

# Effective Drug Control – Toward A New Legal Framework

## State Regulation and Control of Psychoactive Substances as a Workable Alternative to the “War on Drugs”

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### PART I – Drugs and the Drug Laws: Historical and Cultural Contexts

#### *Summary/Outline*

In order to devise a more effective alternative to the prevailing drug control policy, it is important to be familiar with the patterns of drug use in human societies and with the attempts in history to control such use, particularly in the United States. A better understanding of the cultural context of drug use in America, where citizens are expected to be “drug-free” in a society that consumes both legal and illegal drugs to remarkable excess, is also instructive to the process of finding tenable drug policy alternatives.

Archaeological and botanical evidence indicates that the drive to use substances for stimulation, sedation, pain relief and altered perception is a natural human propensity, and that even the lower animals, more familiar than humans with the plant world, first “discovered” mind-altering substances, suggesting an evolutionary basis for drug taking. With the advent of modern times, after the beginning of European colonization, mind-altering substances such as coffee, tea, tobacco and cocoa were treated in Europe with fear and disdain, having been introduced from “savage” cultures, resulting in the first drug prohibitions. Consumption of coffee and tobacco were punishable by death, for instance, in parts of Europe and the Middle East up until the 17<sup>th</sup> century. Prohibitionist sentiments have arisen from these culture clashes and more from the association of certain substances with vulnerable and unpopular social sub-groups than from concern over the effects of the drugs themselves.

Within the limited pharmacopoeia of 19<sup>th</sup> century medicine, opium, and later morphine administered by hypodermic syringe, was heavily relied upon as the most effective analgesic agent. Heroin, a more potent and concentrated opiate, was invented by Bayer in 1898 and became extremely popular, as free samples were distributed to doctors nationwide along with samples of Aspirin, which Bayer had invented in 1899. Cocaine, patented by Parke-Davis in the early 1890s and an original ingredient in Coca-Cola, was heavily promoted as a stimulant and Sigmund Freud was paid to advertise its “exhilarating” effects, while the U.S. Surgeon General endorsed cocaine’s use for medical purposes. These drugs were used with much public indifference and very little government interference. In fact, taxes on psychoactive substances provided a significant part of government revenue for modern nations prior to the advent of income taxation.

Drug prohibition in the United States evolved from a confluence of factors in the late 19<sup>th</sup> century, with rapid industrial expansion, urbanization and waves of immigration giving rise to cultural changes that brought about the temperance movement on the one hand and the progressive movement on the other. By the early 20<sup>th</sup> century, the addictive properties of heroin and cocaine had aroused some public concern, and with even more concern being expressed over alcohol at the time, the influence of the temperance

movement's effort to stamp out "evil" affected attitudes toward narcotics, as well. Addictive drugs were also a target for the Progressive muckrakers seeking to expose fraudulent "patent" medicines. More than any other factor, however, fear of the Chinese opium smokers, the "cocaine-crazed Negro" and other unpopular societal sub-groups helped spur a movement for social control.

Against this background, the ambitions of a few charismatic public figures culminated in the passage of the **Harrison Narcotic Act of 1914**, which, although purportedly an innocuous measure creating a federal system of medically-related registration and taxation, laid the groundwork for what would become a blanket federal prohibition of the use and sale of particular psychoactive drugs.

The Harrison Act and subsequent federal drug control laws were founded on and enforced under the express taxing power of Congress. Undercover agents from the U.S. Treasury Department posing as drug addicts (the origin of the word "narc") aggressively enforced the Harrison Act, arresting doctors and pharmacists, a practice that was challenged, but eventually upheld by the U.S. Supreme Court in the early 1920s. The Harrison Act was also based on the implied foreign affairs power of the federal government, as two years before its passage, the United States had purposefully engineered the **Hague Opium Convention of 1912** in order to establish a mandatory international legal foundation on which U.S. drug laws would be built. Building on the foreign affairs power, the **Drugs Import and Export Act of 1922**, which set strict quotas on the quantity of drugs that could be imported into the United States, allowed possession of narcotics without a prescription to become presumptive evidence of having imported drugs in violation of federal law.

The **Porter Act of 1930** established the powerful Federal Bureau of Narcotics, with Andrew Mellon's legendary nephew, Harry Anslinger, at the helm. Through the power of his personality and skilled public relations techniques, Anslinger practically single-handedly crafted U.S. drug policy for over three decades until stepping down in 1962, and the bureaucracy supporting the policy of federal drug prohibition became more entrenched.

The **Marijuana Tax Act of 1937**, passed without a recorded vote and over the objection of the American Medical Association, solidified Anslinger's power, as "reefer madness" swept the nation, as jazz musicians were vilified and marijuana was thought to produce insanity (which was replaced in the 1950s by the "stepping stone" theory and finally the "gateway" theory today). The fascinating intrigue behind the prohibition of marijuana involved William Randolph Hearst and Lamont DuPont, as economic factors were more relevant than fear over the drug itself. Having teamed up to produce paper from Hearst's own vast timber holdings using DuPont's new chemical formulae, they sought to eliminate hemp from the market, as the technology for producing high-quality paper from hemp had been perfected in the 1920s. Hearst used his newspapers to publish comic strips showing Mexicans smoking marijuana and raping white women, *etc.*, and also his influence with Congress, which held only one hearing on the Marijuana Tax Act, effectively to "eliminate the competition."

The **Boggs Act of 1951** was the first in a series of measures to stiffen penalties for violating federal drug laws and the first bill to establish mandatory minimum sentences.

The **Daniel Act of 1956** established further mandatory minimum sentences by eliminating suspended sentences, probation, and parole, and a new provision for the imposition of the death penalty was added to apply to anyone over eighteen years of age who provided heroin to anyone under eighteen years of age. Despite these severe measures, illicit recreational drug use increased dramatically into the 1960s.

The **Drug Abuse Control Act of 1965** imposed new registration, inspection, and record-keeping requirements and also included provisions dealing with counterfeit drugs, which was a give-away to the pharmaceutical industry and a boon to its efforts to limit the growing market in generic drugs. Limited in scope to stimulants and depressants, this law led to the establishment of a maximum quota on the number of methamphetamine tablets that could be produced, which limited supply and spawned a black market in “speed,” controlled first by the Hell’s Angels motorcycle gang and later by other criminal organizations – the genesis of the current “meth” problem plaguing Washington and other western states.

The second major watershed in U.S. drug policy, after the Harrison Act of 1914, was the passage of the **Comprehensive Drug Abuse Prevention and Control Act of 1970**, commonly known as the “Controlled Substances Act.” Through the Act the modern “War on Drugs” began during the Nixon Administration as an interlocking set of Uniform Controlled Substances Acts were passed in almost every state, consolidating federal preemptive power over drug policy.

After a softening of drug policy during the Ford and Carter administrations, when policymakers considered marijuana decriminalization, the “War on Drugs” intensified again in the 1980s, featuring Nancy Reagan’s “Just Say No” campaign. The cocaine-related death of basketball star Len Bias in 1986 led to the summary enactment of the **Anti-Drug Abuse Act of 1986** and the **Anti-Drug Abuse Act of 1988**, which were responsible for the doubling and tripling of sentence lengths and the addition of new capital drug crimes. Subsequent measures in the 1990s amending the federal sentencing grid toughened drug-related penalties further.

The unfortunate legacy of the recent federal drug laws includes a five-fold increase in federal drug conviction since the 1970s and over 67,000 sentenced drug offenders in federal prison in 2001, compared to 3,400 in 1970, where drug offenders now comprise over 55% of the federal prison population. Meanwhile, high school seniors report that marijuana is easier to get now than it was during most of the 1980s and 1990s and more high school students use marijuana than tobacco. Heroin is also easier for high school student to obtain than it was in the 1970s and 1980s and one in three high school seniors say that it is now easy to get cocaine, crack or LSD. In addition, the death rate from the use of illegal drugs has more than doubled from 3.0 per 100,000 in 1980 to 7.2 per 100,000 in 2000. As the purity of street drugs increases and prices continue to fall, there are signs that the criminal enterprises trafficking in drugs are becoming more efficient, selling a better product for less. The tragic failure of federal drug policy has finally led to calls for fundamental reform.