



opinion By JOEL FORT, M.D.

THERE ARE AN estimated 10,000,000 Americans who smoke marijuana either regularly or occasionally, and they have very obvious reasons for wishing that pot were treated more sensibly by the law. As one of the 190,000,000 who have never smoked marijuana, I also favor the removal of grass from the criminal laws, but for less personal reasons. It is my considered opinion, after studying drug use and drug laws in 30 nations and dealing with drug-abuse problems professionally for 15 years, that the present marijuana statutes in America not only are bad laws for the offending minority but are bad for the vast majority of us who never have lit a marijuana cigarette and never will.

That some changes in these laws are coming in the near future is virtually certain, but it is not at all sure that the changes will be improvements.

On May 19, 1969, the U.S. Supreme Court, in an 8-0 vote, declared that the Marijuana Tax Act of 1937 was unconstitutional. This decision delighted the

defendant, Timothy Leary, and was no surprise at all to lawyers who specialize in the fine points of constitutional law. It had long been recognized that the Marijuana Tax Act was "vulnerable"—a polite term meaning that the law had been hastily drawn, rashly considered and railroaded through Congress in a mood of old-maidish terror that spent no time on the niceties of the Bill of Rights, scientific fact or common sense.

Celebrations by marijuanaphiles and lamentations by marijuanaphobes, however, are both premature. The Court, while throwing out this one inept piece of legislation, specifically declared that Congress has the right to pass laws governing the use, sale and possession of this drug (provided these laws stay within the perimeter of the Constitution).

And, of course, state laws against pot, which are often far harsher than the Federal law, still remain in effect.

There were two defects found by the Supreme Court in the Federal anti-marijuana *(continued on page 154)*

POT: A RATIONAL APPROACH

a leading authority on psychopharmacology calls for a lifting of legal prohibitions and punishments relating to marijuana—and explains why

law—a section that requires the suspect to pay a tax on the drug, thus incriminating himself, in violation of the Fifth Amendment; and a section that assumes (rather than requiring proof) that a person with foreign-grown marijuana in his possession knows it is smuggled. These provisions were perversions of traditional American jurisprudence, no less than the remaining parts of the law that are bound to fall when challenged before the Supreme Court. These forthcoming decisions will, inevitably, affect the anti-marijuana laws of the individual states as well. However, the striking down of the old laws does not guarantee that the new ones will be more enlightened; it merely invites more carefully drawn statutes that are less vulnerable to judicial review. In fact, in a message to Congress, President Nixon specifically demanded harsher penalties for marijuana convictions. But every sane and fair-minded person must be seriously concerned that the new laws are more just and more in harmony with known fact than the old ones. In my opinion, such new laws must treat marijuana no more harshly than alcohol is presently treated.

It is ironic that our present pot laws are upheld chiefly by the older generation, and flouted and condemned by the young; for it is the senior generation that should understand the issue most clearly, having lived through the era of alcohol prohibition. They saw with their own eyes that the entire nation—not just the drinkers and the sellers of liquor—suffered violent moral and mental harm from that particular outbreak of armed and rampant puritanism. They should certainly remember that attempts to legislate morality result only in widespread disrespect for law, new markets and new profits for gangsters, increased violence and such wholesale bribery and corruption that the Government itself becomes a greater object of contempt than the criminal class. Above all, they should be able to see the parallel between the lawless Twenties and the anarchic Sixties and realize that both were produced by bad laws—laws that had no right to exist in the first place.

"Bad law," it has been said, "is the worst form of tyranny." An open tyranny breeds open rebellion, and the issues are clear-cut; bad law, in an otherwise democratic nation, provokes a kind of cultural nihilism in which good and evil become hopelessly confused and the rebel, instead of formulating a single precise program, takes a perverse delight in anything and everything that will shock, startle, perplex, anger, baffle and offend the establishment. Thus it was during alcohol prohibition and thus it is under marijuana prohibition. The parallel is not obvious only because there were already millions of whiskey drinkers when

the Volstead Act became law in 1919, leading to immediate flouting of "law and order" by vast hordes—whereas the use of marijuana did not become extensive until the early 1950s, more than 13 years after the Government banned pot in 1937. But the results, despite the delay, are the same: We have bred a generation of psychological rebels.

Banning marijuana not only perpetuates the rebelliousness of the young but it also establishes a frightening precedent, under which puritanical bias is more important to our legislators than experimentally determined fact—something every scientist must dread. Dr. Philip Handler, board chairman of the National Science Foundation, bluntly told a House subcommittee investigating drug laws, "It is our puritan ethics . . . rather than science" that say we should not smoke marijuana.

Consider the most recent study of the effects of marijuana, conducted under careful laboratory conditions and reported in *Science*. This is the research performed by Drs. Norman E. Zinberg and Andrew T. Weil at Boston University in 1968. This study was "double-blind"; that is, neither the subjects nor the researchers knew, during a given session, whether the product being smoked was real marijuana (from the female *Cannabis* plant) or an inactive placebo (from the male *Cannabis* plant). Thus, both suggestibility by the subjects and bias by the experimenters were kept to the scientific minimum. The results were:

1. Marijuana causes a moderate increase in heartbeat rate, some redness of the eyes and virtually no other physical effects. Contrary to the belief of both users and policemen, pot does not dilate the pupils—this myth apparently derives from the tradition of smoking *Cannabis* in a darkened room; it is the darkness that dilates the pupils.

2. Pot does not affect the blood-sugar level, as alcohol does, nor cause abnormal reactions of the involuntary muscles, as LSD often does, nor produce any effects likely to be somatically damaging. In the words of Zinberg and Weil, "The significance of this near absence of physical effects is twofold. First, it demonstrates once again the uniqueness of hemp among psychoactive drugs, most of which strongly affect the body as well as the mind. . . . Second, it makes it unlikely that marijuana has any seriously detrimental physical effects in either short-term or long-term usage."

3. As sociologist Howard Becker pointed out long ago, on the basis of interviews with users, the marijuana "high" is a learned experience. Subjects who had never had *Cannabis* before simply did not get a "buzz" and reported very minimal subjective reactions, even while physically

"loaded" with very high doses, while experienced users were easily turned on.

4. The hypothesis about "set and setting" strongly influencing drug reactions was confirmed. The pharmacological properties of a psychoactive drug are only one factor in a subject's response; equally important—perhaps more important—are the set (his expectations and personality type) and the setting (the total emotional mood of the environment and persons in it).

5. Both inexperienced subjects and longtime users did equally well on some tests for concentration and mental stability, even while they were on very high doses. On tests requiring a higher ability to focus attention, the inexperienced users did show some temporary mental impairment, but the veterans sailed right on, as if they were not high at all. In short, experienced potheads do not have even a temporary lowering of the intelligence while they are high, much less a permanent mental impairment.

6. On some tests, the experienced users scored even higher while stoned than they did when tested without any drug.

7. Not only alcohol but even tobacco has more adverse effects on the body than marijuana does.

As Zinberg and Weil noted sardonically in a later article in *The New York Times Magazine*, there is a vicious circle operating in relation to marijuana: "Administrators of scientific and Government institutions feel that marijuana is dangerous. Because it is dangerous, they are reluctant to allow [research] to be done on it. Because no work is done, people continue to think of it as dangerous. We hope that our own study has significantly weakened this trend."

One slight sign that the trend may have been weakened was the appearance last June of a study by the Bureau of Motor Vehicles in the state of Washington concerning the effects of *Cannabis* on driving ability. Using driving-traffic simulators, not only did the study find that marijuana has less adverse effect on driving ability than alcohol—which many investigators have long suspected—but also, as in the Boston study, the evidence indicated that the only detrimental effect is on inexperienced users. Veteran potheads behave behind the wheel as if they were not drugged at all.

In short, we seem to have a drug here that makes many users very euphoric and happy—high—without doing any of the damage done by alcohol, narcotics, barbiturates, amphetamines or even tobacco.

But we didn't have to wait until 1968 to learn that pot is relatively harmless. Some research has been done in the past, in spite of the vicious circle mentioned by Zinberg and Weil. As far back as

(continued on page 216)

POT: A RATIONAL APPROACH (continued from page 154)

1942, the mayor of New York City, Fiorello La Guardia, alarmed by sensational press stories about "the killer drug, marijuana" that was allegedly driving people to rape and murder, appointed a commission to investigate the pot problem in his city. The commission was made up of 31 eminent physicians, psychiatrists, psychologists, etc., and six officers from the city's narcotics bureau. If there was any bias in that study, it must have been directed against marijuana, considering the presence of the narcotics officers, not to mention psychiatrists and M.D.s. who were then, as now, rather conservative groups. Nevertheless, after two years of hard study, including psychological and medical examinations of users, electroencephalograms to examine for brain damage, sociological digging into the behavior patterns associated with marijuana use and intelligence tests on confirmed pot-heads, the commission concluded:

Those who have been smoking marijuana for a period of years showed no mental or physical deterioration which may be attributed to the drug. . . . Marijuana is not a drug of addiction, comparable to

morphine. . . . Marijuana does not lead to morphine or heroin or cocaine addiction. . . . Marijuana is not the determining factor in the commission of major crimes. . . . The publicity concerning the catastrophic effects of marijuana smoking in New York City is unfounded.

Even earlier, a study of marijuana use in the Panama Canal Zone was undertaken by a notably conservative body, the United States Army. Published in 1925, the study concluded, "There is no evidence that marijuana as grown here is a habit-forming drug" and that "Delinquencies due to marijuana smoking which result in trial by military court are negligible in number when compared with delinquencies resulting from the use of alcoholic drinks which also may be classed as stimulants or intoxicants."

What may be the classic study in the whole field goes back further: to the 1893-1894 report of the seven-member Indian Hemp Drug Commission that received evidence from 1193 witnesses from all regions of the country (then including Burma and Pakistan), profes-

sionals and laymen, Indians and British, most of whom were required to answer in writing seven comprehensive questions covering most aspects of the subject. The commission found that there was no connection between the use of marijuana and "social and moral evils" such as crime, violence or bad character. It also concluded that occasional and moderate use may be beneficial; that moderate use is attended by no injurious physical, mental or other effects; and that moderate use is the rule: "It has been the most striking feature of this inquiry to find how little the effects of hemp drugs have intruded themselves on observation. The large numbers of witnesses of all classes who profess never to have seen them, the very few witnesses who could so recall a case to give any definite account of it and the manner in which a large proportion of these cases broke down on the first attempt to examine them are facts which combine to show most clearly how little injury society has hitherto sustained from hemp drugs." This conclusion is all the more remarkable when one realizes that the pattern of use in India included far more potent forms and doses of Cannabis than are presently used in the United States. The commission, in its conclusion, stated:

Total prohibition of the hemp drugs is neither necessary nor expedient in consideration of their ascertained effects, of the prevalence of the habit of using them, of the social or religious feelings on the subject and of the possibility of its driving the consumers to have recourse to other stimulants [alcohol] or narcotics which may be more deleterious.

Ever since there have been attempts to study marijuana scientifically, every major investigation has arrived at, substantially, the same conclusions, and these directly contradict the mythology of the Federal Bureau of Narcotics. In contrast with the above facts, consider the following advertisement, circulated before the passage of the 1937 Federal anti-marijuana law:

Beware! Young and Old—People in All Walks of Life! This [picture of a marijuana cigarette] may be handed you by the friendly stranger. It contains the Killer Drug "Marijuana"—a powerful narcotic in which lurks Murder! Insanity! Death!

Such propaganda was widely disseminated in the mid-1930s, and it was responsible for stampeding Congress into the passage of a law unique in all American history in the extent to which it is based on sheer ignorance and misinformation.

Few people realize how recent anti-marijuana legislation is. Pot was widely used as a folk medicine in the



"I'm not a warmonger, but then again, you won't find me at any peace talks!"

19th Century. Its recreational use in this country began in the early 1900s with Mexican laborers in the Southwest, spread to Mexican Americans and Negroes in the South and then the North, and then moved from rural to urban areas. In terms of public reaction and social policy, little attention was paid to pot until the mid-1930s (although some generally unenforced state laws existed before then). At that time, a group of former alcohol-prohibition agents headed by Harry J. Anslinger, who became head of the Federal Bureau of Narcotics, began issuing statements to the public (via a cooperative press) claiming that marijuana caused crime, violence, assassination, insanity, release of anti-social inhibitions, mental deterioration and numerous other onerous activities.

In what became a model for future Federal and state legislative action on marijuana, Congressional hearings were held in 1937 on the Marijuana Tax Act. No medical, scientific or sociological evidence was sought or heard; no alternatives to criminalizing users and sellers were considered; and the major attention was given to the oilseed, birdseed and paint industries' need for unrestrained access to the hemp plant from which marijuana comes. A U.S. Treasury Department witness began his testimony by stating flatly that "Marijuana is being used extensively by high school children in cigarettes with deadly effect," and went on to introduce as further "evidence" an editorial from a Washington newspaper supposedly quoting the American Medical Association as having stated in its journal that marijuana use was one of the problems of greatest menace in the United States. Fortunately for historical analysis, a Dr. Woodward, serving as legislative counsel for the American Medical Association, was present to point out that the statement in question was by Anslinger and had only been reported in the A. M. A. journal.

Dr. Woodward deserves a posthumous accolade for his singlehanded heroic efforts to introduce reason and sanity to the hearing. Most importantly, the doctor (who was also a lawyer) criticized the Congressmen for proposing a law that would interfere with future medical uses of Cannabis and pointed out that no one from the Bureau of Prisons had been produced to show the number of prisoners "addicted" to marijuana, no one from the Children's Bureau or Office of Education to show the nature and extent of the "habit" among children and no one from the Division of Mental Hygiene or the Division of Pharmacology of the Public Health Service to give "direct and primary evidence rather than indirect and hearsay evidence." Saying that he assumed it was true that a certain amount of "narcotic addiction" existed, since "the newspapers have called attention to it so promi-

nently that there must be some grounds for their statements," he concluded that the particular type of statute under consideration was neither necessary nor desirable. The Congressmen totally ignored the content of Dr. Woodward's testimony and attacked his character, qualifications, experience and relationship to the American Medical Association, all of which were impeccable. He was then forced to admit that he could not say with certainty that no problem existed. Finally, his testimony was brought to a halt with the warning, "You are not cooperative in this. If you want to advise us on legislation, you ought to come here with some constructive proposals rather than criticism, rather than trying to throw obstacles in the way of something that the Federal Government is trying to do."

A similar but shorter hearing was held in the Senate, where Anslinger presented anecdotal "evidence" that marijuana caused murder, rape and insanity.

Thus, the Marijuana Tax Act of 1937 was passed—and out of it grew a welter of state laws that were, in many cases, even more hastily ill conceived.

The present Federal laws impose a two-to-ten-year sentence for a first conviction for possessing even a small amount of marijuana, five to twenty years for a second conviction and ten to forty for a third. If Congress is not forced to recognize scientific fact and basic civil liberties, these penalties will be retained when the new Federal law is written without the sections declared invalid in the Leary case. The usual discretion that judges are given to grant probation or suspended sentences for real crimes is taken from them by this (and state) law as is the opportunity for parole. For sale or "dissemination," no matter how small the quantity of marijuana involved, and even if the dissemination is a gift between friends, the Federal penalty for first-offense conviction is five to twenty years; for a second offense, it's ten to forty.

The state laws, as I stated, are even hairier. Here are two real, and recent, cases: In Texas, Richard Dorsey, a shoe-shine-stand operator in a bowling alley, sold a matchbox full of marijuana (considerably less than an ounce) to a Dallas undercover policeman, for five dollars. His sentence: 50 years.

In Michigan, for selling five dollars' worth of grass to another police agent, Larry Belcher was sentenced to 20 to 30 years in prison. This case is worth noting as an example of how the marijuana laws actually function in many instances. Belcher is the only individual in Grand Traverse County to receive this sentence in the past two years; 25 other marijuana arrestees were all placed on probation within that time. Belcher, it appears, was the author of a column called "Dope-O-Scope" in a local under-

ground newspaper and had presented there some of the same scientific facts incorporated into this article. People who publicly oppose the marijuana laws and marijuana mythology of our narcotics police have an unusually high arrest record.

There is no consistency in these laws from state to state. Until 1968, South Dakota had the nation's lowest penalty for first-offense possession—90 days (it has since been raised to two to five years); however, if you crossed the state line to North Dakota, the picture changed abruptly. North Dakota had (and still has) the nation's highest penalty for first-offense possession—*99 years at hard labor*. In New York state, in spite of the revelatory work of the La Guardia commission, the penalties have increased since the Forties. Today, in that state, selling or transferring marijuana to anyone under 21 carries a penalty of one to 25 years, even if the transfer is by somebody who is also under 21 and is a gift to a friend. (The state legislature recently tried to raise this penalty to 15 years to life, but Governor Rockefeller vetoed the bill.) In Louisiana, a minor selling to a minor is subject to five to fifteen years' imprisonment, while an adult selling to a minor may receive the death penalty. Finally, in Georgia, the penalty for a first conviction for selling to a minor is life imprisonment. If the offender is paroled or his sentence suspended, and he is convicted again, he can be sentenced to death.

The barbarity of such penalties in relation to pot's relative harmlessness is even beginning to be recognized in Washington, despite incessant and quite unscientific efforts to maintain the old mythology, emanating from the Federal Bureau of Narcotics. In 1963, President Kennedy's Advisory Commission on Narcotic and Drug Abuse called into question some of the prevailing beliefs about marijuana and recommended lighter sentences for possession. In 1967, President Johnson's Commission on Law Enforcement and the Administration of Justice took a similar view, recommending more flexible penalties; more significantly, it stated that marijuana has virtually nothing in common with true narcotics or opiates—the first time that fact was publicly admitted by a U.S. Government agency. And in 1967, Dr. James Goddard, while commissioner of the U.S. Food and Drug Administration, was quoted as saying that it would disturb him less if his teenage daughter smoked one marijuana cigarette than if she drank an alcoholic beverage. (Faced with a predictable outcry from conservatives in Congress, Goddard said he had been misquoted—but quite honestly added that the known facts did not support the opinion that marijuana is more dangerous than alcohol.)

Not only is marijuana comparatively

harmless on the face of all the evidence but there are even reasons to believe it may be beneficial in some cases. In many countries, Cannabis has been used medicinally for as long as 5000 years and is regarded as a sovereign remedy for a variety of ills. There are references to medicinal uses of marijuana in American medical journals (mostly of the 19th Century) where doctors reported it as useful as an analgesic, appetite stimulant, anti-spasmodic, anti-depressant, tranquilizer, anti-asthmatic, topical anesthetic, childbirth analgesic and antibiotic. My own investigations in areas of the world where this folk medicine still flourishes and my study of 20th Century scientific literature lead me to believe that marijuana would be useful for treating depression, loss of appetite, high blood pressure, anxiety and migraine.

An English psychiatrist who employed marijuana in the therapy of depressive patients, Dr. George T. Stockings, concluded that it "might be more effective

than any tranquilizer now in use." Dr. Robert Walton of the University of Mississippi has also suggested its use for certain gynecological and menstrual problems and in easing childbirth. We should not let lingering puritanical prejudices prevent us from investigating these areas further. As Dr. Tod Mikuriya, a psychiatrist formerly associated with the National Institute of Mental Health, notes, "The fact that a drug has a recreational history should not blind us to its possible other uses. Morton was the first to use ether publicly for anesthesia after observing medical students at 'ether frolics' in 1846." While such speculations about the benefits of pot must await further research before a final answer is given, there can be no doubt that a grave injustice has been suffered by those currently in prison because of laws passed when the drug was believed to incite crime and madness.

Even the Federal Bureau of Narcotics and its propagandists have largely given up the "steppingstone theory" (that mari-

juana smoking leads to use of addictive drugs) and the "degeneracy theory" (that it leads to crime or "bad character"). They have recently rallied around the oldest, and most discredited, canard of all—the legend that marijuana causes insanity. To shore up this crumbling myth, they cite recent research at the Addiction Research Center in Lexington, Kentucky, where 30 former opiate addicts were given high doses of synthetic THC (the active ingredient in marijuana) or concentrated Cannabis extract. Most of the subjects showed marked perceptual changes, which the experimenter chose to describe as "hallucinations" and "psychotic reactions." This, of course, merely confirms a basic axiom of pharmacology; i.e., with increasing doses of any drug, different and more dangerous responses will occur: you could obtain some spectacularly adverse reactions with horse doctors' doses of aspirin, coffee or even orange juice. (With ordinary doses of THC or marijuana, the subjects experienced the same "high" found in normal, social marijuana smoking.)

A more serious defect in this research lies in the loaded terminology with which the experimenter, Dr. Harris Isbell, reported his results. Psychiatrist Thomas Szasz, a crusader for reform in the mental-health field, points out that a "psychotic reaction" is not something *in* an individual, Mr. A, like cancer; rather, it is a label that a second individual, Mr. B (more often, Dr. B), pins on Mr. A. The *fact* is that the subjects experienced perceptual changes; it is not a fact but merely an *opinion* whether one wants to call these changes "consciousness expansion" and "transcendence of the ego" (with Timothy Leary) or "hallucinations" and "psychotic reactions" (with Dr. Isbell).

Sociologist Howard Becker—the observer who first noted the effect of "learning" on the marijuana experience—has researched medical literature from the early 1930s to the present in search of reported cases of "marijuana psychosis." He found none after 1940, a remarkable fact, considering the pyramiding acceleration of marijuana use during the Forties, Fifties and Sixties. Becker concluded that persons who were diagnosed as "marijuana psychotics" in the Thirties were simply anxious and disoriented because they hadn't learned yet how to use the drug. Dr. Isbell's subjects, almost certainly, were not advised about the effects of the drug; and his experiment is really just another proof of the effect of "set and setting" as well as high doses on drug experience.

A 1946 study examined 310 persons who had been using marijuana for an average of seven years each. There was no record of mental-hospital commitment among any of them.

The marijuanaphobes also cite studies



"Interesting, I grant you—but unless you can think of some commercial application—"

from the Near East to prove that marijuana is associated with psychosis. In the first place, many of the people in these studies smoked hashish, not marijuana; and while hashish is derived from the same plant, *Cannabis sativa*, it is otherwise a considerably stronger form of the drug. One might compare the two Cannabis drugs with two alcohol drugs as follows: Smoking a pipe of hashish is equivalent to drinking a fifth of vodka; smoking the same pipe of marijuana is about like drinking a bottle of beer. However, the studies themselves do not deserve such careful rebuttal; they are scientifically worthless. They prove only that, in countries where most of the population regularly use Cannabis, many of the patients in mental hospitals also have a history of Cannabis use. Usually the proportion of users in the institution is less than that in the general population, leading to a possible conclusion that it is psychologically beneficial. In fact, however, there are no scientifically valid statistics or records kept at these facilities. The testimony turns out, on examination, to be impressionistic and anecdotal rather than scientific and precise. The diagnosis of psychosis and its attribution to Cannabis is often made by a ward attendant. In short, we are faced with the kind of "evidence" that the Indian Hemp Drug Commission discarded in 1893. I have visited the mental hospitals of several of the countries involved in the "Cannabis psychosis" and none of the record keeping involved meets the minimum requirements demanded of freshman scientific reports in American colleges.

Perhaps the last bastion of marijuana-

phobia is the argument by uncertainty. "Who knows?" this line goes. "Maybe, in the future, marijuana might be discovered, by further research, to have dangerous side effects that haven't been noted yet." This argument, of course, is unanswerable; but it applies equally well to such diverse objects as diet pills and bubble gum. One cannot prove that the future will not discover new things; but does such a fact—science's lack of clairvoyance—justify our present marijuana laws? It clearly does not. No drug, including marijuana, will ever be found to be totally harmless; and no drug, particularly marijuana, will ever be found to be as dangerous as the hydrogen bomb (once claimed by Anslinger). Social policy should not be determined by this anyway. The possible risks should be dealt with by education. What is unacceptable is locking a man up for 99 years for possessing something of far less proven danger than tobacco, alcohol, automobiles and guns.

Instead of decreasing marijuana usage, our present laws have created the contempt for Government about which I spoke earlier. In addition to continuing to disobey the law, hordes of young people have begun to flout it publicly. There have been smoke-ins—masses who gather in a public park, where those in the inner core of the group light up, while the outer perimeter obstruct and slow down the police until the evidence is consumed—at Berkeley, in Boston and elsewhere. Planting marijuana in conspicuous places has become a fad; among the notable seedings have been the center strip of Park Avenue in New York City, the lawn in front of a police station

in ultraspectable Westchester County, the UN Building and (twice recently) in front of the state capitol in Austin, Texas.

But the American marijuana tragedy is even worse than I have indicated. Like other crimes-without-victims, pot smoking is a private activity and involves no harm to anyone else. Remember: The police do not have to engage in cloak-and-dagger activities to find out if there have been any banks or grocery stores robbed lately—the bankers and store owners (the victims) call them immediately. But since there is no victim in the "crime" of smoking marijuana, nobody is going to call the police to report it—except, very rarely, a neighbor who finds the evidence. Hence, the entire apparatus of the police state comes into existence as soon as we attempt to enforce anti-grass legislation; and by the nature of such legislation, totalitarian results must ensue. We cannot police the private lives of the citizenry without invading their privacy; this is an axiom.

That a man's home is his castle has long been a basic principle of Anglo-American jurisprudence, and some of us can still recall the near poetry of the great oration by William Pitt in which he says, "The poorest man may in his cottage bid defiance to the force of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storms may enter; the rain may enter; but the King of England cannot enter—all his forces dare not cross the threshold of the ruined tenement!" This principle goes back to the Magna Charta and is firmly entrenched in the Fourth Amendment to our own Constitution, guaranteeing the people "the right . . . to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures."

This libertarian tradition is a great hindrance to the police when they attempt to enforce sumptuary laws—laws concerning the private morals of the citizens. And, in fact, the enforcement of the marijuana law requires pernicious police behavior.

For instance, the *Chicago Sun-Times* told, in 1967, how the police of that city obtain search warrants for use in legalizing raids that otherwise would be mere "fishing expeditions"—intolerable to any American court. In dealing with the organized-crime cartel usually called "the Syndicate," the police have obtained from the courts the right to use what are called "blank warrants"—warrants in which the witness who alleges he has seen the crime is permitted to sign a false name. This is supposedly necessary to protect informers against the wrath of the reputedly all-seeing and all-powerful Syndicate. Once this dangerous precedent was set, the police began applying



"OK, then—if it makes you feel like a man,
leave it on . . . leave it on!"

it to marijuana users as well. As the *Sun-Times* noted:

Those methods are dubious. . . . We refer to the method of obtaining search warrants. The informer signs a search-warrant complaint, with an assumed name, alleging perhaps that he bought illicit drugs from a certain person, at a certain place. The police do not have to disclose the name of the informer or the time when the drugs were bought. There is also a device known as constructive possession: The police can arrest anybody found in the vicinity of prohibited drugs, whether he's an innocent visitor or the real culprit. The frame-up is easy. Plant the drugs, get the search warrant, grab everybody in sight. It could happen to you and you'd never have the right to face your accuser.

William Braden, a *Sun-Times* reporter, also uncovered one informer, a heroin addict, who admitted signing dozens of such warrants without the names of the accused on them. The narcotics squad could then type in the name of any individual whose apartment they wanted to raid and it would be perfectly "legal" in form—but a terrifying distance in spirit from the actual meaning of the Constitution. Such raids, of course, violate the Sixth Amendment—guaranteeing the right "to be confronted with the witnesses" against you—as well as the Fourth (no "unreasonable searches"); and they occur everywhere in the nation.

Most of us never hear of such things, because reporters routinely print the police version of the raid, without interviewing the arrested "dope fiends." It is also standard practice for the police to multiply the quantity of drugs seized in such a raid by a factor of two (and the price by a factor of ten) when giving the news to the press. This makes for impressive headlines; it also contributes to the growing tendency toward "trial by newspaper," which worries civil libertarians.

Some types of entrapment are regarded as legal in America today—although some still are not. In my own opinion, all forms of entrapment are profoundly immoral, whether technically legal or illegal; but my opinion is, perhaps, immaterial. The results of this practice, however, are truly deplorable from the point of view of anyone who has any lingering affection for the spirit of the Bill of Rights.

Here is a specific case: John Sinclair, a poet, leader of the Ann Arbor hippie community and manager of a rock group called MC-5, became friendly, around October 1966, with Vahan Kapagian and Jane Mumford, who presented themselves to him as members of the hippie-artist-mystic subculture that exists in all of our large cities. Over a period of two

months, they worked to secure his confidence and friendship and several times asked him to get them some marijuana. Finally, on December 22, Sinclair, apparently feeling that he could now trust them, gave two marijuana cigarettes to Miss Mumford—one for her and one for Kapagian. He was immediately arrested; his "friends" were police undercover agents.

Sinclair has been convicted of both "possessing" and "dispensing" marijuana and faces a minimum of 20 years under each statute, and a maximum of life for the sale. If his appeal is not upheld, the very smallest sentence he could receive is 40 years. As his lawyers pointed out in his appeal, "The minimum sentence to which [Sinclair] is subject to imprisonment is 20 times greater than the minimum to which a person may be imprisoned [in Michigan] for such crimes as rape, robbery, arson, kidnaping or second-degree murder. It is more than 20 times greater than the minimum sentence of imprisonment for any other offense in Michigan law, except first-degree murder."

That illegal wire tapping has also been widely used by the narcotics police was an open secret for years; now it is no secret at all—and not illegal, either. The 1968 Omnibus Crime Bill authorizes such wire tapping for suspected marijuana users. Since this usage has spread to all classes and all educational levels, such suspicion can be directed at virtually anyone (after all, the nephew and the brother of one of President Nixon's closest friends were recently busted on pot charges); thus, almost any American can now have his phone tapped legally. Considering the elastic interpretation police usually give to such Congressional authorization, an anonymous tip by any crank in your neighborhood would probably be enough to get a tap on your phone by tomorrow morning. Why not? As *Chicago Daily News* columnist Mike Royko recently wrote, "There is a democratic principle in injustice. If enough people support it, they'll all get it."

With the doctrine of "constructive possession," anyone who has a pot-smoking friend is subject to marijuana laws if he walks into the friend's house at the wrong time. In California two years ago, a woman was sentenced to sterilization for being in the same room with a man who was smoking grass. The fact that a higher court overturned this sentence does not lessen its frightening implications.

And a new wrinkle has been added. According to a story in the *San Francisco Chronicle* last June 20, the Government is planning "an unpleasant surprise for marijuana smokers—'sick pot.'" The article goes on to explain how an unspecified chemical can be sprayed on Mexican marijuana fields from a helicopter, whereupon "just a puff or two produces uncontrollable vomiting that not

even the most dedicated smoker could ignore."

This, I submit, could have come from the morbid fantasy of Kafka, Burroughs or Orwell. The Government, in its holy war against a relatively harmless drug, is deliberately creating a very harmful drug. Nor is the *Chronicle* story something dreamed up by a sensation-mongering reporter. A call to the Justice Department in Washington has confirmed that this plan has been discussed and may go into operation in the near future.

Consider, now, the actual social background in which this crusade against Cannabis is being waged. America is not the Victorian garden it pretends to be; we are, in fact, a drug-prone nation. Parents and other adults after whom children model their own behavior teach them that every time one relates to other human beings, whether at a wedding or at a funeral, and every time one has a pain, problem or trouble, it is necessary or desirable to pop a pill, drink a cocktail or smoke a cigarette. The alcohol, tobacco and over-the-counter pseudo-"sedative" industries jointly spend more than \$2,000,000 a day in the United States alone to promote as much drug use as possible.

The average "straight" adult consumes three to five mind-altering drugs a day, beginning with the stimulant caffeine in coffee, tea or Coca-Cola, going on to include alcohol and nicotine, often a tranquilizer, not uncommonly a sleeping pill at night and sometimes an amphetamine the next morning to overcome the effects of the sedative taken the evening before.

We have 80,000,000 users of alcohol in this country, including 6,000,000 alcoholics; 50,000,000 users of tobacco cigarettes; 25,000,000 to 30,000,000 users of sedatives, stimulants and tranquilizers; and hundreds of thousands of users of consciousness alterers that range from heroin and LSD to cough syrup, glue, nutmeg and catnip—all in addition to marijuana use.

Drs. Manheimer and Mellinger, surveying California adults over 21, found that 51 percent had at some time used sedatives, stimulants or tranquilizers (17 percent had taken these drugs frequently) and 13 percent had at some time used marijuana.

Further underlining the extent of use of the prescription drugs is the estimate from the National Prescription Audit that 175,000,000 prescriptions for sedatives, stimulants and tranquilizers were filled in 1968. Also enough barbiturates (Nembutal, Seconal, phenobarbital) alone are manufactured to provide 25 to 30 average doses per year for every man, woman and child in this country.

In the light of this total drug picture, the persecution of potheads seems to be a species of what anthropologists call "scapegoatism"—the selection of one minority group to be punished for the sins

of the whole population, whose guilt is vicariously extirpated in the punishment of the symbolic sacrificial victims.

Meanwhile, my criticisms—and those of increasing numbers of writers, scientific and popular—continue to bounce off the iron walls of prejudice that seem to surround Congress and state legislatures. It is quite possible that our new, post-Leary pot laws will be as bad as the old ones. If there is any improvement, it is likely to come, once again, from the courts.

Several legal challenges to our anti-pot mania are, in fact, working their way upward toward the Supreme Court, and the issues they raise are potentially even more significant than those involved in the Leary case.

First is the challenge raised by attorney Joseph Oteri in his defense of two Boston University students. Oteri's case cites the equal-protection clause of the Constitution—grass is less harmful than booze, so you can't outlaw one without the other. He also argues that the marijuana statute is irrational and arbitrary and an invalid exercise of police power

because pot is harmless and wrongly defined as a narcotic, when it is, technically, not a narcotic. This is not mere hairsplitting. It is impossible, under law, to hang a man for murder if his actual crime was stealing hubcaps; it should be equally impossible to convict him of "possession of a narcotic" if he was not in possession of a narcotic but of a drug belonging to an entirely different chemical family.

And marijuana, decidedly, is not a narcotic—although just what it should be called is something of a mystery. The tendency these days is to call it a "mild psychedelic," with the emphasis on mild; this is encouraged both by the Tim Leary crowd—to whom psychedelic is a good word, denoting peace, ecstasy, non-violent revolution, union with God and the end of all neurotic hang-ups of Western man—and by those to whom psychedelic is a monster word denoting hallucinations, insanity, suicide and chaos. I doubt the psychedelic label very much and think it is as off base as narcotic. Since marijuana has very little in common with LSD and the true psyche-

delics, but much in common with alcohol and other sedatives, and a certain similarity also to amphetamine and other stimulants, I prefer to call it a sedative-stimulant as it is classified by Dr. Frederick Meyers, who also notes its resemblance to laughing gas (nitrous oxide). Dr. Leo Hollister finds enough resemblance to LSD to call it a sedative-hypnotic-psychedelic. *Goodman and Gilman*, the orthodox pharmacological reference, dodges the issue entirely by listing marijuana as a "miscellaneous" drug. In any case, it is not a narcotic, and anyone arrested for having a narcotic in his possession when he actually has marijuana definitely is being charged with a crime he hasn't committed.

A second challenge, raised by Oteri and also being pressed by two Michigan attorneys, is based on the prohibition of "cruel and unusual punishments" in the Eighth Amendment. The courts have held, in the past, that a law can be struck down if the punishments it requires are cruel and unusual in comparison with the penalties in the same state for similar or related crimes. For instance, the statute against chicken stealing was made quite harsh in the early days of Oklahoma, apparently because the offense was common and provoked great public indignation. As a result, a man named Skinner was threatened with the punishment of sterilization under one section of this law. He appealed to the Supreme Court, which struck down the Oklahoma statute because similarly harsh penalties were not provided for other forms of theft. Obviously, in the states where the penalty for possession of marijuana is higher than the penalty for armed robbery, rape, second-degree murder, etc., the law is vulnerable to legal attack as cruel and unusual.

There is also the "zone of privacy" argument, originally stated in the Connecticut birth-control decision and more recently invoked by the Kentucky supreme court, in striking down a local (Barbourville, Kentucky) ordinance making it a crime to smoke *tobacco* cigarettes. The court ruled that "The city . . . may not unreasonably interfere with the right of the citizen to determine for himself such personal matters." The zone of privacy was also cited by the U. S. Supreme Court in invalidating the Georgia law against possession (not sale) of pornography.

The drug police and their legislative allies have been experimenting with our liberties for a long time now. The Leary decision, however, shows that it is not too late to reverse the trend, and the issues raised by the constitutional questions discussed above show how the erosion of our liberties can, indeed, be reversed.

A compelling medical, sociological and philosophical case exists for the full legalization of marijuana, particularly if legalization is the only alternative to the present criminalization of users. But an



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even more substantial case exists for ending all criminal penalties for possession or use of the drug, while still exercising some caution. I would recommend, for example, that to prevent the sale of dangerously adulterated forms of the drug, marijuana be produced under Federal supervision, as alcohol is. Furthermore, sellers of the drug should be licensed, and they should be prohibited from selling to minors. If there are infractions of these laws, the penalties should be directed at the seller, not the user. I would also strongly recommend that all advertising and promotion of marijuana be prohibited, and that packages of the drug carry the warning: CAUTION: MARIJUANA MAY BE HARMFUL TO YOUR HEALTH.

If marijuana were to be legalized, what would happen? According to the marijuanaphobes, the weed will spread into every American home; people will become lazy and sluggish, sit around all day in a drugged stupor and talk philosophy when they talk at all; we will sink into the "backward" state of the Near Eastern and Asian nations.

There are good, hard scientific reasons for doubting this gloomy prognostication.

1. Most Americans have already found their drug of choice—alcohol—and there is more conditioning involved in such preferences than most people realize. The average American heads straight for the bar when he feels the impulse to relax; a change in the laws will not change this conditioned reflex. When the Catholic Church allowed its members to eat meat on Friday, the majority went right on following the conditioned channel that told them, "Friday is fish day."

2. Of the small minority that will try pot (after it is legalized) in search of a new kick, most will be vastly disappointed, since (a) it doesn't live up to its sensational publicity, largely given to it by the Federal Narcotics Bureau; and (b) the "high" depends, as we have indicated, not only on set and setting but, unlike alcohol, on learning.

This involves conditioning and the relationship of the actual chemistry of the two drugs to the total *Gestalt* of our culture. What pot actually does—outside mythology—is produce a state midway between euphoria and drowsiness, like a mild alcohol high; accelerate and sharpen the thoughts (at least in the subjective impression of the user), like an amphetamine; and intensify sound and color perception, although not nearly as much as a true psychedelic. It can also enhance sexual experience, but not create it—contrary to Mr. Anslinger, pot is not an aphrodisiac. It is, in short, the drug of preference for creative and contemplative types—or, at least, people with a certain streak of that tendency in their personality. Alcohol, on the other hand, depresses the forebrain, relaxes inhibitions, produces euphoria and drowsiness and, while depleting some functions,

soar



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"Please, Howard—I'm not that kind of girl!"

such as speech and walking, does not draw one into the mixture of sensuality and introspection created by pot. It is the drug of preference for aggressive and extroverted types. Therefore, the picture of pot spreading everywhere and changing our culture is sociologically putting the cart before the horse; our society would first have to change basically before pot could spread everywhere.

3. Even if, against all likelihood, marijuana were to sweep the country, this would not have dire consequences. Marijuana has no specifically anti-machine property in it; it would not make our technology go away, like a wave of an evil sorcerer's wand. Nor does it dull the mental faculties, as we have seen in reviewing the scientific evidence. (I might add, here, that the highest honor students at certain Ivy League colleges are frequently pot users, and one study at Yale found more marijuana smokers at the top of the class than at the bottom.)

4. Finally, the whole specter of America sinking into backwardness due to pot is based upon totally false anthropological concepts. The Near East is not tribal, preindustrial, superstitious, and so forth, merely because Mohammed banned alcohol in the Koran but forgot to exclude Cannabis drugs also; a whole complex of historical and cultural factors is in-

involved, not the least of which is the continuous intervention of Western imperialism from the Crusades onward. Other factors are the rigid structure of the Islamic religion and the lack of a scientific minority that can effectively challenge these dogmas; the Western world was equally backward—please note—when the Christian religion was not open to scientific dissent and criticism. Backwardness is a relative concept, and, although pot has been used in the Arabic countries for millenniums, they have several times been ahead of the West in basic science (the most famous example being their invention of algebra). The populations of these nations are not "lazy" due to marijuana nor to any other cause; they are merely underemployed by a feudalistic economic system. The ones lucky enough to find work usually toil for longer hours, in a hotter sun, than most Americans would find bearable.

Thus, treating marijuana in a sane and rational way presents no threat to our society, whereas continuing the present hysteria will alienate increasing numbers of the young while accelerating the drift toward a police state. I take no pleasure in the spread of even so mild a drug as marijuana, and I am sure (personally, not scientifically) that in a truly open,

libertarian and decent society, nobody would be inclined to any kind of drug use. While I agree with the psychedelic generation about the absurdity and injustice of our criminal laws relating to drugs, I am not an apostle of the "turn on, tune in, drop out" mystique. I recognize that drugs can be an evasion of responsibility, and that there is no simple chemical solution to all the psychic, social and political problems of our time. My own program would be: Turn on to the life around you, tune in to knowledge and feeling, and drop in to changing the world for the better. If that course could prevail, the adventurous young, no longer haunted by the anxiety and *anomie* of the present system, would probably discover that love, comradeship, music, the arts, sex, meaningful work, alertness, self-discipline, real education (which is a lifelong task) and plain hard thought are bigger, better and more permanent highs than any chemical can produce.

But, meanwhile, I must protest—I will continue to protest—against the bureaucrat who stands with cocktail in one hand and cigarette in the other and cries out that the innocent recreation of pot smoking is the major problem facing our society, one that can be solved only by raising the penalty to castration for the first offense and death for the second. He would be doing the young people—and all the rest of us—a true favor if he forgot about marijuana for a while and thought, a few minutes a day, about such real problems as racism, poverty, starvation, air pollution and our stumbling progress toward World War Three and the end of life on earth.

It is an irony of our time that our beloved George Washington would be a criminal today, for he grew hemp at Mount Vernon, and his diary entries, dealing specifically with separating the female plants from the male before pollination, show that he was not harvesting it for rope. The segregation of the plants by sex is only necessary if you intend to extract "the killer drug, marijuana" from the female plant.

Of course, we have no absolute evidence that George turned on. More likely, he was using marijuana as many Americans in that age used it: as a medicine for bronchitis, chest colds and other respiratory ailments. (Pot's euphoric qualities were not well known outside the East in those days.) But can you imagine General Washington trying to explain to an agent of the Federal Narcotics Bureau, "I was only smoking it to clear up my lumbago"? It would never work; he would land in prison, perhaps for as long as 40 years. He would be sharing the same cruel fate as several thousand other harmless Americans today. As it says in the book of *Job*, "From the dust the dying groan, and the souls of the wounded cry out."

