NOTES & COMMENTS

HEROIN, MARIJUANA AND CRIME:
A SOCIO-LEGAL ANALYSIS

In a recent survey, New York City residents ranked “drug use” as one of the most urgent problems confronting their metropolis. More significant, however, is the fact that the context within which “drug use” was cited makes it clear that many people consider it to be a major facet of the general problem of “crime in the streets.” Indeed this identification of drug use with crime is also found in numerous statutes and official and semi-official publications throughout the nation. Yet, research into the problem of drug abuse indicates that such identification, at least as a stimulus-response reaction, is not warranted—that the relationship of drug abuse and crime is a complex issue which merits more serious investigation than it now receives. This study will limit its discussion to problems surrounding heroin addiction and marijuana use, and to an analysis of how these drugs affect crime in the United States.

1 The Attack on Narcotic Addiction and Drug Abuse, Fall 1969, at 3, col. 1. The problems mentioned most often in the survey conducted by the Research Department of the New York State Narcotic Addiction Control Commission (NACC) were: (1) burglary, (2) vandalism, (3) drug use, (4) unsafe streets, (5) car theft, (6) poor protection, (7) drug pushing, (8) muggings, (9) alcoholism and (10) unemployment.

2 Id.

3 See, e.g., UNIFORM NARCOTIC DRUG ACT (1958 version), which has been adopted in forty-eight states (California and Pennsylvania are the sole exceptions), the District of Columbia, Puerto Rico, and the Virgin Islands. 9B U.L.A. 409-10. See also U.S.C. ch. 39 (1964).

4 See, e.g., PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY ch. 8 (1967) [hereinafter cited as President’s Commission Report]. An entire chapter is devoted to the general subject of narcotics and drug abuse.


6 Marijuana and heroin were chosen because the data are most readily available for these drugs, and because the patterns of use provide the most distinctly defined picture of the current situation. There are many other drugs being abused today; hallucinogens, amphetamines, and barbiturates are prominent examples. However, each was eliminated in an attempt to avoid obfuscation of the problem.

Current Patterns of Heroin Abuse

First synthesized from morphine in 1898, heroin, like the other opiates, is a "true" narcotic in the medical sense of the word. Its effects have been summarized thusly:

[H]eroin is a depressant. It relieves anxiety and tension and diminishes the sex, hunger, and other primary drives. It may also produce drowsiness and cause inability to concentrate, apathy, and lessened physical activity. It can impair mental and physical performance. Repeated and prolonged administration will certainly lead to tolerance and physical dependence.

Euphoria is an effect often associated with heroin. . . . Among the symptoms of the withdrawal sickness, which reaches peak intensity in 23-48 hours, are muscle aches, cramps, and nausea.

Although the prevalence of addiction can only be approximated, heroin is clearly the drug that is most widely preferred by addicts in the United States. For example, estimates of the actual number of heroin addicts vary from 100,000 to 200,000 nationwide, while the number of known addicts in the United States, as of the end of 1968, was 64,011, with fully one-half of these in New York State and 93 percent of the latter figure in New York City. Most of the remaining addicts reside in California, Illinois, New Jersey, Maryland, Michigan, Pennsylvania, Texas and the District of Columbia.

The ethnicity of heroin addiction is also significant, for as Dr. Louria points out, "[h]eroin abuse is primarily a disease of repressed

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7 D. Louria, supra note 6, at 3. Dr. Louria includes an excellent discussion of the problem of drug classification, and of how the pertinent definitions differ between the medical and legal worlds.


9 Data can be collected only from the arrest records of addiction treatment agencies and other incomplete compendia. President's Commission Report 212.


11 It should be emphasized that we are discussing the so-called "hard-core" addicts and not the casual users of drugs such as marijuana. It has been estimated that marijuana has been used by as many as twenty million members of the middle class. D. Louria, supra note 6, at 8.

12 President's Commission Report 212.

13 Koval, Opiate Use in New York City, November 1969, at 4, table 1 (study on file at N.Y.S. Narcotic Comm'n Research Dep't).

14 President's Commission Report 212.
minorities." The following table represents the ethnic breakdown of New York City heroin addicts from the latest available data:

<table>
<thead>
<tr>
<th>Ethnic Background</th>
<th>% of 15-44 year old population</th>
<th>% of heroin addicts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negro</td>
<td>19.9</td>
<td>49.9</td>
</tr>
<tr>
<td>Puerto Rican</td>
<td>12.4</td>
<td>25.9</td>
</tr>
<tr>
<td>White</td>
<td>67.7</td>
<td>24.2</td>
</tr>
</tbody>
</table>

The 15-44 year old population was used since at least 95.8 percent of all heroin addicts fall into that age group. 1968 N.Y. Narc. Addiction Control Comm. Ann. Rep. 2-3.

Source: Koval, Opiate Use in New York City, November, 1969, at 10, table VI, at 14, table X (study on file at N.Y.S. Narcotic Comm'n Research Dep't).

Thus, in New York City, where at least 47 percent of the nation's heroin addicts reside, "minority groups" comprise only 32.3 percent of its young people but 75.9 percent of its heroin addicts. For the entire nation, the Federal Bureau of Narcotics states the ethnic breakdown of heroin addicts as follows: Mexican-Americans 15.6 percent; Negroes 53.3 percent; Puerto Ricans 12.2 percent; Whites 28.1 percent.

<table>
<thead>
<tr>
<th>Age &amp; Education of Male Heroin Addicts (N.Y. State)</th>
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</thead>
<tbody>
<tr>
<td>Ageb</td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>16 or less</td>
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<tr>
<td>17-20</td>
</tr>
<tr>
<td>21-25</td>
</tr>
<tr>
<td>26-50</td>
</tr>
<tr>
<td>31-35</td>
</tr>
<tr>
<td>36-40</td>
</tr>
<tr>
<td>40 or over</td>
</tr>
<tr>
<td>Unknown</td>
</tr>
</tbody>
</table>

The above data further illuminate the picture of the heroin addict. In addition to the probability of being from an ethnic minority group, 81.2 percent are in the "below 30" age category and 73.5 percent have not completed high school. It is also generally accepted that

15 D. Louria, supra note 6, at 5.
the addict is an economically disadvantaged person, although no concrete data are available on this question. Indeed, the only major characteristic of heroin addicts that has not yet been discussed is criminality, and it is manifest that all, or nearly all, addicts have criminal records. However, since this characteristic is closely related to the specific analysis of drug use and crime, it would be best to defer a discussion of this problem for closer scrutiny in a subsequent section of this paper.

CURRENT PATTERNS OF MARIJUANA USE

An epidemiology of current marijuana use is extremely difficult to outline. It is apparent, however, that the use of this narcotic is increasing to "epidemic proportions." Significantly, the incidence of marijuana use seems to traverse a wider cross-section of society than does opiate use. Basically, although statistics are sparse, two contrasting patterns of use have emerged: marijuana is used not only in the urban ghetto but in the middle-class suburb as well. In fact, marijuana has become a major topic of social research primarily because of its use on college campuses in recent years; when marijuana was confined to the uneducated poor, it received little attention. The differences between these two patterns of use bear heavily upon any study of the drug's effects on crime.

A composite picture of marijuana use in the urban ghetto can be seen with relative clarity from data extracted from available arrest records. Most of the arrests in which marijuana use was detected tend to involve minority group members. Notwithstanding the reader's

19 See notes 33-56 and accompanying text infra.
20 See R. Blum, supra note 6, at 286; D. Louria, supra note 6, at 8.
21 Although the law classifies marijuana as a narcotic, it is clear that use of the drug causes no physical dependence, nor do withdrawal symptoms appear upon cessation of use. Id. at 97-98.
22 President's Commission Report 213. Whereas heroin addiction is generally confined to ethnic minorities, marijuana use is common among college students, "hippies" and artists, as well as ghetto youngsters. D. Louria, supra note 6, at 97.
23 D. Louria, supra note 6, at 111; President's Commission Report 213; Inciardi, Later Heroin Use by Adolescent Marijuana and Heroin Users and by Non-Drug Using Adolescent Offenders, September 1968, at 11 (study on file at N.Y.S. Narcotic Comm'n Research Dep't).
24 Although there is no showing of racial discrimination in the enforcement of the anti-drug laws, it is clear that Negroes, Puerto Ricans and Mexican-Americans are over-represented. Mandel, Problems with Official Drug Statistics, 21 Stan. L. Rev. 991, 1034-35 (1969).
initial incredulity, it is quite possible that the ghetto youngster may use marijuana as part of his normal and general orientation to "ghetto adolescence." He probably has already had some experience with tobacco and alcohol. More importantly, as a consequence of his other characteristics, such as race and the likelihood of finishing school, the ghetto youngster is more likely to continue drug use and progress to heroin addiction than a middle-class white marijuana user.

In a recent study of adolescent offenders in New York, the likelihood of future heroin addiction as a factor of adolescent marijuana use was investigated. The results were conclusive.

<table>
<thead>
<tr>
<th>Drug Used - 1962</th>
<th>% Using Heroin 1963-67</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marijuana</td>
<td>41.3</td>
</tr>
<tr>
<td>Heroin</td>
<td>52.5</td>
</tr>
<tr>
<td>None</td>
<td>15.1</td>
</tr>
</tbody>
</table>

Source: Inciardi, Later Heroin Use by Adolescent Marijuana and Heroin Users and by Non-Drug Using Adolescent Offenders, September 1968, at 4, table 1 (study on file at N.Y.S. Narcotic Comm'n Research Dep't).

Thus, while few non-drug using adolescent offenders progress to heroin addiction, for those who were using drugs, it seems to have made little difference whether they were using heroin or marijuana at the time of arrest — a large proportion had "graduated" to heroin use within five years. The authors of the report believed that the data were strong enough to warrant the conclusion that, for adolescent delinquents, "marijuana use is almost as portentous of adult heroin use as is actual use of heroin as an adolescent." For the purposes of this study, the above data are significant. Any attempted analysis of the relationship of ghetto marijuana use to crime would be distorted by the fact that the ghetto marijuana user may also be involved with heroin or by the fact that crime in general is concentrated in ghetto areas. Therefore, the "urban ghetto" pattern

24 R. Blum, supra note 6, at 280.
25 Id.
26 Inciardi, supra note 22, at 5.
27 For example, the "top" five areas in New York City for general delinquency are:
(1) Central Harlem (112.6)
(2) Fort Greene (109.5)
(3) Bedford-Stuyvesant (108.3)
(4) Bushwick (106.7)
(5) Brownsville (99.4)
Koval, supra note 13, at 5, table 2 (figures are crimes per 1000 population).
of marijuana use will be merged into the topic of heroin addiction and its relationship to crime.\(^{28}\)

The incidence of marijuana use among middle-class youths is difficult to calculate, estimates ranging as high as twenty million.\(^{29}\) However, within this group, marijuana is not associated with any criminal behavior other than the crime of possession.\(^{30}\) Blum describes the typical collegiate marijuana user in this manner.

Originally curious, perhaps seeking religious experience or aesthetic revelations, he may continue because drug use dampens anxiety over his studies or career, helps him relax from pressure, or is symbolic of membership in a way of life that he finds pleasing.\(^{31}\)

In any event, the prognosis for the student's graduation from college and retention of a "square" job remains unaffected by his use or failure to use marijuana while at school or thereafter.\(^{32}\)

**THE RELATIONSHIP BETWEEN HEROIN ADDICTION AND CRIME**

The traditional concept of the relationship between addiction and crime characterized the addict as a criminal aggressor who was driven to violence by the evil effects of the drug itself.\(^{33}\) Of course, medical science has long been aware of the complete falseness of this conception. Rather than causing aggression, heroin's depressant effect actually impedes aggressive tendencies.\(^{34}\) Accordingly, the heroin addict will usually be "lethargic, semi-somnolent, devoid of ambition, and preoccupied with grandiose fantasies."\(^{35}\) Nevertheless, there does exist

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\(^{28}\) The recognition of epidemiological differences between these two groups of marijuana users was not quickly accepted by modern sociological researchers. Nevertheless, independent statistical surveys have been compared herein, and the distinctions in treatment are indeed justified; the surveys arrive at different prognoses for the marijuana user depending upon the socioeconomic group studied — and this has been found to be the only variable factor. Acceptance of the distinction seems to be gaining in the more recent studies of the problem. See Goode, *The Connection Between Marijuana and Heroin*, in MARIJUANA 62 (E. Goode ed. 1969).

\(^{29}\) D. Louria, *supra* note 6, at 8.

\(^{30}\) R. Blum, *supra* note 6, at 280. Blum characterizes the collegians' marijuana use as "isolated and not associated with other visible criminal activity." His opinion is characteristic of the prevailing view.

\(^{31}\) Id. But see Giordano, *Marijuana and the American System*, in MARIJUANA, *supra* note 28, at 154, wherein former Bureau of Narcotics Commissioner Giordano expresses his opinion that "this is just another effort to break down our whole American system. I can just imagine all of our youth spending the rest of their days high on marijuana, and I do not know what our society would come to if that were the case."

\(^{32}\) R. Blum, *supra* note 6, at 280.


\(^{34}\) See note 8 and accompanying text *supra*.

a clear relationship between heroin addiction and crime, although that relationship is much more complex than any pharmacological cause-effect theory. Despite the fact that the drug inhibits his physical proclivity to "semi-somnolence," the addict is typically a criminal.\textsuperscript{36} His criminal activity is, in fact, extensive. The President's Commission on Law Enforcement and the Administration of Justice reported in 1966 that the average addict had been arrested six times for non-drug related offenses.\textsuperscript{37} Furthermore, a more recent study has estimated that addicts average one arrest for every two and one quarter years of addiction.\textsuperscript{38}

\textit{Associative Theory}

The criminality of most addicts, when viewed in conjunction with their ethnic, educational, and economic characteristics, gives rise to a sociological hypothesis regarding addiction and crime. In essence, this theory supposes that heroin use is simply a symptom of criminal proclivity — that heroin use occurs among people who, in view of their disadvantaged state, are likely to engage in antisocial behavior, and that it is this disadvantaged state which leads them to heroin addiction as well. According to this theory then, heroin addiction has no demonstrable effect on crime. Instead, it is regarded as a symptom of social disorder, just as the crime with which it is associated can be traced to economic deprivation, racial inequity and other social ills.

Certainly, according to modern thought, addiction is the result of some defect which renders a man incapable of functioning without heroin.\textsuperscript{39} The sociopathic origins of addiction were summarized during Senate subcommittee hearings on narcotics in 1964:

\begin{quote}
The symptom of addiction . . . always represents a mode of adaptation, perhaps the sole adjustive mechanism to living prob-\end{quote}

\textsuperscript{36} \textit{President's Commission Report} 222; The Attack on Narcotic Addiction & Drug Abuse, Spring 1966, at 2, col. 1.

\textsuperscript{37} \textit{President's Commission Report} 222. It should be emphasized that the author's discussion of this relationship will focus only on non-drug related crimes, since it is in this area that the connection between heroin and criminality becomes important. The crimes of drug possession, drug sale, possession of hypodermic needles and the like are unquestionably tied to heroin addiction. This, however, proves nothing of significance; a similarly close relationship to crime could easily be manufactured by prohibiting the possession of anything. If the use of heroin has any real meaning for the law, it is in its association, or causal relation, with non-drug crimes.

\textsuperscript{38} Koval, Drug Users Among Police Dept. Arrestees & Arrests for Narcotic Offenses in New York City, May 1969, at 7 (study on file at N.Y.S. Narcotic Comm'n Research Dep't). There is no further breakdown of this statistic into drug and non-drug crimes.

\textsuperscript{39} A plethora of studies have dealt with this topic. Two of the better ones are I. Chein, D. Gerard, R. Lee & E. Rosenfeld, \textit{The Road to H} (1964); Y. Kron & E. Brown, \textit{supra} note 17. It is surprising, at least to this author, how many pages have been written merely to support the proposition that addiction is not a self-generative disease.
lems the addict has available at the moment. It is a symptom representation of some form of stress functioning, an attempt to meet, deal with, or master some form of intra-psychic imbalance, conflict, or excitation.

It is a kind of last-grasping toward something so as to forestall the horror of inevitable disintegration, of psychic disorganization that spells the doom of helplessness. The addict has found something that he knows will give him relief from unbearable tension and anxieties.

What are these “tensions and anxieties” that cause addiction? The answer will vary according to the addict, but they encompass a wide range of social and psychological points of weakness — marital instability, racial prejudice, poor education and the like. Whatever the individual addict’s particular weaknesses may be, he feels that he cannot overcome them without heroin and uses the drug to this end, despite all the other inconveniences, both great and small, that he suffers as a result. In this respect, therefore, the proponents of the defect-symptom or associative theory of the relationship of heroin addiction to crime appear to be correct. Heroin addiction is almost probably the result rather than the cause of psychological distress. However, their conclusion that addiction is only related to crime in that the same persons are associated with both types of antisocial behavior is not borne out by modern research. Many criminals are simply not heroin users. In 1968 for instance, heroin addicts accounted for 9.1 percent of the total crime in New York City, leaving 90.9 percent for non-addicted criminals. And finally, the most effective refutation of this theory can be found in the data supporting the alternate major theory — that of cause and effect.

**HEROIN ADDICTION AS THE CAUSE OF CRIME**

The theory that views heroin addiction as the cause of crime differs, of course, from the traditional, pharmacological cause-effect theory.

Recognizing that heroin use is itself the result of social ills or psycho-

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40 *Senate Narcotics Hearings, supra note 10, at 1300* (testimony of Dr. Herbert A. Raskin, who was then clinical Associate Professor of Psychiatry at the Wayne State University School of Medicine).


44 *See note 33 and accompanying text supra.*
logical stresses, the former supposes that heroin use itself—for whatever reasons—in turn causes crime. The first set of facts in support of this causal relationship theory are seemingly contradictory, i.e., the addict’s physically-proven tendency toward lethargy and his persistent criminal activity. The enigma is resolved by a more detailed analysis of the addict’s crimes. According to 1966 New York City Police Department Arrest Records, the following percentages of each crime were committed by heroin addicts:

- Possession of Burglar’s Tools: 30.5
- Burglary: 18.9
- Forgery: 11.2
- Possession of Stolen Property: 38.2
- Robbery: 10.6
- Selected Felonies Against Persons: 2.0

Thus, it is clear that the addict’s crimes are crimes against property. It is equally manifest that the addict’s revenues are expended on drugs; the average daily cost of a heroin habit has been estimated to be as much as $50 per day. This situation is aggravated by the fact that stolen property yields only one-fifth to one-third of its actual value for black-market cash. More importantly, it has been found that crimes against property increased markedly after addiction, while crimes against persons showed a slight decrease or no change.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Before Addiction</th>
<th>After Addiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Assault</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total—crimes against persons</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Burglary</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Larceny</td>
<td>7</td>
<td>22</td>
</tr>
<tr>
<td>Other Theft</td>
<td>25</td>
<td>38</td>
</tr>
<tr>
<td>Total—crimes against property</td>
<td>38</td>
<td>70</td>
</tr>
</tbody>
</table>


From the above data, it can easily be seen that in the sample studied, while offenses against the person actually decreased after addiction, there was a 79.9 percent increase in the incidence of money-producing offenses. 

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45 Koval, *supra* note 38, at 4, table 1; see also *Senate Narcotics Hearings*, *supra* note 10, at 858-59.
crimes against property.\textsuperscript{47} For all crimes in the same sample, 63 percent had no arrests prior to addiction, whereas after addiction this figure was reduced to 38 percent\textsuperscript{48} (most of whom were medical men with licit supplies of narcotics).\textsuperscript{49}

It is evident, therefore, that the relationship between heroin addiction and crime is causal rather than associative. The addict must overcome the pharmacological effects of his drug and often a "severe psychological conflict occasioned by [his] repugnance to theft."\textsuperscript{50} Yet, Professor O'Donnell's study has shown that the addict, typically non-criminal prior to addiction, becomes closely involved in parasitic criminal activity thereafter.\textsuperscript{51} Indeed, it has been pointed out that the addict with a licit supply of drugs avoids criminal activity almost to a man.\textsuperscript{52} The conclusion that heroin addiction causes crime is simply too well supported to reject.

In recent years, many have advocated the legalization of heroin as a means of eliminating such drug-induced crime.\textsuperscript{53} Apart from the moral considerations involved in such a proposal,\textsuperscript{54} there is a real and substantial argument against the effectiveness of free narcotic clinics. The government would be compelled to provide increased dosages of heroin as the addict's tolerance to the drug increased. If a contrary policy were adopted, the addict would simply continue to turn to illicit sources for the extra "high."\textsuperscript{55} Moreover, there is every reason to believe that such a policy would lead to an increase in the incidence of addiction once the stigma of illegality was removed.\textsuperscript{56} In consequence, it would seem better to accept both the illegality of heroin

\textsuperscript{47} In view of its dual nature as a crime against property involving force exerted on persons, robbery was omitted from the table. The crime of prostitution was also omitted because it involved only females. See O'Donnell, supra note 18, at 380.
\textsuperscript{48} O'Donnell, supra note 18, at 376.
\textsuperscript{49} Id. at 381, table 5.
\textsuperscript{50} A.B.A.-A.M.A. REPORT 66.
\textsuperscript{51} O'Donnell, supra note 18, at 380.
\textsuperscript{52} Id. at 381, 385.
\textsuperscript{54} There is, of course, some substance to the argument that heroin should not be legally available because addicts would remain unable to function normally in society.
\textsuperscript{55} W. ELDRIDGE, supra note 8, at 108-10.
\textsuperscript{56} BRILL & LARIMORE, SECOND ON-SITE STUDY OF THE BRITISH NARCOTIC SYSTEM 8 (NACC Reprints, June 1967). Of course, a mere increase in the incidence of addiction, in vacuo, is not necessarily bad. Indeed, were it not for the side effects of heroin addiction, cogent arguments could be made concerning the right of man to absolute control over his body vis-à-vis attempts by society to limit the ways in which men can abuse themselves. The fact is, however, that heroin use has been shown to lead to criminal activity, and that legalization might well increase the \textit{addiction} rate. In addition, since any practicable program would have to \textit{limit availability}, theft would still be necessary to obtain large quantities of drugs.
and the causal relationship existing between heroin addiction and crime. Any proposals for change must embark from that pier.

The Effect of Marijuana Use on Crime

The recent upsurge in marijuana use in the United States among middle-class youth has prompted an interesting and provocative dialogue about the effects of the drug on the "turned-on generation." The focal point of the discussion is the effect of such use on crime. Again, as we found in the case of heroin addiction, there is a traditional view on the subject. Again, the traditional view asserts with certainty a positive link between marijuana use and crime:

marijuana is capable of inducing acts of violence, even murder. The drug frees the unconscious tendencies of the individual user, the result being reflected in frequent quarrels, fights and assaults. Again, the traditional view is incorrect.

One of the first problems encountered by the student of marijuana use is that statistics are generally unreliable. The reasons for this are basically two in number: (1) drug statistics are usually extracted from arrest figures, which are subject to manipulation by variations in police department enforcement tactics; and (2) it is the conclusion of researchers, in the area of marijuana use specifically, that most users escape detection.

In the previous discussion of heroin use, it was stated facilely that no valid conclusion could be drawn unless the study limited its scope to non-drug related crimes. In the case of marijuana, such an approach would leave little to analyze. It is clear that, for the vast majority of marijuana users among the middle class, their only crime has been possession or sale of marijuana. Parenthetically, it should also be

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67 It is generally conceded that the major significance of current marijuana use is in its epidemiology, as discussed at notes 21-22 supra. For further reactions on the spread of marijuana to middle-class youngsters, see A. GELLER & M. BOAS, THE DRUG BEAT 95-127 (1969); LIFE, Oct. 31, 1969, at 27-34. The recent works on marijuana are too numerous to mention; the publications cited herein represent a fair sample of the current debate in print.

58 A. GELLER & M. BOAS, supra note 57, at 95. (The views expressed are those of Henry Giordano, former Commissioner of the Federal Bureau of Narcotics.)

59 See Mandel, supra note 23.

60 Id. at 1024-29.

61 Id. at 1031-33. Mr. Mandel points out that minority group members form the majority of arrested marijuana users. It should again be emphasized that this section of the article is concerned solely with middle-class marijuana use. See notes 27-28 and accompanying text supra.

62 See note 37 supra.

noted that the crime of "sale" of illegal drugs does not require that consideration be paid, but only that there be a transfer. This factor, along with the fact that such sales usually take place between schoolmates, should eradicate another fallacious traditional concept — that of the professional pusher, lurking about the schools and plying his innocent prey with his vile wares. It is manifest, then, that we are dealing with persons who are essentially non-criminal, and whose use of marijuana has not altered that status (unless they happen to have been unfortunate enough to have been arrested for a marijuana crime). What other side effects might their drug use have on their life styles? Let us consider some of the traditional arguments individually:

1. Marijuana use does not lead to more serious drug abuse, except among the specific and identifiable group noted earlier. Dr. Louria states categorically that "[t]he overwhelming majority of some 200 million users of cannabis in the world will never go on to other drugs."

2. Chronic marijuana use will not impair the user's health, although it may impair sensory perception and physical coordination temporarily, as will alcohol intoxication. No permanent physical or mental damage has been shown to be caused by marijuana use.

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64 Uniform Narcotic Drug Act § 2.
65 Rosenthal, supra note 63, at 1372. Professor Rosenthal points out that the condemned "sale" of marijuana at schools is often simply a gift from one student to another in exchange for a promise to return the favor if the donee has an ample supply at a later time.
66 See notes 23-28 and accompanying text supra.
67 D. Louria, supra note 6, at 110. But see Tauro, Marijuana and Relevant Problems — 1969, 7 Am. Crim. L.Q. 185 (1969) (representing those few traditionalists who cling to the position that the latest studies are inconclusive). Dr. Louria's statement represents one of the few frank appraisals of a proposition which, at least for the middle-class student group, seems to be generally accepted. See also The Connection Between Marijuana and Heroin, supra note 28, at 62.
68 A. Geller & M. Boas, supra note 57, at 98, 100. In fairness, it must also be acknowledged that marijuana has no demonstrable therapeutic characteristics. At least, this seems to be taken for granted among the medical profession. See, e.g., D. Louria, supra note 6, at 113-14; Jaffee, The Medical View, in Marijuana, supra note 28, at 47, 50. But see N.Y. Post, Feb. 3, 1970, at 18, col. 3.

Regarding the detrimental medical effects of marijuana use, a recent article studied twelve cases of psychotic reactions to marijuana observed in servicemen on duty in Vietnam. Although Drs. Talbott and Teague were quite certain that the mental symptoms were attributable to the use of marijuana, they declined to conclude that such severe reactions to marijuana were anything but aberrant for the following reasons: (1) the size of the group studied was small; (2) all of the "reactions" observed were paranoid in nature and may well have resulted from the exigencies of battle duty rather than from marijuana use; (3) Vietnamese marijuana is a good deal more potent than that found in the United States, and, in about 50 percent of the cases, it is mixed with opiates; (4) there were no experimental controls used, so that it was not always clear whether marijuana was the
3. No substantial evidence in support of the contention that marijuana use impairs personal adjustment has been adduced, although this problem is quite new.\(^6\) However, there does exist some support for the proposition that marijuana use does not impair social adjustment.\(^7\)

It would be inaccurate to conclude that since the only demonstrable effect of marijuana on crime is the generation of the crime of marijuana possession or sale, the effect of marijuana use on crime is negligible. In fact, the greatest impact of the marijuana "epidemic" on the crime problem stems from this criminalization of persons who would not otherwise be criminals.\(^7\) Commenting on this aspect of marijuana use in a recent article, Professor Michael P. Rosenthal of the University of Texas School of Law stated that

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[c]hief among the costs of the marijuana laws is that they criminalize large numbers of people, many of whom are young and developing and many of whom appear to have no prior criminal record. . . . Probably never before in our history has the mere possession of a criminal record been as serious and detrimental as it is today. A conviction may adversely affect opportunities in employment and education. . . . [T]he consequences of conviction have become particularly meaningful as marijuana has spread to the middle class. The middle class person convicted of crime really has something to lose.\(^7\)

It seems, on the basis of Professor Rosenthal's study and other current treatises,\(^7\) that the major impact of marijuana use on crime is one aspect of the general sociological problem of alienation or group ostracism. The marijuana group's ostracism will be scrutinized in a subsequent section of this article, as part of a general discussion on current drug legislation. It remains clear, however, that this is the only notable relationship between marijuana use and crime; marijuana

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\(^6\) Rosenthal, supra note 63, at 1361.

\(^7\) R. Blum, supra note 6, at 280. Dr. Blum, speaking of the college student user, states: When he graduates and takes a job in the "square" world, there may be . . . pressures to make him conform which make him shift from the psychedelic crowd to conventional use of the social drugs alcohol and tobacco — a pattern he may continue without difficulty for the rest of his life.

\(^73\) See, e.g., The Connection Between Marijuana and Heroin, supra note 28.
use cannot be said to cause criminal behavior, nor can marijuana be said to be associated with non-drug crimes.\textsuperscript{74}

\textbf{Current Drug Laws}

\textit{State Criminal Laws}

The basic state statute regulating narcotic drugs is the Uniform Narcotic Drug Act,\textsuperscript{76} which has been adopted in 48 states, the District of Columbia, Puerto Rico and the Virgin Islands.\textsuperscript{76} Of course, the Uniform Act has been altered somewhat in each jurisdiction in which it has been adopted, but all of the states — including California\textsuperscript{77} and Pennsylvania\textsuperscript{78} — "prohibit the same types of activity, prescribe essentially the same type of safeguards for the public, and regulate the medical and paramedical profession in essentially the same way."\textsuperscript{79} The Act's statement of prohibition is clear:

It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, disperse, or compound any narcotic drug.\textsuperscript{80}

The statute's definition of a "narcotic drug" is sufficiently flexible to encompass newly-discovered drugs within its scope.\textsuperscript{81} Similarly, the meaning of that term is as comprehensive as it is flexible: cocaine, marijuana, opium (heroin is included under this category) and "every other substance neither chemically nor physically distinguishable from them" are included without differentiation.\textsuperscript{82} The concept of "possession" for purposes of imposing criminal liability under the Act is also broad. Courts have construed the statute to prohibit constructive\textsuperscript{83} as

\textsuperscript{74} Of course, this view will undoubtedly remain unconvincing to devoted traditionalists. Almost invariably, however, their own arguments supporting a causal connection between marijuana use and crime begin with a statement that marijuana possession is itself a crime and go no further in substantiating the argument. See, e.g., Tauro, \textit{supra} note 67, at 184-87.

\textsuperscript{76} 9B \textit{UNIFORM LAWS ANNOTATED} 409. For an excellent discussion of the Act and an extensive examination of the factors underlying its adoption, see W. Eldridge, \textit{supra} note 8, at 85-48.


\textsuperscript{79} W. Eldridge, \textit{supra} note 8, at 51.

\textsuperscript{80} \textit{UNIFORM NARCOTIC DRUG ACT} § 2.

\textsuperscript{81} Id., § 1 (14).

\textsuperscript{82} Id., § 1 (12-14).

well as actual possession, and have permitted prosecutions for possession of very small amounts of a drug. 84

In regard to the sale of narcotics, once again the intention is to bring all such transactions within the scope of the prohibitions imposed by the Act. 85 Thus, as previously noted, the terms of the statute do not require consideration for the unlawful sale. 86 Moreover, defendants have been successfully prosecuted and incarcerated for both possession and sale, 87 despite the fact that the drug obviously had to be possessed (at least constructively) before it could be sold. 88 Finally, many states, including New York, have imposed supplementary penalties by implying an intent to sell from the mere possession of a specified amount of drugs. 89

Although the Uniform Act, as such, contains no penalties, the various state legislatures, in compliance with the spirit of that statute, have adopted penal provisions which were apparently based on views which this author has characterized as traditionalist. While commenting on these divers state penalties, William Butler Eldridge of the American Bar Foundation noted the

almost unanimous trend toward increasing the severity of penalties in all the States. Maximum sentences of forty or more years as well as an increasing number of life sentences are liberally sprinkled throughout the provisions. 90

Fortunately, in response to the current levels of knowledge about marijuana use, this trend toward increasing severity has been replaced to some degree by a movement toward lesser penalties. 91 However, this reform movement is clearly a rather sluggish one; state legislatures have been very slow to act, and the reversal has taken place on too few


85 W. ELDRIDGE, supra note 8, at 56.

86 UNIFORM NARCOTIC DRUG ACT § 2. It is, by the terms of the Uniform Act, equally unlawful to “administer” or “dispense” a narcotic drug. See notes 64-65 and accompanying text supra.


88 The criminal law usually evinces disdain for such double jeopardy. The closest analogy can be found in the various attempt crimes; that is, a successful attempt is merged into the completed crime. See, e.g., United States v. Quincy, 31 U.S. (6. Pet.) 298 (1832).

89 See, e.g., N.Y. PENAL LAW § 220.15(2) (McKinney 1967).

90 W. ELDRIDGE, supra note 8, at 65. Eldridge’s work contains a comprehensive summary of state penalties for narcotics violations. Id. at 178-255 (app. B).

91 Rosenthal, supra note 63, at 1360-61.
fronts. Accordingly, it can still be said that, in general, state narcotics laws tend to be restrictive.

**Federal Narcotics Laws**

The federal government has also enacted a narcotics statute, namely the Harrison Narcotic Law of 1914. Technically, this provision represents an exercise of the taxing power of Congress, but in operation, both the act and its companion, the Marijuana Tax Act, are criminal statutes: penalties of two to ten years' imprisonment plus a fine of up to $20,000 are imposed for first-offense violations, the prison term increasing to five to twenty years thereafter. Probation, suspended sentences and parole are prohibited, except for a very small category of marijuana offenders who are eligible for parole.

By the terms of the act, compliance with federal regulations does not exempt any person from the provisions of state or local law. However, in a recent case involving Dr. Timothy Leary's prosecution for narcotic law violations, the Supreme Court of the United States decided, at least as to marijuana prosecutions, that in certain circumstances a proper claim of the privilege against self-incrimination will be a complete defense. Therefore, if the payment of a particular tax or

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92 Id.
94 Id. § 4701 (imposing a tax on narcotic drugs produced in or imported into the country).
95 Id. § 4741 et seq.
96 Id. § 7237.
97 Id.
98 Id.
99 Parole is available to those who are convicted of using a communications facility in connection with a narcotic crime, provided the narcotic drug involved was marijuana. 18 U.S.C. § 1403 (1966).
101 Leary v. United States, 395 U.S. 6 (1969). The well-known Dr. Leary was convicted of failure to register and pay taxes on his purchase of marijuana as required by the Marijuana Tax Act, 26 U.S.C. § 4741 et seq. (1964). The Supreme Court reversed the conviction, holding that the registration requirements were tantamount to compulsory self-incrimination in view of the fact that every state prohibited possession of the drug. However, almost immediately after it was established, the Leary rule was distinguished on its facts in a case involving a marijuana peddler. In the case of a seller of marijuana (as opposed to a buyer of the drug), the Court reasoned that the de facto danger of self-incrimination would be negligible. Since it is unlikely that a buyer of illegal drugs would utilize the required order form, there is no real possibility that a seller would be compelled to incriminate himself by filling out such a form. Minor v. United States, 396 U.S. 87 (1969). See also Grosso v. United States, 390 U.S. 62 (1968); Marchetti v. United States, 390 U.S. 59 (1968). In Marchetti and Grosso, the Supreme Court held that provisions of federal law requiring the payment of gambling taxes were subject to the defense of self-incrimination in light of state statutes making gambling a crime. The reasoning of these cases, of course, provided precedent for the holding in Leary. See 43 St. John's L. Rev. 112, 123 (1968). However, there is still a question as to whether this reasoning can
the filing of the required statements would constitute admissions of
guilt by the individual to a violation of state narcotic laws, the defend-
dant cannot be convicted for his failure to comply with the federal
statute.

Summary of Existing Narcotics Laws

Despite the ameliorating trends which have been noted, statutes on
both federal and state levels can still be characterized as severe and
repressive. In 1964, Professor Graham Hughes, commenting generally
on narcotics laws in this country, indicated that

the suffering inflicted on the offenders by the sentence of the court
is one factor that we must always balance against the wrong of the
offenders [for] in narcotics cases the suffering is quite out of
proportion to the offence. . . . To meet with savage sentences the
purchasing by such people of a little artificial euphoria is hard to
justify when the rest of us may legally relax with cigarettes and
whisky.\textsuperscript{102}

It is clear that Professor Hughes' remarks continue to retain their basic
validity.\textsuperscript{103}

Current Trends in Narcotic Laws

Criminal Law Reform

In response to the widespread condemnation of current narcotic
laws, legislative bodies are beginning to enact reforms which reflect the
present level of knowledge about drugs. Indeed, perhaps the most
notable of governmental responses to demands for the elimination of
statutory narcotic fictions is the proposed Federal "Controlled Dangerous
Substances Act of 1969."\textsuperscript{104} This Act is notable for two reasons:
(1) it is being proposed on the federal level; and (2) it seems to coincide
be applied to other federal drug laws which do not rely upon the taxing power. Although
the privilege against self-incrimination may be strong enough to overcome the equities
of a tax which produces little revenue and requires wide disclosure, this may not be true
where the statute is based on the commerce power, as it is with other drugs. There is no
disclosure required there, and the interest of preventing interstate trading in narcotics
can be said to be greater than the interest in taxing marijuana importation.


\textsuperscript{103} Professor Hughes' article concerned heroin and other drugs as well as marijuana.
Most of those who would share his conclusions today, however, would probably limit the
scope of their objections to marijuana laws, ostensibly because this is where the greatest
injustice occurs.

\textsuperscript{104} S. 3246, 91st Cong., 2d Sess. (1970) [hereinafter cited as S. 3246]. The Bill was
passed by the Senate on January 28, 1970 by a vote of 82-0. \textit{Cong. Reg.} 804 (daily ed.
with the general legislative ideal of what is needed in the way of drug law reform.\textsuperscript{105}

The proposed Act sets out four schedules classifying the various "dangerous substances." For example, to be classified under Schedule I, a substance must have:

1. a high potential for abuse, and
2. no accepted medical use in the United States, and
3. a lack of accepted safety for use under medical supervision. \ldots \textsuperscript{106}

Additionally, the bill requires that certain substances, such as heroin,\textsuperscript{107} lysergic acid diethylamide (LSD),\textsuperscript{108} and marijuana,\textsuperscript{109} be included within this schedule. Finally, although the Attorney General is afforded the general authority to classify drugs, he may not remove any drug from Schedule I or Schedule II without an Act of Congress.\textsuperscript{110}

There are several important respects in which the proposed federal legislation is reformatory in nature. The first is the forthrightness of the Act in its direct prohibition of possession of the "controlled" substance;\textsuperscript{111} the legal fictions of the taxing power which limit current

\textsuperscript{105} In a letter to the Speaker of the House of Representatives and the Vice President, Attorney General Mitchell discussed the background of the legislation proposed by the Nixon Administration:

The Nation is today facing an increasingly serious problem with regard to the illicit use of drugs. \ldots The creation of an intelligent legal framework for dealing with these problems should be the first order of society's response. This bill seeks to provide just such a framework for the control of all narcotics and dangerous drugs and would replace many of the present Federal drug statutes. \ldots

Although the bill contains a number of innovations reflecting current levels of knowledge, it also preserves much of the structure and concepts of existing drug legislation. \ldots


\textsuperscript{106} S. 3246 \S 202(a).

\textsuperscript{107} Id. \S 202(b)(6).

\textsuperscript{108} Id. \S 202(c)(6).

\textsuperscript{109} Id. \S 202(c)(7). The other schedules impose the following standards:

Schedule II
1. A high potential for abuse, and
2. currently accepted medical use, \ldots and
3. abuse may lead to severe psychic or physical dependence.

Schedule III
1. A potential for abuse less than under Schedules I and II, and
2. well documented and approved medical use, \ldots and
3. abuse may lead to moderate or low physical dependence or high psychic dependence.

Schedule IV
1. A low potential for abuse, \ldots and
2. currently accepted medical use, \ldots and
3. limited physical dependence and/or psychological dependence. \ldots

\textsuperscript{110} Id. \S 201(d).

\textsuperscript{111} Id. \S 501(e). The Bill is being considered as an incident of the commerce power, although the wording of its operative sections gives little indication of the constitutional authority. The connection between the authority and its exercise is established in Section 101 of the proposed Act:

The Congress finds and declares that a major portion of the traffic in controlled dangerous substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce.
federal law would be abandoned. However, it has been suggested by at least one commentator that this aspect of the legislation merely represents an attempt to evade the decision of the Supreme Court in *Leary v. United States.*

Secondly, the Bill is significant in that it would allow probation, within the discretion of the court, for first offenders convicted of possession of a controlled dangerous substance without intent to distribute it. Moreover, upon successful completion of the probation period, the offender may have the proceedings dismissed, and no criminal conviction will be entered against him. This provision was drafted, in the words of Attorney General Mitchell, to "retain sufficient flexibility to rehabilitate the unfortunate victims of drug abuse and addiction, and [to] distinguish between hard core criminals and misinformed abusers."

The final aspect of reform incorporated within the proposed Act involves the reduction of penalties. Whereas current federal laws impose prison terms of two years, the proposed Act reduces that term to a maximum of one year for simple possession of a controlled dangerous substance. This applies only in cases of first offenders, however, for penalties are doubled in subsequent offenses. Moreover, the bill also contains a provision whereby persons who are found to have been engaged in a "continuing criminal enterprise" can be sentenced to a term of imprisonment from five years to life plus a mandatory fine of $50,000.

Of course, this new schedule of penalties represents significant

(a) After manufacture, many controlled dangerous substances flow through interstate commerce.
(b) Substances distributed locally commonly flow through interstate commerce immediately prior to such possession.
(c) Substances possessed commonly flow through interstate commerce immediately prior to such possession.
(d) Local distribution and possession of controlled dangerous substances contribute to swelling the interstate traffic in such substances.
(e) Substances manufactured and distributed intrastate cannot be differentiated from substances manufactured and distributed interstate; thus, it is not feasible to distinguish, in terms of controls, between substances manufactured and distributed interstate and substances manufactured and distributed intrastate.

*Id.* § 101.


113 S. 3246 § 507.

114 *Id.*


117 S. 3246 § 501(e). There are also fines imposed under both the old law and the proposed Act, but this aspect of the penalties has been omitted from the discussion in order to concentrate on the real reforms.

118 *Id.* § 508(c).

119 *Id.* § 509(b).
quantitative reform; that is, the quantum of punishment is reduced, but there is no reform in a qualitative sense. Punishment is still imposed despite the fact that current knowledge raises reasonable doubts about the validity of imposing any punishment at all, at least in the case of marijuana.\textsuperscript{129}

Perhaps the greatest hope for the Bill can be found in the attitudes which underlie its treatment of the crime of non-remunerative distribution of marijuana.\textsuperscript{121} This type of distribution, which has been the subject of innumerable prosecutions for the illegal "sale" of drugs,\textsuperscript{122} is punishable under the proposed act by no more than one year in prison — the same penalty attending mere possession of illegal drugs.\textsuperscript{123} Thus, it appears that the traditional notion that most adolescents obtain their drugs from professional pushers has finally been dispelled.\textsuperscript{124}

The proposed Act's differentiation between marijuana and the other "controlled substances" is extremely important. If the quality of treatment of possessory offenses were changed as much as the treatment of distribution offenses, the Bill would indeed represent a victory of modern knowledge over antique instincts. However, although the Bill, which is representative of the current trend toward drug law reform,\textsuperscript{125} is commendable in its expansion of flexibility as to marijuana offenders, it retains the penalties and other core elements of existing legislation,\textsuperscript{126} and remains true to the traditional concept of drug abuse.\textsuperscript{127}

**Civil Commitment Laws**

The enactment of laws "authorizing or compelling commitment of drug addicts for purposes of treatment" is the most significant front of narcotic law reform in the area of heroin abuse.\textsuperscript{128} Originating in California in 1961,\textsuperscript{129} the modern trend toward civil commitment received impetus from the dicta of the United States Supreme Court in *Robinson v. California*.\textsuperscript{130} While deciding that laws making it a crime

\begin{footnotes}
\item[120] This suggestion is discussed more fully at pp. 142-43 \textit{infra}.
\item[121] \textit{S. 3246} § 501(c)(4).
\item[122] See notes 64-65 & 85-86 and accompanying text \textit{supra}.
\item[123] \textit{S. 3246} § 501(c)(4).
\item[124] See notes 64-65 and accompanying text \textit{supra}.
\item[125] Rosenthal, \textit{supra} note 63, at 1360.
\item[126] Rosenthal, \textit{supra} note 63, at 1365.
\item[127] Rosenthal, \textit{supra} note 63, at 1365.
\item[128] \textit{PRESIDENT'S COMMISSION REPORT} 228. It should be noted that although thirty-two states had enacted civil commitment statutes by 1966; most of these were inactive, and lacked a treatment program. Note, \textit{Civil Commitment of Narcotic Addicts}, \textit{76 YALE L.J.} 1164 (1966).
\item[129] \textit{CAL. WELF. & INST'NS CODE} § 11000 \textit{et seq.} (West 1966).
\end{footnotes}
to be a narcotic addict constituted "cruel and unusual punishment," the Robinson Court clearly indicated that a state might constitutionally treat addicts as sick persons and impose mandatory confinement for treatment purposes.\textsuperscript{131}

The civil commitment statute enacted by the New York State Legislature in 1966\textsuperscript{132} provides an excellent specimen for study, since it includes all four types of civil commitment mentioned by the President's Commission on Law Enforcement and the Administration of Justice in its report on narcotics.\textsuperscript{133} This statute defines "narcotic addict" as a person who is dependent upon an opiate drug or who "by reason of repeated use of any such drug is in imminent danger of becoming dependent."\textsuperscript{134} Commitment for the treatment of drug addiction is authorized with\textsuperscript{135} or without\textsuperscript{136} criminal involvement, and the necessary proceeding may be initiated by any person, including the alleged addict himself.\textsuperscript{137} Thus, even if the addict is before the court on criminal charges, he may, in certain instances, avoid the stigma of a criminal record by requesting commitment.\textsuperscript{138} In addition, upon conviction of a criminal charge, an addict may be involuntarily committed in lieu of penal incarceration.\textsuperscript{139} Although discretion to refuse treatment in certain cases is reserved to the court\textsuperscript{140} and to the District Attorney,\textsuperscript{141} the statute is designed to authorize civil commitment at every conceivable juncture of the addict's life. All that need be shown, in essence, is that the person is truly a narcotic addict.\textsuperscript{142}

\textsuperscript{131} Id. at 662. Compare Powell v. Texas, 392 U.S. 514 (1967), in which the Supreme Court held that a statute penalizing public drunkenness was not unconstitutional as applied to a person suffering from the disease of chronic alcoholism. Attempting to distinguish this case from Robinson, Mr. Justice Marshall indicated that the defendant Powell was convicted of a particular act, i.e., being intoxicated in public, whereas defendant Robinson had been convicted of a status—that of being a narcotic addict. Id. at 532. Therefore, the Court held this conviction not to be a violation of the cruel and unusual punishment clause of the eighth amendment.

\textsuperscript{132} N.Y. MENTAL HYGIENE LAW § 200-14 (McKinney 1969).

\textsuperscript{133} President's Commission Report 228-29. The four types are:
1. Commitment upon the request of a noncriminal addict.
2. Involuntary commitment of noncriminal addicts.
3. Commitment on request or consent of criminal addicts.
4. Involuntary commitment of criminal addicts.

\textsuperscript{134} N.Y. MENTAL HYGIENE LAW § 201(2) (McKinney 1969).

\textsuperscript{135} Id. §§ 208, 210.

\textsuperscript{136} Id. § 206.

\textsuperscript{137} Id. § 206(2)(a).

\textsuperscript{138} Id. § 210.

\textsuperscript{139} Id. § 208.

\textsuperscript{140} Id. § 208(4)(b) (where the addict has been convicted of a felony); § 210 (where the addict requests the dismissal of criminal charges).

\textsuperscript{141} Id. § 210 (where the addict requests that a felony charge be dropped in favor of civil commitment for treatment).

\textsuperscript{142} Id. § 207.
Civil commitment statutes have been held to be constitutional, and they do, from a legal standpoint, represent the best answer to the problem of heroin addiction. However, the problem of what type of treatment should be provided continues to present considerable difficulty. The field of narcotic addiction treatment is still in a fledgling state, and this fact has ramifications on the prospects for success of civil commitment.

The major problem in this area is that it has been held that, in order to justify involuntary civil commitment, the state must provide treatment which is distinguishable from mere incarceration. Indeed, a contrary holding would violate the rule enunciated by the Supreme Court in Robinson. Predictably, the allegation that no "treatment" is being provided forms the basis of the majority of the many writs of habeas corpus which are filed by involuntarily committed non-criminal addicts. Although the judiciary has been tolerant thus far, unless the states can implement demonstrably effective treatment principles, involuntary civil commitment for non-criminal addicts may cease to be an effective weapon against heroin addiction.

**Suggestions for the Future**

**Heroin Addiction**

By attempting to eliminate the addict's malady before the causal relationship is consummated, civil commitment reflects a logical reaction to modern levels of knowledge about addiction and its relationship to crime. However, in view of the possibility that the civil commitment experiment may be concluded by the courts before it has an opportunity to prove itself therapeutically viable, a number of alternatives...
have been proposed. The most notable involves the implementation of medical treatment of addicts. The Joint Committee on Narcotic Drugs of the American Medical Association and the American Bar Association studied the possibilities in 1961, and in the appendix to its interim report stated that "the present law provides the framework within which the medical profession ... can authoritatively determine what the role of the doctor should be in the treatment of addicts ...." 149 Specifically, the Committee was referring to the authorization in our present laws for the dispensation of narcotics in the course of medical treatment. 150 Yet, it is clear that this authority is not utilized by the medical profession because there are no acceptable standards by which one might judge what constitutes "medical treatment." The leading case in this area is United States v. Linder, 151 wherein the Court merely stated that the federal laws "must not be construed as forbidding every prescription for drugs ..., when [such prescription is] designed temporarily to alleviate an addict's pains ... [and is] issued in good faith and without design to defeat the revenues." 152 The problem with this rule is that it is too uncertain, exposing the doctor's judgment to scrutiny by laymen at a later date. Most physicians are, of course, unwilling to act on such shaky premises. 153

example of the current diversity of opinion, see 1968 N.Y. NARCOTIC ADDICTION CONTROL COMM'N ANN. REP.; AUSBEL, supra note 25; JURGENSON, PROBLEMS OF INPATIENT TREATMENT OF ADDICTION (NACC Reprints, Vol. 1, No. 1, 1968); Scher, supra note 16. Today, most of the suggestions for change involve the particular type of treatment offered. Specifically, the methadone maintenance treatment has been receiving a great deal of attention. However, since this is really a question involving sociopathic therapy principles, any discussion of methadone maintenance would be inappropriate. An excellent treatment of the subject of methadone maintenance by one of the program's initiators can be found in M. NYSWANDER, THE DRUG ADDICT AS A PATIENT (1956). For an extensive discussion of the legal aspects of methadone maintenance, see Note, Methadone Maintenance for Heroin Addicts, 78 YALE L.J. 1175, 1192-1211 (1969). See also Joseph, Narcotic Addiction, Crime and Methadone Maintenance (1969) (study on file at N.Y.S. Comm. Against Mental Illness).

There has also been a suggestion that drug addiction, like insanity, should be made a defense to criminal prosecutions. Bowman, Addiction and Criminal Responsibility Under Durham, 53 GEO. L.J. 1017-48 (1965); McMorris, Can We Punish for Acts of Addiction, 54 A.B.A.J. 1081 (1968).

149 A.B.A.-A.M.A. REPORT 82.
150 See, e.g., 26 U.S.C. § 4704 (1964); UNIFORM NARCOTIC DRUG ACT § 7 (1).
152 Id. at 20.
153 A recent California case dealt with the issue of statutory vagueness in connection with another cause celebre of contemporary criminal law — abortions. In People v. Belous, 38 U.S.L.W. 2167 (Cal. Sup. Ct. Sept. 5, 1969), aff'd without opinion, 397 U.S. 915 (1970), the California Supreme Court held that a statute penalizing abortions except where necessary to preserve the patient's life was unconstitutionally vague and therefore unenforceable. Possibly, this line of reasoning could be extended to cover medical dispensation of drugs to addicts, thus facilitating widespread acceptance of the A.B.A.-A.M.A. recommended medical treatment. However, there are a number of problems still
As a permanent replacement for civil commitment, medical treatment enjoys less than the best prognosis. The experience of Great Britain under this type of program has been that:

1. the number of addicts has increased;
2. the new addicts are mostly of the American “street addict” type, remaining outside of the mainstream of normal functioning despite legally available drugs; and
3. consequently, the system is currently being modified.164

As a temporary measure, until civil commitment finds its therapeutic milieu, medical treatment would result in no net gain. Principles of medical treatment can be implemented by programs operating under civil commitment statutes without the adoption of an entirely new “system.” Thus, it seems that society’s best efforts to date toward combating heroin addiction remain in the area of civil commitment.

Marijuana Use

The latest trend toward marijuana law reform appears to be in the nature of a reduction of penalties. As noted earlier, this trend does not reflect a new societal attitude toward the drug, although our knowledge about marijuana is increasing steadily.

The primary suggestion for reform in this area is the demand for legalization of marijuana.155 The arguments for legalization concentrate on the allegations that marijuana is harmless in that it causes no crime, leads to no more serious drug use, and does not impair physical or psychological health.156 Proponents of legalization also point out that society allows the use of other drugs, such as alcohol and tobacco, which have been shown to be more harmful than marijuana.157 On the other hand, the arguments against legalization assert that too little is now

attached to this argument: (1) the reasoning of the California Court in the Belous case represents an isolated attempt to deal with a social problem in a legally enlightened way. Since it is not exemplary of any judicial trend in statutory construction, it is doubtful whether such a line of reasoning would be applied to drug laws; and (2) even if the medical treatment of addiction could be implemented, its therapeutic validity is by no means secure. From a standpoint of de facto effectiveness in “curing” addiction, social-based therapy is a much better risk. See also Methadone Maintenance for Heroin Addicts, supra note 148, at 1197-1202, for a discussion of the problem of the “good faith medical treatment” test.

154 Brill & Larimore, supra note 56.
155 See, e.g., D. Louria, supra note 6, at 96-121; Rosenthal, supra note 63, at 1374-75.
156 See, e.g., A Geller & M. Boas, supra note 57, at 79-94.
157 See, e.g., 79-80; D. Louria, supra note 6, at 115. The lethargy of the public in accepting the fact that alcohol and tobacco are “drugs” as much as marijuana and heroin are, has prompted many writers in the area to discard the word “drug” in favor of the term “substance abuse.”
known about the drug, and that more study is needed. This is the same conclusion reached in 1967 by the President's Commission on Law Enforcement and the Administration of Justice.

The basic problem here seems to be one aspect of the current generation gap. There are no studies which prove that marijuana is harmful, but until it is proven harmless, it will presumably remain illegal since it is not beneficial. At the same time despite the fact that alcohol and tobacco have been shown to be harmful, and despite the fact that they too have no discernible beneficial characteristics, these substances remain legally available for no apparent reason other than the fact that they have always been legal, and the fact that they are commonly used by those having authority over these matters. This is not to ignore marijuana's only proven dangerous quality — that, as an intoxicant, it may release normal inhibitions and impair capabilities, such as the capability to drive an automobile safely. Yet, for no reason other than the political leverage of alcohol users, this danger has not been convincing enough to provoke prohibition of alcohol use (which is probably more dangerous). In the meantime young people are asked to "wait and see," and to defer their chosen gratification on pain of criminal penalties, while the older generation imbibes with impunity. The offer to reduce these penalties for the interim period of study is no real compromise.

As an alternative to legalization, Professor Rosenthal has suggested a new approach — the implementation of civil liability for the possession of marijuana. This policy would involve the payment of a fine, possibly accompanied by a period of probation, the successful completion of which would result in remission of the fine. It is intended only to be a temporary measure, either until scientific knowledge about marijuana reaches a point at which it would be an egregious limitation of personal liberties to impose any restrictions, or, if current levels of knowledge remain static, until public attitudes change. Once it is generally believed that marijuana is desirable, this in itself, in Professor Rosenthal's opinion, would be sufficient justification for legalizing this method of "turning on."

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158 See, e.g., Tauro, supra note 67, at 174.
159 President's Commission Report 225.
160 Except, of course, for the noble experiment with Prohibition.
161 For a recent and complete study of the physiological and psychological symptoms of marijuana intoxication, see Waskow, Olsson, Salzman & Katz, Psychological Effects of Tetrahydrocannabinol, 22 Archives of General Psychiatry 97 (1970).
162 Rosenthal, supra note 68, at 1373.
163 Id.
164 Id. at 1376. It should be obvious by now that this author concurs in the opinion.
CONCLUSIONS

As to heroin addiction, the civil commitment structure is the strongest weapon available. It has been shown that addiction causes crime, that the type of crime caused by addiction is identifiable, and that the elimination of addiction would, in all probability, seriously diminish, if not eliminate, all of this crime. If effective treatment is available to the addict whenever his addiction comes to society’s attention — whether he volunteers, or a family member makes out a petition, or an arresting officer informs the court — then much addiction could be cured before it causes any more crime.

The law has put forth its best efforts in behalf of civil commitment, providing for the widest availability of treatment, while protecting basic notions of constitutional rights. It is now the task of medicine, psychiatry, psychology, social work, and other similarly-involved professions to develop demonstrably effective treatment methods. Such advancements would not only protect the legal concept of civil commitment from attack, but they would also provide the law with a basis upon which the scope of such laws could be widened.

The question of marijuana law remains perplexing. Even if one assumes passage of the “Controlled Dangerous Substances Act of 1969,” current law is undoubtedly out of step with scientific reality. There is no longer any justification for denying the younger generation its drug of choice on a legal basis. For those who remain skeptical and desire another opportunity to review the facts, Professor Rosenthal’s suggestion represents an equitable interim measure. Surely, barring unforeseeable reverses in such a final study, legalization of marijuana seems to be dictated in fact of our knowledge of the drug and society’s objectively-appraised attitudes on artificial euphoria.

Note, too, that implicit in this discussion is the fact that drug use can only be said to constitute drug abuse in certain social environments. Thus, arguments about drugs should omit attempted comparisons to other societies, notably Mexico and India, where drug use presents a different face owing to the difference in social structure. For an interesting discussion of drug use on an intersocietal plane, see R. Blum, supra note 6.