

# The 1937 Marijuana Tax Act

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Social reformers successfully initiated federal restrictions on cannabis, along with alcohol, opiates, cocaine, and chloral hydrate in the first decade of this century. The Pure Food and Drug Act of 1906 required that any quantity of cannabis, as well as several other dangerous substances, be clearly marked on the label of any drug or food sold to the public.' Early drafts of federal antinarcotic legislation which finally emerged as the Harrison Act in 1914 also repeatedly listed the drug along with opiates and cocaine (for example, H.R. 25,241 61st Cong., Second Session [1910] which was prepared and endorsed by the State Department and introduced April 30, 1910). Cannabis, however, never survived the legislative gauntlet, probably because of the pharmaceutical industry's opposition. At that time, and for at least a decade longer, the drug trades did not see any reason why a substance used chiefly in corn plasters, veterinary medicine, and other non-intoxicating forms of medicaments should be so severely restricted in its use and sale. Not even the reformers claimed, in the pre-World War I hearings and debates over a federal antinarcotic act, that cannabis was a problem of any major significance in the United States.

Dr. Hamilton Wright, a State Department official who from 1908 to 1914 coordinated the domestic and international aspects of the federal antinarcotic campaign, wanted cannabis to be included in drug abuse legislation chiefly

because of his belief in a hydraulic model of drug appetites. He reasoned, along with numerous other experts, that if one dangerous drug was effectively prohibited, the addict's depraved desires would switch to another substance more easily available. He felt, therefore, that cannabis should be prohibited in anticipation of the habitual user's shift from opiates and cocaine to hashish. The narcotic reformer's task, then, was to prohibit and control as many dangerous and seductive substances as possible at one time.

Although congressional hearings rarely heard any witnesses defend opiates or cocaine, those against including cannabis in federal legislation spoke more openly. In January 1911 hearings were held on a federal antinarcotic law before the House Ways and Means Committee. The National Wholesale Druggists' Association (NWDA) representative protested, in addition to other aspects of the proposed legislation, the inclusion of cannabis alongside opiates and cocaine. Charles A. West, chairman of the NWDA Legislative Committee, complained that "cannabis is not what may be called a habit-forming drug."<sup>2</sup> Albert Plaut, representing the New York City pharmaceutical firm of Lehn & Fink, objected to including "insignificant articles, the habit-forming quality of which is more than doubtful."<sup>2</sup> In particular he objected to the inclusion of cannabis; he attributed its reputation more to literary fiction, such as the description of hashish in *The Count of Monte Cristo*, than to informed opinion. "Cannabis brought into this country," Plaut explained, "is used almost altogether for the manufacture of corn cures and in veterinary practice. As a habit-forming drug its use is almost nil."<sup>2</sup> When questioned as to whether cannabis might be taken by those whose regular supply of opiates or cocaine is restricted, Plaut responded that the effects of cannabis were so different from those of opiates and cocaine that he would not expect an addict to find cannabis attractive.<sup>2</sup>

The drug industry's complaints received stern rebuttals but no one denied that cannabis constituted at that time a very small part of drug abuse. Arguments for inclusion rested on the belief of such authorities as Dr. Alexander Lambert, of Bellevue Hospital and later President of the American Medical Association, that some of his patients were habitual users of cannabis and that, therefore, the drug was habit-forming.<sup>2</sup> One of the most stirring attacks on cannabis came from a

comrade of Dr. Lambert, the lay proprietor of a profitable hospital for addiction treatment, Charles B. Towns. Towns's chief fame arose from his popularization of a supposed cure for the cravings of drug-users, but he made an active sideline out of appearing before committees of inquiry and drafting model legislation to combat the evils of drug abuse. He was an impressive witness in 1911, nearing the peak of his fame as one of mankind's **benefactors**.<sup>3</sup> He took a very uncompromising attitude toward drug use :

To my mind it is inexcusable for a man to say that there is no habit from the use of that drug. There is no drug in the Pharmacopoeia today that would produce the pleasurable sensations you would get from cannabis, no not one-absolutely not a drug in the Pharmacopoeia today, and of all the drugs on earth I would certainly put that on the list.

The "Father of the Pure Food Law," Dr. Harvey Washington Wiley of the Department of Agriculture, was no less adamant than Towns. Dr. Wiley favored prohibition of the drugs listed in the proposed legislation but if regulation was all he could get, he would settle for that. To his mind the list of drugs was too short and it should have included not only acetanilid, antipyrine, and phenacetin, but also alcohol and caffeine. Dr. Wiley declared alcohol to have no medicinal value and caffeine to be a habit-forming drug, sold indiscriminately even to children in cola and other drinks. The only value he saw to habit-forming painkillers was to permit an easy death; a patient who had a chance for recovery would be better off without them since he might establish a habit which could never be **broken**.<sup>2</sup>

While most spokesmen for the drug trades opposed federal regulation of cannabis, one distinguished member favored its control and most of the other provisions of the new legislation: Dr. William Jay Schieffelin of New York, like Dr. Lambert, was prominent in the nation's social and political life as well as in his profession as the president of a wholesale drug house. He moved with the progressive and reform spirit of the era and was, therefore, somewhat separated from the rank and file as regards the acceptable burdens antinarcotic legislation would place on the drug trade. Schieffelin believed

cannabis was “used only to a slight extent in this country,” but he had heard that there was a demand for it in the “Syrian colony in New York” where he thought it was smoked like prepared opium. He concluded, “The evil is minute but it ought to be included in the bill.”

Cannabis was not included, though, and except for the Pure Food and Drug Act’s provision as to labeling, no federal regulatory law was enacted until 1937. (By 1931 regulations under the Food and Drug Act had limited the importation of cannabis except for medical purposes.) Meanwhile the two contrasting attitudes toward cannabis remained pretty much the same: the reformers feared its use; the drug industry, which used it in rather minor preparations, felt less concern about possible misuse and opposed its regulation. Both sides seemed to agree that cannabis was not as threatening as other drugs and that its inclusion in regulatory laws would be for the purpose of anticipating its popularity once opiates and cocaine were brought under control.

Complaints about cannabis continued to come to the attention of the federal government, although without the frequency or insistence which was to occur in the 1930s. In preparation for the First Hague Conference, which led to the Hague Convention (1912) for the control of the world’s narcotic traffic, one of the American delegates, Henry J. Finger of the California Board of Pharmacy, wished to draw particular attention to the dangers of cannabis. Many Californians, particularly in San Francisco, were frightened by the “large influx of Hindoos . . . demanding cannabis indica” who were initiating “the whites into their habit.”<sup>5</sup> Finger wanted the world traffic in cannabis to be controlled.<sup>5</sup> The United States delegation, of which Dr. Wright was a member, gladly adopted Finger’s goal, but did not find the Hague Conference favorably disposed to include cannabis in the Hague Convention. The best the United States could accomplish at this time was the adoption of a recommendation that nations look into the character of the drug and see whether it merited regulation.<sup>6</sup> Agreement that international traffic in cannabis should be regulated did not come until the Second Geneva Convention in 1925.<sup>7</sup>

Domestic concern over cannabis seemed to originate in the Southwest and to begin increasing after the First World War. In 1919 the crucial Supreme Court decision outlawing addic-

tion-maintenance for pleasure or comfort led to national restrictions on physicians, druggists, and other outlets for drugs believed to be responsible for America's many addicts. Such a time was also appropriate for control of other dangerous substances. Of course, alcohol was outlawed for convivial consumption when the 18th Amendment became effective in January 1920. Cannabis also ought to be controlled, argued the Governor of Louisiana and the president of Louisiana's Board of Health. Their contact with "marihuana" had elements which would become familiar in the 1930s. A white, twenty-one-year-old musician in New Orleans had been arrested for forging a physician's signature in order to get some "marihuana" imported from Mexico. The musician said the substance was taken to "make you feel good," but the dangers of this substance were clear to Dr. Oscar Dowling and Governor John M. Parker. Dr. Dowling, who was also a member of and later chairman of the American Medical Association's Board of Trustees, warned the Governor that marihuana was "a powerful narcotic, causing exhilaration, intoxication, delirious hallucinations, and its subsequent actions, drowsiness and stupor." He also urgently requested of the Surgeon-General of the Public Health Service that the federal government take "some action" to control the traffic in marihuana.<sup>9</sup> The Surgeon-General replied that he was in complete agreement with Dr. Dowling's concern." Shortly thereafter Governor Parker claimed in a letter to Prohibition Commissioner John F. Kramer that "two people were killed a few days ago by the smoking of this drug, which seems to make them go crazy and wild" and he expressed his surprise that there were no restrictions against marihuana.<sup>11</sup> But the troubles the government was already having with enforcement of the Harrison Act may not have encouraged addition of more drugs for control.

Yet, the United States continued to press for international control of cannabis, as well as of other drugs. International drug control, if obtained, would have solved much of the American problem since opiates, coca leaves, and some cannabis were imported. The cool reception other nations gave the American proposals to control cannabis did not discourage the American delegation, but rather added one

**International  
Control of  
Cannabis:  
1911-1925**

more proof of international perfidy. Since the earliest stirrings of an international campaign by the United States, American diplomats believed that other nations, some of whom received considerable revenue from the narcotic traffic, used various stratagems to discourage or nullify American efforts. That foreign governments should also oppose the inclusion of cannabis in a schedule of controlled drugs was almost a confirmation of the wisdom of controlling the cannabis market.

The United States, having started the antinarcotic campaign which resulted in the Hague Opium Convention of 1912, lost its premier role during the 1920s. The League of Nations assumed responsibility for the Hague Convention from the government of the Netherlands, a transfer which the United States would not recognize. Although the intricate formalities by which the State Department avoided any appearance of "recognizing" the League were certainly effective in achieving their goal, such actions also lost the United States its leadership in the world antinarcotic movement.

Repeatedly the League tried to involve the United States in planning for the international control of narcotics. While the United States maintained meticulously distant relations with the League's Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, American cooperation did emerge. These hopeful signs were reversed, however, by the walkout of the American delegation, led by the chairman of the House Committee on Foreign Affairs, from the Second Geneva Opium Conference in February 1925.<sup>12</sup>

The delegates' exit was based on righteous indignation at the weak will of other nations: they left behind an opportunity to sign the first Convention which sought to bring the cannabis traffic between nations under international supervision.

Five years would pass before the United States would again sit in such an international meeting.

**Rising Domestic  
Fear of Cannabis:  
1920-1934**

Fear of cannabis, or as it was beginning to be known, marihuana, was minor throughout most of the nation in the 1920s. Nevertheless, it still concerned the federal government. For example, in January 1929 Congress authorized two narcotic farms to be operated by the Public Health

Service largely for the treatment of addicted federal prisoners. The law specifically defined "habit-forming narcotic drug" to include "Indian Hemp" and made habitual cannabis users, along with opium addicts, eligible for treatment.<sup>13</sup> Although there seems to have been almost no transfer of cannabis users to the two "farms," later known as the Lexington and Fort Worth Hospitals, it is significant that congressional worry about cannabis continued after passage of the Pure Food and Drug Act and clearly was present before the Federal Bureau of Narcotics (FBN) was established in 1930.

In certain areas of the United States, however, the fear of marihuana was more intense. These areas mostly coincided with concentration of Mexican immigrants who tended to use marihuana as a drug of entertainment or relaxation. During the decade, Mexican immigration, legal and illegal, rapidly increased into the region from Louisiana to California and up to Colorado and Utah. Mexicans were useful in the United States as farm laborers, and as the economic boom continued they received inducements to travel to the Midwest and the North where jobs in factories and sugar beet fields were available.<sup>14</sup>

Although employers welcomed them in the 1920s, Mexicans were also feared as a locus of crime and deviant social behavior. By the mid-1920s horrible crimes were attributed to marihuana and its Mexican purveyors. Legal and medical officers in New Orleans began studies on the evil, and within a few years published articles claiming that many of the region's crimes could be traced to marihuana. They implicated it particularly in the most severe crimes, for they believed it to be a sexual stimulant which removed civilized inhibitions." As a result, requests were made to include marihuana in the federal law which controlled similar substances, the Harrison Narcotic Act.<sup>16</sup>

When the great Depression settled over America, the Mexicans, who had been welcomed by at least a fraction of the communities in which they lived, became an unwelcome surplus in regions devastated by unemployment. Considered a dangerous minority which should be induced to return to Mexico by whatever means seemed appropriate, they dwelt in isolated living groups. A contemporary writer described their mood in 1930, the first year of the Depression.

A . . . factor in decreasing Mexican immigration is what officials call "the fear of God." It may be indefinite, but it is very real; and the quality is standard all the way from California to Texas.

And that **fear** hovers over every Mexican Colony in the Southwest is a fact that all who come in contact with them can readily attest. They fear examination by the border patrol when they travel; they fear arrest; they fear jail; they fear deportation; and whereas they used to write inviting their friends, they now urge them not to come.<sup>17</sup>

Naturally, cotton, fruit, and vegetable growers in the Southwest and sugar beet farmers in Colorado, Michigan, Montana, and the Northwest favored further immigration. On the other hand, the American Federation of Labor understandably favored strict bars against foreign labor. But another group which worked for an end to Mexican immigration as energetically as those with economic interests did so for social reasons, afraid that mixture with an "inferior race" was causing "race suicide." Citizens anxious to preserve what they believed valuable in American life banded together into "Allied Patriotic Societies," "Key Men of America," or the group which united many of these associations, the "American Coalition" whose goal was to "Keep America American."<sup>18</sup> One of the prominent members of the American Coalition, C. M. Goethe of Sacramento, saw marihuana and the problem of Mexican migrants as closely connected (New York *Times*, Sept. 15, 1935, section IV, p. 9):

Marihuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration. Easily grown, it has been asserted that it has recently been planted between rows in a California penitentiary garden. Mexican peddlers have been caught distributing sample marihuana cigarettes to school children. Bills for our quota against Mexico have been blocked mysteriously in every Congress since the 1924 Quota Act. Our nation has more than enough laborers.

Southwest police and prosecuting attorneys likewise raised a continual protest to the federal government about the

Mexican's use of the weed (H. J. Anslinger, oral communication, June 30, 1970).

In 1934, a U.S. marshal in Tulsa, Oklahoma, wrote to the FBN, describing marihuana as a most dangerous and crime-causing drug which gave its users the feeling that they had "superman and superwoman" powers.<sup>19</sup> Newspapers occasionally headlined the weed as a cause of horrible crimes. For example, in 1933 the New York *Mirror* presented an article in its Sunday supplement on "Loco Weed, Breeder of Madness and Crime." That same year Dr. Walter Bromberg, a respected researcher, informed a meeting of the American Psychiatric Association that some authors had estimated the number of marihuana smokers in the southern states to be one out of four.<sup>20</sup> Dr. Bromberg, who did not subscribe to the alarm over marihuana displayed by some writers, nevertheless told of its spread from the South to the large cities and to New York, "where its use is widespread." He noted that marihuana's inclusion in the Harrison Narcotic Act had been requested. Although denying that crimes were directly and simply caused by marihuana and asserting that it was something like alcohol in its effect, nevertheless, on the basis of good physiological and psychological studies of cannabis, he was persuaded that it was "a primary stimulus to the impulsive life with direct expression in the motor field."<sup>20</sup> Marihuana "releases inhibitions and restraints imposed by society and allows individuals to act out their drives openly," and "acts as a sexual stimulant," particularly to "overt homosexuals."<sup>20</sup>

Dr. Bromberg's description of marihuana in 1933 differed in quality from the writings, for example, of New Orleans' Prosecuting Attorney who, in 1931 fearfully portrayed "Marihuana as a Developer of Criminals."<sup>21</sup> Yet, Dr. Bromberg's statements would not have calmed the apprehensive. Furthermore, neither the New Orleans studies, which began at least in the late 1920s nor Dr. Bromberg's research can be ascribed to any "campaign" by the FBN for a federal marihuana law. It is reasonable to assume that in the first few years of the 1930s, marihuana was known among police departments and civic leaders, particularly those connected with Mexican immigrants and even among scientific investigators as a drug with dangerous propensities. This situation led naturally to pressure on the federal government to take

“some action” against marihuana. What was the attitude of the new Federal Bureau of Narcotics to the growing concern over marihuana?

The Decision to  
Seek a Federal  
Anti-marihuana  
Law:  
1935-1937

During its first few years, the FBN, as judged from its annual reports, minimized the marihuana problem and felt that control should be vested in the state governments. The report published in 1932 commented that:

This abuse of the drug is noted among the Latin-American or Spanish-speaking population. The sale of cannabis cigarettes occurs to a considerable degree in States along the Mexican border and in cities of the Southwest and West, as well as in New York City and, in fact, wherever there are settlements of Latin Americans.

A great deal of public interest has been aroused by newspaper articles appearing from time to time on the evils of the abuse of marihuana, or Indian hemp, and more attention has been focused upon specific cases reported of the abuse of the drug than would otherwise have been the case. This publicity tends to magnify the extent of the evil and lends color to an inference that there is an alarming spread of the improper use of the drug, whereas the actual increase in such use may not have been inordinately large.<sup>22</sup>

That year the FBN strongly endorsed the new Uniform State Narcotic Act and repeatedly stressed that the problem could be brought under control if all the states adopted the Act.<sup>23</sup> As late as January 1937, Commissioner Anslinger was quoted as advising that the distribution of marihuana was an “intrastate problem” and that “hope for its ultimate control lies . . . in adoption by states of the Uniform Narcotic Act” (New York *Times*, Jan. 3, 1937, section 3, p. 6). Study of the annual reports reveal an increasing amount of space taken up by marihuana-associated crime after 1935, but the FBN continued to recommend the Uniform Act. There seem to be several reasons why the FBN delayed advocacy of a federal marihuana law,

The Commissioner recalls that marihuana caused few problems except in the Southwest and the Western states. There the growing alarm was directed at the “Mexicans”

whom the “sheriffs and local police departments claimed got loaded on the stuff and caused a lot of trouble, stabbings, assaults, and so on.” These states were “the only ones then affected . . . we didn’t see it here in the East at all at that time.” To Anslinger, the danger of marihuana did not compare with that of heroin and, after the Act’s passage in October 1937, he states that he warned his agents to keep their eyes on heroin. If an agent started to make a series of arrests for marihuana possession, he was told to get back to “the hard stuff” (H. J. Anslinger, oral communication, June 30, 1970).

In addition to questioning whether a federal law would significantly ameliorate the “marihuana problem,” the Commissioner also doubted the possibility of a law which would be constitutional. When the idea of a transfer tax was first broached to him by the Treasury’s General Counsel, Herman Oliphant, he thought the notion was “ridiculous.” Even after the decision was made to recommend the transfer tax to Congress, Anslinger “couldn’t believe it would go through.” It was not that he did not abstractly favor a marihuana law, but he had doubts about its constitutionality and about whether it would have any substantial effect on the problem of marihuana use (H. J. Anslinger, oral communication, June 30, 1970).

Lastly, the FBN had “put sandbags against the door” whenever anyone suggested it take over control of barbiturates and amphetamines. Such controls would mean very difficult problems in adjudicating “proper uses” and legitimate exceptions. The FBN preferred heroin as a target; it had no legal uses whatever. The whole question of enforcement was enormously simplified by tracking down a totally prohibited drug. Such an attitude would be consistent with hesitating to take on marihuana which, unlike heroin, was not imported but rather grew, as the Commissioner ruefully pointed out in 1936, “like dandelions,” and which had a few legitimate uses.<sup>24</sup> It is significant that when marihuana was finally controlled by the federal government, almost all uses were outlawed with the exception of its use in bird seed (and then only if sterilized). The regulations for its use by physicians were so complicated that possibly no general physician has legally prescribed it since 1937.

The pressure for a federal anti-marihuana law was,

Anslinger states, "political," traveling from local police forces in affected states to the governors, then to the Secretary of the Treasury, Hem-y Morgenthau, Jr., and from him to the General Counsel, and the Commissioner of Narcotics (H. J. Anslinger, oral communication, June 30, 1970). Apparently the decision to seek a federal law was made in 1935, since by January 1936 Anslinger was holding conferences on what course to take to accomplish that end. The FBN's search for grounds on which to base a federal law was almost unsuccessful. It first claimed that only the treaty-making power of the federal government could sustain an anti-marihuana statute. Such a treaty was then attempted, but with an appeal to other nations which had almost no chance of success. If the FBN did not actually want a federal marihuana law, it had performed faithfully the task it had been given and the effort was about to fall short, when, claims Anslinger, the Treasury's General Counsel ingeniously contrived the "transfer tax."

The pressure on the Treasury could well have been sufficient to induce such cleverness, as the following letter of 1936 (Anslinger papers, Box 6) from the editor of the Alamosa, Colo, Daily Courier suggests:

Is there any assistance your Bureau can give us in handling this drug? Can you suggest campaigns? Can you enlarge your Department to deal with marihuana? Can you do anything to help us?

I wish I could show you what a small marihuana cigarette can do to one of our degenerate Spanish speaking residents. That's why our problem is so great; the greatest percentage of our population is composed of Spanish speaking persons, most of whom are low mentally, because of social and racial conditions.

While marihuana has figured in the greatest number of crimes in the past few years, officials fear it, not for what it had done, but for what it is capable of doing. They want to check it before an outbreak does occur.

Through representatives of civic leaders and law officers of the San Luis Valley, I have been asked to write to you for help.

It was this kind of attitude which the Tax Act was

designed "to placate," according to Anslinger, although he felt that little besides a law on the books could be offered the fearful citizens of the Southwest and their importuning officials (H. J. Anslinger, oral communication, June 30, 1970).

With the goal of trying to figure out how the federal government could pass such a law, the Narcotics Commissioner traveled in January 1936 to New York. There he met with a group of distinguished experts—a representative of the Foreign Policy Association; Joseph Chamberlain, Professor of Law at Columbia; Herbert L. May, a member of the permanent Central Board of the League of Nations; and Stuart Fuller, Assistant Chief of the Division of Far Eastern Affairs of the State Department. They concluded, Anslinger reported to Assistant Secretary of the Treasury Stephen B. Gibbons in a confidential memorandum, "that under the taxing power and regulation on interstate commerce it would be almost hopeless to expect any kind of adequate control."<sup>25</sup>

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The Commissioner's recommendation was to follow the example of the Migratory Bird Act which had been declared constitutional, although it entered into the police powers of the states, because it was enacted as a requirement of international treaties with Canada and Mexico (*MO. vs. Holland*, 252 US 416). He suggested a treaty requiring the control of marijuana. Once the treaty was ratified by the Senate, a federal law could be enacted which would not meet the constitutional blocks which he felt sure an anti-marihuana law would face if based on federal tax or commerce powers. Otherwise, the various details which imperiled simple prohibition of marihuana were coming near solution:

The State Department has tentatively agreed to this proposition, but before action is taken we shall have to dispose of certain phases of legitimate traffic; for instance, the drug trade still has a small medical need for marihuana, but has agreed to eliminate it entirely. The only place it is used extensively is by the veterinarian, and we can satisfy them by importing their medical needs.

We must also satisfy the canary bird seed trade, and the Sherwin Williams Paint Company which uses hemp seed oil for drying purposes. We are now working with the Department of Commerce in finding substitutes for the legitimate trade, and after that is accomplished, the path will be cleared for the treaties and for federal law.<sup>25</sup>

The Commissioner was permitted to try his idea in June of the same year when he and Fuller represented the United States at the Conference for the Suppression of Illicit Traffic in Dangerous Drugs, held in Geneva. The United States sought to incorporate a requirement for domestic cannabis control in a treaty with twenty-six other nations. Perhaps to have additional leverage, or perhaps to dramatize the opposition of other governments, the US delegation asked just before the conference opened for permission to abstain if the American proposals were turned down. Still recalling the regrettable isolation which followed American departure from a similar conference in 1925, the State Department refused permission. So, although their views were outvoted, the delegation stayed, but did not sign the Convention. It was the only nation represented which did not do so.<sup>12</sup>

In the summer of 1936, therefore, it became obvious that there would be no law to placate the police of the Southwest unless some federal legislation under the traditional legal powers was enacted. General Counsel Oliphant then suggested the marihuana transfer tax about which the Commissioner had strong doubts: (H. J. Anslinger, oral communication, June 30, 1970). The FBN loyally went along with the plan, though, and did its best to present a very strong case to Congress so as to ensure the greatest chance of passage. To Anslinger, Congress did not seem very concerned and "the only information they had was what we could give them in our hearings" before the Appropriations Committee or when the Tax Act was pending (H. J. Anslinger, oral communication, June 30, 1970).

The Treasury Department collected and considered scientific and medical opinion prior to the Tax Act hearings. But the desire to present a solid front when the Department appeared before the committees of Congress caused the officials to ignore anything qualifying or minimizing the evils

of marihuana. As suggested above, the political pressure to put “something on the books” and the doubt that it could be done combined to make the marihuana hearings a classic example of bureaucratic overkill.

For a balanced interpretation of the hearings it is necessary to keep in mind that marihuana had been extravagantly condemned in the halls of Congress at least as early as 1910 and that in some areas of the nation it was at that time an object of horror to respectable and vocal citizens. The Bromberg study would have offered ample reason for concern, although it can be read as reassuring about the dangers of marihuana. After the Tax Act was passed, even Dr. Lawrence Kolb, Sr., certainly no booster of the FBN, warned that “Continued use of the drug causes insanity in many cases, but very unstable persons may have a short psychotic episode from only a few doses. . . . No matter by what means taken marihuana is a dangerous drug . . . much more harmful in certain respects than opium . . . Enough is known about the drug to brand it as a dangerous one that needs to be strictly controlled” (Federal Probation 2:22-25, 1938).

The Treasury presentation to Congress may, therefore, have been exaggerated, but it was not without foundation in the current thinking of medical research. The government’s witnesses could also be fairly confident that the congressmen had no preconceived, favorable, or even informed opinions.

In the tradition of federal departments, everyone from the Treasury Department who appeared for the Tax Act gave it full support, while those who might have had more moderate views remained in the background. In particular, the Public Health Service was not represented, although the opinion of its Division of Mental Hygiene (now the National Institute of Mental Health) was available to the Treasury Department months prior to the hearings in April. Like other authorities, Dr. Walter L. Treadway was asked a series of questions about marihuana, probably in late 1936, when the Treasury was gathering expert opinion on the botanical, chemical, pharmacological, and behavior-modifying characteristics of cannabis. To the question “What are the proofs that the use of marihuana in any of its forms is habit forming or addictive, and what are the indications and positive proofs that such addiction develops socially undesirable characteristics in the users?” Dr. Treadway replied in full:

Cannabis **Indica** does not produce dependence as in opium addiction. In opium addiction there is a complete dependence and when it is withdrawn there is actual physical pain which is not the case with cannabis. Alcohol more nearly produces the same effect as cannabis in that there is an excitement or a general feeling of lifting of personality, followed by a delirious stage, and subsequent narcosis. There is no dependence or increased tolerance such as in opium addiction. As to the social or moral degradation associated with cannabis it probably belongs in the same category as alcohol. As with alcohol, it may be taken a relatively long time without social or emotional breakdown. Marihuana is habit forming although not addicting in the same sense as alcohol might be with some people, or sugar, or coffee. Marihuana produces a delirium with a frenzy which might result in violence; but this is also true of alcohol.<sup>26</sup>

Having received Dr. Treadway's opinion and that of other authorities, the Department held a conference in the Treasury Building on January 14, 1937. Attending were fourteen government officials and consultants, many of whom would testify a few months later before the Congressional committees deliberating on the Tax Act.<sup>27</sup> The purpose of the conference was to prepare a satisfactory legal definition of marihuana for the proposed legislation and to make some final arrangements for the presentation to Congress. Dr. **Treadway** was not present, although Dr. Carl Voegtlin, Chief of the Division of Pharmacology of the National Institute of Health, was there to assist, along with some chemists, pharmacologists, and Commissioner Anslinger. Two members of the Department's General Council's Office and the FBN's General Counsel were so present.

Fortunately, the conference was stenographically transcribed so that we can gain some appreciation of the attitudes surrounding the proposed legislation by the individuals who would present it to the House and Senate. Most of the conference was devoted to which part of the marihuana plant was pharmacologically active and what should be the name of the soon-to-be-taxed substance. Conversation was chiefly between the scientists and the Treasury lawyers and reveals

that the Department did take into consideration scientific and medical opinion in the preparation of the marihuana legislation.

The upcoming hearing was on the minds of the participants. They knew that they would have to be prepared to rebut any suggested valid use or to include it through some exemption. The goal, however, was to have a prohibitive law to the fullest extent possible. Exceptions, particularly trade or medical exceptions, would make enforcement considerably more expensive and the Act's future cost concerned the conference. Such a desire prior to the Act and the lack of any increased appropriations for several years after the Act are consistent with Anslinger's claim that the Tax Act was no boon to his bureaucratic structure.<sup>27</sup>

Tennyson, the FBN's Counsel, emphasized to the group that every detail of the legislation would have to be worked out well ahead of the hearings, because "we have to support it and everything in it when we go before the Committee."<sup>27</sup> Perhaps a little defensively, the Commissioner wanted the group to know that the enterprise was not "a fishing expedition." Two hundred ninety-six seizures had been made of cannabis in 1936 alone. "The illicit traffic," he complained, "shows up in almost every state."<sup>27</sup>

After about an hour the scientific evidence on the plant and its active principle had been exhausted and the group reverted to the hearings. With regard to the effects of marihuana on the personality, S. G. Tipton of the Department's General Counsel's Office asked the Commissioner: "Have you lots of cases on this-horror stories-that's what we want."<sup>27</sup> The Commissioner did indeed have a collection. Then, in one of the most significant moments in the meeting, Anslinger asked the opinion of Dr. Voegtlin on whether marihuana actually produces insanity. The NIH pharmacology expert replied: "I think it is an established fact that prolonged use leads to insanity in certain cases, depending on the amount taken, of course. Many people take it and do not go insane, but many do."<sup>27</sup> To which the Secretary of the Treasury's Consulting Chemist, H. H. Wollner, responded with a characteristic comparison of American frankness to foreign vacillation: "At the League of Nations, they white-washed the whole thing."<sup>27</sup>

The hearings before the House were held in late April and

early May.<sup>28</sup> They were curious events. The Treasury's presentation to Congress has been adequately described many times, although no retelling has equalled reading the original transcript. As anticipated, the Representatives accepted whatever the Treasury Department asserted. The only witness to appear in opposition to the administration's proposal, AMA spokesman William C. Woodward, M.D., was barraged with hostile questions. One member of the Committee even questioned whether the veteran of many legislative battles dating back to before the Harrison Act actually represented the AMA. Nevertheless, he was able to get his message across: there was no need to burden the health profession with the bill's restrictions, the states could handle the problem without any additional assistance from the federal bureaucracy than was already available, and, finally, the evidence against marihuana was incomplete. He pointedly asked where the Public Health Service and Children's Bureau experts were, if it were true that the weed did have horrible physiologic effects and was wreaking havoc among America's school children. Dr. Woodward's arguments were ignored. One reason for his poor showing was that the AMA had aroused a lot of hostility by its successful defeat of President Roosevelt's plan to include health insurance in the Social Security Act. In a way reminiscent of the battle lines over the Harrison Act, the most "liberal" spokesmen were among the most eager to effect the protection of the public through the prohibition of **cannabis**.<sup>29</sup>

After the House and Senate hearings the bill was passed by Congress with no difficulty and came into effect on October 1, 1937. One of the regrettable aspects of the Marihuana Tax Act was that its role as a symbolic legislative gesture toward fearful groups made any qualification or moderation of the drug's intrinsic dangers a threat to the FBN. Anything less than prohibition would greatly diminish its value as a symbol as well as making enormously more difficult legal control with no additional appropriations. As regards enforcement, this task continued to be primarily the responsibility of local police aided by the occasional efforts of FBN agents. The arrest of those who violated the marihuana law was not difficult when compared to the task of stopping heroin smuggling, and, with no more agents, the FBN was able to put an impressive number of arrests before the public. After

the Act's passage the educational campaign of the FBN stepped up, but other publicity campaigns, by lay organizations who claimed that the menace was still out of hand, were muted by FBN opposition. For example, the creators of the often reprinted marihuana poster warning children of the "Killer Drug Marihuana" were in fact put out of business by the FBN because their tactics were beginning to alarm the citizens of Chicago.<sup>30</sup> It may surprise some to learn that the FBN attacked such apostles of fear and had only contempt for their profit making. One reason for the FBN's action may have been its policy of designing educational literature in such a way that no youth would be tempted to try the substance.<sup>31</sup> Another reason may have been a reflection of the Commissioner's belief that the problem was under control in the vast majority of the nation's communities and any impression that it was out of control would only embarrass the Treasury Department.

On the other hand, the FBN resented later medical rebuttal of claims that marihuana was an extreme danger, as, for example, the *La Guardia Report (1944)*.<sup>32</sup> Two responses from the FBN-closing down the Inter-State Narcotic Association for spreading disturbing scare stories and a strong and publically effective attack on the medical criticism of the FBN's position on marihuana-demonstrate both the effectiveness and the philosophy of the FBN. Two goals seem to have guided the FBN's actions: to show (1) that the FBN fought a great menace and (2) that the menace was under control.

Why the marihuana law was so eagerly desired by some and, when enacted, so effectively placating are fundamental questions. From the evidence examined, the FBN does not appear to have created the marihuana scare of the early 1930s nor can the law be simply ascribed to the Commissioner's determined will. Such scapegoating offers no more than it did in the era when marihuana was blamed for almost any vicious crime. When viewed from the narrow goal of placating fears about an "alien minority," the Act was serviceable for more than a quarter of a century. For the broader significance of the marihuana law and an understanding of the dynamics involved in prohibitive legislation, the Tax Act must be placed in its cultural and institutional context.

## REFERENCES

1. **Pure Food and Drug Act**, 59th Cong., 1st Sess., ch 391.5, § 8 (1901).
2. **Importation and Use of Opium**, hearings before the House Committee on Ways and Means, 61st Cong., 3rd Sess. (Jan 11, 1911).
3. Musto DF: The American antinarcotic movement: Clinical research and public policy. *Clin Res* 19:603, 1971.
4. **Importation and Use of Opium**, hearings before the House Committee on Ways and Means, 61st Cong., 3rd Sess. (Dec 14, 1910).
5. Letter from H. J. Finger to Dr. Hamilton Wright, July 2, 1911, in **Preliminary Inventories**, No. 76, Records of United States Participation in International Conferences, Commissions and Expositions, No. 39, "Correspondence of Wright with Delegate Henry J. Finger, 1911." Washington, DC, National Archives, 1955.
6. International opium convention. *Amer J Int Law* 6:177-192, 1912.
7. The Second Geneva Convention, reprinted in Terry CE, Pellens M: *The Opium Problem*. New York, Bureau of Social Hygiene, 1928, pp 945-961.
8. Letter from Dr. Oscar Dowling to Gov. John M. Parker, Aug 21, 1920, Records of the Public Health Service, File No. 2123. Washington, DC, National Archives.
9. Letter from Dr. Oscar Dowling to Surgeon-General Hugh S. Cumming, Aug 25, 1920, Records of the Public Health Service, File No. 2 123. Washington, DC, National Archives.
10. Letter from Surgeon-General Hugh S. Cumming to Dr. Oscar Dowling, Sept 3, 1920, Records of the Public Health Service, File No. 2 12 3. Washington, DC, National Archives.
11. Letter from Gov. John M. Parker to Commissioner John Kramer, Nov 26, 1920, Records of the Prohibition Unit, Bureau of Narcotics and Dangerous Drugs, Washington, DC.
12. Taylor AH: **American Diplomacy and the Narcotics Traffic, 1900-1939**. Durham, NC, Duke University Press, 1969, pp. 200-203.
13. Act of Jan 19, 1929, 70th Cong., Sess. 2, ch 82, 45 Stat. 1085.
14. Samora J.: **Los Mojados: The Wetback Story**. Notre Dame, Ind, University of Notre Dame, 1969, pp 38-46.
15. Fossier AE: The marihuana menace. *New Orleans Med Surg J* 84:247-251, 1931.

16. Hayes MH, Bowery LE: Marihuana. *J Criminal Law and Criminology* 23:1086-1098, 1933.
17. McLean RN: Tightening the Mexican border. *The Survey* 64:29, 1930.
18. Taylor PS: More bars against the Mexicans? *The Survey* 64:26, 1930.
19. Letter from the US Marshall of the Northern District of Oklahoma to Commissioner Anslinger, Dec 18, 1934. Papers of Harry J. Anslinger, Pennsylvania State University, Box 6.
20. Bromberg W: Marihuana intoxication. *Amer J Psychiat* 91: 303-330, 1934.
21. Stanley E: Marihuana as a developer of criminals. *Amer J Public Sci* 2:252, 193 1.
22. *Report by the Government of the United States of America for the Calendar Year ended December 31, 1931: On the Traffic in Opium and Other Dangerous Drugs*. Federal Bureau of Narcotics, 1932, p 51.
23. Uniform State Narcotic Act, reprinted in Eldridge WB: *Narcotics and the Law*, ed 2. Chicago, University of Chicago Press, 1967, pp 161-175.
24. Don't Be a "Mugglehead." Worcester, Mass, *Telegraph*, Oct 11, 1936. Papers of Harry J. Anslinger, Pennsylvania State University, Box 6.
25. Confidential memorandum from Harry J. Anslinger to Assistant Secretary of the Treasury Stephen B. Gibbons, Feb 1, 1936. Papers of Harry J. Anslinger, Pennsylvania State University, Box 12.
26. Marihuana questionnaire filled out by Dr. Walter L. Treadway, papers of Harry J. Anslinger, Pennsylvania State University, Box 6.
27. Transcript of the conference on *Cannabis sativa*, held Jan 14, 1937, 10:30 a.m., Room 81, Treasury Bldg Papers of Harry J. Anslinger, Pennsylvania State University, Box 6.
28. *Taxation of Marihuana*, hearings before the House Committee on Ways and Means, 75th Cong., 1st Sess. (April 27-30 and May 4, 1937).
29. Musto DF: The development of narcotic control in the United States, in Bell WJ Jr (ed): *Medicine and Society*, publication No. 4. Philadelphia, American Philosophical Library, 197 1, pp 95-1 10.
30. "Inter-state Narcotic Association," FBN File 0145-18, Bureau of Narcotics and Dangerous Drugs.

**3 1. Report by the Government of the United States of America for the Calendar Year ended December 31, 1938: On the Traffic in Opium and Other Dangerous Drugs.** Federal Bureau of Narcotics, 1939, p 49.

32. Mayor's Committee on Marihuana: **The Marihuana Problem in the City of New York.** Lancaster, Pa, Jacques Cattell Press, 1944.

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