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II. THE NARCOTIC LOBBY AND THE DRUG PROBLEM

ALFRED R. LINDESMITH*

For over half a century, from 1915 to the late 1960's, American policy with respect to the currently illicit drugs was largely controlled by a small decision-making elite within the federal bureaucracy in Washington, D.C. This elite was dominated after 1930 by officials of the Federal Bureau of Narcotics who exercised virtually monopolistic power over both policy and governmental propaganda concerning the drug problem.¹ The policy to which this Bureau owed its existence, and which it vigorously promoted and defended, was one of strict prohibition that included severe penalties for all offenders including the users of drugs. Through press releases, handouts and other public relations measures, legislators, officials, enforcement personnel and the general public were bombarded with the idea that punitive policy was the only proper policy and further that this policy was effectively dealing with the problem.² When addiction appeared to be spreading shortly after World War II, the situation was met by calling for more severe penalties, by blaming the judiciary for its alleged leniency and by attacking constitutional restrictions on police power.³ Only during the last several years has there been any tendency to question the fundamental assumptions of the punitive policy itself.

The position of this article is that twentieth century American attempts to control or suppress bad personal habits by punitive measures have been wrong in principle and counterproductive in practice. Particular attention will be given to marihuana and opiate laws, with occasional reference for comparative purposes to the national experiment with alcohol prohibition.⁴ The practice of taking drugs, as with alcohol, admittedly may sometimes have harmful social effects. However, it is primarily and basically a personal practice in which the direct harm, if any, is to the user himself. The

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1. See notes 14 to 28 *infra* and accompanying text.

2. See notes 29 to 40 *infra* and accompanying text.

3. See notes 32 to 34 *infra* and accompanying text.

4. Alcohol, it should be noted, is an addictive drug in the same sense as heroin, even though it is not commonly thought of as such.

indirect social harm sometimes produced by illicit drugs is often the consequence of their very illegality and, apart from that, is essentially the same as that sometimes resulting from the injudicious consumption of alcohol.

It is a common practice to explain social policy by reference to public opinion or as an expression of the "will of society." To attribute drug policy to the will of such an abstraction is to obfuscate rather than clarify the situation. It obscures the facts that legislatures commonly act in response to pressures exerted upon them by vested interests, that public opinion is subject to manipulation by such interests and that central governmental bureaucracies whose budgets, prestige and power depend upon established programs often constitute the most powerful lobbies dedicated to the perpetuation, defense or extension of such programs. This has been the case with the narcotic problem and the narcotic laws.

THE NARCOTIC LOBBY

When the Harrison Act, a tax law directed primarily at the opiates, went into effect in 1915,⁵ it was enforced initially by a special unit within the Treasury Department.⁶ On its face it was not a prohibition measure; it made no specific mention of addicts and did not seem to deny addicts access to legal drugs from medical sources.⁷ It was thought at the time that the main effect of the Act would be to bring the entire opiate problem into the open by making it a matter of public record since manufacturers, distributors and physicians who dispensed drugs were required by the measure to keep detailed records of all transactions. The law, however, became a prohibition measure as the result of a series of court decisions and administrative actions and regulations during the early years of its enforcement.⁸ These actions and decisions had the effect of denying addicts access to legal drugs and of punishing them for possession of illicit drugs when they resorted to a mushrooming black market

5. Act of Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785 [hereinafter referred to in the text and cited as the Harrison Act].

6. *Id.* at § 10.

7. *See id.* at § 6.

8. *See, e.g.,* United States v. Behrman, 258 U.S. 280 (1922); Jin Fuey Moy v. United States, 254 U.S. 189 (1920); Webb v. United States, 249 U.S. 96 (1919). For further discussion of the restrictive interpretation given the Harrison Act, see the author's book. A. LINDESMITH, ADDICTION AND THE LAW 5-8 (1965) [hereinafter cited as Lindesmith].

to obtain supplies. This situation was not materially changed when the United States Supreme Court in *Linder v. United States*⁹ adopted the "disease theory" of addiction and declared addicts to be "diseased and proper subjects of medical care."¹⁰ While this decision seemed to mark a drastic change in the addict's legal position with respect to physicians, enforcement practices continued as before and doctors generally ceased to have anything to do with addicts for fear of criminal prosecution.¹¹

The Harrison Act thus became a prohibition measure for reasons unrelated to public opinion or legislative intentions. The British Dangerous Drugs Act of 1920,¹² which was remarkably like the Harrison Act in its language, did not become a prohibition measure. The reason for the difference was that the British law was interpreted by medical men while the Harrison Act was, in effect, interpreted by enforcement authorities of the federal bureaucracy.¹³

In 1920 the Volstead Act went into effect.¹⁴ Its enforcement was combined with that of the Harrison Act, and the newly appointed prohibition agents were put in charge of the enforcement of both measures.¹⁵ This situation continued until 1930 when the Federal Bureau of Narcotics was created as a separate agency within the Treasury Department.¹⁶ This ten year amalgamation of the two measures no doubt greatly contributed to establishing the punitive-prohibition approach toward opiate users. However, when the Volstead Act was repealed a few years after the creation of the Federal Bureau of Narcotics, no questions were raised concerning the wisdom or efficacy of the antiopiate program.

The Bureau of Narcotics, headed by Commissioner Harry J. Anslinger,¹⁷ quickly established itself as the prime arbiter of opinion

9. 268 U.S. 5 (1925).

10. *Id.* at 18.

11. See Lindesmith at 11-17.

12. 10 & 11 Geo. 5, c. 46.

13. See, e.g., R. ASHLEY, *HEROIN: THE MYTHS AND THE FACTS* 150-51 (1972) [hereinafter cited as ASHLEY]; R. KING, *THE DRUG HANG-UP* 33-68 (1972) [hereinafter cited as King]; E. SCHUR, *NARCOTIC ADDICTION IN BRITAIN AND AMERICA* 70-85 (1962).

14. Act of Oct. 28, 1919, ch. 85, § 1, 41 Stat. 305 [hereinafter referred to in the text and cited as the Volstead Act].

15. *Id.* tit. I, § 2.

16. Act of June 14, 1930, ch. 488, § 1, 46 Stat. 585.

17. Commissioner Anslinger headed the Bureau from its inception in 1930 until his

and policy in the narcotic field. Mr. Anslinger came to be viewed as something of a minor national hero who had saved the nation from narcotics as J. Edgar Hoover had saved it from communism. He was hailed by members of Congress as the greatest living authority on narcotics;¹⁸ his budget was dealt with generously;¹⁹ his views were never challenged;²⁰ the operations of his bureau were not investigated;²¹ and the statistical data that he annually presented to Congress was accepted even when internally inconsistent and self-contradictory.²²

In 1937, largely through the efforts of Mr. Anslinger,²³ Congress enacted the Marihuana Tax Act of 1937²⁴ which was closely modeled after the Harrison Act. Enforcement was again entrusted to Anslinger's bureau.²⁵ The number of agents in the Bureau at that time was only about three hundred²⁶ but this force was almost doubled in 1968 when the Federal Bureau of Narcotics was amalgamated with forces from the Bureau of Drug Abuse Control of the Food and Drug Administration.²⁷ The amalgamated force was moved into the Depart-

retirement in 1962. Prior to 1930, Mr. Anslinger had served as Assistant Prohibition Commissioner.

18. *Hearings on S. 67 Before the Subcomm. on Improvements in the Federal Criminal Code of the Comm. on the Judiciary, 84th Cong., 1st Sess., pt. 1, at 8 (1955)* [hereinafter cited as *Daniel Hearings*].

19. See note 37 *infra*.

20. Cf. Lindesmith at 244-45.

21. One author notes on this point that

[t]he only occasion, so far as is known, when those files [of the Federal Bureau of Narcotics] were opened to outsiders was during the 1960's, when a Boston consulting firm, Arthur D. Little, Inc., was employed to make one study of addiction problems for the President's Commission on Crime and another for the National Institute of Mental Health.

E. BRECHER, LICIT AND ILLICIT DRUGS 39 (1972) [hereinafter cited as Brecher]. This event occurred after Mr. Anslinger's retirement in 1962.

22. See notes 41 to 46 *infra* and accompanying text.

23. Brecher at 413-18; Lindesmith at 228-37.

24. Act of Aug. 2, 1937, ch. 553, § 1, 50 Stat. 551.

25. *Id.* § 14.

26. At the end of 1966, the Federal Bureau of Narcotics had a force of 278 agents. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE at 7 (1967) [hereinafter cited as TASK FORCE REPORT]. The President's Task Force strongly recommended a material increase in the enforcement staff of the Bureau of Narcotics and related enforcement agencies. *Id.* at 6-9.

27. Reorganization Plan No. 1 of 1968, 82 Stat. 1367. The Bureau of Drug Abuse Control was established within the Food and Drug Administration to enforce the Drug Abuse Control Amendment of 1965 which dealt with the suppression of LSD, amphetamines and other suspected "dangerous drugs." Act of July 15, 1965, Pub. L. No. 89-74, 79 Stat. 226. Initially,

ment of Justice and is now called the Bureau of Narcotics and Dangerous Drugs.²⁸ The growth of this Bureau is, of course, demonstrative of the power it has enjoyed.

THE POWER OF THE LOBBY

There is little mystery about the power exercised by what I have called the narcotic lobby or Washington enforcement establishment. The Congress contains many persons with legal training and prosecution experience who share the police-prosecutor orientation toward social problems. The important legislative committees of the past that have fashioned drug policy seem invariably to have been chaired and dominated by such persons, who also usually had long-standing friendships with officials of the Bureau of Narcotics. Two of these committees responsible for the 1951 and 1956 legislation were headed by Hale Boggs of Louisiana and Price Daniel of Texas.²⁹ The legislation was tailored almost to the last detail to conform to the wishes of the Bureau of Narcotics.³⁰ Testimony hostile to the proposed legislation was generally excluded from the hearings by representatives of the Bureau and medical opinion was presented only when it was unavoidable.³¹ While the legislation was aimed at

this Bureau had 200 agents stationed in nine field offices, with a projected estimate of 500 agents assigned by 1970. TASK FORCE REPORT at 7. President Johnson recommended the amalgamation of the two bureaus (as well as a 30 percent increase in the number of agents) because the fragmentation of jurisdiction, with the Federal Bureau of Narcotics having jurisdiction over narcotics and marihuana and the Bureau of Drug Abuse Control having jurisdiction over dangerous drugs, hindered effective enforcement of federal drug laws. In many cases, violations of both narcotic and dangerous drug laws were present, but the arresting agent only had jurisdiction over one offense. See Message of President Johnson to the Congress, White House, Feb. 7, 1968.

For background on the Drug Abuse Control Amendment of 1965 and its enforcement by the Bureau of Drug Abuse Control see generally Note, *LSD: A Challenge to American Drug Philosophy*, 19 U. FLA. L. REV. 311 (1966).

28. Reorganization Plan No. 1 of 1968, § 3, 82 Stat. 1367.

29. Representative Hale Boggs served as chairman of the Subcommittee on Traffic in, and Control of, Narcotics, Barbiturates and Amphetamines of the House Committee on Ways and Means and was responsible for the Boggs Act of 1951, ch. 666, 65 Stat. 767 [hereinafter cited as the Boggs Act of 1951].

Senator Price Daniel was chairman of the Subcommittee on Improvements in the Federal Code of the Senate Committee on the Judiciary. His efforts resulted in the Narcotics Control Act of 1956, ch. 629, 70 Stat. 567 [hereinafter cited as the Narcotic Control Act of 1956].

30. Both the Boggs Act of 1951 and the Narcotics Control Act of 1956 contained provisions designed to facilitate the efforts of the Federal Bureau of Narcotics in securing convictions, and, in addition, the penalties for violations were enhanced. See Lindesmith at 25-28.

31. See Lindesmith at 248-51. Even where medical opinion was presented, the records

curtailing the powers of the federal judiciary,³² and while judges were severely criticized by police witnesses and members of Congress,³³ no federal judges testified at the hearings.³⁴ They were, in effect, tried and convicted in absentia for being lenient with "dope peddlers." This attack on the integrity and competence of the federal judiciary by another agency of the government is a striking example of the arrogance of bureaucratic power.

The rigid policy which this bureaucracy succeeded in implementing both maintained the police monopoly of the problem and effectively isolated the medical and scientific communities from addicts and addiction, stifling research, experimentation and innovation. The bureaucratic elite were not mere policemen and prosecutors; they were politicians who knew their way around Washington and cultivated day-to-day relationships with key congressional and administrative figures. Like bureaucrats generally, they tended to identify the interests of their agency with the public interest. The addict, who long ago had been pronounced a proper subject of medical care,³⁵ found that virtually the only doors open to him were those of the jails and prisons.³⁶

The power exercised in the past by the Federal Bureau of Narcotics also rested upon its propaganda campaign, generously financed with public funds allocated to the Bureau year after year by Congress.³⁷ In one year the Bureau stated in its annual report that

of these hearings often suggest that these opinions were irresponsible and that the medical profession was on trial for the improper prescription of drugs for addicts. A vivid example is the *Daniel Hearings*, *supra* note 18, pt. II, at 415-30, 443-519.

32. The major impact of the laws was to take the power to mitigate punishment from federal judges by providing for mandatory minimum sentences depending on the nature and number of violations and by barring suspended sentences and probation. *See* Lindesmith 25-28.

33. *See generally Daniel Hearings*, *supra* note 18, pt. III.

34. The only commentary from members of the judiciary came from *state* judges who were generally critical of the discretion afforded federal judges. *See, e.g., Daniel Hearings*, *supra* note 18, pt. II, at 430-34.

35. *Linder v. United States*, 268 U.S. 5 (1925).

36. It should be noted that while the above remarks pertain to federal judges and the federal policy, drug policy at the state level also has been overwhelmingly determined in Washington. *See* Lindesmith at 28-34.

37. Prior to the reorganization of the Federal Bureau of Narcotics in 1968, total appropriations for the necessary expenses of the Bureau for the respective years were as follows:

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it had responded to more than 66,000 requests for information.³⁸ It dipped deeply into public funds to prepare handouts representing the narcotics problem as it wished it to be viewed and vilifying occasional critics.³⁹ These handouts were circulated gratis to those

<u>year</u>	<u>appropriation</u>
1956	\$2,990,000
1958	3,780,000
1961	4,100,000
1966	5,970,000
1968	6,565,000

Following the reorganization in April 1968 and reflecting the expanded function of the Bureau, total appropriations for the Bureau of Narcotics and Dangerous Drugs dramatically increased as follows:

<u>year</u>	<u>appropriation</u>
1969	\$17,818,000 (est.)
1970	27,772,000
1971	43,592,000
1972	65,089,000
1973	71,771,000 (est.)

See THE BUDGET OF THE U.S. GOV'T for the respective fiscal years. These appropriations are further divided in the respective years for such expenses as salaries, traveling expenses, administrative expenses and so forth. There is, of course, no specific division of the amount of funds utilized for propaganda purposes. Thus, one can only speculate on the specific proportion of these budgets which was used to reimburse the agent who visited my office or the administrative costs entailed in stage managing congressional hearings.

After the reorganization in 1968, the Bureau became less secretive about their efforts to influence popular opinion and in an explanation of budgetary expenditures indicated an intention to increase their efforts in the area of "public education."

[Influence groups] will be reached each year through the distribution of printed matter; debate kits; films; speeches to educational and civic groups; radio and TV appearances; letters to over 50,000 pharmacists, and bulletins to over 27,000 law enforcement officers and organizations.

In 1970, the number of publications will be doubled and the emphasis on use of mass media, radio and TV will be significantly increased.

APPENDIX TO THE BUDGET OF THE U.S. GOV'T, FISCAL YEAR 1970 at 668.

38. U.S. TREASURY DEP'T, BUREAU OF NARCOTICS, TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS 38 (1966).

39. The Federal Bureau of Narcotics also used the national media to manipulate public opinion to its advantage. See BRECHER at 413-21 (use of magazine articles in the campaign for federal marijuana laws and its effect on public opinion). The Bureau of Narcotics and Dangerous Drugs has continued the propaganda campaign of its predecessor and will provide publications and films on drug abuse upon request. U.S. GOV'T ORGANIZATION MANUAL 292, 294 (1973).

who asked for information and, more importantly, to the press, to members of Congress and to law enforcement officials throughout the nation. Many of the recipients probably read little else on the narcotic problem. Legislators, bombarded with these brochures, were not in a position to evaluate them critically and, in any case, were unlikely to take a stand on the issues unless it seemed that they could win votes by doing so. Through the Bureau's massive influence, it was established that the only safe political line was to demand even harsher punishment, more inflexible laws and greater freedom of action for enforcement agencies.

In addition to the routine types of propaganda activities that might be expected from almost any embattled agency, the Bureau of Narcotics has sometimes resorted to more direct, "raw jaw" tactics in the attempt to silence its critics. To cite a few instances from personal experience, federal narcotic agents have visited Indiana University at Bloomington three times on orders from Washington on other than law enforcement business. The first time, after first calling on the Chairman of the Board of Trustees and the President of the University, was to threaten me with the loss of my position for advocating a medical policy toward addicts and criticizing the Bureau's punitive policy. The second visit, by a top official of the Bureau, was designed to pour oil on waters that had been troubled by the first visit. The third occurred in the early 1960's, evidently for the purpose of preventing the publication by the Indiana University Press of a book that I edited and for which I wrote an introduction.⁴⁰

The very crudeness of these tactics suggest a sense of insecurity, vulnerability or paranoia. Predictably, a police attempt to suppress a non-pornographic book solely because it is critical of them is bound to fail and likely to stimulate sales. That the effort was made indicates that, even in the early 1960's, the growing tide of criticism of traditional narcotic policy, coupled with continued deterioration

40. The book, *DRUG ADDICTION: CRIME OR DISEASE?*, was the report of a Joint Committee of the American Medical and American Bar Associations which originally had been sponsored by the Russell Sage Foundation which later declined to publish it. I was told that officials of this foundation reached their decision after conversations with the head of the Federal Bureau of Narcotics who objected strongly to its criticism of the Bureau and its advocacy of a medical approach to opiate addiction. These incidents are described in more detail in my book, *THE ADDICT AND THE LAW*, 246-57 (1965).

of the heroin problem, may have been perceived by officials of the Washington bureaucracy as ominous portents for the future of their empire. It was not many years later that the erosion of the power of the Bureau of Narcotics became evident; the Bureau had been much more successful in its public relations than in law enforcement. It is to these recent developments that we now turn.

THE HEROIN CRISIS

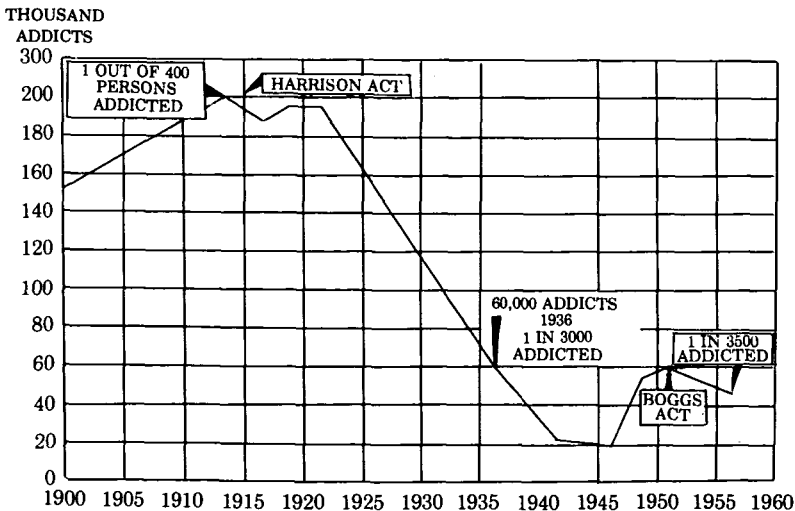
When I began my studies of the opiate problem in 1935, official estimates put the number of addicts at about 60,000.⁴¹ Government handouts at that time were not affected by the credibility gap that has since developed and there was little public interest in the problem. During World War II, the international illicit traffic was disorganized by war conditions, heroin was in short supply and arrests dropped.⁴² The Bureau of Narcotics lowered its estimate of the number of addicts to about 20,000 and when the post war increase began to be noticed around 1950, raised it again to 60,000.⁴³ Around this time the Bureau manufactured its well known "ski-jump curve" which showed a total of about 200,000 in 1914 followed by a steep decline to 20,000 during the war years.⁴⁴ After the war, the total rose to 60,000 and then declined following the 1951 Boggs Act and the

41. See note 44 *infra*.

42. See Brecher at 94 and authorities cited therein.

43. See note 44 *infra*.

44. The ski-jump curve is a graphic depiction of the prepared statement of Mr. Anslinger on the history of the drug problem in the United States introduced before the Daniel Senate subcommittee in 1955. See *Daniel Hearings*, *supra* note 18, pt. I, at 9-10. The number of addicts he claimed existed in specific years in the United States is depicted below:



Narcotic Control Act of 1956 which sharply escalated penalties.⁴⁵ The entire curve was a fiction that bore no relationship whatever to any known statistics, but it was presented annually at the Congressional hearings on the Bureau's budget and accepted as authoritative.⁴⁶

The figure of 50,000 or 60,000 addicts in the nation is described as an irreducible minimum even though it is larger than the total for all the countries of Europe combined and is known to be an underestimate.⁴⁷ Press releases and handouts nonetheless assured the public and legislators that the problem was under control, that the apparent deterioration after the war was being grossly exaggerated and that all problems could be quickly resolved by increasing penalties and curbing judicial powers.⁴⁸ When arrest rates increased, this was interpreted as evidence that the problem was being vigorously dealt with; when rates declined, this was taken to mean that the problem was diminishing.

During the last ten to fifteen years, the official Washington position has been discredited by developments that could no longer be concealed by optimistic handouts or statistical fakery. The official estimate of the number of addicts has gone up about 1000 per-

45. See note 44 *supra*.

46. The ski-jump curve on its face is highly improbable. It suggests, for example, that in a 30-year span over 180,000 addicts simply vanished. There are, of course, no official statistics which reliably reflect the actual number of addicts in this country except as they are arrested, and these figures only superficially indicate the magnitude of the problem. Nonetheless, there is no correspondence between Mr. Anslinger's estimates and the number of arrests reported by the Federal Bureau of Investigation. For example, between 1951 and 1956 Mr. Anslinger reports a sharp decline in the number of addicts while the arrest figures of the F.B.I. almost doubled and continued to rise. For a critical evaluation of the ski-jump curve, see Lindesmith at 104-24. Despite the obvious inaccuracy of the estimates by Mr. Anslinger, he clung to his ski-jump curve until his retirement and presented it to the American people and Congress as an accurate depiction of the success of his Bureau. See, e.g., Anslinger, *We're Winning the War Against Dope!*, THIS WEEK MAGAZINE, April 16, 1961, at 11.

For an update of the numbers game, see ASHLEY at 38-48.

47. See Vogel, Isbell & Chapman, *Present Status of Narcotic Addiction*, 138 J.A.M.A. 1019-26 (1948). These officials of the Public Health Service placed the total number of addicts at 48,000, a figure that was often used interchangeably with 50,000 to 60,000 as an irreducible minimum in the media. For comparative figures for the combined number of addicts in European countries during this period, see Lindesmith at 179-80 (*U.N. Summaries* placed the estimated number of addicts in Europe at approximately 8,000).

48. See, e.g., Anslinger, *We're Winning the War Against Dope!*, THIS WEEK MAGAZINE, April 16, 1961, at 11; N.Y. Times, June 3, 1955, at 11, col. 1.

cent to nearly 600,000;⁴⁹ the estimated total in New York City alone has jumped from around 20,000 to over 100,000;⁵⁰ and the crimes committed by addicts to raise money for black market heroin undoubtedly have become a major factor in increasing the urban citizen's fear of being victimized, both in the streets and in his home.⁵¹ A recent study of a number of heroin addicts concluded that, with drug offenses excluded, addicts committed an average of 23 crimes a month, seven percent of them being robberies or muggings.⁵² Assuming 100,000 addicts in New York City, this would mean 2,300,000 crimes per month or 27,600,000 annually. Even if these figures are exaggerated by as much as 100 percent, they still suggest that the drug problem alone probably accounts for much of the impression that American cities are among the most dangerous in the world. Moreover, heroin addiction, which once seemed to be reasonably well confined to the slums and Black ghettos,⁵³ has spilled out of the slums into the suburbs and onto the campuses;⁵⁴

49. Myles J. Ambrose, then head of the Office for Drug Abuse Law Enforcement, estimated on April 3, 1972, that there were 560,000 addicts in the nation. Ashley at 43. Ashley's own estimate is 720,000 untreated addicts in the United States. *Id.* at 48.

50. Ashley cites this figure as the most conservative estimate available, noting that a BNDD statistician, Dr. Joseph Greenwood, estimated in 1968 that there were 150,000 addicts in New York City. *Id.* at 41, 46. Ashley calls attention to a New York City register of known addicts that contains 150,000 names and himself estimates New York's addicts at more than 300,000. *Id.* at 47.

51. A poll of 43,000 readers conducted by LIFE magazine concluded that over 80 percent of those in cities over 500,000 felt unsafe on the streets at night; in cities of 1,000,000 or more, three out of five claimed that they or members of their family had been victims of crime during the last year; 30 percent of the respondents stated that they kept guns in their homes for protection; and 78 percent said they sometimes felt unsafe in their own homes. LIFE, Jan. 14, 1972, at 28.

52. Inciardi & Chambers, *Unreported Criminal Involvement of Narcotic Addicts*, 2 J. DRUG ISSUES 57, 64 (1972).

53. BNDD statisticians claimed in 1970 that 48.4 percent of known addicts were Black. BRECHER at 18. This high addiction rate, however, seems to be a post-W.W. II development. *Id.* at 18-19. See also C. THOMAS, THE EPIDEMIOLOGY OF OPIATE ADDICTION IN THE UNITED STATES 89-90 (1970) (noting that in 1937, 88.4 percent of the male patients admitted to Lexington Hospital were white, 8.9 percent Negro, 1.2 percent Mexican and 1.5 percent other; in 1962, 51 percent were white, 30 percent Negro, 12.2 percent Puerto Rican, 4.9 percent Mexican and 1.5 percent other).

54. While heroin use is undoubtedly increasing among young people in suburbs and on campuses, the extent of the problem is difficult to assess. In 1971 it was estimated that 12 percent of the national high school population had tried heroin. B. JOHNSON, MARIHUANA USERS AND DRUG SUBCULTURE 93 (1973). In the New York area it was estimated that of persons graduating from high schools, 0.5 percent had used heroin in 1966, while in 1970 the figure rose to nine percent. *Id.* at 219. In a sample of about 3,500 New York college students, 126

the American drug scene has become a spawning ground for esoteric drug cults. This new fertile ground has also, more than ever before, become a prime target for heroin dealers and manufacturers throughout the world.⁵⁵

The bankruptcy of the exclusively punitive approach to the heroin problem, like that of the prohibition of alcohol in the 1920's, is especially evident in the big cities. Turning again to New York City, if it is proposed to incarcerate any significant proportion of the city's addicts and peddlers under the old guidelines of "getting addicts off the streets" and "cracking down" on pushers, the penal establishment of the State of New York could not begin to accommodate them.⁵⁶ The recent proposal of Governor Rockefeller⁵⁷ to impose mandatory life sentences on peddlers and addicts who commit crimes under the influence of drugs and to eliminate plea bargaining and parole at the same time, represents a regression, a long step backward, and has been so received by most knowledgeable observers.⁵⁸ The fact that this proposal has been made at this stage in the evolution of drug policy is an indirect tribute to the effectiveness of decades of governmental propaganda advocating punishment as the only remedy for the drug problem. In the meantime, New York City has the melancholy distinction of being the only metropolitan area in the world which can claim the heroin habit as the number one cause of deaths of persons between the ages of fifteen and thirty-five.⁵⁹

had used heroin and about 35 (or one percent) were addicts. *Id.* at 116. Even if these figures are imprecise, they are at least indications of the expanding dimensions of the problem and the need for reevaluating our national drug policy. *See generally* Brecher at 183-92.

55. The amount of heroin being brought illegally into the United States is highly speculative. It depends on a variety of factors, such as how many addicts there actually are, how much heroin they use per day and the dilution factor of the final street product. For some comparative figures, see Ashley at 16-23 (his own estimate is at least 22 tons per year). *See also* Brecher at 92.

56. *See Fourth National Conference on Methadone Treatment: Proceedings, San Francisco*, Jan. 8-10, at 69 (published by the National Association for the Prevention of Addiction to Narcotics, New York, 1972).

57. *See Annual Message of Governor Rockefeller to the New York Legislature*, Jan. 3, 1973 in [1973] *Session Laws of New York* at 2309, 2317-20. The New York Legislature considerably modified Governor Rockefeller's proposal. *See, e.g.*, Act of May 8, 1973, ch. 276, [1973] *Session Laws of New York* 371.

58. *See N.Y. Times*, Jan. 10, 1973, at 1, col. 5 (Mayor John Lindsay of New York City); *N.Y. Times*, Jan. 11, 1973, at 1, col. 3 (New York State Commissioner on Drugs).

59. Brecher at 102.

Another facet of the heroin situation tarnishing the public image of the enforcement bureaucracy has been the exposure of widespread corruption in narcotic enforcement on the part of both federal and local agents in New York City. Several years ago an investigation initiated in Washington, D.C., was followed by the resignations of about 50 federal narcotic agents who were or had been stationed in the New York office which had approximately 80 agents attached to it while the entire national force numbered only 300. Later still, the Knapp Commission inquiry indicated considerable graft within the huge New York narcotic squad, and very recently the disappearance of large quantities of seized heroin from the police vaults confirmed this impression.⁶⁰ Scandals of this dimension, which seem to be a recent occurrence, suggest that the heroin crisis has generated a growing disillusionment within the enforcement ranks.

THE METHADONE MAINTENANCE PROGRAM

The methadone maintenance program, which originated in New York City in 1964,⁶¹ was a response to a crisis. City officials had gradually come to the painful realization that the heroin situation was bad and getting worse; traditional methods of suppression no longer made sense. It became increasingly clear that the punitive approach only pushed the problem underground. Through the influence of a black market that enriched nonaddicted criminal entrepreneurs who were rarely arrested, the problem slipped more or less out of sight and out of control. There was a desperate search for alternative ways of dealing with the problem, and increasing attention was given to medically oriented programs in European countries whose drug problems were miniscule compared to that of the United States or even that of New York City alone.⁶²

The methadone program, which consists of simply providing addicts with a legal, low cost, opiate-type synthetic drug that maintains their addiction, is an improved variant of the kind of program

60. Ashley at 136-39 cites numerous articles from the New York Times on these scandals which were extensively covered by the press late in 1971. See also N.Y. Times, Feb. 1, 1973, at 1, col. 4 (Police Commissioner Patrick V. Murphy stated 398 lbs. of heroin and cocaine were stolen from police vaults).

61. For background on the first methadone program, see generally N. HENTOFF, *A DOCTOR AMONG THE ADDICTS* (1969).

62. See note 47 *supra*.

that exists in most European countries.⁶³ It is also the kind of program which was bitterly and virtually unanimously opposed by Washington officials over a period of decades. This opposition was not confined to the enforcement bureaucracy alone but also was expressed by Public Health Service officials. In 1948, for example, Dr. Victor H. Vogel, formerly of the Lexington Hospital for addicts, criticized my proposal⁶⁴ that such a program was needed saying that it was "naive in the extreme and dangerous to the public health of the nation."⁶⁵ The methadone program itself was begun in New York against the advice of Washington narcotics officials and in the face of the possibility of criminal prosecution. When it began to show signs of success, hostility from enforcement sources increased even more and various efforts to sabotage it were made.⁶⁶

Despite these hostile efforts, the methadone maintenance program has been spreading rapidly throughout the United States and in a number of foreign countries as well. It was recently estimated that about 80,000 addicts are currently being provided with methadone at several hundred centers scattered throughout the country.⁶⁷ A recently reported decline in rates of property offenses in a number of cities may well account for the program's widespread acceptance.⁶⁸

It is not appropriate or relevant here to discuss this program in detail or to consider its weaknesses and the criticisms that are made of it. My present concern is to indicate only that it is medically directed and that it has had the effect of breaking the enforcement monopoly that has for so long dominated the scene. The medical and scientific communities are again in touch with the addict and the addiction problem; the field is alive with new ideas, new experimentation and a new spirit. Narcotic conferences which used to be dominated by prosecutors and police officials are now more often dominated by medical men and scientists. Within the Washington

63. For a description of the British program, see LINDESMITH at 162-88. See also Ashley at 149-68; Brecher at 120-29.

64. See A. LINDESMITH, OPIATE ADDICTION 204-10 (1947).

65. 38 AM. J. PUB. HEALTH 885 (1948).

66. Cf. King at 256-60, 333-37.

67. N.Y. Times, Dec. 17, 1972, at 48, col. 1. See also *Fifth National Conference on Methadone Treatment: Proceedings, New York*, March 17-19, 1973, at 1416 (published by the National Association for the Prevention of Addiction to Narcotics, New York, 1973).

68. N.Y. Times, Jan. 10, 1973, at 49, col. 1.

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bureaucracy, the enforcement lobby now is compelled to compete with other agencies representing medical and health interests. Government money now is being used to subsidize methadone programs,⁶⁹ and the President's advisor on the drug problem, Dr. Jerome Jaffe,⁷⁰ a leader in the methadone movement, quite capably represents the medical and therapeutic orientation. Nevertheless, as Governor Rockefeller has demonstrated, the old line punitive program is not dead. The current government program, indeed, is ambivalent. On the one hand, it has permitted and even encouraged the spread of the methadone and other therapeutically designed programs; on the other hand, it continues to provide severe punishment for those addicts which the program fails to reach largely because of its own inadequacy.⁷¹ In effect, the current approach punishes the addict for not utilizing treatment facilities which are not made available to him.

In the meantime, within the bureaucracy a power struggle is apparently developing between the enforcement agencies threatened with the loss of an empire and newly emerged health and medical interests. There are some signs of an attempt to strangle the methadone program with red tape and over-regulation.⁷² Undoubtedly, the most powerful enemies of the methadone and other medical programs for addicts are to be found in the Bureau of Narcotics and Dangerous Drugs. If this Bureau is permitted to have its way, it is possible that the errors of the past with respect to heroin will be repeated with methadone. It is hard to escape the conclusion that much of what is happening in the bureaucracy is motivated more by self-interest than by consideration of the national welfare.

69. The budget proposed for 1974 by President Nixon allocated 719 million dollars for all drug programs compared to 654 million dollars for 1973. Of the 719 million, 274 million was specified for treatment and rehabilitation, and 243 million of this amount was directed to the National Institute of Mental Health which is particularly involved in funding methadone programs. See *DRUGS AND SOCIETY*, Mar. 1973, Vol. 2, at 21-22.

70. In 1971 Dr. Jaffe was appointed director of the Nixon Administration's Special Action Office for Drug Abuse Prevention in Washington, D.C. From 1965-71, Dr. Jaffe served as director of the Illinois Narcotic Advisory Council and was instrumental in establishing effective methadone maintenance and auxiliary drug programs in that state and on the national level. In 1973 Jaffe was replaced by Dr. R.L. DuPont who had been in charge of the Washington, D.C. methadone clinic.

71. Cf. Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 *et seq.* (1970).

72. See King at 256-60, 333-37; *SCIENCE*, Aug. 11, 1972, Vol. 177, at 502-04 (F.D.A. guidelines tighten distribution of methadone).

THE MARIHUANA FIASCO

Like the antiheroin program, marihuana enforcement is also in a rather obvious state of dilapidation and decay. The federal ban on marihuana was enacted in 1937⁷³ at the behest of the Federal Bureau of Narcotics on the grounds that this substance produced insanity, murder, mayhem, slaughter on the highways and other violent crime.⁷⁴ Even then, however, it was known that alcohol produces all these effects much more commonly than "pot." Moreover, in the hearings prior to the enactment of the legislation, Mr. Anslinger was twice asked about the tendency to progress from marihuana to heroin and twice denied that this occurred, saying that heroin and marihuana users constituted two separate, unrelated groups.⁷⁵ In the 1950's, when penalties for offenses involving heroin were being escalated, penalties for marihuana violations were also increased in a seemingly casual manner. At this time Mr. Anslinger reversed his earlier position, arguing that marihuana should be prohibited, not because it generated crime, but because it led to the use of heroin.⁷⁶

For close to three decades after the 1937 legislation, those who were sent to jail or prison for marihuana violations were mainly children of the poor from the slums and Black ghettos.⁷⁷ There was, during this period, little public interest in marihuana and almost no public criticism of the injustice and cruelty of the savage penalties embodied in the laws. At the White House Conference of 1962, for example, the focus was on heroin, and marihuana was scarcely

73. Marihuana Tax Act of 1937, ch. 553, § 1, 50 Stat. 551.

74. See Brecher at 413-21.

75. Mr. Anslinger testified at both the House and Senate Hearings on the taxation of marihuana to this effect. See *Hearings on H.R. 6906 Before the House Comm. on Ways and Means*, 75 Cong., 1st Sess., at 24 (1937) and *Hearings on H.R. 6906 Before a Subcomm. of the Senate Comm. on Finance*, 75th Cong., 1st Sess., at 14-15 (1937).

76. *Daniel Hearings*, *supra* note 18, pt. 5, at 16.

77. There were very few studies of marihuana until the 1960's in this respect. *But see* MAYOR LA GUARDIA'S COMMITTEE ON MARIHUANA, *THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK* (1945) in *THE MARIHUANA PAPERS* 251 (D. SOLOMON ed. 1966) where the committee noted that of 167 persons arrested for marihuana violations in New York City from October 1939 to November 1940, 89 were Negro, 37 white, 28 Latin-American, 10 colored Latin-American, one British East Indian, one Filipino and one Chinese. The committee concluded that "[t]he distribution and use of marihuana is centered in Harlem. The majority of marihuana smokers are Negroes and Latin-Americans." *Id.* at 259. By 1967 the President's Task Force on Narcotics and Drug Abuse reported that marihuana use was apparently increasing both within depressed urban areas and the college communities. *TASK FORCE REPORT* at 3.

mentioned.⁷⁸ Federal enforcement activities reflected this lack of interest and in 1960 the Federal Bureau of Narcotics reported only 169 cases involving marihuana.⁷⁹ At the same time, however, it was not maintained that the use of "pot" was diminishing.

All of this changed a few years later when marihuana, like heroin, moved out of the slums into the middle and upper classes and onto the college campuses. Some estimates currently place the number of those who use or have tried this substance at twenty million or more,⁸⁰ with the practice spreading not only among adults but also into high schools and even grade schools. It appears that even a moderately vigorous enforcement campaign could, by itself, fill all the jails and prisons of the nation with marihuana offenders alone and keep most of the police and the courts busy with this one problem.

When the sons and daughters of well-to-do, respectable and influential families began to be arrested, a new attitude toward marihuana quickly developed both within a segment of the general public and within the legal profession. Defendants were now more often represented by competent, well-paid attorneys who had no difficulty in finding arguments attacking the laws. Just as the Volstead Act had sparked a bitterly divisive debate between the "wets" and the "drys," the marihuana laws generated a similar confrontation between the generations. A storm of criticism was directed at the drug laws in general and the marihuana laws in particular;⁸¹ associations of various kinds were organized to promote reform or to legalize or decriminalize the use of pot.⁸² As the great marihuana

78. See generally PROCEEDINGS, WHITE HOUSE CONFERENCE ON NARCOTIC AND DRUG ABUSE, Washington, D.C., Sept. 27-28, 1962.

79. U.S. TREASURY DEP'T, BUREAU OF NARCOTICS, TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS 71 (1960).

80. FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING 7 (1972) (estimate of 24,000,000 on the basis of a national survey sponsored by the commission).

81. Practically all the authors of books on marihuana are critical of the marihuana laws. See THE MARIJUANA REVIEW, Sept. 1973, Vol. 1, at 47-48 for an impressive list of endorsers supporting the decriminalization of marihuana.

82. The most powerful and prestigious association is probably the National Organization for the Reform of Marihuana Laws (NORML) which maintains a Washington lobby and is currently filing suit to have punishment for possession declared unconstitutional. Anderson, *The Pot Lobby*, N.Y. Times, Jan. 21, 1973, § 6 (Magazine), at 8.

For additional organizations supporting the decriminalization of marihuana, see THE MARIJUANA REVIEW, Sept. 1973, Vol. 1, at 48.

debate progressed, its emotionalism increased, public support of the laws diminished, the laws were enforced less vigorously or evaded altogether and the logic of argument degenerated.

Advocates of reform compared the use of pot with that of alcohol and accused whiskey-drinking officials and legislators of hypocrisy, arguing that marihuana was less harmful than alcohol.⁸³ The Establishment, embarrassed and hard-pressed, answered that alcohol had become part of the culture and that the harmful effects of marihuana had not yet been sufficiently examined by scientists. When the latter turned their attention to this matter in recent years, their findings were inconclusive and consisted, in the main, of rediscovering what was already known, leaving the essentials of the situation unchanged. Confidence in the essential fairness of the entire system of criminal justice declined, especially among the young, and hostility toward the narcotics police became intense. This hostility continues to be fueled by reports, such as the recent ones from Texas of two marihuana offenders who were given sentences of ten and of fifty years in prison, and of 700 persons, more than half of them first offenders, serving sentences averaging over nine years for simple possession.⁸⁴

An excellent illustration of the degeneration of the logic of the argument in favor of the marihuana laws is provided by the "stepping stone" theory which holds that "pot" smokers should be punished because most heroin smokers used marihuana before heroin. What is disregarded is that most marihuana smokers do not progress to heroin; that most heroin and marihuana users previously smoked tobacco and drank alcohol; and that the very illegality of marihuana tends to push its users, and especially those who deal in it, into association with heroin users and distributors.⁸⁵ There are other progressions which are totally disregarded, such as a widely observed tendency for some heavy consumers of alcohol to progress directly to heroin or opiate use.⁸⁶ There is also a progression from

83. See, e.g., J. FORT, *THE PLEASURE SEEKERS* (1969).

84. *THE LEAFLET*, March, 1973, Vol. 2, at 2.

85. See B. JOHNSON, *MARIHUANA USERS AND DRUG SUBCULTURES* 90-121 (1973). See also Brecher at 427-29; J. O'DONNELL, *NARCOTIC ADDICTS IN KENTUCKY* 135-42 (1969).

86. For example, of a sample of 1,100 addicts studied at Lexington about 75 percent had never tried marihuana whereas 95 percent of the sample had previously used alcohol to excess. *Louisville Courier-Journal and Times*, June 20, 1971, § B, at 10.

the use of legally prescribed drugs to illicit ones and it is known that parents who drink or who use tranquilizers and sedatives are more likely to have children who use illicit drugs than those who do not.⁸⁷ If one takes into consideration both the illicit and the licit drugs such as nicotine and alcohol, the stepping stone justification for punishing marihuana smokers becomes obviously untenable. The fact that the argument is taken seriously is merely an indication of an extreme shortage of logical arguments.

It has come to be widely recognized that the greatest evil that the use of marihuana produces is the danger of arrest and criminal prosecution: the harmful personal and social effects of criminal prosecution far outweigh the effects of any drug, be it marihuana, alcohol or heroin. Despite the tragedy that enforcement may produce, the marihuana laws and the use of marihuana have become favorite subjects of jokes and laughter, perhaps the best indication of a disrespect for the law. While the kinds of crime that rightfully deserve thorough police investigation, such as mugging, homicide, robbery, rape and burglary have risen steadily, too much police effort is devoted to trivialities such as searching for marihuana seeds on the floors of automobiles or recovering miniscule shreds of marihuana from people's pockets. The enforcement tactics used commonly involve the use of decoys, informers and the wholesale invasion of privacy.⁸⁸ As the laws are increasingly evaded and unenforced, they tend to be used increasingly in a discriminatory manner to harass people who are disliked for reasons having nothing to do with drug abuse, such as unconventional dress, long hair or unpopular political views and activities.

With the trend toward the decriminalization of marihuana use, as indicated by the reduction of first-possession offenses to the misdemeanor level in most states,⁸⁹ another segment of the narcotic bureaucracy's empire seems to be slipping away. Outside of the field of criminal law enforcement, most agencies with records as bad as that of the Federal Bureau of Narcotics and its successor, the Bureau of Narcotics and Dangerous Drugs, for over half a century, would long since have been reorganized, dismantled or had their policies overhauled. It is primarily in the enforcement field that the

87. See R. BLUM, *STUDENTS AND DRUGS* II 84-109, 139 (1970).

88. See, e.g., *Sherman v. United States*, 356 U.S. 369 (1958).

89. See, e.g., *IND. CODE* § 35-24.1-4-7 (Cum. Supp. 1973).

remedy for disasters produced by past policies is thought to be more of the same patent medicine that has proven itself worse than the disease.

ON THE PRINCIPLE INVOLVED

This article began with a statement that the drug laws were wrong in principle as well as counterproductive in practice. As a final point, I should like to illustrate this issue of principle. The principle involved here was succinctly stated many years ago by John Stuart Mill in his essay *On Liberty*:

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. He cannot rightfully be compelled to do or forbear because it will make him happier, because, in the opinion of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he does otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else.⁹⁰

This principle is an integral part of our legal system and of most other civilized countries. It deals with considerations of justice, fair play and the rights of the individual. Official discussions of the drug problem, however, almost never mention these words. The emphasis in framing drug laws is on deterrence, inflexibility and punishment. It is considered of first importance that the laws be cruel and of no importance that they be just or humane.

Our departure from the principle stated by Mill began, in respect to the drug policy, in 1914 with the Harrison Act and its subsequent interpretation as a prohibition measure⁹¹ and has continued to the present. Society, in the meantime, has paid a heavy price for this abandonment of justice in favor of retribution as the history of the heroin and marihuana situations amply demonstrate. The current situation has its roots in the past, where it was quietly developing in the slums and Black ghettos while we were being

90. J. MILL, *ON LIBERTY* 9-10 (A. Castell ed. 1947).

91. See note 8 *supra*.

regaled with stories of the heroic exploits of narcotic agents and reassured by optimistic government handouts.

The heroin and marihuana problems have, of course, deteriorated in quite different ways and for different reasons, although both stem from the same basic source, *i. e.*, an emotional, overhasty resort to coercion in dealing with what are essentially public health rather than police problems. The opiate prohibition, unlike the Volstead Act or the antimarihuana laws today, applied only to a small, nonvocal minority reduced to virtual outlaw status and seemingly confined to urban slums. Because the majority of citizens had no direct experience with the problem, the enforcement bureaucracy easily concealed the subject.

The marihuana problem was very different, especially when "pot" smoking was taken up by middle and upper class youth during the 1960's. Unlike heroin users, the smokers of marihuana were not pressured into criminal enterprises in order to finance their habit and were arrested mainly for their violations of the drug laws, as first offenders in most cases.⁹² They were also much more numerous than heroin users and, unlike the latter, were far from being a hopeless, helpless and inarticulate group. Supported by competent and expensive legal talent, as well as by influential segments of the respectable public, they confronted the defenders of the status quo with an array of embarrassing arguments and with the beginnings of organized opposition that includes lobbying activities.

The force of Mill's ideas can be best illustrated by the marihuana situation. In comparison with the rough treatment accorded marihuana users, dealers and growers, the "pushers" of cigarettes and alcohol are often respected, influential and wealthy citizens represented by giant corporations and powerful lobbies, sometimes even enjoying governmental subsidies.⁹³ Instead of resorting to coer-

92. The Commission on Marihuana and Drug Abuse, upon examining the arrest records of marihuana offenders in New York and Philadelphia, found that less than 10 percent of those arrested in Philadelphia were "known to the police" and in New York only 20 percent had arrest records, commonly for traffic and other minor offenses. The Commission concluded that crime rates among marihuana users (apart from marihuana offenses) were about the same as those in the general population. *FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING 71-77 (1972).*

93. In 1969 the Department of Agriculture was spending 1.8 million dollars to support the price of tobacco; 28 million dollars to subsidize tobacco exports; 240 thousand dollars to

cive measures to counteract the propaganda and advertising of the tobacco and alcohol industries that urge consumption of their products, the gentler arts of education and persuasion are employed to combat the known bad effects of these two substances.⁹⁴ Whether one chooses to drink or to smoke is viewed as a personal matter and outside the legitimate business of government. Under these circumstances, it is easy to understand why marihuana users and dealers do not regard themselves as criminals and why they are joined by substantial segments of informed opinion in regarding criminal prosecution as a much greater evil than the use of the drug.

If the laws designed to protect the young from the evils of drugs actually accomplished this purpose and genuinely represented government with the consent of the governed, they might be supported by the young. However, there is considerable reason to think that marihuana is less harmful or dangerous to the user and to society than alcohol.⁹⁵ It is also known that many legislators, policemen, prosecutors and various other officials drink alcoholic beverages and would strenuously resist, on the grounds of civil liberty, any attempt on the part of the government to interfere with their right to do so. There is thus a manifest and gross incongruity involved when whiskey-drinking officials solemnly consider the appropriate length of prison terms that should be imposed on those who prefer marihuana to alcohol. The drinkers of alcohol are secure in their personal freedom to drink and are not threatened by the tyranny of the majority simply because they are the majority. Marihuana users should not be subjected to this tyranny simply because they are the minority.

It has been said that societies have the criminals they deserve and one might argue that they also have the drug problems they deserve. In retrospect it seems clear that if our drug policy had originally taken a line based on principles of justice, humanity and individual liberty, rather than on retribution, coercion, cruelty and

promote cigarette sales abroad; and 30 million dollars a year to ship tobacco abroad to developing countries through the "Food for Peace" program. Drew, *The Cigarette Companies Would Rather Fight than Switch*, N.Y. Times, May 4, 1969, § 6 (Magazine), at 36-37, 129-33.

94. For example, set the recent anti-smoking campaign on television and the required warning on cigarette packs.

95. See Brecher at 260-66, 249-53, 431-33 for examples of reports comparing the use of alcohol with the use of marihuana.

deterrence, it would also have been more effective. It would, in that case, not have criminalized the users but rather turned them over to the medical profession, effectively substituting the techniques of training, education, medication and persuasion for those of coercion.

CONCLUSION

In view of the role that the federal enforcement bureaucracy has played in stifling criticisms, blocking innovation and reform, in misrepresenting the facts and in keeping the nation on the course that has produced the present crisis, an obvious, logical suggestion is that this bureaucracy in its present form be dismantled much as the alcohol bureaucracy was after the repeal of the eighteenth amendment. Rufus King has already proposed that this be done.⁹⁶ Two public administration professionals, assessing the problems of liquor control in 1936 shortly after repeal, offered the following considered opinion which is also applicable here:

Indeed, considering the ineptitude of Congress in dealing with the subject, we are disposed to say that the less the federal government has to do with matters relating to the social control of liquor the better. It is too far removed from the more important problems that arise in connection with the *consumption* of alcoholic beverages.⁹⁷

If the present burgeoning federal narcotics enforcement bureaucracy were to be dismantled, this would put the police power and responsibility for drug policy in the hands of the states, leaving, as in the case of alcohol, some appropriate residual functions with the federal government. The latter's role with respect to the consumption of drugs would be to provide advice, leadership, funds and information, leaving the states free to adapt their policies to their own particular problems. In this decentralized situation, the federal health, welfare, medical and research agencies would probably perform more significant advisory and educational functions than they

96. King at 348-50, 355-58.

97. L. HARRISON & E. LAINE, *AFTER REPEAL* 41 (1936) (original emphasis). Another relevant instance is the recommendation of the National Council on Crime and Delinquency, an unbiased citizen's organization concerned with prison reform, that the Federal Bureau of Prisons should be dismantled.

now do, encouraging the states to handle drug consumption more as a public health problem than as a police problem. Perhaps one of the most important effects of such a change might be that of removing the drug issue from the national political arena, thus preventing its exploitation as a political issue and saving the public from the misinformation of aspiring politicians. Further, much duplication of effort and cross purposes that now prevail would be eliminated. Vested interest lobbies, of course, would continue at the state level, but such lobbies would be much less well-financed and much more visible and responsive than those in Washington. With the removal of some of the inflexibility and unresponsiveness generated by bureaucratic empire building in Washington, discussion of drug policy might become more rational and policy itself more varied, responsible and progressive.