Dissonance and Contradictions in the Origins of Marihuana Decriminalization

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The movement for removal of criminal penalties for possession of marihuana in the United States provides an important case study of the causes and process of decriminalization. Between 1973 and 1978, 11 states reduced criminal penalties for possession of small amounts of the drug, but the reform movement was fragile, brief, and limited to a few states. This case study suggests that reform was driven in part by "moral dissonance" resulting from the arrest of high-status offenders. Although public opinion has always been deeply divided on decriminalization of marihuana possession, a narrow "policy window" was created in the 1970s by the expressed concern of political leaders about the effect of arrest on high-status youths and the support of law enforcement agencies interested in efficient use of limited resources. Even after the window for reform closed at the end of the 1970s with a shift in national leadership, deep moral ambivalence renders criminalization symbolic and police place a low priority on marihuana arrests.

Many have observed that the 1970s was a period when a wide variety of deviant groups and their supporters began to mobilize to challenge popular stereotypes and to demand an end to discriminatory treatment (see, e.g., Weitzer 1991). The decriminalization of marihuana represents one part of this pattern. Previous research on the origins of criminal laws justifiably has been criticized for analysis of isolated case studies of one particular law, which Hagan (1980) claims has resulted in confusion in attempts to explain a law's passage. The study reported here attempts to avoid this problem by analysis of the legislative process in 11 states which, over a five-year period, removed jail sentences for possession of small amounts of marihuana. These laws, sometimes collectively referred to as "decriminalization," often specify

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that offenders are to be issued summons like those for traffic offenses rather than being taken into custody.

Such laws were passed in 11 states and cover about a third of the American population: Oregon in 1973; Alaska, Maine, California, Colorado, and Ohio in 1975; Minnesota in 1976; Mississippi, New York, and North Carolina in 1977; and Nebraska in 1978.[1]

If the 1970s was a period of liberal change, the 1980s was generally regarded by participants in government as a more conservative era (Kingdon 1984). In any case, no states have decriminalized marihuana since 1978, and in 1990 Alaska "recriminalized" the drug.

Our study sought the political and cultural sources of these laws through a description and analysis of the legislative process, as well as analysis of the ultimate stalling of the decriminalization movement.

Toward a Theory of Decriminalization

Lempert (1974:1) has noted that little attention has been devoted to the problem of decriminalization and attempted to move "toward a theory of decriminalization" by identifying the initial pressures for such legal change, as well as distinguishing the pressures from their empirical consequences. He observed that pressure for decriminalization occurs to the extent high-status individuals are identified as violators of the law. His reasoning is that deviant, law-violating behavior creates a "moral dissonance" whereby an actor is simultaneously seen as having high social status and low moral status (p. 5). Lempert further reasoned: "If moral dissonance is to induce legal change it will have to work on a relatively large number of individuals. For this to happen, observed dissonant behavior must be widespread" (ibid.).

This widespread moral dissonance causes problems for law enforcement, reflecting not so much the irrelevance of the law but rather deep divisions of opinion and intense political conflict. A statute may be repealed "at a time when the moral principle embodied in the statute is still of compelling importance to many members of society" (p. 3). We here will demonstrate that the pressures leading to marihuana decriminalization had precisely the origins Lempert predicted.

[1] This research intentionally omitted South Dakota, which enacted a decriminalization law effective in April 1976 as part of a general revision of the state's criminal code but repealed it 11 months later. We did not include this statute in our analysis because (1) unlike the other decriminalization statutes, this law was never accepted as a relatively permanent part of the state's criminal code, and (2) South Dakota kept no records of public hearings or legislative debate, making the analysis used for the other states impossible.

As useful as Lempert's ideas may be, they tell us nothing about why particular marihuana policy alternatives emerged when they did and why they ceased to appear relevant by the 1980s. Kingdon (1984:174–75) has helped our understanding of the fleeting temporal quality of this legislative ebb and flow by observing that "policy windows, the opportunities for action on given initiatives . . . open infrequently. . . . Despite their rarity, the major changes in public policy result from the appearance of the opportunities." But when "the window opens, it does not stay open long. An idea's time comes, but it also passes" (p. 177). Kingdon also explained that if a proposal fails, people may be unwilling to invest more time and energy in the endeavor, or changes in key political leadership may make such proposals less feasible.

Supplementing Lempert's theory of decriminalization in this way draws attention away from an exclusive interest in the social status of the deviant and toward broader issues involving state and national politics and the activities of moral entrepreneurs. In addition, we consider the specific behaviors causing moral dissonance, the indicators of this problem, the events that focus public attention, and the policy alternatives available.

Burstein (1985:193) has observed that while "social scientists tend to divide themselves into those who study the causes of legislative change and those who study the consequences," in the real world the "law itself is neither an end nor a beginning, but rather an intermediate stage in the political process." Thus, while Lempert implied that decriminalization solves the problem of moral dissonance, another type of moral dissonance is actually created by legal reforms themselves. As an illustration, Chambliss (1979:7–8) has concluded that in any historical period law is created to help resolve the existing "contradictions, conflicts, and dilemmas. . . . The most important of these dilemmas and conflicts are those that derive from the economic and political structures of the times," but that "[o]ften, resolutions of particular conflicts and dilemmas not only create further conflicts, but also spotlight other contradictions which may have been dormant," leading to further resolutions.

We demonstrate that while decriminalization laws resolved certain conflicts, the legislation produced additional conflicts or moral dissonance all its own when behavior considered by some to be immoral was no longer severely punished, thereby setting the stage for the stalling of the movement toward decriminalization. Our view is that decriminalization as a policy alternative, and marihuana decriminalization in particular, represented a unique historical moment in the evolution of criminal sanctions. The ideological, social, and political basis for decriminalization opened a narrow and tenuous "policy window," and thus the viability of this policy was limited and quickly supplanted by de facto

decriminalization. We also demonstrate that the effects of these laws were primarily symbolic, and thus it should not be surprising that another type of symbolic response, de facto decriminalization, was a commonly accepted alternative that addressed conflicting social-class and political interests more adequately than statutory change. According to these formulations, a theory of decriminalization and its consequent contradictions must include consideration of the national mood, political leadership, concerns of interest groups, especially law enforcement and drug users, as well as public opinion.

Establishing Moral Dissonance

The social and economic costs of enforcement of prohibition of alcohol are legendary. During the 1920s there was a growing perception that the authorities' attempts to enforce prohibition were leading to disrespect for law in general and to a total breakdown in the social order (Kyvig 1979). Repeal promised an end to the diversion of police from the arrest of "casual" law violators (Engelmann 1979:35), an easing of the hopeless clogging of the courts and prisons, and an elimination of "thou shalt nots" that are so tempting to the young (p. 191). Similar problems in law enforcement have also been central to the history of marihuana prohibition.

During the first half of the 20th century, marihuana use was concentrated among Latin Americans (LaGuardia Commission on Marihuana 1944), African Americans, the Greenwich Village "beat" community, and jazz musicians (Polsky 1967). These usage patterns are of great significance, for research on alcohol prohibitions (Gusfield 1963), opium laws (Morgan 1978), and other drug legislation (Musto 1973; Helmer 1975) indicates that the most severe punishment is reserved for those instances where a substance is publicly associated with a threatening minority group. During the 1960s, however, patterns of marihuana use began to change. By 1970 Goode reported survey data indicating that marihuana smokers were likely to be urban, college graduates in their early 20s. By 1977, 60% of those aged 18–25 had used this substance (Abelson & Fishburne 1977). A survey in 1979 (Fishburne et al.) indicated that 68% of those aged 18–25 reported that they had used marihuana. In addition, 69% of whites, 62% of all others, and 73% of those with college training had used the drug. These figures indicate not only that marihuana use increased dramatically during the 1970s among those 18–25, but that the increase especially occurred among middle-class, college-educated whites—a totally different picture from what existed during the 1930s. These demographic changes in the typical marihuana user provided the key social context for the reform of marihuana laws.

Given what is known about the relationship between patterns of drug use and penalty structures, it was not completely surprising that, coincident with these changing patterns of marihuana use, several states reduced marihuana possession penalties to misdemeanor levels, among them Nebraska (Galliher et al. 1974) and Utah (Galliher & Basilick 1979). The increasing risks of arrest for affluent young people were critical ingredients in the passage of these new laws, especially in homogeneous states where drug use was not associated with any local minority group (Galliher et al. 1974; Galliher & Basilick 1979). A statewide survey in Utah revealed widespread marihuana use by young people of nearly all ages and all social classes (Galliher & Basilick 1979:291): "Economic status is no deterrent to obtaining drugs and youngsters of all economic levels are involved," the survey concluded. An attorney who supported reduction in drug penalties explained to the Utah state senate: "These are your kids, after all." Another attorney involved in the lobbying effort said: "We also pointed out that the courts would be reluctant to convict in marihuana possession cases since the marihuana problem was hitting middle-class families and Mormon youth."

In Nebraska a prosecutor's son was arrested for marihuana possession, and his lawyers lobbied with a state legislator for misdemeanor penalties retroactive to the date of his arrest. Prior to the law's passage, the Nebraska State Highway Patrol recorded an average of only 15 marihuana possession cases per year; after the change, arrests rose precipitously (Galliher et al. 1974).

By the late 1970s, Nevada was the only U.S. state retaining felony penalties for possession of the slightest amount of marihuana. Yet, just as was originally true in Nebraska, these severe penalties could not be enforced. In 1974, of the 214 persons convicted for marihuana possession, only 14 were actually sentenced to prison. In 1978, only 13 were sentenced to prison, and these were all "special cases" involving other criminal charges (Galliher & Cross 1982:383). The president of the Nevada Peace Officers complained in legislative hearings on misdemeanor penalties: "Judges are not sending people to prison as the present law calls for for smoking a joint of grass. . . . As a consequence, the law, as it stands today is being subverted. It's being met with a lot of cynical amusement by the young people today" (ibid., p. 384). The experience in both Nebraska and Nevada suggests that the police desired a law that could be enforced when felony penalties began to be widely seen as inappropriate for marihuana users increasingly concentrated in the middle and upper classes. Similar evidence of difficulties in marihuana law enforcement from across the United States were disclosed in a federal report published in the early 1970s (National Commission on Marihuana & Drug Abuse 1972).

Public Opinion and Agenda Setting

Burstein (1985) has demonstrated that the weight of intensely held public opinion made the federal Equal Employment Opportunity legislation possible; this was not the case with marihuana decriminalization. Over all, public opinion is not necessarily the most important consideration (Kingdon 1984). Those most intensely interested are specialists in a given policy arena, who often emphasize "equity and efficiency" (p. 140). Assuming the significance of moral dissonance in the enforcement of marihuana laws, the relevant values and beliefs were those of political leaders, since the general public has been divided about evenly on this issue and thereby stalemated. For example, the 1977 Gallup Poll found 53% supported decriminalization; in 1980, 52% favored the idea; in 1985, 46% did so. This deep division of opinion may reflect an ambivalence arising from a recognition that while use marihuana may be immoral and may represent a health hazard, incarceration of marihuana users is not a reasonable response. Thus public opinion can be said to have made marihuana decriminalization a legitimate issue, but did not ensure its legislative success.

Conservative columnist William F. Buckley (1972) was among the first nationally prominent figures to endorse decriminalization. More significantly, prestigious groups and people associated with law enforcement such as the American Bar Association (MacKenzie 1973), U.S. Attorney General William Saxbe,[2] and FBI Director Clarence Kelley[3] lent their support to decriminalization. The reasons included the massive costs to law enforcement, the impossibility of deterring marihuana use, and the social cost of ruining a person's future employment opportunities with an arrest. Kelley said it might be better "not to prosecute for possession of marihuana, but spend greater attention and time on those who sell" marihuana and other drugs. First President Ford, and then President Carter, lent the prestige of their office to the cause of decriminalization, claiming that their primary motivation came from their children. President Ford claimed: "More people are hurt by criminal laws against marihuana use than are hurt by the drug itself."[4] Later President Carter asked the Congress to decriminalize marihuana possession (Wooten 1977).[5] No longer could it be said that marihuana was simply a minority-linked drug, and these changes in attitude and usage patterns were to play a role in future attempts to alter the method of its

[2] "Pot Statement Expected," *Columbus Evening Dispatch,* 15 Nov. 1974, p. B9.

[3] "Get Sellers, Kelley Says," *Atlanta Constitution,* 24 June 1975, p. 6A.

[4] *Columbus Evening Dispatch,* 15 Nov. 1974 (cited in note 2).

[5] "Carter Asks Congress to Decriminalize Marihuana Possession; Cocaine Law Is Studied," *New York Times,* 15 March 1977, sec. 1, p. 15; "Administration Urges Marihuana Decriminalization," *South Mississippi Sun* (Biloxi-Gulfport), 15 March 1977.

legal control. Both U.S. senators and representatives argued that middle- and upper-class college students, on the road to professional careers, should not be incarcerated for marihuana possession because such users would lose respect for a law their experience tells them is incommensurate with the danger of the drug (Peterson 1985).

A Policy Window Opens

Beginning in the 1960s policymakers increasingly began to view deviance as being magnified by official reactions (Empey 1978). Thus a series of programs designed to limit the negative effects of official sanctions were enacted (Olson-Raymer 1984). Among these were laws to abolish the indeterminate sentence (Dershowitz 1976), as well as laws to decriminalize status offenses in California and New York (Rubin 1985). And official opinion on marihuana reflected in government reports also began to change. Initially, during the early 1960s, and before, when the effects of marihuana were studied by government agencies, its users were often described as was stated in the President's Advisory Commission on Narcotics and Drug Abuse (1963) as "frustrated, hopeless, maladjusted" and as exhibiting "psychological dependence" (pp. 1, 4). But by the late 1960s, we see evidence of the beginnings of moral dissonance when marihuana was described by the President's Commission on Law Enforcement and Administration of Justice (1968:13) as merely a "mild hallucinogen" and by the 1970s a federal commission described the marihuana user as "essentially indistinguishable from their non–marihuana-using peers by any fundamental criterion other than their marihuana use" (National Commission on Marihuana & Drug Abuse [NCMDA] 1972:41). The Comprehensive Drug Abuse and Prevention Act of 1970 reduced the federal marihuana possession penalty to a misdemeanor and also required reports to Congress on marihuana and other drugs.

In accordance with the latter provision of this legislation, in 1972 the NCMDA, drawing on advice from experts in a variety of fields appointed by President Nixon, released its report. It minimized the health risks of marihuana use and urged that public possession of one ounce or less of marihuana (the usual purchase amount) be decriminalized, subject only to confiscation, and that public use remain a criminal offense punishable by a $100 fine. Surveys conducted by the commission found that only a minority of prosecutors and judges viewed marihuana possession penalties as a deterrent and that police seldom attempted to seek out such law violators. Instead these surveys found that law enforcement viewed such prohibitions as too costly, claimed they created discrimination in enforcement, and ruined the lives of those arrested. At this point there seemed to be no difference

between the demands of affluent marihuana users and the requirements of law enforcement efficiency. Much as the 1931 report of the Wickersham commission was instrumental in discrediting national prohibition of alcohol by describing the law as both ineffective and the source of political corruption (Kerr 1985), the key triggering event in decriminalization was the 1972 NCMDA Report. Beginning the next year and extending into 1978, 11 states passed laws modeled closely after its recommendations (Table 1).

Table 1. Provisions of State Marihuana Possession Decriminalization Laws

State	Year	Title of Law	Maximum Penalty	Amount of Marihuana
Oregon	1973	Violation	Up to $100—1st offense	Up to 1 oz.
Alaska	1975	Misdemeanor	Up to $100	Up to 1 oz. (in public)
Maine	1975	Civil violation	Up to $200	"Usable Amount"
Colorado	1975	Petty offense	Up to $100	Up to 1 oz.
California	1975	Misdemeanor	Up to $100	Up to 1 oz.
Ohio	1975	Minor misdemeanor	Up to $100	Up to 100 grams
Minnesota	1976	Petty misdemeanor	Up to $100—1st offense	"Small Amount"
Mississippi	1977	Noncriminal	$100–$250—1st offense	Up to 1 oz.
New York	1977	Violation	Up to $100—1st offense	Up to 25 grams
N. Carolina	1977	Misdemeanor	Up to $100—1st offense	Up to 1 oz.
Nebraska	1978	Civil offense	$100—1st offense	Up to 1 oz.

Data Sources

We reviewed all issues of a major daily newspaper in each state we studied for a year prior to, and immediately after, the passage of the decriminalization law to assess the type of political environment in which each law passed. In addition, we secured numerous articles that dealt with marihuana and marihuana offenses from private collections and library holdings in the states involved. We also explored legislative records of floor debate and/or public hearings. The quality and amount of such information available varied greatly across the states, but at least some such information was available for all states. In Mississippi and North Carolina we conducted interviews with key informants to supplement our analysis of existing records that appeared to give an incomplete picture of the legislative process. In addition, we contacted the legislatures in all states that did not decriminalize marihuana to locate existing records of the introduction of relevant bills, as well as committee hearings and floor debate on any marihuana reforms.

The Puzzling Patterns of Marihuana Decriminalization

A survey of some of the earliest of these marihuana laws found great variation in the legislative process of decriminalization from state to state, with no apparent logic to the pattern (National Governors' Conference 1977). Decriminalization in Maine, California, and Ohio was preceded by extensive legislative staff research, but such research was also conducted in New Jersey where the legislation failed. In Ohio and Maine decriminalization was part of an overall criminal code revision that diverted attention, to a degree, from the marihuana penalty changes. But in Colorado and California successful decriminalization bills stood alone, and in Iowa and New Jersey decriminalization bills failed despite being part of a general criminal code revision. In Minnesota, Ohio, and California, the survey reported an individual or interest group was of primary importance, but in other states they were not important factors. The press was typically supportive of decriminalization, but this was true in states that passed, as well as those that did not pass, such laws. The severity of existing penalties was an important influence in California and Colorado, but in Minnesota experience with previous penalty reductions made decriminalization more palatable. In none of these states did the National Organization for the Reform of Marihuana Laws (NORML), the only national organization lobbying for decriminalization, make a visible and constructive contribution to the decriminalization process. The limited significance of this organization is apparently a result of the ineptitude of its leadership (Anderson 1981). Interest groups cannot always control the course of the debate; in addition, the efforts of opposing interest groups often cancel each other out (Kingdon 1984).

The states that passed decriminalization laws had quite diverse political, cultural, and demographic characteristics. Some of these states (Minnesota, Oregon, and New York) are well-known liberal enclaves. But some are conservative (e.g., Nebraska, Mississippi, and North Carolina). And every region of the nation is represented: the West (California, Oregon, Colorado, and Alaska); the East (Maine and New York); the Middle West (Nebraska, Minnesota, and Ohio); and the South (Mississippi and North Carolina). There are populous states (Ohio, California, and New York) as well as sparsely populated states (Maine, Nebraska, and Alaska). Some of the states have heterogeneous populations, with sizable numbers of African Americans or Hispanics (among them New York, California, Mississippi, and North Carolina). Some states are relatively homogeneous (e.g., Oregon, Minnesota, Nebraska, and Maine; U.S. Bureau of the Census 1980). These variations in the demographic characteristics of decriminalization states are curious because some research

leads us to believe that the demographic characteristics of a state will, to a considerable extent, determine the local response to drug use (Musto 1973; Galliher et al. 1974; Galliher & Basilick 1979). These puzzling patterns parallel the variations across the states in the process by which decriminalization laws were passed.

Decriminalization Histories

Polsby (1984) distinguished between laws on the basis of how quickly they are passed. Some laws are passed with dispatch, especially if there is a close association between the source of the ideas and the agencies responsible for enforcing the law. Other laws involve a much longer process and may require considerable research to attempt to determine the consequences of the policy change. Jacob (1988) has also observed that legislation can involve a routine process or can be associated with considerable conflict. According to Jacob (p. 11), "those who seek to use the routine policy process define their proposals in as narrow terms as they can." The experiences of both the states that decriminalized marihuana as well as those that failed to do so reflect these differences in speed and conflict.

Routine Policy Change

The decriminalization policy window was open only five years and ultimately ended with a significant shift in the national mood and change in presidential administrations. Nonetheless, the legislation begun in the early 1970s seemed full of promise for providing significant policy changes. Oregon was the first state to pass a decriminalization law—in 1973. Before the law was changed, conviction for possession of less than one ounce of marihuana was a misdemeanor and could be punished with a $1,000 fine, a one-year sentence, or both.[6] Possessing more than one ounce was a felony, and could incur a $2,500 fine and/or a 10-year sentence. However, these penalties existed only on the statute books, and a local paper noted many instances in which they were not actually enforced, particularly against juveniles.[7] The conservative Republican hog-farmer legislator who introduced the bill in the state legislature compared marihuana's dangers and penalties with that of alcohol and other drugs:

[6] "Obvious, Subtle Effects of Pot Using Described," *Eugene Register-Guard,* 6 Oct. 1972, p. 4A.

[7] "Marihuana Costs Man $200 Fine," *Eugene Register-Guard,* 7 March 1973, p. 4D; "Youth Pays Fine for Possessing Pot," *Eugene Register-Guard,* 9 March 1973, p. 5A; "Court Dismisses Marihuana Case," *Eugene Register-Guard,* 18 March 1973, p. 3A; "Drug Sentence Put Off One Year," *Eugene Register-Guard,* 3 April 1973, p. 4A.

> "Having explored all the basic components of the marihuana situation, I am convinced we could and should take steps to decriminalize its use. Prohibition was not the answer to our alcohol problem in 1919, nor is it the answer to the marihuana problem in 1973." He sat down amid an ovation (Anderson 1981:122).

Later the legislator noted that public views toward marihuana were changing and that he had received very few letters objecting to his position, while the great majority supported his stand.[8] A local prosecuting attorney announced that less emphasis would be placed on marihuana enforcement and more on hard drugs and drug trafficking. He ordered local law enforcement authorities to begin issuing citations to marihuana users instead of putting them in jail.[9] This apparently involved no political risk, as no opposition to his ideas surfaced. Later, the prosecutor testified in support of such legislation in at least four other states (Alaska, Maine, Ohio, and Minnesota), and was greeted warmly in all four.

In Ohio, the Oregon prosecutor assured legislators that decriminalization had caused no perceptible increase in the use of the drug.[10] An Ohio federal court overturned a marihuana *sale* sentence of 20–40 years as cruel and unusual, and therefore "unconstitutional" (*Downey v. Perini* 1975).[11] This court decision provided a legal mandate for new Ohio marihuana legislation. A physician was quoted as saying: "We just want to end the agony of arrest records for teenagers found with small amounts of marihuana."[12] A former police chief of Toledo declared that the money spent on marihuana arrests was wasted.[13]

Along with U. S. Attorney General Saxbe, a Republican and an Ohio native, who as we noted above supported decriminalization,[14] there were other similar proponents in Ohio. A wealthy Republican whose family owned a Columbus (the state capital) newspaper, several television and radio stations, hotels, and much of Ohio's largest bank eventually supported the bill. He had easy access to every state official, and he drew on it when necessary. He showed a film to the state legislature about a young marihuana smoker whose parents had found some marihuana in his room. Horrified, they called the police and had him arrested to save him from the drug. He was in fact sentenced to prison where he was soon gang-raped. Then he hanged himself in his

8 "Drug Penalty Bill Passed by House," *Eugene Register-Guard,* 22 June 1973, p. 13A.

9 "Hard Drug Crackdown Set," *Eugene Register-Guard,* 15 March 1973, p. 1C.

10 "Marihuana Legislation Subject of Panel at Fair," *Columbus Evening Dispatch,* 1 Sept. 1974, p. A2.

11 "Pot Case—Alleged Vendetta by Police Here Led to Overturning Ohio Statutes," *Cleveland Plain Dealer,* 28 July 1975, p. 14A.

12 *Columbus Evening Dispatch,* 1 Sept. 1974 (cited in note 10).

13 Ibid.

14 *Columbus Evening Dispatch,* 15 Nov. 1974 (cited in note 2).

cell (Anderson 1981:166). After this presentation the bill had no trouble passing.

In Colorado the state attorney general indicated that he supported reduced marihuana penalties because marihuana cases were clogging the courts and wasting money.[15] A split state supreme court "reluctantly" upheld the conviction of four defendants for selling marihuana. Two justices asserted that when marihuana is misclassified as a narcotic, "the classification lacks a fundamental rational basis and is unreasonable and is constitutionally offensive" (*People v. Summit* 1974:855 (Lee, J., dissenting)). A *Denver Post* editorial strongly endorsed the legislative efforts to lower the marihuana penalties by reclassifying marihuana as a "dangerous drug" rather than a "narcotic."[16] The Colorado legislation was supported by conservatives, and an ultra-conservative in the senate even proposed total legalization.[17] In the senate, the Republican sponsor of the bill to decriminalize possession summarized the prevailing mood, admitting that marihuana was dangerous, but "any person has the right to go to hell any way he chooses so long as he doesn't hurt anybody else."[18]

In April 1975 under a new city ordinance, the Denver prosecutor started giving tickets for marihuana possession rather than making arrests. During house hearings, another Colorado prosecutor said: "We simply can no longer in the criminal justice system expend taxpayers' money and lawyers' and investigators' time chasing the pot smoker around the dormitory" (debate in the Colorado House, 20 Feb. 1975). The Denver prosecutor's office reported that in 1972–73 only 7 marihuana cases in the city ended with sentences to prison out of 2,200 marihuana-related cases, at a total cost of $1,650,000. A deputy district attorney observed that the law was selectively enforced and was "the single most destructive force in society—in terms of turning our children against the system."[19]

In Maine, the Oregon prosecutor testified once again about his state's decriminalization law in legislative hearings:

> [S]tudies indicate that use of marihuana has not increased in the state since then. Tremendous amounts of time and money have been spent trying to enforce the marihuana laws. . . . As a law enforcement officer, I am vitally concerned with the best use of the limited resources of the criminal justice system.[20]

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[15] "Marihuana Law Change Viewed—MacFarlane Supports Leniency," *Denver Post,* 16 Dec. 1974, p. 30.

[16] "Moderating Marihuana Laws" (Editorial), *Denver Post,* 27 Feb. 1975, p. 26.

[17] "Decriminalization Effort—Conservatives Back 'Pot' Proposals," *Denver Post,* 10 April 1975, p. 2.

[18] "Liberalized Laws—Senators Debate Bill on Marihuana," *Denver Post,* 2 May 1975, p. 3.

[19] "Testimony Favors Easing 'Pot' Law—Senate Judiciary Hearing," *Denver Post,* 9 April 1975, p. 18.

[20] "Pot Decriminalization Aired," *Kennebec Journal,* 28 March 1975, p. 1.

Others testifying in favor of the revised code included a mother of seven who said several of her children had "problems because of marihuana use, but she wouldn't want to see them jailed."[21] A state legislator noted that in 1974 a total of 1,700 were arrested in the state for possession of marihuana.[22]

A former Republican state attorney general, head of a criminal code revision commission, put decriminalization in the new code. He defended a statement in the new code that marihuana was less harmful to our society than tobacco and alcohol, declaring that the latter two drugs cause many more deaths and havoc in people's lives than marihuana.[23] According to the local paper, the new code was an attempt to restrict the law "to instances where enforcement is to be encouraged and the prohibitions to be taken as representative of community judgments that are widely and strongly held. . . . Otherwise the already badly overextended law tends to squander . . . law enforcement and court resources."[24] A house member also noted that it would be easier to prove possession under this code because a civil offense is not subject to the same strict rules of evidence as are crimes.[25]

A 28 March 1975 *Kennebec Journal* editorial supported the efforts of the commission to abolish the criminal penalty for marihuana possession, "a move we have supported in the past and do again."[26]

> What hypocrites we can be without even conscious thought! We shy away from decriminalizing marihuana possession because it carries the name drug, and hug to our bosoms the cocktail hour because its image is social. Yet there are 450,000 under-21 alcoholics in this country; alcohol is responsible for one-half of traffic fatalities, accounts for one-third of all suicides and has some part in one-half of the 5,500,000 arrests made yearly. The marihuana cigarette will never match those figures, but we're afraid to look truth in the eye.[27]

We should recall that the Governors' Conference Report on state marihuana laws observed in 1977 that previous penalty reductions made decriminalization a relatively easy process in Minnesota. A 1973 law had made the maximum penalty 90 days in jail and a $300 fine. A decriminalization bill sponsor was quoted as saying: "There are a lot of young people in my district who smoke pot. . . . Enforcement of the present law involves an awful lot of expense, and . . . people who otherwise lead perfectly nor-

[21] Ibid., p. 2.

[22] Ibid.

[23] "Lund Defends Marihuana Decriminalization," *Kennebec Journal,* 26 March 1975, p. 25.

[24] "Criminal Code Revision: A New Balance," *Kennebec Journal,* 3 March 1975, p. 1.

[25] "Bigelow Bill Dies in House," *Kennebec Journal,* 10 June 1975, p. 10.

[26] "A Polarizing Issue" (Editorial), *Kennebec Journal,* 28 March 1975, p. 4.

[27] Ibid.

mal lives go to jail."[28] Another sponsor had "seen kids subjected to the criminal justice process, seen the disruption of their lives and the threat of jail hanging over them."[29] A legislative supporter concluded:

> My main interest is to put out accurate information to the public. We've got to give them the truth. . . . We've been putting out untruthful stuff the past 100 years—so much so that kids don't believe anything. I mean we've been telling people that pot-smoking will shrink your brain and turn you into a rapist.[30]

A local judge testified at the senate hearings that he favored decriminalization because of the time it would save the courts (Minnesota Senate Judiciary Committee 1975a). And a district attorney claimed: "As a prosecutor it is my feeling that the efforts of our police departments could be better utilized in investigating more serious crimes" (Minnesota House Judiciary Committee 1975). A Minnesota sheriff agreed: "I am against marihuana, however I feel the enforcement is not always constant. The new law, the way it's set up, could be more consistent . . . I don't have a large department . . . things could be speeded up" (Minnesota Senate Judiciary Committee 1975b). And a senator observed that police look the other way "from the use of marihuana by kids" (ibid.). Also, a 1973 study discovered that only 21 perons were confined in the state for marihuana possession, even though 40% to 50% of all Minnesota high school students had used the drug (Minnesota Senate Debate 1975).[31]

Nebraska was one of the pioneers in lowering marihuana possession penalties with a 1969 law that reduced the penalty for first-offense possession of marihuana to a maximum seven-day jail sentence; on subsequent offenses the sentence merely doubled (Galliher et al. 1974). Thus, like Minnesota's decriminalization, the move to decriminalization was not a major legislative step. A Nebraska state senator reasoned that a massive amount of police time could be saved by decriminalization: "A policeman, for the same amount of time, effort and money, could be dealing with ten or twelve individuals" (Nebraska Senate 1978). The Nebraska supreme court acknowledged that the costs of enforcing the marihuana laws exceeded the benefits (*State v. Kells* 1977).[32] A survey of rural Hall County found 57% favored decriminalization.[33] The people, the press, and the legislature in Nebraska showed little interest in this law. As one state

[28] "Present Law held Useless," *St. Paul Dispatch,* 21 April 1975, pp. 19, 21.

[29] "Knoll Says Law has 'Bad Effects,'" *St. Paul Dispatch,* 21 April 1975, pp. 19, 21.

[30] Ibid.

[31] "Marihuana Law Isn't Enforced, Study Says," *St. Paul Dispatch,* 21 April 1975, pp. 19, 21.

[32] "Marihuana Arrest in Home Legal, Nebraska Supreme Court Rules," *Lincoln Journal,* 2 Nov. 1977, pp. 1, 17.

[33] "Laxer Pot Laws Said Favored," *Lincoln Journal,* 24 Feb. 1978, p. 7.

senator argued: "Particularly [if] a minor or young person has done wrong smoking marihuana, you don't destroy their career for the rest of their life" (Nebraska Senate 1978).

Alaska was the first state to enact misdemeanor marihuana possession penalties in 1968. Alcohol and alcoholism were widely recognized as the main social problem in the state. This was true even though a local attorney estimated that half the school children in the Anchorage area had used marihuana.[34] The Republican governor claimed that he opposed legalization of marihuana, but said, "I can certainly appreciate the hypocrisy in the manner we treat booze and, by comparison, marihuana."[35] The attorney general was also quoted as favoring the bill. The Commissioner of Public Safety in Alaska said in endorsing decriminalization: "Nobody in law enforcement objects to lessening the penalty for the possession of small amounts for an individual for his own use. [I have] no objection to doing away with jail time and lowering the fine" (Alaska House 1975). He admitted that such a change would save his resources, but said that even without the change his officers did not attempt to seek out marihuana users.

But the Anchorage newspaper bitterly opposed the decriminalization bill and published seven editorials in the year prior to decriminalization attacking the bill and its supporters. One editorial referred to it as "the odious measure," "the ugly mess," and "the garbage in the door."[36] The paper and the Republican candidate for the U.S. senate attempted to make this the key issue in the election,[37] but few apparently listened and the Republican lost the election by a wide margin.

Shortly after the state legislature had passed the decriminalization bill, the Alaska supreme court ruled that private use and possession of marihuana were a constitutional right:

> There is no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marihuana for personal consumption in the home. . . . The state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals. . . . It appears that the use of marihuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of psychological and social damage than alcohol or tobacco.[38]

[34] "Supreme Court Receives Case on Marihuana," *Anchorage Daily Times,* 16 Oct. 1974, p. 2.

[35] "Marihuana Bill Moves to Vote," *Anchorage Daily Times,* 13 April 1975, p. A7.

[36] "No Marihuana Veto: Double-Dealing" (Editorial), *Anchorage Daily Times,* 24 May 1975, p. 4.

[37] "Gravel Hits Lewis, Press," *Anchorage Daily Times,* 3 Oct. 1974, p. 2.

[38] "Court Dilutes Pot Law: Ruling Says Constitution Protects Use in Home," *Anchorage Daily Times,* 27 May 1975, pp. 1, 2, referring to *Ravin v. State* (1975).

In North Carolina, in 1977, a liquor-by-the-drink bill was hotly debated in the state legislature, thoroughly covered by the press, and ultimately defeated. By comparison, the marihuana decriminalization bill that passed that same year was covered in only seven news reports. Even so, editorial opinion on decriminalization in the local press was sharply divided.[39] As early as the mid-1960s it was reported that drug use was increasing in the state's colleges,[40] and that marihuana use in particular was even more common among whites than among African Americans.[41] The press reported on what was called "High Noon" at the University of North Carolina in Chapel Hill. Several hundred students routinely gathered at noon to smoke marihuana at the campus bell tower.[42] A senate supporter recalled in an interview:

> There was tremendous disparity from Chapel Hill to Rose Hill. In Rose Hill you can make corn liquor but with a joint you're going to jail for two years. After football games in the Bell Tower at Chapel Hill as many as 15,000 smoked marihuana with the State Bureau of Investigation, local and county police watching. Do the same thing in Anderson, North Carolina, in the mountains and you were gone.

Another senator commented: "Last summer my nephew was busted for smoking marihuana . . . and due to the fact that maybe I've got somebody with clout over there, this kid got off fairly easily" (North Carolina Senate 1977). By contrast he cited the case of another "young boy" who was sentenced to prison for marihuana possession and murdered while there. Another senator observed: "I do not believe that the majority of the people of North Carolina support the concept that fifty or sixty kids in North Carolina ought to be imprisoned for doing what thousands of others have done without any punishment at all" (ibid.).

The director of corrections noted the state's prison overcrowding and asserted that there should be no imprisonment for alcohol and drug violations.[43] Soon a state commission confirmed that the state prisons were too crowded and therefore faced the threat of federal court intervention and control.[44] The threat was real since such intervention had already occurred in Mississippi. Another article noted that North Carolina led all

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[39] "No Glib Solutions Needed," *Fayetteville Times,* 9 March 1977; "Rufus Shouldn't Let 'Young Kids' Fool Him," *Goldsboro News-Argus,* 4 March 1977; "Decriminalization?" *Shelby Star,* 7 March 1977.

[40] "Drug Usage May Be on Rise at State's Colleges," *News & Observer* (Raleigh), 19 Dec. 1965.

[41] "A Profile of Users of Hard, Soft Drugs," *News & Observer* (Raleigh), 24 March 1974.

[42] "'High Nooners' Photographed," *News & Observer* (Raleigh), 16 Jan. 1975.

[43] "Prison Aid Is Urged by Jones," *News & Observer* (Raleigh), 21 July 1976, p. 11.

[44] "Prisons Face Threat of Federal Control," *News & Observer* (Raleigh), 8 Feb. 1977, p. 19.

states in the percentage of its population in prison.[45] A local judge was quoted as saying: "When drug use was restricted to young hippies, we could talk about THEM. When it hits the neighbor down the street, it's US. It's not what we can do about THEM, now it's what we can do for US."[46]

On the basis of such concerns, a liberal Democratic state representative began pressing the attorney general to support a decriminalization bill. In July 1977 the attorney general finally supported the bill and justified it as a means of concentrating on hard drug sales, of relieving prison crowding, and of avoiding placing kids in prison with "professional felons." Just prior to the passage of the marihuana law, there were several stories of arrests in North Carolina involving massive amounts of drugs, including one case involving 25 tons of marihuana,[47] making it apparent that the local criminal justice system had its hands full with major dealers.

Various law enforcement representatives in all these states expressed support for decriminalization laws both to ensure the most efficient use of law enforcement resources and to protect the young. The list of supporters included prosecutors, state and federal judges, attorneys general, and the police. As Polsby (1984) has predicted, legislation passed quickly if those who would enforce new legislation also supported it. Although there were some differences across the states, decriminalization was never elevated to a critical political issue because the existing marihuana laws were not routinely enforced. There was widespread opinion among those directly involved that marihuana was not that dangerous, at least when compared to heroin, alcohol, or even tobacco. Since the drug was increasingly being used by affluent youngsters, it seemed rational that law enforcement should be explicitly freed to concentrate on more serious offenses, including more potent drugs. Much as Lempert (1974) predicted, decriminalization in these states was associated with "moral dissonance" stemming from widespread "dissonant behavior," leading in turn to obvious problems in law enforcement. In only two of these states could we locate evidence of opposition from the press. Missing was evidence of intense political conflict. This collective experience demonstrates Kingdon's (1984:176) point that "when the issue has a serious chance of legislative or other action, then advocates become more flexible, bargaining from their previously rigid positions, compromising in order to be in the game." It also illustrates Jacob's (1988) contention that a routine legislative process is easier to achieve if the initiative is narrowly defined: the successful bills all called for decriminaliza-

[45] "N.C. Prison Rate Highest in Nation," *News & Observer* (Raleigh), 23 May 1977, p. 19.

[46] "Pot in N.C.: It's Becoming No Big Deal," *News & Observer* (Raleigh), 4 July 1977.

[47] "N.C. Now Major Importing Point for Pot Smugglers," *Durham Sun*, 12 Jan 1976.

tion of only possession, and only possession of small amounts of the drug, and most bills only called for this on the first offense. Instead of conflict, there were often-stated concerns that went unchallenged about the impact of law enforcement on the lives of the young.

Protracted Political Conflict

In a minority of the states that were successful in passing marihuana decriminalization bills, the legislative process involved sometimes rancorous political conflict. The fact that the process of decriminalization was so protracted and difficult, as well as so seldom successful, demonstrates that routinization was the key to success. Later we will demonstrate that when marihuana reforms were not presented in a routine manner, the initiatives always failed. No better example of protracted conflict can be found than in Mississippi where there were increasing numbers of arrests of young people for marihuana possession during the mid-1970s. Middle-class youths were sometimes convicted of marihuana possession, with some judges giving no prison sentences and some giving the maximum possible penalty of one to three years. The senate sponsor of the decriminalization bill said: "We're putting children in jail and ruining their lives,"[48] and "your children and your neighbor's children are in severe jeopardy."[49]

One state legislator who was often associated with the Far Right supported decriminalization because of this disparity. In two separate cases in January 1977, involving the smuggling of tons of marihuana into Mississippi, ten out-of-state men were fined but given no jail sentences.[50] This prompted a flood of editorials and letters to the editor in papers across the state and included references to the obvious disparity in the handling of young people in the state compared with that for major drug dealers.[51] This harshness was especially outrageous because the state prison had been under federal court order since 1975 to reduce its crowding. This was a special problem for Mississippi because it is such a poor state and could not easily afford to build new prisons. A county sheriff, who was president of the Mississippi Sheriff's Association, agreed with the idea of decriminalization, and he said that his office "already concentrates on drug pushers rather than users. . . . If we were to round up everybody

[48] "Bill to Reduce Penalty to Be Debated," *Mississippi Press* (Pascagoula), 9 Feb. 1977.

[49] "Bill Reducing Marihuana Penalty Dealt Crushing Blow by Senate," *Natchez Democrat,* 10 Feb. 1977.

[50] "Officials Fear Mild Punishments Will Deter Drug Crackdown Efforts," *South Mississippi Sun* (Biloxi-Gulfport), 14 Jan. 1977; "11 Tons of Pot Seized in Giant Coast 'Bust,'" *Jackson Daily News,* 4 Oct. 1976.

[51] See, e.g., "Letter to Editor," *Daily Herald* (Biloxi-Gulfport), 10 Feb. 1977.

in [this] county who has smoked marihuana and send them to prison, . . . I don't know that we would have enough left to hold Sunday school."[52] Still, law enforcement and legislators were deeply divided on this issue.[53]

Mississippi was one of the first states to adopt prohibition of alcohol in 1908 and did not repeal it until 1966. From the lessons learned from alcohol prohibition, a young, conservative Republican president of a family-owned insurance company concluded that it was grossly unfair to treat young marihuana users differently from those who had used alcohol openly in Mississippi during prohibition. He traveled around the state speaking to individuals and groups, including state legislators, and also arranged hearings on decriminalization bills in 1975, 1976, and 1977. He displayed little concern about his personal reputation, which was sometimes under attack. For example, he was accused of being a drug dealer,[54] and a local newspaper implied that he had a financial interest in plans to manufacture marihuana cigarettes once the drug was legalized.[55]

But this business executive strategically mentioned that he was not in favor of marihuana use but only opposed to putting young marihuana users in prison. In a "Letter to Parents" he wrote: "We do not advocate or encourage the use of marihuana . . . . We do advocate a non-criminal, civil fine or citation approach to possession of small amounts."[56] He also emphasized the long list of conservatives and establishment organizations supporting decriminalization and eventually convinced the director of the Mississippi Bureau of Narcotics to publicly support the bill. The latter told the state legislature (Mississippi Joint Judiciary Hearings 1977): "It is a bill that we could live with. . . . Our major thrust today is toward heroin, cocaine, amphetamines, barbiturates. . . . I personally feel that alcohol is much more physically damaging to the body than marihuana." After defeats in 1975 and 1976 a decriminalization law was finally passed in 1977. This third bill was no doubt helped by the light sentences given to major drug smugglers earlier that year, but the big difference appears to have been the support of the top drug enforcement official in the state. In an interview the young executive recalled his protracted negotiations with the leaders of the state Bureau of Narcotics:

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52 "Marihuana Penalty Revision Draws Mixed Reviews," *Daily Journal* (Tupelo), 3 March 1977.

53 Ibid.; "State Marihuana Law May Come before Senators," *Enterprise Journal,* 11 Feb. 1977; "One Down, One Still to Come," *Jackson Daily News,* 11 Feb. 1977; "House Approves Bill to Relax Pot Laws," *Mobile* (Alabama) *Register,* 11 Feb. 1977; "Senate Approves Marihuana Reform," *South Mississippi Sun* (Biloxi-Gulfport), 11 March 1977.

54 "Slander and Worse," *Delta Democrat Times* (Greenville), 5 May 1975.

55 "Playboy and Pot," *New Albany* (Miss.) *Gazette,* 12 June 1975.

56 *George County Times,* 24 April 1975.

> I spent several hours on many occasions at the Mississippi Bureau of Narcotics Office talking with the Director and his division heads. They kept saying they didn't arrest kids for possession and I kept saying, let's make your policy into law. After several drafts of the proposed bill, the Director said he could live with it except for the wording "civil offense." He crossed out the "civil" and put in "misdemeanor." I crossed out "misdemeanor" and said let's just leave it an offense. That is how the final draft came about.

Here we have a first-hand account of the process of selling decriminalization to law enforcement.

In California prior to decriminalization, state law provided for penalties of up to 10 years for simple possession. From the outset, the *Los Angeles Times* favored marihuana reform, giving it a great deal of coverage in dozens of articles. The 25 June 1974 paper presented a strong editorial urging senate passage of the assembly bill.[57] The chiefs of police from San Diego and San Francisco indicated that the law merely codified what they had been doing all along—that for years they had only given citations to marihuana users.[58] Prosecutors in Colorado and Oregon had made similar admissions. But the Los Angeles police chief referred to supporters of decriminalization as "irresponsible, no-good sons of bitches" and "pot peddlers,"[59] and "'it is obvious that a 15 percent philosophical minority who believe in a licentious and libertine existence are going to force it on all of us, even if it kills us.' He predicted that the new law will lead to a doubling of the number of heroin addicts in the state within a year."[60] Earlier, then Governor Ronald Reagan had vetoed decriminalization bills on several occasions because he felt that reducing the penalty would give the "impression to young people that it isn't to be feared. They're going to seize on this as encouragement."[61]

In 1972 there were 73,000 arrested and 150 in prison for marihuana offenses in California—at an annual cost of $100 million (California Senate Select Committee on Control of Marijuana 1974:92, 96, 123). In May 1975 the assembly defeated a decriminalization bill but narrowly passed it in June. All Republicans voted against the bill both times and tried to make it a major partisan issue. The conflict was intense, and the charge was even made before a legislative committee that funding for pro-

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57 "Reducing the Marihuana Penalty" (Editorial), *Los Angeles Times,* 25 June 1974, pt. 2, p. 6.

58 "Police Differ on Possible Impact of Marihuana Law," *Los Angeles Times,* 26 Dec. 1975, pt. 2, pp. 1, 2.

59 "Davis Predicts Outcry on 'Pot,'" *Los Angeles Times,* 2 May 1975, pt. 2, p. 1.

60 "Davis Hits Signing of 'Pot' Bill, Predicts Crime Wave," *Los Angeles Times,* 11 July 1975, pt. 1, p. 3.

61 "Reagan Warns against Easier 'Pot' Penalties," *Los Angeles Times,* 5 Dec. 1974, pt. 1, p. 32.

reform witnesses came from communists.[62] An assembly Republican told the press: "If the Democrats want to pass that bill and foster San Francisco morals on California, . . . they ought to get full credit for it. Ring it around their necks."[63] The Republicans saw what they regarded as a good political issue. Said their leader in the assembly: "Republicans ought not to be a party to taking the first step toward the legalization of marihuana."[64] Four previous attempts had failed: statewide referendum attempts in 1972 and 1974 and vetoes of decriminalization bills by Reagan in 1973 and 1974. It was not until Governor Reagan left office that a bill passed the state legislature and was signed into law.

In New York by 1977, according to a survey of New York City judges, it had become clear that the notoriously tough Rockefeller drug laws passed in 1973 had not deterred illegal drug use (Raab 1977). A congressional committee studied New York City's public schools and found a marked increase in all drug use, including marihuana (Burks 1977). During the assembly debate there were dire predictions for the chain smoker of marihuana: "One year of cannabis smoking, 20 cigarettes a day, can produce sinusitis, pharyngitis, bronchitis and emphysema and other respiratory conditions" (New York Assembly 1977a). All these alleged horrors were just too much for one member of the assembly to endure in silence: "It really bothers me to hear somebody talk about recreational drugs. You might as well talk about recreational cancer because the debilitating effect of drugs are far worse" (ibid.). The small Conservative party nearly killed the bill by bullying conservative Republicans into joining their opposition, but then backed away after criticism by William F. Buckley for its "unthinking traditionalism."[65]

New York assembly members claimed: "No judge is convicting, no jury is convicting, the law is not working" (New York Assembly 1977a); "One judge that I know of in Upstate New York . . . refused to impose the penalties and publicly stated it. And, all the people in the 7th Judicial District knew that he refused to impose the penalties, and they elected him to the supreme court of this state" (New York Assembly 1977b). A member of the New York assembly who was also a police officer reported:

> In ten years in the New York City Police Department I never experienced or met anybody that had mugged somebody to get the money to buy marihuana. I never found anybody that was addicted to marihuana. . . . Forcing a police officer to go out

[62] "Bill to Ease State Marihuana Penalties Clears Key Panel," *Los Angeles Times,* 12 Feb. 1975, pt. 1, pp. 1, 25.

[63] "Bill to Ease 'Pot' Law Moves to Assembly Floor," *Los Angeles Times,* 30 April 1975, pt. 2, pp. 1, 3.

[64] "Bill to Relax 'Pot' Law Hits Roadblock," *Los Angeles Times,* 8 May 1975, pt. 1, pp. 3, 31.

[65] "Justice Done, Undone, Done in: No Pot Luck," *New York Times,* 29 May 1977, sec. 4, p. 14.

> and lock somebody up for having marihuana causes them to be hypocritical because he knows that if the case is brought to court that the probability of anybody being prosecuted is practically nil. (New York Assembly 1977a)

In the New York Senate it was reported that there were 27,644 marihuana possession arrests in the state in 1975 and 20,961 in 1976—at a total cost of $52 million (New York Senate 1977). An editorial on 30 April 1977 stated, "The imperatives for reform are clear."[66]

In both New York and California it was obvious that marihuana possession penalties did not deter marihuana use even though massive numbers of arrests were made at great expense. The question was, could young people be protected from the law and could law enforcement be protected from collapse? Yet the bills were the subject of protracted conflict and nearly failed to pass because in both states the opposition to decriminalization was represented by an organized interest group. In California and Mississippi there were deep divisions of opinion among local law enforcement. In Mississippi the legislation took three years of intensive lobbying in spite of the obvious problems of crowded prisons and hanging judges, and was ultimately passed only when the director of the Mississippi Bureau of Narcotics was convinced to support the bill. In these three states we again see the law enforcement problems and widespread dissonant behavior Lempert (1974) predicted, but here we also see the intense political conflict that he imagined would be associated with all such legal changes. In these three states concern for young people was not prominently mentioned and, in any case, did not immobilize opposition to decriminalization. The importance of including in our analysis the total cohort of decriminalization states, avoiding isolated case studies as cautioned by Hagan (1980), now becomes apparent. By including the total group of decriminalization states, we can distinguish between conditions that are incidental to marihuana decriminalization and those that are essential.

The Narrow Window of Opportunity Missed: The Failure to Pass Decriminalization Bills during the 1970s

In 1978 the eminent criminologist Jerome Skolnick confidently predicted: "It is conceivable that in the next ten years marihuana will be virtually decriminalized in this country" and that some states would do the same with heroin and cocaine (Skolnick & Dombrink 1978:194). But by 1979 the movement to decriminalize marihuana had come to an end. Just as Kingdon (1984) claimed, the policy window closed just as quickly as it had

66 "Melting the Marihuana Glacier" (Editorial), *New York Times,* 30 April 1977, pt. 4, p. 20.

opened. In 1973 a writer in *Harper's* had expressed certainty that marihuana would be *legalized* in Iowa by 1980, preceded by decriminalization in 1976, as this was an idea "whose time had come" (Bourjaily 1973:13). But the effort to pass a decriminalization bill failed in Iowa (National Governors' Conference 1977). In 1976 it was predicted that Illinois and New Jersey would decriminalize marihuana possession (Post 1976). Illinois never passed such a law, and developments in New Jersey provide an example of how quickly the situation changed. By 1978 proponents of decriminalization in New Jersey had the support of legislative leaders, the state's governor, and attorney general, as well as the endorsement of a legislative study commission (Sullivan 1974; Waldron 1978). Even so, such legislation got nowhere in the 1979 legislature or thereafter.

Records of floor debate and committee hearings indicate that many of the 39 states which did not pass marihuana decriminalization bills never seriously considered marihuana reform legislation. For example, decriminalization legislation was not even introduced in some states, among them Texas (National Governors' Conference 1977), Alabama (Adams 1993), Florida (Helms 1993), Kentucky (Cummins 1993), Idaho (Silvers 1993), Delaware (Gross 1993), Montana (Foley 1993), Arizona (Muir 1993) and Nevada (Galliher & Cross 1983). In other states, decriminalization bills never got out of committee and left no record of public hearings or floor debate. For example, in Maryland decriminalization bills were introduced in 1973, 1974, and 1976, but the closest a bill came to being reported out of committee was a 4–4 deadlock in the Senate Judiciary Committee in 1978 (Garland 1981).

In some areas failure of marihuana reforms seems to have been a consequence of how the issue was originally framed because legal change seemed to require a specific formula for success. No matter what the traditions of the local political culture, if the bills proposed violated the narrow boundaries of successful decriminalization legislation, the initiatives inevitably failed. For example, in Virginia a legislative subcommittee recommended removing jail terms for marihuana possession and *cultivation* (Edwards 1979). The proposal got nowhere. Suggesting that cultivation be treated the same as simple possession apparently was beyond the bounds of possible reform. In Maryland one bill introduced in the Senate Judiciary Committee in 1974 would have "eliminated all penalties" for possession of marihuana (Barker & Walsh 1974). Marihuana reform bills introduced thereafter were all scuttled, including a 1977 initiative to study legislation to "fully legalize marihuana" (Baker 1977). In Seattle in 1974 voters rejected by a 2 to 1 margin an initiative that would

have legalized marihuana possession.[67] All subsequent attempts at marihuana reform in Washington State were stalled. In Louisiana a 1972 "proposal was introduced . . . to study the feasibility of *legalization* or decriminalization of marijuana" (emphasis added), which failed by more than a 2 to 1 margin (National Governors' Conference 1977:pt. I, p. 215). Subsequent 1976 decriminalization bills in both the house and the senate died in committee. The only marihuana reform bill reported out of committee was debated in the senate and amended to include jail terms; thus the concept of decriminalization was dead (National Governors' Conference 1977).

Other states had similar experiences. A 1977 Oklahoma bill (H.B. 1268) providing for the "*legal* possession of four ounces or less" died in committee (emphasis added). In Washington, D.C., a task force appointed by the mayor advised legalizing marihuana use and possession (Claiborne 1973), and thereafter marihuana reforms were stymied in spite of support from the D.C. Medical Society (Feinberg 1973). A 1972 Michigan bill would have *legalized* use of marihuana in a private residence (H. 6051). Similar bills were reintroduced in Michigan in 1973/74, 1975/76, and 1977/78, with no success. A *Chicago Tribune* headline reported on a "Stormy Session on Marihuana Bill" where a proposal to *legalize* possession of marihuana in private residences was defeated in the Illinois House Judiciary Committee.[68] Thereafter several decriminalization bills were introduced, but all failed. In 1974 the Massachusetts state senate approved plans for a public referendum to "legalize marihuana" that got nowhere.[69] In addition that year, bills that would have *legalized* possession and *sale* of marihuana in Massachusetts were introduced (H. 3406, H. 3587). In subsequent years decriminalization bills failed, even though there was support from law enforcement (Buckley 1975) and 54% of those polled in the state in 1978 supported decriminalization (Clark University Department of Government 1978). If *legalization* seemed to be one word to avoid, *sale* of marihuana was another.

In some states, failure of decriminalization initiatives appeared to result not only from the terms originally used to propose marihuana reforms but also as a consequence of who was sponsoring the legislation. In Kansas the *Topeka Journal* reported about a bill that would have decriminalized possession of less than two ounces of marihuana, sponsored by a Democratic legislator from Lawrence, the home of the University of Kansas.[70] The paper reported that in past sessions the legislator had "attempted

[67] "Around the Nation," *Washington Post,* 28 March 1974, p. A10.

[68] 23 April 1975, p. 1A.

[69] "Marihuana Vote Urged," *New York Times,* 26 April 1974, p. 31.

[70] "Marihuana Law Revision Proposed," *Topeka Journal,* 26 Jan. 1977.

outright legalization, and much broader decriminalization" measures. His picture appeared with the article, showing him with shoulder-length hair and a heavy beard. Given his historical support for more sweeping marihuana proposals as well as his appearance, it was not surprising that this and his later even more modest decriminalization proposals failed.[71]

In Wisconsin multiple, wide-ranging marihuana reform bills were introduced in 1971, 1973, 1975, 1977, and 1979. All these bills would have eliminated prohibitions for possession and use as well as *sale* of the drug. The sponsor of these bills was a liberal African American, Democratic house member whom the press described as "outrageous" and as one who "loved to shock the system."[72] Early in the marihuana debate he argued: "[i]f a person wants to take a joint to make life more palatable, we shouldn't say he can't."[73] This line of reasoning predictably triggered angry responses, including one from a house colleague who said: "As far as I'm concerned intoxication is a sin."[74] Along with marihuana reform, the maverick legislator defended the legalization of all drugs, prostitution, gay rights, and abortion on demand. The *Milwaukee Journal* noted with considerable understatement that the "mortality rate of such unorthodox bills is high."[75] This legislator, however, remained undeterred, for he felt that even if his bills were not passed, their mere introduction was "educational."[76] Like the legislator in Kansas, he seemed to be the wrong messenger, with the wrong message. The difference in his approach and that of the conservative Republican in Mississippi who said he did not "advocate or encourage the use of marihuana" could not have been greater. Not only was the marihuana policy window open for a short period, but it only allowed for narrowly circumscribed reforms. It did not extend to sale of marihuana and did not include the legalization of possession. Successful reforms also required some maintenance of the message that marihuana use was improper. The many tactical errors appear to have been based on the mistaken presumption of imminent radical change reflected in the predictions of Skolnick and others mentioned above.

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71 "Pot Backers Go for 6th Try," *Wichita Eagle,* 11 March 1979.

72 "The OUTRAGEOUS Mr. Barbee," *Milwaukee Journal, Insight Magazine,* 16 April 1972, pp. 24, 25.

73 "Barbee Presents Case for Legalization of Marihuana," *Capital Times* (Madison, WI), 29 April 1971, p. 19.

74 Ibid.

75 *Milwaukee Journal, Insight Magazine,* 16 April 1972, p. 25 (cited in note 72).

76 "Barbee Calls His 'Far-out' Bills Educational," *Capital Times,* 28 June 1973, p. 15.

The Demise of Decriminalization in the 1980s

If the 1972 NCMDA Report provided the form as well as the timing of the states' decriminalization laws, perhaps we should again look to the federal level to understand why only 11 states passed such laws and why none did so after 1978. What seems important, if not essential, to this legislation is federal leadership. That leadership was briefly available during the Ford administration and early in the Carter administration, but missing prior to that time and thereafter. Until his resignation in 1974, President Nixon had consistently opposed decriminalization of marihuana, even after the publication of his commission's report, which he rejected.[77] After Nixon left office and until 1978 there was considerable agreement among national political leaders on the desirability of marihuana decriminalization. However, this changed after marihuana use by Carter White House staff was reported. Carter was besieged by further charges of drug use among senior White House staff being leaked to the press. The Republican Senate minority leader called for an official investigation by the Justice Department into drug use among White House staff (Smith 1978). President Carter gave no support to decriminalization thereafter, undoubtedly in part because partisan political conflict with Republican opposition had not been the usual path to success, and Carter could have been expected to know that a partisan political conflict on marihuana decriminalization without whole-hearted Republican support would be hard to win.

At the time marihuana decriminalization bills were being passed, Skolnick (1978:27–28) observed: "Basically, the strategy of decriminalization has been to reduce penalties for the socially acceptable and powerful users." Yet with "concepts like decriminalization . . . we solve some problems, but create new ones." Skolnick (1978:28) quotes from the NCMDA report: "[I]t is painfully clear . . . that the absence of a criminal penalty for private use is presently equated in too many minds with approval. . . . The commission regrets that marihuana's symbolism remains so powerful, obstructing the emergence of a rational policy." At least in this regard, Skolnick and the commission were prophetic. The symbolism of marihuana use remained a powerful part of the legislative equation.

Even as early as the late 1970s, the views political leaders expressed began to change. In 1977 Dr. Robert DuPont, the former drug-policy advisor to the Nixon and Ford administrations, reversed his earlier support for decriminalization and advocated de facto decriminalization in its place.

[77] "Transcript of the President's News Conference on Foreign and Domestic Matters," *New York Times,* 25 March 1972, p. 12.

> On the substantive merits of the issue, everybody is for decriminalization. But the real issue is symbolic. Nobody wants to have anyone, young or old, go to jail for possession of small amounts of marihuana. But being in favor of decriminalization is seen by the majority of the public as being in favor of pot. . . . It is possible to eliminate jail as a threat for simple possession of marihuana without favoring decriminalization. That is the way out! In fact, as a nation we have already done that. . . . Those who now go to jail are the sellers of marihuana. (Anderson 1981:312)

De facto decriminalization has the added advantage of being a means of avoiding the rancorous conflict that surrounded decriminalization bills in New York, California, and Mississippi.

Additional evidence concerning de facto decriminalization emerges when government records of incarceration and arrest are compared with survey data on frequency of marihuana use. If it is assumed, as some respondents argued, that the primary concern in decriminalization hinges on the issue of incarceration, then it is necessary to determine the levels at which incarceration is actually used. In 1984 questionnaires were mailed to all state departments of correction asking for the number of inmates in the state prison system whose most serious crime was marihuana possession. The 43 states responding reported a total of 2,729 prisoners, for an average of about 65 per state. Given such small numbers, one can understand why a sense of urgency or widespread dissonance was missing.

The incarceration figures can also be compared with arrest figures. The *FBI Uniform Crime Reports* between 1977 and 1992 indicate that total drug arrests nearly doubled, while marihuana possession arrests have declined by nearly a third. In 1977 marihuana possession arrests accounted for 61% of all drug arrests; in 1986, 36% of all drug arrests; by 1992 this figure had dropped to 25%. These figures show that the police no longer are swamped primarily by marihuana possession cases, and that over these three decades there has been a steady decrease in the emphasis on marihuana possession enforcement compared to other drugs. Thus the sense of urgency regarding the bureaucratic benefits flowing from marihuana reform has vanished. Still, compared with the about 300,000 marihuana possession arrests made annually, the numbers incarcerated for marihuana possession are minuscule and give real evidence of de facto decriminalization.

The relatively constant number of marihuana possession arrests is mirrored by levels of marihuana use that remained relatively stable between the 1970s and the 1980s. For example, in 1976 approximately 52% of high school seniors had ever used marihuana. In 1980 the figure had increased to 60% but had dropped again by 1985 to 54%, about the same level as found in 1976 (Bachman et al. 1986). One possible explanation for the

decreasing support for the decriminalization movement is that states passing such laws might have routinely experienced consequent increases in marihuana use. No such evidence exists. There were similar patterns in the frequency of marihuana use in decriminalization states compared with those without such laws (Johnston et al. 1981). The decreased proportions of all drug arrests involving marihuana and scant use of incarceration cannot be attributed to there being far fewer marihuana users or much less marihuana in circulation. Given the widespread use of marihuana reflected in survey results, these arrest and incarceration figures suggested some de facto decriminalization. Yet they also indicated that the process was not quite complete, contrary to the claims of DuPont.

If de facto decriminalization indicates *how* the legislative reform has been stalled, the question that remains is *why* it occurred and at this particular time. Himmelstein (1986) has observed that by the 1980s, or even earlier, local parents' groups concerned about marihuana began to form, the New Right emerged as a major antimarihuana force, and federal officials no longer supported decriminalization. He concluded: "Which is cause and effect is hard to say" (p. 10). The 1980s ushered in a new conservative Republican administration. In 1986 President Reagan attempted to initiate a "national crusade" to combat the drug epidemic, which he said was "a repudiation of everything America is" (Pasztor 1986). This crusade is consistent with Reagan's opposition to decriminalization while he was governor of California, given his fear of sending the wrong message to potential users. To this was added Mrs. Reagan's cant, "Just Say No to Drugs." More recently, the Bush administration's director of drug control policy, William Bennett, joined the crusade in criticizing skeptics like economist Milton Friedman and former Secretary of State George Shultz for their observations that the nation's drug control policies were not enforceable. Bennett was unswayed by these difficulties. "I remain an ardent defender of our nation's laws against illegal drug use and our attempts to enforce them because I believe drug use is wrong" (Bennett 1989). When a federal judge called for legalization due to his first-hand observations of the collapse of drug law enforcement, Bennett responded by asserting that this argument was as "morally atrocious as it ever was."[78] Bennett, like DuPont, apparently preferred unenforced legislation as opposed to actual decriminalization because of the symbolic power criminal penalties provide even if unenforced. The cornerstone of the Bush administration's efforts to control illegal drugs is found in its voluminous *National Drug Control Strategy* published in 1989. No mention was made there of decriminalization of marihuana, and only feeble

[78] "Bennett Says 'No' to Drugs," *Kansas City Star,* 14 Dec. 1989, p. 1.

recommendations were made for marihuana control, including increased intelligence in foreign drug-producing countries and stepped-up crop eradication.

Yet the failure of decriminalization produced additional dissonance and contradictions. "[R]esolutions of particular conflicts," as Chambliss noted (1979:7–8), "create further conflicts." To understand these problems, it is important to emphasize that the academic community was of little direct significance in this dispute because there was comparatively little debate about the definition of marihuana or the degree to which it is a dangerous drug. Just as in the 1930s when expert medical testimony was ignored in federal marihuana legislation (Galliher & Walker 1977), the impact of physicians in the decriminalization process seemed blunted by the fact that even as early as the 1970s marihuana was already widely recognized as something other than a very dangerous drug. During the 1980s the medical picture remained unchanged. In 1988 a Drug Enforcement Administration (DEA) administrative law judge ruled that marihuana was "one of the safest therapeutically active substances known to man" (Isikoff 1988), with no evidence of a single cannabis-induced fatality and thus the drug should be made available for legitimate medical purposes such as the treatment of glaucoma and the nausea resulting from chemotherapy in cancer patients (Drug Enforcement Administration 1988). "But the DEA rejected its own judge's opinion and stands firm that doctors shall not prescribe marihuana."[79] In 1989 the Director of the Office of National Drug Control Policy, William Bennett, publicly admitted that marihuana was no more dangerous than alcohol but still saw no reason to support any legal changes.[80]

Alaska, the only state to have repealed a decriminalization law, did so by referendum in 1990 after the state legislature had consistently refused to recriminalize marihuana, knowing that, if enforced, any such statute would be overturned by the state supreme court (Boyko 1990). The Anchorage Bar Association also had unanimously voted to oppose recriminalization because of problems of selective enforcement. But shortly prior to the referendum vote, William Bennett traveled to Alaska to offer his support.[81] Unlike the state bar association, the minority whip of the state assembly was not concerned with actual enforcement of the measure, which called for up to 90 days in jail and a $1,000 fine. He was quoted as claiming:

> [P]eople like me understood that the law is more than just putting people in jail. It has other functions as well. The law is a witness. The law is a testament to our values. It describes what

79 "60 Minutes," CBS News, 1 Dec. 1991.

80 *Kansas City Star,* 14 Dec. 1989, pp. 1, 2 (cited in note 90).

81 "Showdown over Pot-Smoking in Anchorage, Alaska," Donahue Show, NBC News, 16 Nov. 1990.

> we believe is right and wrong. It sets an example for our children and that's why it passed.[82]

Another leader of the drive to recriminalize marihuana said the voters should be congratulated for "sending out a strong message against drugs."[83] Yet another leader said, "what I am hoping to achieve with this law is to begin to tell our young people, 'This stuff is harmful. It is hurting you.' And we will begin, hopefully not only to change the attitudes of the children, but the attitudes of the parents."[84] Thus, all supporters appeared to agree that the vote itself sent a symbolic message and that was the critical issue rather than actual enforcement.

Summary: The Continuing Contradictions of Marihuana Control

The problem addressed here concerns the origins of marihuana decriminalization, both its inception and its lapse into de facto decriminalization. Two factors seem important—bureaucratic, law enforcement problems and moral dissonance. The first played a major role in decriminalization, while the second was a factor both in the origins of decriminalization legislation and in the symbolic form this reform eventually took in de facto decriminalization, which avoids jail terms without formal legal change. Marihuana decriminalization provided what initially seemed to be an ideal resolution to the conflict between the drug use of affluent Americans and the requirements of law enforcement. Among the 11 decriminalization states, there were very few instances of severe press opposition. Yet the immediate significance of the mass media in and of itself is less important than might be imagined because across the nation, even in states that never decriminalized marihuana, press reports during the 1970s became increasingly sanguine about marihuana and its users (Himmelstein 1983; Shepherd 1979). If the scientific evidence remained unchanged, the mass media in the 1980s largely ceased making distinctions between marihuana and other drugs, thereby playing a role in a resurgent "drug frenzy" (Ehrenreich 1988:20). And all successful decriminalization bills had some law enforcement support, as Scheerer (1978) also found in the Netherlands. Our results are much like Inciardi's (1981), who also noted that decriminalization drives were propelled through state legislatures largely by efforts aimed at increasing law enforcement efficiency. Such instrumental considerations often dominate the agenda of local officials, responsible as they are for local social order. After the first wave of decriminalization laws

[82] Ibid.

[83] "Alaska: Mowing the Grass," *Time,* 19 Nov. 1990, p. 47.

[84] Donahue Show, NBC News, 16 Nov. 1990 (cited in note 81).

had been passed, the structural foundations for decriminalization remained unchanged and compelling. There were still large numbers of affluent marihuana users and police forces that were more overwhelmed every year.

While scientific facts were not significant considerations in the demise of decriminalization, neither bureaucratic considerations nor social class interests sealed the fate of this legislative movement, and we uncovered no evidence of changing public opinion. As Himmelstein (1986:3) has observed, "that marijuana received only partial approval suggests that impact of the social status of the actor on the moral status of the act is limited." Given the history of alcohol prohibition, many observers undoubtedly have been surprised that the widespread use of marihuana by affluent Americans has not resulted in its legalization. Unlike the failure of alcohol prohibition, marihuana prohibitions remain on the books in most states in spite of widespread marihuana use by the middle and upper classes and in spite of the overwhelming demands on law enforcement resulting from the 1980s crack epidemic.

The different histories of these two prohibitions can best be explained by the nature of the prohibitions themselves, as well as other demographic characteristics of alcohol and marihuana users. Alcohol prohibition only put legal controls on manufacture and distribution, not on possession. Therefore, public use of alcohol by those of all ages was common during Prohibition and speak-easies abounded, both broadcasting the failure of this national policy. For marihuana, manufacture, distribution, *and possession* are all prohibited. And while marihuana use has occurred in public at rock concerts and other similar events, it has more often been a private event. Because most marihuana use occurs in private, the failure of the current legal policy is not so obvious, allowing officials to persist in the illusion of the efficacy of these legal controls even in the face of survey data showing massive use. Moreover, while alcohol is used by all age groups, marihuana is used primarily by young people and thus can be dismissed as the product of immaturity and youthful indiscretion. Gusfield (1981:184) has noted that the intense conflict over marihuana legislation symbolized the struggle of the "authority of adult culture and its power over youth" during a historical period "when adult public values were under attack in wide areas, including sex, work goals, public decorum, and dress." Our data suggest that only prominent concern for young people could neutralize this conflict and allow decriminalization legislation to pass without partisan controversy. No one political party, for example, was willing to cede to another a monopoly on concern for the young.

The theory of decriminalization began with the assumption that such legislation originates in a moral dissonance created by

the law violation by high-status individuals. Lempert (1974:5) predicted that "if moral dissonance is to induce legal change . . . observed dissonant behavior must be widespread." Marihuana use and the consequent threat of arrest was widespread across America. Thus, such dissonance was equally widespread and developed in states in all regions of the nation, among large and small states, homogeneous and heterogeneous states, conservative and liberal states, and clearly was not idiosyncratic to any particular political and cultural mix. This is true, even though Lempert notes that decriminalization laws may be passed at a time "when the moral principle embodied in the statute is still of compelling importance to many." This was clearly the case with marihuana decriminalization, and thus a new moral dissonance was created by the decriminalization laws themselves, since those who continued to argue that marihuana use belonged in the same moral realm as use of other illegal substances were now concerned that the new laws provided insufficient penalties. Just as Burstein (1985:193) noted, the passage of a law does not represent the end "but rather an intermediate stage in the political process." The persistence of prohibitionist moral principles explains the bitter legislative battles in some decriminalization states, the failure of most states to pass decriminalization legislation, and recriminalization efforts in still others. In Kingdon's (1984:174) words, marihuana reform bills could only take advantage of a very narrowly defined and strictly limited "policy windows" with only clearly circumscribed justifications.

Indicators of a problematic condition form the most immediate basis for policy change. Selective enforcement of marihuana laws, nominal sentences for large-scale dealers, the arrest of affluent users, and the fears of parents of youthful marihuana users all served to focus attention for a time on the legal controls rather than the drug use itself. Kingdon (1984) has demonstrated that policy initiatives at first circulate informally within communities of policy specialists. As the marihuana policy crisis reached its height, the National Commission on Marihuana and Drug Abuse in 1972 recommended decriminalization as a minor incremental reform that would solve the existing law enforcement problems while not raising the ire of President Nixon. It is important to remember that no other "recreational" drugs were seriously considered as candidates for reform. This demonstrates weak support for decriminalization as a foundation for penal policy. In addition, Kingdon referred to the importance of the national mood in any policy change. For marihuana reforms, it is significant that President Nixon had left office and was eventually replaced the more reformist Carter administration. Yet after one Carter term, the nation seemed to veer to the right led by President Reagan.

As early as 1974 it had become clear that even while most opponents of decriminalization agreed that marihuana users should not be imprisoned, they preferred de facto decriminalization and "a minimum penalty . . . to make it clear to young people that society . . . does not approve of [marihuana] use" (Himmelstein 1983:105). The problem with decriminalization as a solution to these practical problems, as Ronald Reagan had said while he was still governor of California, was that it indicated that marihuana was not really a dangerous drug. Since the consequences of marihuana decriminalization were primarily symbolic, another type of symbolic policy was seen as the required response. Both Edelman (1964) and Chambliss (1979) argue that symbolic law is often a vehicle for such a resolution of conflicting political and economic needs. De facto decriminalization offered an ideal resolution of this additional conflict that developed as a consequence of the decriminalization laws themselves. In the final analysis the real differences for law enforcement and, for most marihuana users, in the consequences of de facto versus de jure decriminalization are not that great. De facto decriminalization is an effective means of reducing the moral dissonance inherent in the arrest of high-status individuals while still retaining the presence of criminal penalties. Since law enforcement has only finite resources, if legislatures refuse to set law enforcement priorities, police will do it for them. Legislators are seldom interested in taking political risks. Thus the obvious symbolic advantages of de facto decriminalization tip the balance.

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