

Seeing through the Smoke: The Origins of Marijuana
Prohibition in the United States

by

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A note on sources: Much of the third and fourth chapters of this thesis rely on speeches, articles, and correspondence located among the Harry J. Anslinger Papers in the Special Collections Library at The Pennsylvania State University. The library sorts the various materials into files within boxes, which, in addition to any relevant author, title and date, is the primary method by which they are cited. Scans of all cited documents are available electronically by request.

A note on spelling: The early history of marijuana involved a number of different words and spellings for the same drug. In this thesis, unless quoting or directly referencing a source, I use the modern spelling, marijuana, in place of spellings like marihuana, mariahuana, marahuana, and mariguana and in place of words like cannabis, Indian hemp, loco weed and others.

*In memory of the millions of men and women swept up in the drug "menace."
May progress be swift and just.*

Introduction

How Did We Get Here?

The “war” on drugs may have begun under President Richard Nixon, but the first battles began many decades earlier, in the halls of state legislatures and conference rooms in Shanghai.¹ However, despite more than a century of effort and billions of dollars spent, drug control in the United States has done little to “defeat” the problem of drugs in American society. This is particularly true of marijuana. In 2013, close to 700,000 people were arrested for marijuana crimes and close to 90 percent of those arrests were for possession.² Yet, while marijuana arrest rates skyrocketed in the 2000s, use did too. In 2013, 19.8 million Americans—7.5 percent of the population aged twelve or older—were past-month marijuana users, a rate higher than those of the previous ten years.³

These statistics prompt the elementary, but surprisingly complicated question that motivates this thesis: how did we get here? How did marijuana, the most widely used illegal drug in America, come to be demonized? When and how did it become equated with drugs like heroin and deemed more dangerous than drugs like cocaine, opium, and morphine?⁴ I began my quest for that answer by

¹ The International Opium Commission met in Shanghai in 1909 and was the impetus for the first federal prohibition of a drug (smoking opium) in American history. See David T. Courtwright, *Dark Paradise: A History of Opiate Addiction in America* (Cambridge: Harvard University Press, 2001), 81.

² Federal Bureau of Investigations, “Crime in the United States 2013.” <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/persons-arrested/persons-arrested>

³ Substance Abuse and Mental Health Services Administration, *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-48, HHS Publication No. (SMA) 14-4863. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.

⁴ See *Controlled Substances Act*, Public Law 91-513, Title 2, *U.S. Statutes at Large* 84 (1970).

researching the “War on Drugs” between the late 1960s and the 1980s, not realizing that, by that time, the marijuana consensus had already begun to crumble. Instead, I had to return to the early history. While contemporary American marijuana policy is rightly deemed punitive, compared to the 1950s, when possession of any quantity of marijuana merited a mandatory prison term of two to five years, twenty-first century drug enforcement seems practically enlightened.⁵ Again, I wondered: where, when and how did the logic—or, perhaps, the illogic—of marijuana prohibition develop?

As it turned out, that development was quite rapid. Just a few decades before the extreme punitiveness of the 1950s, marijuana—then known almost exclusively as cannabis—was available over the counter in tinctures and other remedies. Though used only minimally by the twentieth century, cannabis inspired little concern among pharmacists or doctors, unlike opiates and cocaine, the dangers of which became obvious to the medical community around the end of the nineteenth century. What disrupted that uneventful status quo was the arrival of Mexican immigrants to the southwestern and western United States in large numbers beginning in the early 1900s and continuing until about 1930. These immigrants, who were mostly laborers, brought with them a habit of lower-class Mexicans: the smoking of marijuana. Although marijuana was not an issue of great concern in most western and southwestern states, it was

⁵ Richard J. Bonnie and Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* (Charlottesville: University Press of Virginia, 1974), 210.

quickly identified as a Mexican drug and associated with violence, inciting prohibition in most states west of the Mississippi by 1930.

In New Orleans, the epicenter of what one local physician called the marijuana “menace,” the drug was brought in by sailors coming from the Caribbean.⁶ New Orleans was the only place where any real discussion of marijuana took place in those formative years. In most of the southwest, it was banned with little discussion and even less attention. In New Orleans, though, the rise of marijuana use coincided with a crime wave. A violent image of marijuana as a developer of psychopathic criminals emerged.⁷ That notion, though pseudo-scientific at best, persisted.

In fact, it reached high places in the federal drug enforcement bureaucracy. When Harry J. Anslinger took control of the newly-formed Federal Bureau of Narcotics in 1930, he quickly bought into the idea of marijuana as a violent, insanity-producing drug. Anslinger, the Commissioner of the Bureau for thirty-two years, is easily the most important character in this story. Due to constitutional and budgetary constraints, he believed the most effective way to achieve marijuana prohibition was at the state level. Though Anslinger initially accepted a compromise with the medical establishment to leave marijuana out of a model anti-drug law he helped design, when states failed to heed the call, his strategy changed.

⁶ A. E. Fossier, “The Marihuana Menace,” *New Orleans Medical and Surgical Journal*, 84 (1931): 247-52.

⁷ Eugene Stanley, “Marihuana as a Developer of Criminals,” *The American Journal of Political Science*, 2 (1931): 252-61.

Starting at the end of 1934, Anslinger vigorously employed the image of the marijuana menace in his campaign to encourage states to adopt the uniform law. Though he intended to encourage states to pass the law (and they did), his strategy may have worked a little too well. Although he was reticent to push for federal prohibition, Anslinger's campaign created a feedback loop, and states demanded federal action. In the summer of 1937, the states got their wish and the Marijuana Tax Act was enacted.

This thesis aims to integrate a number of perspectives into a detailed recounting of the above history. First is the consideration of what sociologist Jerome Himmelstein calls "social locus," that is, the relationship between the demographics of a drug's users and the legal and cultural status of that drug.⁸ The initial criminalization of opiates and cocaine, for example, closely tracked the shifting user bases of those drugs, from upper class women to lower class men in inner cities. The same seems generally true of marijuana prohibitions at the state level, although it was certainly not uniform. As marijuana became identified with Mexicans, and lower class, laboring Mexican immigrants more specifically, the perceived characteristics of those users, like tendencies toward violence, were attributed to the drug itself. From a social locus perspective, drugs, often associated with lower class laborers and inner city criminals, serve as a scapegoat for the negative behavior of the drug's users and of broader societal problems. Though this thesis is restricted to the origins of prohibition and thus ends in 1937, it is worth noting that penalties for marijuana were

⁸ Jerome L. Himmelstein, *The Strange Career of Marihuana: Politics and Ideology of Drug Control in America* (Westport: Greenwood Press, 1983), 13.

drastically reduced after white, upper middle class college students began using the drug in large numbers in the 1960s and politicians could see that the negative behavior associated with the drug did not translate when their children became users.⁹

Aside from marijuana's users, this thesis also spends a significant amount of time detailing the actions and motivations of particular individuals who shaped early drug policy. There are, of course, structural arguments that are made; the ensuing history addresses macro issues like the constitutional separation of powers in federalism, the role of international relations, and the effects of the Great Depression on bureaucracy. Still, the historical origins of marijuana prohibition suggest that individuals can significantly shape policy. This was particularly true in this period of American history because of the uncrystallized nature of marijuana policy. When there was little knowledge of marijuana and even less attention to it, one loud voice could (and did) have a meaningful impact on the drug's definition.

The early anti-drug activists and politicians in places like Texas and New Orleans, for example, painted a lurid picture of marijuana that stuck for decades. Federal officials involved early in the process, like Congressman Porter of Pennsylvania, classified marijuana as a "habit-forming narcotic" in federal legislation. This definition arose not because there was actual evidence that marijuana was habit-forming or that it was a narcotic—technically, a drug that dulls and can produce unconsciousness in larger doses—but because, as a

⁹ Ibid., 30-32.

powerful member of Congress, he wrote the bill and shepherded it through committee. That marijuana in the 1950s would continue to be lumped together with drugs like heroin and cocaine is likely a product of Porter's original power to define.

Porter was also the sponsor of the bill—known, appropriately, as the Porter Act—that created the Federal Bureau of Narcotics, which Harry Anslinger came to lead. Anslinger shaped drug policy more than any of his contemporaries, and one could argue, more than any other individual since. With an unparalleled thirty-two years as Commissioner of the FBN, Anslinger oversaw significant developments in federal drug control. This is especially true of marijuana, which, unlike opiates and cocaine, was federally unregulated before Anslinger's tenure. Anslinger was thus presented (and took) the opportunity to define, almost singlehandedly, a national image of marijuana. Anslinger's personal and professional papers, housed at the Pennsylvania State University, are of great use in analyzing Anslinger's motivations and thinking toward marijuana. Combined with the other history, they provide a nuanced view of a man who has been often written about in extreme terms.¹⁰ What emerges is the picture of a "true believer" in the fight against drug use, but not one so blinded by ideology that politics fell by the wayside. Anslinger was an idealist, but also a pragmatic politician who understood that he had to maintain his office if he was to achieve his goals.

¹⁰ See, for example Larry Sloman, *Reefer Madness: The History of Marijuana in America* (Indianapolis: The Bobbs-Merrill Company, Inc, 1979), whose author seems to take pleasure in excoriating Anslinger.

A third theme that emerges in this study of marijuana prohibition's origins has to do with attention to fact, or lack thereof. There were, in the course of the early drug debate, and the marijuana debate more specifically, a huge number of supposed "facts" that shaped how marijuana was perceived. And, tied to the idea of powerful individuals, those "facts" came to be defined not primarily by scientists or medical professionals, but by activists and politicians. Individuals like Anslinger were able to use anecdotes—sometimes mythological—to perpetuate a particular image of marijuana. Anslinger had agents forward him information about ghastly crimes allegedly linked to marijuana use and he later deployed those stories in interviews, editorials and Congressional testimony. The use of anecdote as fact was a defining feature of the early period in marijuana's American history.

In other cases, the "facts" in question related to physiology. Though one would think physical effects would be a place for objective science, as Erich Goode points out, "society has constructed the social concept 'drug' in such a way that it excludes elements which are substantially identical to those it includes."¹¹ Take the modern phrase "alcohol and drugs," for example, which seems to separate alcohol from all other drugs, despite alcohol's well-documented intoxicating effects. This obscuring of physiological "fact" applies particularly to acts of marijuana definition, like Porter's, which classified the drug as a narcotic. The term narcotic, as Goode emphasizes, was abstracted away from its pharmacological definition (drugs that are pain-killing), to its cultural

¹¹ Erich Goode, *The Marijuana Smokers* (New York: Basic Books, Inc., 1970), 53.

definition, “bad.” Indeed, it became like code “for unprovable assumptions about the drug’s properties, the moral nature of its use, and the character of its clientele.”¹² When Porter or Anslinger called marijuana a narcotic, it was to refer to the drug as a member of a class of illegal, condemnable drugs, as opposed to a class of drugs with similar physiological effects.

Finally, the role of fact is particularly interesting with regard to two studies, the Indian Hemp Commission Report, conducted in India by the British government in the late 1800s, and the Panama Canal Zone study, which took place in the 1920s and was administered by the United States army. Both studies had similar conclusions, which are discussed in the ensuing chapters. In short, they found that marijuana was not nearly as addicting or dangerous or criminogenic as popular mythology had suggested. How these studies were interpreted by American anti-drug activists and politicians, however, is the intriguing part of the story. In New Orleans, all of the published articles condemning marijuana as a violence and insanity-inducing drug directly cited the Indian Hemp Commission Report. One went so far as to praise its scientific validity and suggest it be emulated in the United States!¹³ And yet, their published “findings” about the effects of marijuana—based, essentially, on anecdote and the myth of a group of hashish-addled assassins in the eleventh century—made no reference to the fact that they completely diverged from those of the Indian Hemp Commission.

¹² Ibid., 64-65.

¹³ Frank R. Gomila and Madeline Gomila Lambou, “Present Status of the Marihuana Vice in the United States,” in *Marihuana: America’s New Drug Problem* ed. Robert P. Walton (Philadelphia: J. B. Lippincott Company, 1938), 28.

Anslinger, too, had read and considered the Indian Hemp Commission and the Panama Canal Zone study. On a note card in his papers, he typed up his interpretation of the Indian Hemp Commission's findings, which were drastically different than what the Commission itself suggested its findings were. While Anslinger seemed to highlight only the most severe reactions from the most indulgent users, the Commission wrote that most people used marijuana moderately and experienced no severely negative effects.¹⁴ His notes on the Panama Canal Zone study were terse. He wrote simply that it was "evident that the Panama Board did not have the proper evidence at its disposal when it reached its conclusion."¹⁵ Instead of grappling with facts that challenged his presuppositions, Anslinger either reversed or dismissed them. That, it seems, was the power of being the most influential drug control bureaucrat in the nation. The empirical truth of a given "fact" mattered far less than the power to decide what the facts were and how they would be presented.

These three factors—social locus, powerful actors, and the malleability of fact—together illuminate much about the development of marijuana prohibition in the United States. Because the question of marijuana was uncrystallized in the early twentieth century, the sudden immigration of hundreds of thousands of Mexicans, who brought their practice of smoking the drug, quickly overwhelmed the old image of cannabis as a harmless remedy sold at the local drug store. And

¹⁴ Harry J. Anslinger, "Effects," Undated. Anslinger Papers, Box 9, File 24; Report of the Indian Hemp Drugs Commission 1893-94, Vol. 1, pg. 263-64, cited in Tod H. Mikuriya. "Physical, Mental, and Moral Effects of Marijuana: The Indian Hemp Drugs Commission Report," *The International Journal of the Addictions*, 3 (1968): 269-270.

¹⁵ "Panama," Anslinger Papers Box 9, File 51.

it was not moral panic springing from the citizenry or the media that caused that reevaluation. It was, instead, driven by politicians in the southwest who reflexively reacted to stereotype and racial fear. It was driven by the cries (and publications) of concerned activists in public health and law enforcement, like in New Orleans, that gave the drug its killer image. Finally, it was driven by Harry Anslinger, who used the image of the marijuana menace to entice states to adopt a uniform narcotic law and ultimately brought that menace to the halls of Congress. That trajectory is told in four parts.

Chapter one details early state and federal attempts at drug control. It documents rising concern over cocaine and opiate addiction around the turn of twentieth century, caused largely by doctors who overused habit-forming drugs in the mid-to-late 1800s. Those fears, in conjunction with international pressures, produced the 1914 Harrison Narcotics Tax Act, the first major federal anti-drug law. The Act, enforced by zealous agents in the Department of the Treasury, was ultimately a prohibition on non-medical use of regulated drugs, though marijuana did not make the list. The Harrison Act set the stage, both ideologically and practically, for federal control of marijuana.

Chapter two focuses on early marijuana prohibitions at the state level. It discusses the surge of Mexican immigration and resultant reactions to (and against) marijuana in the west and southwest. It also pays heed to prohibitions in California and in the northeast, which were not racial or fear-based reactions, but were put into place as a preventative public health measure by politicians and bureaucrats who feared the spread of dangerous intoxicants. In New

Orleans, a city already burdened with drug addiction and crime, the arrival of marijuana in the 1920s created more real public concern than anywhere else in the first several decades of the twentieth century. That led to an influential image of marijuana as a pernicious menace.

Chapter three concerns early federal legislation related to drug control as well as the development of the Uniform State Narcotic Drug Act, a model state law developed to close loopholes between various state narcotic laws, finalized in 1932. The 1929 Narcotic Farm Act, written by Congressman Porter, created prison-like hospitals for drug addicts to reduce overcrowding in the federal system, and, at the same time, defined marijuana as a “habit-forming narcotic.” In that same year, the Narcotics Division of the Treasury Department opposed a plan to add marijuana to the Harrison Act due to constitutional concerns. As the Federal Bureau of Narcotics was created to replace the Narcotics Division, and Harry Anslinger took charge of the federal drug bureaucracy, that opposition to federal prohibition remained. Anslinger instead attempted to include marijuana in the Uniform Narcotic Act, which he helped to draft, but he backed down after strong opposition to the proposal by the pharmaceutical and medical industries. Though Anslinger and the FBN actively lobbied states in support of the Uniform Act, he had little luck in his first two years.

Finally, chapter four discusses the pinnacle of this early history: the passage of the Marijuana Tax Act in 1937. It first delves into the Bureau’s evolution on marijuana and traces it back to Anslinger’s positions on the issue. It concludes that Anslinger had been documenting the marijuana menace for

several years before he decided to unleash it in late 1934 as a way to convince states to adopt the Uniform Narcotic Act. It shows that, contrary to some scholarly opinion, Anslinger was not attempting to encourage a federal law and indeed actually opposed the idea, but was overruled by his superiors when his campaign engendered too much fear of the marijuana menace. The chapter concludes by tracing the development of the Tax Act and synthesizing various theories of the motivations behind its enactment.

The following chapters, in sum, present a detailed account of how and why marijuana prohibition at the federal level emerged. As a whole, they reveal the lasting importance of how powerful actors initially defined drugs; those definitions had a way of persisting through time. They suggest that, while racism likely prompted prohibition in the southwest, national prohibition was ultimately a triumph of bureaucratic initiative. Though the law was perhaps based around a violent image of marijuana that had its roots in prejudice, it was not put into place as a direct result of racial animus, as some have suggested. American marijuana prohibition, finally, is a testament to how bureaucratic reach can widen over time. At the time of the Marijuana Tax Act, Harry Anslinger could not have imagined that, seventy-five years later, police would arrest hundreds of thousands of marijuana users every year. Though, as his record shows, he would hardly have objected.

Chapter One

The Harrison Act and the Road to Prohibition

While drug use and addiction were widespread in the late 1800s, it took until the second decade of the twentieth century for the federal government to produce significant anti-drug legislation. That legislation, the Harrison Narcotics Tax Act of 1914, spurred on by international anti-opium efforts, served as the constitutional and intellectual foundation of American drug legislation for the next five decades. It created, in the Treasury Department, a Narcotics Division that grew substantially over time and came to have significant power in defining drug law. Through the Department's enforcement efforts, the concept of addiction maintenance, hitherto an accepted medical practice, was delegitimized and criminal punishment favored in its stead. As the precursor to federal marijuana prohibition, the adoption of the Harrison Act and its enforcement is crucial to understanding the trajectory of drug control in the United States.

Drugs at the Turn of the Century

When the twentieth century began, federal regulation of now-illicit drugs in the United States was essentially nonexistent. Besides moderate tariffs on imported opium, the federal government left regulation of drug sales and use to the states.¹ That is not to suggest that drugs had little role in American life. On the contrary, rates of drug addiction in the post-Civil-War nineteenth century

¹ David F. Musto, *The American Disease: Origins of Narcotic Control* (New Haven: Yale University Press, 1973), 9.

were very high.² Most of this addiction was iatrogenic, that is, inadvertently precipitated by physicians. The development of the hypodermic syringe in the 1850s and its subsequent use during the Civil War and afterwards contributed to a precipitous rise in morphine addiction. Morphine—which before the invention of syringes had to be administered orally and had unpleasant side effects—became “a virtual panacea” for doctors who had no other solution for suffering patients.³ In the late 1800s, cocaine came into use as well, particularly by Southern blacks who first used the drug to provide energy for long stretches of arduous physical labor.⁴

Around the same time, so-called “patent medicines” were trademarked and aggressively marketed by entrepreneurial pharmaceutical companies.⁵ Consumers could (and in reasonably large numbers, did) purchase patent medicines containing morphine, cocaine, alcohol, and (less commonly) cannabis at local stores without a doctor’s prescription.⁶ Given the unregulated nature of these proprietary concoctions, which were taken as cures to a variety of common ailments, people became habitual users without ever knowing the chemical contents of the medicines they were ingesting.⁷ These patent medicines

² Troy Duster, *The Legislation of Morality: Law, Drugs, and Moral Judgment* (New York: The Free Press, 1970), 8.

³ David T. Courtwright, *Dark Paradise: A History of Opiate Addiction in America* (Cambridge: Harvard University Press, 2001), 42-46.

⁴ *Ibid.*, 94-95.

⁵ Joseph F. Spillane, “The Road to the Harrison Narcotics Act: Drugs and Their Control, 1875-1918,” in *Federal Drug Control: The Evolution of Policy and Practice*, eds. Jonathon Erlen Joseph F. Spillane (New York: Pharmaceutical Products Press, 2004), 3-4.

⁶ Musto, *American Disease*, 3.

⁷ Richard J. Bonnie and Charles H. Whitebread II, *The Marihuana Conviction: A History of Marihuana Prohibition in the United States* (Charlottesville: University Press of Virginia, 1974), 8.

were mainly used by the poor, however, and as compared to iatrogenic addiction, they contributed less to nationwide rates of addiction.⁸

At the same time, the United States was undergoing significant social changes. In response to large-scale urbanization, industrialization and immigration, groups of concerned citizen reformers, calling themselves Progressives, demanded that all levels of government pass legislation to “protect the moral fiber of the nation.”⁹ While Progressivism’s concerns were numerous—political corruption, corporate conglomeration, prostitution, and child labor, to name a few—use of intoxicants was high on the list.¹⁰ To Progressives, drug use, and the marketing of drugs by pharmaceutical companies to children, immigrants and other unsuspecting users, warranted reform not just for health reasons, but also because they represented a dire threat to public morality.¹¹

Inspired by Progressive concerns, a temperance movement developed to fight the spread of intoxicants. While the prohibition of alcohol in 1919 may be its best-remembered achievement, the prohibition of other drugs has been its longest lasting legacy. The first major step in the establishment of a national drug control apparatus was the Pure Food and Drug Act of 1906, through which the federal government required producers to label patent medicines that contained so-called “dangerous substances.” These included alcohol, opiates, cocaine, and cannabis, the name for the genus of plant from which marijuana is

⁸ Courtwright, *Dark Paradise*, 56.

⁹ Bonnie and Whitebread, *Marihuana Conviction*, 10-11.

¹⁰ *Ibid.*, 12.

¹¹ *Ibid.*, 13.

derived.¹² The Act was quite successful; after it passed, a number of drug manufacturers eliminated opiates and cocaine from their medicines because consumers feared buying products that included them.¹³

While fairly viewed as a modest step toward greater consumer awareness, the Pure Food and Drug Act also began a century-long battle to restrict the ability of individuals to self-regulate the substances they consumed, ultimately relying on criminal measures to enforce drug prohibition. The Act's major historical relevance for drug control may be that it failed to differentiate between drugs. In determining all drugs equally deserving of a warning label, the Act set into motion a trend of thinking of "drugs" as a group as opposed to individual substances. Indeed, for all the drugs besides alcohol, the Act's conflation stuck. Over the next several decades, marijuana would be continually lumped together with opiates and cocaine as a "narcotic."

Though opiates and cocaine were both targeted by some state and local measures prior to 1906, the Pure Food and Drug Act was the first piece of legislation in the United States to regulate intoxicants and served as the launching point for the systemic governmental control of drugs that characterizes the system today.¹⁴ For marijuana in particular, the Act began a thirty-year process of redefinition, morphing it from "an herbal and legal remedy

¹² Musto, *American Disease*, 216.

¹³ Courtwright, *Dark Paradise*, 58.

¹⁴ Martin A. Lee, *Smoke Signals: A Social History of Marijuana—Medical, Recreational, and Scientific* (New York: Scribner, 2012), 41.

to a deviant and harmful drug.”¹⁵ It took nine full decades for the first state to reverse that redefinition, which California began to do when it passed legalized marijuana for medical use in 1996.

The Development of the Harrison Narcotics Tax Act

Drug control at the state level expanded rapidly in the first decades of the twentieth century, although enforcement was sporadic.¹⁶ By the late 1800s physicians and some pharmacists began to realize the dangers of overusing drugs like morphine and cocaine and supported laws limiting their availability only to patients with prescriptions.¹⁷ By 1914, almost every state had laws prohibiting cocaine without a doctor’s prescription, and a majority had similar laws with regard to opium.¹⁸

At the federal level, policy developed more slowly. When the United States took control of the Philippines in 1898 after the Spanish-American War, it also inherited a substantial number of Chinese residents on the island who smoked opium. After much debate, Congress outlawed non-medical importation of opium in the Philippines in 1905.¹⁹ That same year, in China, which had a large opium problem, merchants organized a boycott of American imports in response to the legalized and institutionalized discrimination and harassment

¹⁵ Jeffrey Matthew London, *How the Use of Marijuana Was Criminalized and Medicalized, 1906-2004: A Foucaultian History of Legislation in America* (Lewiston: The Edwin Mellen Press, 2009), 55.

¹⁶ Musto, *American Disease*, 9.

¹⁷ Courtwright, *Dark Paradise*, 52.

¹⁸ Spillane, “Road to the Harrison Narcotics Act,” 11.

¹⁹ Courtwright, *Dark Paradise*, 79-80.

faced by Chinese immigrants in America.²⁰ The Episcopal Bishop of the Philippines, Charles Brent, suggested that the United States might organize an international meeting to help China combat its opium problem. President Roosevelt, seeing the meeting as an opportunity to engender good will and improve trade relations, agreed.²¹

Before the International Opium Commission convened in Shanghai in 1909, the State Department's delegates, Bishop Brent, Charles Tenney—a diplomat to China—and Dr. Hamilton Wright, a physician and scientist who would come to be a foundational figure in early American drug control efforts, researched the issues.²² Wright, who was assigned to study the domestic opium situation, realized that the United States would appear hypocritical if it went to an international conference on opium control without any domestic anti-opium legislation.²³ In order to demonstrate America's international leadership, Congress, at the urging of the State Department, passed the Smoking Opium Exclusion Act, prohibiting importation and use of opium for non-medical purposes, which meant a ban on smoking opium.²⁴

At the Shanghai Commission, nations adopted resolutions about the problems with opium, but as a Commission and not a conference, nothing was binding. Wright lobbied hard for an international opium conference, which, after

²⁰ Marcus Aurin, "Chasing the Dragon: The Cultural Metamorphosis of Opium in the United States, 1825-1935," *Medical Anthropology Quarterly*, 14 (2000): 430.

²¹ *Ibid.*, 430-31.

²² *Ibid.*, 431.

²³ Courtwright, *Dark Paradise*, 80-81.

²⁴ *Ibid.*, 81.

two years of additional delay, took place at The Hague on December 1, 1911.²⁵ The International Opium Convention signed on January 23, 1912, established rules for international narcotic traffic, but also included a pledge to enact domestic controls over opium, morphine, heroin and cocaine and to prohibit non-medical use.²⁶ Wright believed the convention would force Congress to finally enact meaningful domestic drug control.²⁷

For the two years preceding the 1911 Opium Conference, Commissioner Wright had been lobbying Congress to pass anti-drug legislation. The first such attempt was in 1910, shortly after the Shanghai Commission. Drafted by Wright and introduced by Representative David Foster of Vermont, the 1910 Foster Bill attempted to regulate a broad range of drugs, including opiates, cocaine, and cannabis. The law required tax stamps and detailed record keeping for every sale, with severe penalties for noncompliance, perhaps in an effort to eliminate the drug trade by making it “more troublesome than profitable.”²⁸ To encourage Congress to pass the bill, Wright submitted a *Report on the International Opium Commission*, which made American opium use seem greater than it was. Though drug wholesalers had told Wright that opium use had declined in the first decade of the twentieth century, he obscured the numbers by presenting a fifty-year trend. Wright’s reported a 351 percent increase in opium use against a 133

²⁵ Ibid., 100.

²⁶ Ibid., 101.

²⁷ Ibid.

²⁸ Musto, *American Disease*, 41-42.

percent increase in the population, which Wright said spoke “louder than words,” despite opium imports actually having peaked in the late 1800s.²⁹

Not surprisingly, those with a material stake in the matter virulently opposed such onerous restrictions. A representative of the National Wholesale Druggists Association argued that the law was too broad and that the inclusion of cannabis was not necessary because it was not a “habit-forming drug.”³⁰ Wright, a believer in the hydraulic model of drug use, thought that stricter controls on opium and cocaine would prompt users to switch to cannabis.³¹ One representative of a pharmaceutical company attributed the negative image of cannabis to fictional literature, as opposed to reality, where cannabis was used primarily in “corn cures and in veterinary practice.”³² Overall, the drug industry groups saw the Foster Bill as an attack on an honest industry.³³ While the bill’s opponents were too strong and the bill died in committee in 1911, Wright’s report on opium addiction did not. It lived on through media reports and editorials and was cited in later Congressional hearings on drug control.³⁴

Wright, for his part, did not give up. The next year, after Congressman Foster died, Wright found a new partner in the anti-narcotics fight, New York Congressman Francis Burton Harrison, who in 1912 introduced a bill essentially identical to the Foster bill of the year before.³⁵ Sensing the inevitability of some

²⁹ Courtwright, *Dark Paradise*, 29.

³⁰ Musto, *American Disease*, 44-47.

³¹ David F. Musto, “The 1937 Marijuana Tax Act,” in *Marijuana: Medical Papers 1839-1972* ed. Tod H. Mikuriya (Oakland: Medi-Comp Press, 1973), 420.

³² *Ibid.*

³³ Musto, *American Disease*, 44-47.

³⁴ Courtwright, *Dark Paradise*, 29.

³⁵ Musto, *American Disease*, 54.

kind of government regulation, the various interests involved in the drug trade founded the National Drug Trade Conference (NDTC) in 1913. All of the group's component members—the Association of Pharmaceutical Chemists, the National Association of Medicinal Products, the National Association of Retail Druggists and the National Wholesale Druggists' Association—opposed the Harrison bill.³⁶ After two failed attempts to get a bill out of committee and a hot-tempered meeting between Wright, Harrison, and the NDTC, Harrison put the onus on Wright to work out a compromise he could shepherd through Congress.³⁷

That compromise, agreed upon in 1913, simplified the record-keeping mandate, allowed patent medicines with certain amounts of restricted substances, and limited taxation.³⁸ Notably, this compromise also removed cannabis from the purview of the law. Although Wright wanted cannabis regulated, the drug industry “vehemently protested, contending that cannabis was an insignificant medicine which had no place in antinarcotics legislation.”³⁹ Evidently, Wright believed that appeasement in return for drug industry support, was worthwhile, which is logical considering the lack of public concern over (or even knowledge of) cannabis at the time.⁴⁰ After disagreements between the House and Senate over the amount of heroin that should be accepted in patent medicines, Congress passed the Harrison Narcotics Tax Act

³⁶ Ibid., 54-55.

³⁷ Ibid., 55.

³⁸ Ibid. 59-60.

³⁹ Bonnie and Whitebread, *Marihuana Conviction*, 48.

⁴⁰ Jerome L. Himmelstein, *The Strange Career of Marihuana: Politics and Ideology of Drug Control in America* (Westport: Greenwood Press, 1983), 22-23.

and President Woodrow Wilson signed it into law in December 1914.⁴¹ Federal action was copied by the states; those without laws drafted them, and those with laws strengthened penalties.⁴²

As the legislation that set the course for a century of drug prohibition in the United States, the foundations of the Harrison Act warrant further attention. The final law required that anyone who produced, imported, manufactured, distributed or sold narcotics would be required to register with the Bureau of Internal Revenue and pay a yearly tax of one dollar.⁴³ Furthermore, only a doctor could prescribe the regulated drugs “in the course of his professional practice only” and pharmacists could only dispense drugs with a valid prescription.⁴⁴ It made possession of the restricted drugs without registration “presumptive evidence of a violation” of the Act, unless one could provide proof that the drugs had been “prescribed in good faith by a physician.”⁴⁵ Violations would incur a fine of up to two thousand dollars and imprisonment for up to five years.⁴⁶

Constitutional Creativity

Perhaps the most important (and controversial) legacy of the Harrison Act is its constitutional foundation: the power of taxation. While from a contemporary standpoint, the federal government’s ability to control a broad swath of activities through the interstate commerce clause is clear, in 1914, a nationwide ban on drugs was presumed unconstitutional. The Court’s narrow

⁴¹ Musto, *American Disease*, 61.

⁴² Kenneth J. Meier, *The Politics of Sin: Drugs, Alcohol, and Public Policy* (Armonk, New York: ME. Sharpe, 1994), 30.

⁴³ *Harrison Narcotics Tax Act*, Public Law 223, Chap 1, *U.S. Statutes at Large* 38 (1914): 785.

⁴⁴ *Ibid.*, 786.

⁴⁵ *Ibid.*, 789.

⁴⁶ *Ibid.*

reading of the commerce clause and the fact that most drug transactions did not cross state boundaries gave the federal government little justification for control.⁴⁷ The taxing power was an innovative ploy on Congress's part. Given the severely limited class of individuals who could prescribe and dispense drugs under the Harrison Act (and therefore actually pay the tax), legal scholar William Stuntz calls the law "a ruse," arguing that "the tax was a fig leaf—not a means of raising money but a cover for a bill that barred drug dealers, sellers of patent medicine, and most pharmacies from distributing opium and cocaine, and forbade doctors to do so absent medical necessity."⁴⁸

That ruse produced bizarre results. For the next fifty-four years, until reorganization in 1968, American drug enforcement was housed not in the Department of Justice, but in the Department of the Treasury. Employees of the Treasury decided questions of public health, of science, and of the proper enforcement of drug law. In other industrialized nations, drug use is considered a problem of health, not of crime. But from the outset, the federal approach to drugs in America has been to criminalize and enforce vigorously. The early decisions by Treasury Department officials have much to do with that legacy.

As a revenue measure, at least on its face, the Harrison Act created a Narcotics Division in the Bureau of Internal Revenue within the Treasury Department that was tasked with enforcement of the law. The month after the Act was signed into law, the Treasury Department announced its enforcement

⁴⁷ William Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Harvard University Press, 2011), 175.

⁴⁸ *Ibid.*, 175-176.

protocol. It stated that consumers would not be able to register and could “only obtain a supply of such drugs through a duly registered physician,” and clarified that a prescription intended to maintain a patient’s addiction would be not be valid, barring a then-common practice.⁴⁹ Essentially, the Treasury Department declared addiction maintenance illegal.⁵⁰ That decision by officials in the Treasury Department was monumentally important and reveals the power of bureaucrats within the drug control apparatus. Nowhere in the text of the Harrison Act are “addicts” mentioned, yet Narcotics Division agents would go on to arrest thousands of them.

While it did actually collect some revenue from the Harrison Act (close to four million dollars between fines and tax collections in its first five years), Treasury’s revenue role was eclipsed in importance by its criminal enforcement role.⁵¹ In the fifteen years after enactment, thousands of doctors and pharmacists and tens of thousands of addicts were arrested and convicted for serious violations of the Harrison Act. These arrests were not inconsequential; by 1928, close to a third of federal prisoners were serving time for Harrison Act violations.⁵²

Challenges to Harrison Act, 1916-1928

As might be expected, this new federal role in drug enforcement, far beyond what the drug and medical industries anticipated during negotiations with Wright, was not accepted without pushback. The first challenge to the

⁴⁹ Treasury Decision 2172, quoted in Musto, *American Disease*, 122.

⁵⁰ Meier, *Politics of Sin*, 25.

⁵¹ *Ibid.*, 28.

⁵² *Ibid.*, 30.

Treasury Department's interpretation to reach the Supreme Court was the 1916 case of *Dr. Jin Fuey Moy*, who was accused of prescribing morphine to an unregistered addict, Willie Martin.⁵³ However, because the government claimed the prescription was not made "in good faith...for medicinal purposes, but for the use of supplying one addicted to the use of opium," the possession itself was prohibited.⁵⁴ By a 7-2 vote, the Supreme Court held that as a revenue measure, the Harrison Act could only tax those it had explicitly stated it was regulating—producers, importers, manufacturers, dealers, and distributors—not mere possessors. The Court held that, "Only words from which there is no escape could warrant the conclusion that Congress meant to strain its powers almost if not quite to the breaking point in order to make the probably very large proportion of citizens who have some preparation of opium in their possession criminal or at least prima facie criminal," and that although a moral end could be assumed, it had to be reached "within the limits of the revenue measure."⁵⁵ In other words, criminalizing possession was unconstitutional, a major blow to Treasury enforcers.

The Treasury Department responded by forming a special narcotics committee in 1918, which recommended amending the Harrison Act to strengthen its control over drug use.⁵⁶ The committee's chairman, Representative Henry Rainey of Illinois, successfully added a one-cent per ounce tax to all narcotics in 1919, getting around the Supreme Court's decision by

⁵³ *U.S. v. Jin Fuey Moy*, 241 U.S. 394 (1916)

⁵⁴ *Ibid.*, 399.

⁵⁵ *Ibid.*, 402.

⁵⁶ Musto, *American Disease*, 135.

making possession of narcotics without a tax stamp or a valid prescription “prima facie evidence of illegal possession.”⁵⁷

By 1919, the constitutionality of the entire Act was called into question. In *United States v. Doremus*, a doctor was accused of knowingly prescribing heroin to an addict.⁵⁸ In a 5-4 decision, the Court stated that unless Congress attempted to “exert authority wholly reserved to the states,” legislation that had a “reasonable relation” to Congressional authority over taxation was constitutional, even if it had other motives as well.⁵⁹ It held that the Harrison Act’s restrictions were reasonably related to revenue because “they tend to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax imposed by the federal law” and that large prescriptions to an addict might be sold to others without proper revenue collection.⁶⁰ Essentially, the Court held that the regulations would have to have no relation to taxation whatsoever to be deemed unconstitutional.

In *Doremus*, the Court blessed Wright and Harrison’s ruse. Unless the Act could be shown to “have nothing to do with facilitating the collection of the revenue,” the Court said it could not declare it unconstitutional.⁶¹ The message for future drug control was clear; so long as Congress hides its exercise of police power behind a revenue shield, the Court would not object. Not surprisingly, that

⁵⁷ *Ibid.*, 136.

⁵⁸ *U.S. v. Doremus*, 249 U.S. 86 (1919)

⁵⁹ *Ibid.*, 93.

⁶⁰ *Ibid.*, 94.

⁶¹ *Ibid.*, 95.

was exactly the tactic used by the Narcotics Division and, later, the Federal Bureau of Narcotics.

In a decision announced the same day as *Doremus, Webb v. United States*, the Court addressed whether addiction maintenance by doctors was considered a proper objective for a prescription issued as a part of “professional practice.”⁶² The defendant, Dr. Webb, essentially prescribed morphine to anyone who requested it for fifty cents—four thousand times in the eleven months before he was arrested. He was, by any reasonable interpretation, a doctor selling prescriptions. The Court, in a 5–4 decision, held simply that “to call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required.”⁶³

As Rufus King points out, the question the Court answered—whether “providing the user with morphine sufficient to keep him comfortable by maintaining his customary use” is exempted as a part of “professional practice”—ignores the fact the Dr. Webb was quite clearly selling prescriptions and “it also reaches toward the bona fide administration of drugs for the relief of a patient-addict.”⁶⁴ In other words, the Court took a case of patent misconduct and applied it to a much broader range of possible defendants. Treasury’s prohibition on addiction maintenance was strengthened three years later in *United States v. Behrman*, which held that not all prescriptions claimed by

⁶² *Webb v. United States*, 249 U.S. 96, 99 (1919)

⁶³ *Ibid.*, 99-100.

⁶⁴ Rufus King, “The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick,” *Yale Law Journal*, 62 (1953): 740-41.

prescribers to be given in “good faith” were so in practice, and that proving criminal intent was not necessary.⁶⁵

However, the Court later held in *Linder v. United States* that its previous decisions on egregious violations should “not be construed as forbidding every prescription for drugs, irrespective of quantity, when designed temporarily to alleviate an addict's pains,” and that it was not Congress’s place to meddle in medical affairs.⁶⁶ However, Treasury all but ignored the case, which Alfred Lindesmith has said “had practically no effect and remains a ceremonial gesture of no practical significance for either addicts or physicians.”⁶⁷ By ignoring the restrictions *Linder* theoretically imposed on enforcement, the Narcotics Division made it extremely risky for doctors to prescribe drugs to addicted patients, thereby maintaining its strict prohibition of addiction maintenance.⁶⁸

Finally, in a pair of 1928 decisions, *Casey v. United States*⁶⁹ and *Nigro v. United States*,⁷⁰ the Court once again upheld the Harrison Act’s presumption of guilt for those possessing regulated drugs and affirmed the Act as within Congress’s taxing power. *Casey* found that, in light of the 1919 amended Harrison Act, possession of a regulated substance without a tax stamp did in fact provide *prima facie* evidence of a violation. The Court held that “it is consistent with all the constitutional protections of accused men to throw on them the

⁶⁵ *U.S. v. Behrman*, 258 U.S. 280 (1922)

⁶⁶ *Linder v. U.S.*, 268 U.S. 5, 20 (1925)

⁶⁷ Alfred R. Lindesmith, *The Addict and the Law* (Bloomington: Indiana University Press, 1967), 11.

⁶⁸ Donald T. Dickson, “Bureaucracy and Morality: An Organizational Perspective on a Moral Crusade,” *Social Problems* 16 (1968): 151.

⁶⁹ *Casey v. U.S.*, 276 U.S. 413 (1928)

⁷⁰ *Nigro v. U.S.*, 276 U.S. 332 (1928)

burden of proving facts peculiarly within their knowledge and hidden from discovery by the government.”⁷¹ *Nigro* held that the amended law was indeed a “genuine taxing act,” although it warned that “Congress, by merely calling an Act a taxing act, cannot make it a legitimate exercise of the taxing power...if in fact the words of the Act show clearly its real purpose is otherwise.”⁷² The Harrison Act, however, did produce substantial revenue, which the Court noted in detail as it upheld its constitutionality as a taxing act for the second time.⁷³

Taken together, these decisions—and the Congressional response to them—reveal much about the foundations of American drug control. Most notable is that the use of taxation as an enforcement tool was deemed constitutional, which became the basis for anti-drug legislation for more than five decades. Though the Harrison Act did actually generate meaningful revenue, the “reasonable relation” to taxation the court established as the test in *Doremus* and affirmed in *Nigro* proved to require little more than the appearance of a revenue measure.

The Court did say that if the “words of the Act show clearly its real purpose” is not to tax, that Act would be declared unconstitutional.⁷⁴ But based on the Court’s actual holdings, the test for constitutionality was indeed simple to meet. No one inside the Treasury Department even pretended that agents were throwing addicts in jail because they did not pay the required excise tax. The Harrison Act became a prohibition of addiction under the guise of a revenue

⁷¹ *Casey v. U.S.*, 276 U.S. 413, 419 (1928)

⁷² *Nigro v. U.S.*, 276 U.S. 332, 353 (1928)

⁷³ *Ibid.*, 353-54.

⁷⁴ *Ibid.*, 353.

measure. And the Court, instead of putting into place any meaningful standard, accepted the use of the taxing power to enforce what were in effect criminal laws.

Indeed, less than ten years after *Nigro*, the Court dropped any pretense that meaningful revenue was necessary. In declaring the 1937 Marijuana Tax Act, constitutional, the Court held that a tax is still valid even if it “definitely deters” the taxed activity and “the revenue obtained is obviously negligible.”⁷⁵ A tax would still be considered a tax even if it was prohibitively high and therefore guaranteed no substantial revenue would be generated. The legacy of Harrison Act is that, so long as the use of police power could be couched in the language of taxation and revenue, it would pass constitutional muster. And, as the legislative history shows, Congress was happy to oblige.

Congress Responds

The Harrison Act tested not only the Court’s willingness to permit an expanded federal role in drug enforcement, but Congress’s willingness as well. Congress may have originally intended the Harrison Act’s regulations to be narrower than Treasury’s 1915 enforcement protocols; certainly, the American Medical Association and the various drug industry representatives who signed off on the law did not expect thousands of doctors and pharmacists to be arrested. However, by 1919, any Congressional reluctance that may have existed was gone. The 1919 amendment—suggested by Treasury in response to the *Jin Fuey Moy* restrictions and passed over the criticism of the affected industries—

⁷⁵ *U.S. v. Sanchez*, 340 U.S. 42, 44 (1950)

made it clear that Congress had no qualms about criminalizing possession or intrusively policing the private practice of medicine.⁷⁶

Two issues related to the law's motive—why it was passed and why it was enforced in the way it was—provide insight into the progression of drug policy in the United States. On the question of legislative motive, the push for international drug control legitimacy certainly propelled drug control legislation forward, as discussed above. However, more troublesome social dynamics, like classism and racism, also affected outcomes. Troy Duster, in *The Legislation of Morality*, shows that the Harrison Act and its enforcement tracked dramatic changes in who used the newly regulated drugs.⁷⁷ This concept of “social locus”—that the moral and legal status of a given drug is related to the “social position of the groups identified as the primary users”—is helpful in understanding the Harrison Act and its successors.⁷⁸

While in 1900 most morphine and heroin users were middle-aged, middle to upper class women, by the late 1910s, users had become predominately young, lower class men.⁷⁹ Most addicts in 1903 were portrayed as respectable and described as coming from the “higher walks of life.”⁸⁰ By 1920, a similar medical journal report described the “overwhelming majority” of users as coming from the underworld, where drug use was a “panacea for the physical and mental ills that are the results of the lives they are leading.”⁸¹ By

⁷⁶ Musto, *American Disease*, 136.

⁷⁷ Duster, *Legislation of Morality*, 8-14.

⁷⁸ Himmelstein, *Strange Career*, 13.

⁷⁹ Duster, *Legislation of Morality*, 10-11.

⁸⁰ Quoted in Duster, *Legislation of Morality*, 9.

⁸¹ *Ibid.*, 11.

1914 this transformation was well under way, and it was complete by the 1919 *Webb* decision that authorized Treasury officials to police doctors' medical decisions.⁸² Duster contends that moral hostility became much easier as users began to come from less "respectable" backgrounds.⁸³

Though some scholars⁸⁴ think the Harrison Act caused this demographic shift and created criminals out of ordinary citizens, the truth is that changes had been underway for two decades. It is true that before 1900, most opiate addicts were upper or upper-middle class women.⁸⁵ Most became addicted through their personal physician, who supplied habit-forming drugs for a wide variety of ailments.⁸⁶ However, by the end of the nineteenth century, better knowledge of how diseases spread improved care, vaccinations were on the rise, and "greater diagnostic precision" reduced the number of doctors who prescribed habit-forming drugs because they did not know what else to do.⁸⁷ These factors, along with improved medical education on the dangers of morphine, precipitated a major decrease in the number of prescriptions for opiates by 1900.⁸⁸

Thus, with a decrease in prescriptions and the aging of the population whose addiction was iatrogenic, the number of "medical" addicts decreased.⁸⁹ Those addicts, as individuals who could afford personalized medical care, were generally wealthier. Interestingly, blacks in the south had very low rates of

⁸² *Ibid.*, 9-12.

⁸³ *Ibid.*, 21.

⁸⁴ See, for example, Rufus King "The Narcotics Bureau and the Harrison Act."

⁸⁵ Courtwright, *Dark Paradise*, 40.

⁸⁶ *Ibid.*, 42.

⁸⁷ *Ibid.*, 51.

⁸⁸ *Ibid.*, 52-53.

⁸⁹ *Ibid.*, 111.

opiate addiction because, unlike their white counterparts, they had very limited access to medical care.⁹⁰ At the same time, in urban areas, cocaine use and heroin use (as cocaine became too expensive) was on the rise.⁹¹ This use was recreational from the beginning and concentrated among young, unskilled or low-skilled laborers in poor neighborhoods.⁹² Though not criminal masterminds by any stretch, these youths would gather in gangs and engage in low-level violence or property crimes.⁹³ Thus the demographic shift that Duster identifies in the literature does seem to have a basis in fact, and his argument that the image of drug users affected their legal status is convincing. As will be discussed below, the evolution of the “dope fiend” image coincided with very strict enforcement from Treasury agents.

That image was not just based on class and gender. Racial tension was evident in the law’s development as well. Opium Commissioner Wright’s reports to Congress prior to the Harrison Act stressed his concern that opium smoking was leading white women to cohabit with and become common-law wives of Chinese men in Chinatowns across the nation.⁹⁴ He was especially worried about the spread of cocaine use among blacks in the South, which he thought was insufficiently communicated. He made efforts to tie the drug to criminals, including those involved in white slave trafficking and he publicized that cocaine was “often the direct incentive to the crime of rape by the Negroes of the South

⁹⁰ Ibid., 48-49.

⁹¹ Ibid. 86-87.

⁹² Ibid., 88.

⁹³ Ibid. 97-98.

⁹⁴ Musto, *American Disease*, 43.

and other sections of the country.”⁹⁵ Wright’s racial fear mongering was not immediately successful because the pharmaceutical industries were too strongly opposed to the stringent regulations proposed initially. However, as Southern Democrats took control of the House in 1911 and gained a huge supermajority in 1913, his tactics might have been helpful in swaying Congressmen who were reluctant to allow federal encroachment on states’ rights but whose fear of black cocaine use won them over.⁹⁶

Wright’s attempt to tie drug use to feared racial minorities was not an innovation on his part. The origins of drug control in the United States are intimately tied to racial fear and control. For example, Patricia Morgan argues that the first anti-drug legislation in the United States—the 1875 ban on racial co-mingling in opium dens in San Francisco and an 1881 California state ban on opium smoking aimed at opium dens—were aimed not at the drug itself (opium was legal in every other form), but the drug’s users.⁹⁷ California, the site of massive Chinese immigration in the mid to late 1800s, faced an economic depression in the 1870s, which flooded the labor market with Chinese laborers willing to work for lower wages.⁹⁸

The legislation targeting opium smoking, a habit almost exclusively pursued by Chinese immigrants, was explicitly anti-Chinese. The media took up the battle, raising concerns about the moral perversion of white women and

⁹⁵ Wright, quoted in Musto, *American Disease*, 43-44.

⁹⁶ *Ibid.*, 44.

⁹⁷ Patricia A. Morgan, “The Legislation of Drug Law: Economic Crisis and Social Control,” *Journal of Drug Issues* 8 (Winter 1978): 59.

⁹⁸ *Ibid.*, 54.

youth, who were seen as particularly vulnerable to efforts by Chinese men to lure them into opium dens.⁹⁹ That the use was not related to any claim of medical necessity and that its recreational aspect encouraged “undesirable social mixing” added to the perceived threat.¹⁰⁰ The anti-opium smoking legislation, contextualized into the broader efforts to exclude Chinese immigrants, appears to be both a symbolic affirmation of white morality and a coercive action against the threat of a Chinese labor surplus.¹⁰¹

Smoking opium was the first drug to be outlawed not only because of racism, but because it was seen more broadly as an underworld drug. Unlike cocaine or other opiate addiction, smoking opium was a purely recreational activity, not a drug prescribed by doctors.¹⁰² As such, its use emerged in social settings among the non-Chinese as well, particularly among white prostitutes, gamblers and petty criminals, who, as members of a disrespected underworld, were not afraid of contact with the Chinese.¹⁰³ The reaction to smoking opium, then, was a reaction both to a feared and hated immigrant group and a maligned group of whites who associated with them. Whereas other forms of opium had “respectable” users, smoking opium had very few.

Fear of cocaine use and legislation to criminalize it were also building by the turn of the century. Cocaine, which was once associated with professional classes, became the drug of youth, the working class, blacks and “the urban

⁹⁹ Ibid., 58.

¹⁰⁰ Spillane, “Road to the Harrison Narcotics Act,” 8

¹⁰¹ Morgan, “Legislation of Drug Law,” 59.

¹⁰² Courtwright, *Dark Paradise*, 61.

¹⁰³ Ibid., 63-69.

underworld.”¹⁰⁴ Though it was prescribed by doctors and was prominent in a number of patent medicines in the late 1800s, by 1900, cocaine became feared in the South because whites thought it encouraged blacks to violently reject their subjugation.¹⁰⁵ These fears, not coincidentally, arose at the zenith of Southern white violence against blacks and attempts to suppress black political participation.¹⁰⁶

These fears, while not entirely unfounded, were also likely not based in fact. Black southerners did have proportionally higher rates of cocaine use than their white counterparts.¹⁰⁷ The criminogenic aspect, however, is less clear. Southern police chiefs claimed that cocaine caused a wave of violent crime, but evidence of such an increase does not exist.¹⁰⁸ It is more likely that whites in the south had heard anecdotes of cocaine-driven violent crime and that, through repetition, those stories became fact. It is also likely that cocaine, as a drug used by an urban underclass, was used by criminals and thus developed a criminogenic image, though it was unlikely to have actually been the causal factor in the commitment of crimes. Finally, as an expensive drug that became more expensive after attempts at prohibition, cocaine addicts may have committed property crimes to feed their addictions.¹⁰⁹ Still, some of the more outlandish beliefs were undoubtedly based on fearful racist mythology and not empirical observation. Many southerners, for example, thought that cocaine gave

¹⁰⁴ Spillane, “Road to the Harrison Narcotics Act,” 8.

¹⁰⁵ Musto, “American Disease,” 6.

¹⁰⁶ *Ibid.*, 7.

¹⁰⁷ David T. Courtwright, “The Hidden Epidemic: Opiate Addiction and Cocaine Use in the South, 1860-1920,” *The Journal of Southern History*, 49 (1983): 68.

¹⁰⁸ *Ibid.*, 69-70.

¹⁰⁹ *Ibid.*, 71.

black men super-human strength, rendering .32 caliber bullets useless, which prompted a switch to .38 caliber weapons among some police departments.¹¹⁰ This fear, unsurprisingly, had legislative consequences.

Beginning around 1900, dozens of states began to ban non-medical sales of cocaine, and almost all had done so by the Harrison Act's adoption.¹¹¹ Of course, in the north, where black cocaine use was much less prevalent, racism played a smaller role, if any at all. At the same time, as "cocainomania" swept the south, the medical establishment began to realize the dangers of cocaine, use of which had become common. Physicians successfully lobbied for changes to narcotics laws to prevent sale of cocaine without a doctor's prescription.¹¹² So, considering the significant extent of cocaine and opiate regulations at the state level by 1914, the Harrison Act, while highly significant, might be better described as the federal "culmination" of earlier laws as opposed to a drastic new paradigm.¹¹³ Either way, the budding racial fears that Wright explicitly cited in his lobbying efforts for the law, in conjunction with the other changing demographics of opiate and cocaine use, certainly had a role in its passage.

From Regulation to Prohibition

The other element of the Harrison Act—its enforcement—suggests how much sway an aggressive bureaucracy can hold, particularly with weak enforcement targets. Enforcement swelled as the demographic evolution proceeded; three times more arrests were made in 1920 than 1915, and that

¹¹⁰ Musto, *America Disease*, 7.

¹¹¹ Spillane, "Road to the Harrison Narcotics Act," 11.

¹¹² Courtwright, *Dark Paradise*, 52.

¹¹³ Spillane, "Road to the Harrison Narcotics Act," 17.

number tripled again by 1925.¹¹⁴ Of course, those figures likely also attest to the growing strength of the law in the eyes of the courts; the *Doremus* and *Webb* decisions in 1919 upheld the use of the taxing power to police possession without a tax stamp and ban addiction maintenance, respectively. To understand why the Harrison Act's enforcement was so stringent, it is necessary to consider the role and motivations of actors within the drug enforcement bureaucracy.

The Harrison Act created a Narcotics Division within the Internal Revenue Bureau of the Treasury Department that was charged with enforcement of the law. However, the law on its face did not create a particularly powerful drug bureaucracy, as the revenue collection requirements were narrow and addicts were not under the Division's purview.¹¹⁵ Those in charge of the infant Narcotics Division were thus faced with a choice: adapt to their environment and accept a marginal role as an enforcer of a minor law, or convince the public and Congress to expand the law. Around the same time, views on narcotics (and their users) were shifting. Advocacy of addiction maintenance began to be rejected by a public that was engulfed in major social changes. As users of narcotics shifted to a criminal underclass, drug use was seen as causing "antisocial acts and individual degeneracy."¹¹⁶ Addiction was seen as a threat to the nation's efforts in World War I and alcohol prohibition was put into place after the Eighteenth Amendment was adopted in 1919.¹¹⁷

¹¹⁴ Meier, *Politics of Sin*, 29.

¹¹⁵ Dickson, "Bureaucracy and Morality," 149.

¹¹⁶ Musto, *American Disease*, 134.

¹¹⁷ *Ibid*, 132-33.

The enforcement of narcotic laws, then, became an issue of national security, at least in the eyes of its enforcers. As Rufus King puts it, somewhat cynically, the Harrison Act “was assigned for enforcement, to the same righteous zealots who were undertaking another national mistake—enforcement of our then new Prohibition laws.”¹¹⁸ While King is clearly critical of the Act and its enforcers, it makes sense that the young men working for the newly-formed Narcotics Division would see their work as imbued with moral weight. As their counterparts fought foreign enemies overseas, Division agents were fighting a crippling domestic enemy: narcotics.

In conjunction with these cultural shifts came a substantial public relations campaign by the Narcotics Division, which was likely initiated by societal concerns, but also spurred on those same fears. In support of that campaign, the Division utilized its power as a federal agency to release a number of ominous reports on narcotics and to bring test cases in front of the Supreme Court in an ultimately successful attempt to broaden the scope of the Division’s jurisdiction so it could more effectively battle the drug scourge.¹¹⁹ As solely a revenue measure, the Harrison Act could never eliminate drug use—smuggling and addiction maintenance were always going to be a problem. However, if the Division could police illegal possession and doctors who prescribed to addicts, the chance of making a meaningful impact increased substantially.

Though public sentiment against drug use was building, the chance Congress would act to strengthen the Harrison Act would be greater if the drug

¹¹⁸ King, “The Narcotics Bureau and the Harrison Act,” 737.

¹¹⁹ Ibid.

problem looked very serious. Like Commissioner Wright and his 1910 report to Congress, which misleadingly made opium addiction appear to be growing, the Division released information that was pseudo-scientific at best and blatant propaganda at worst.

The first example, in 1918, was Andrew DuMez's report. DuMez was a technical assistant for the Special Narcotic Committee within the Treasury Department, and he released a study that claimed "an estimate of 750,000 drug addicts in the United States would appear to be conservative. The Bureau of Internal Revenue places the number at 1,500,000."¹²⁰ Those figures were based on a survey of physicians where those who responded—claiming 270,662 addicts—were assumed representative of the entire sample. The final extrapolated number, 694,000, was considered too low, however, because DuMez hypothesized that lower and upper addicts tended not to see doctors.¹²¹ Though 1,500,000 was a patently absurd number, even the lower end was ultimately untrue. When the final report was published, it turned out that the original respondents only reported 73,150 addicts and so even the extrapolated figure of 237,665 was a far cry from 750,000 to 1,500,000.

Like Wright's claim of growing opium addiction, however, the facts of DuMez's report were significantly less important than the report's reach. In *Doremus* and *Webb*, the two critical Supreme Court decisions in 1919 that upheld the Harrison Act and its enforcement mechanisms, the government cited

¹²⁰ Andrew DuMez, "Some Facts Concerning Drug Addiction," quoted in Courtwright, *Dark Paradise*, 30.

¹²¹ *Ibid.*

the 750,000 to 1,500,000 figure in its brief as evidence of the severity of the drug problem that warranted federal regulation.¹²²

In the Special Committee's final report *Traffic in Narcotic Drugs*, it continued to claim outrageously high numbers of addicts, despite the evidence that those figures were not true. DuMez's report may have exaggerated (based on what turned out to be false numbers), but the 1919 final report represented little more than propaganda. Though extrapolation from the physician survey evinced less than 250,000 addicts, the Committee still claimed that "the number of addicts in this country probably exceeds 1,000,000 at the present time."¹²³ Somehow, the 237,665 figure became one million because the Committee assumed that "only a small portion of the total number of addicts present themselves for treatment," and therefore the number required an adjustment based on other estimates of addiction rates.¹²⁴ Just five years later, in a 1924 report, DuMez and Lawrence Kolb of the Public Health Service rejected the Committee's findings, stating that there was no way the amount of opiates in the country could have supported more than a quarter of the estimated addicts.¹²⁵

Although the report was an "interesting combination of truth, speculation, and fiction," its findings were aggressively utilized in support of the Harrison Act.¹²⁶ Congressman Rainey of Illinois, who served on the Committee, used the information to lobby for his Harrison Act amendment that made

¹²² Ibid., 30-31.

¹²³ *Traffic in Narcotic Drugs* (1919), quoted in Courtwright, *Dark Paradise*, 31.

¹²⁴ *Traffic in Narcotic Drugs* (1919), quoted in Musto, *American Disease*, 138.

¹²⁵ Courtwright, *Dark Paradise*, 31.

¹²⁶ Dickson, "Bureaucracy and Morality," 150.

possession of a regulated drug without a tax stamp presumptive evidence of a violation. In frightening language, he noted that 1,500,000 addicts had been identified by the scientifically expert Committee on which he served.¹²⁷ The Committee actively campaigned for media coverage of the report, which Rainey leaked to an eager press, which widely reported the findings as fact.¹²⁸ Between the media coverage of the report and Rainey's testimony, the American public and Congress were convinced of the danger. Congress passed the amendments in 1919 without even scheduling a hearing for the pharmaceutical industry to object, claiming wartime urgency.¹²⁹

The Division's test cases, especially after the Congressional amendment, were also essential to its mission. Even with the amended Act, which made it easier for agents to arrest people in possession of narcotics, if maintenance addiction were permitted, doctors could propagate the drug scourge. Because the text of the Act itself did not speak of addiction nor did it address what was permitted in the course of "professional practice," the Division needed the Court to adjudicate whether addiction maintenance was permissible. By seeking out the most egregious violators—doctors who prescribed to thousands of patients or who prescribed amounts that were obviously intended for resale—to be test cases, the Division engendered favorable decisions from the Court. Those

¹²⁷ Courtwright, *Dark Paradise*, 32.

¹²⁸ Spillane, "Building a Drug Control Regime," 31.

¹²⁹ Musto, *American Disease*, 136.

decisions empowered it to police the private practice of medicine in a way previously thought to be beyond its scope.¹³⁰

By making criminals of doctors who prescribed to addicts and by criminalizing possession of a regulated drug without a tax stamp (which could only be obtained through a legitimate prescription), the Narcotics Division was able to essentially criminalize addiction. Thus, rather than accepting its role as a minor enforcer of an unremarkable revenue law, the Division expanded the class of people subject to enforcement and became the major player in a nationwide drug prohibition, which was seen by Treasury agents as a positive development.¹³¹ That expansion had its rewards. By 1925 the Division's budget was more than four times the 1918 budget appropriated before the Harrison Act's amendment and the Court's expansionary rulings.¹³² That is not to argue that the higher-ups in the Narcotics Division were bureaucratic megalomaniacs. Instead, they were likely temperance-inspired men who perceived the drug threat as serious and who thought rigid, punitive enforcement was the best cure.

Harrison's Legacy

The factors at play in the Harrison Act and its state-level predecessors—fear based on pseudo-science, prejudice, and the power of bureaucrats to shape policy environments—provide a framework to approach the marijuana legislation that developed over the next several decades. Drug control legislation did not develop as an organic democratic movement from the populous to

¹³⁰ Dickson, "Bureaucracy and Morality," 151.

¹³¹ Ibid.

¹³² Ibid.

lawmakers. Instead, it was related to both macro-level policy and micro-level individual efforts. Opium prohibition and the later Harrison Act were clear products of Commissioner Wright's efforts on the international stage, which were a product of the American desire to improve trade relations with China. Congress's decision to expand the Act to include presumptive evidence of guilt was not something it just decided to do—it was encouraged by aggressive lobbying from Narcotics Division insiders who felt strongly about the perniciousness of drugs and employed questionable science to convince others.

Beneath this complex web emerges an understanding of drug legislation in its infancy. It was not based entirely on “fact” (or at least, on true fact), but on fear and cultural, racial and socioeconomic considerations. The Narcotics Division's policies were themselves spurred on by public sentiment against increasingly poor, criminal drug users. The facts that did come into play were not based on rigorous science, but seat-of-the-pants empiricism produced, with a goal in mind, by people with the power to define drugs and drug users when there was little competing information. Although marijuana escaped Wright's grasp in 1914, the same would come to be true of its developing image in the southwest and in New Orleans. As a maverick piece of federal drug legislation that portended, both in style and substance, the marijuana legislation to come, the Harrison Act and its enforcement offers a critical lens with which to view the next hundred years of American drug control.

Chapter Two

The Marijuana Menace Materializes

Though marijuana had been removed from the Harrison Act due to objections from the pharmaceutical industry, states took action to regulate it in the years following the passage of the Act in 1914. Early in the 1910s, a handful of states added cannabis to their Progressive-era drug regulations, but as a preventative measure against the use of all intoxicants, and not as a reaction to widespread use.¹ However, beginning in the mid-1910s and continuing in the 1920s and 1930s, many states—mostly west of the Mississippi—began to notice and stigmatize marijuana use, criminalizing non-medical distribution and use.² In Texas and other western and southwestern states, an influx of Mexican immigrants brought marijuana with them, triggering backlash against the drug. At the same time, anti-marijuana activists in New Orleans crafted an image of marijuana as a violence-inducing drug in an effort to encourage federal legislation against the drug. Though refuted by the best science at the time, the portrait stuck. The way marijuana was defined in these early, formative decades of drug policy had major implications for its future federal control.

Marijuana Emerges in the Southwest

Compared to alcohol and tobacco, marijuana is a relatively recent intoxicant in the United States. Its American emergence is generally credited

¹ Dale H. Gieringer, “The Forgotten Origins of Cannabis Prohibition in California,” *Contemporary Drug Problems* 26 (1999), revised 2012: 34.

² Jerome L. Himmelstein, *The Strange Career of Marihuana: Politics and Ideology of Drug Control in America* (Westport: Greenwood Press, 1983), 23.

to—or perhaps more accurately, blamed on—Mexican immigrants. As the Mexican Revolution of 1910 created political and economic turmoil, hundreds of thousands of Mexicans poured in the southwest, settling mostly in Texas.³ These immigrants brought marijuana growing and smoking, primarily a lower class practice in Mexico, across the border.⁴ While attention to marijuana remained localized for the next two decades, the drug did attract concern in areas with large Mexican populations, like border towns in Texas.

The nation’s first public “marijuana scare” occurred in 1913, when, across the border in Juarez, Mexico, an allegedly marijuana-crazed “Mexican desperado” brandished a knife while chasing Americans, eventually killing a police officer before being shot himself.⁵ The incident made the front page in local El Paso newspapers, where the man was described as a marijuana “fiend.”⁶ The local El Paso sheriff, Stanley Good, blamed such marijuana “fiends” for “atrocious crimes,” and claimed that most Mexicans in the area were addicted.⁷ After a 1913 grand jury investigation recommended a ban, the city in 1915 prohibited all use and sale of marijuana, which the local paper described as a “Mexican drug.”⁸ These early reports clearly enunciated a purported link

³ Richard J. Bonnie and Charles H. Whitebread II, *The Marihuana Conviction: A History of Marihuana Prohibition in the United States* (Charlottesville: University Press of Virginia, 1974), 32-33.

⁴ *Ibid.*, 35.

⁵ Gieringer, “Forgotten Origins,” 29.

⁶ “Maniac Kills a Patrolman, Runs Amuck in Juarez—Creates Panic,” *El Paso Morning Times* (El Paso, TX), January 2, 1913, p. 1.

⁷ Bob Chessey, “Stanley Goode and El Paso’s 1915 marihuana ordinance,” *Newspaper Tree* (El Paso, TX), January 9, 2014. <http://newspapertree.com/articles/2014/01/09/stanley-good-and-el-pasos--marihuana-ordinance>.

⁸ Gieringer, “Forgotten Origins,” 29.

between marijuana use and violence, holding the drug itself “accountable” because it “causes the smoker to crave murder.”⁹

After the El Paso prohibition, Good, the same concerned sheriff, lobbied federal officials from the region to take action. That request reached the Secretary of the Treasury, William McAdoo, who prohibited importation of marijuana for non-medical purposes under the auspices of the Food and Drug Act of 1906.¹⁰ Since pharmaceutical interests were opposed to including marijuana in the Harrison Act, that administrative declaration was the only action taken, though it was largely symbolic; most users in the southwest at the time grew their own supply or bought it from drug stores.¹¹ A 1917 report of the Bureau of Chemistry of the United States Department of Agriculture, which investigated marijuana sale and use in Texas and the effectiveness of the 1915 import ban, provides interesting insights into conceptions of marijuana at the time and the role of social locus—that is, who uses—on the cultural understanding of the drug.

The report begins by stating that there was substantial growth of marijuana plants in border states, and particularly in Texas.¹² While growth may have been widespread, users, according to the report, came from particular

⁹ “Crazed by a Weed, Man Murders,” *El Paso Herald* (El Paso, TX), January 2, 1913, p. 1.

¹⁰ Bonnie and Whitebread, *Marihuana Conviction*, 53.

¹¹ Gieringer, “Forgotten Origins,” 29; “Marihuana Sale Now Prohibited: City Council Passes Emergency Ordinance to Stop Sale of Mexican Drug,” *El Paso Morning Times* (El Paso, TX), June 3, 1915.

¹² R. F. Smith, “Report of Investigation in the State of Texas, Particularly along the Mexican Border, of the Traffic in, and Consumption of the Drug Generally known as ‘Indian Hemp’ or *Cannabis Indica*, known in Mexico and States Bordering on the Rio Grande as ‘Marihuana’; Sometimes also referred to as ‘Rosa Maria,’ or ‘Juanita,’” Bureau of Chemistry, United States Department of Agriculture, April 13, 1917, 4.

classes of society. It stated that medicinal use of marijuana was “extremely rare,” but that which existed was confined to “Mexicans of low birth.”¹³ As for the growing recreational smoking of marijuana, users were not just Mexicans, but also “American soldiers, negroes, prostitutes, pimps, and a criminal class of whites.”¹⁴ Obviously, aside from soldiers, the report painted a rather unflattering view of marijuana’s primary users. A 1917 San Antonio Spanish-language newspaper article, included as a supplement to the report, emphasized the unsavory nature of the recreational user, calling marijuana a drug of the “lower classes” in Mexico. It raised alarm about the spread of the “malicious vice” to “members of distinguished families” in both the United States and Mexico, warning that use caused violent frenzies.¹⁵ The investigation reveals that class, race, and social standing colored the earliest American perceptions of marijuana, which was seen as a dangerous drug waiting to poison youth from good homes, a trope that would be continuously trotted out to support marijuana prohibition.

Perhaps the most interesting aspect of the report (and the one consistently reflected in later government claims) is its reliance on anecdotal evidence. The “injurious” effects of marijuana the report proclaimed were not based on science, or even pseudo-science, but instead on the anecdotal claims of activist officials who sought prohibition. Stanley Good, the local sheriff who campaigned for the 1915 ban on importation, was a key witness, “interviewed

¹³ Ibid., 6.

¹⁴ Ibid., 13.

¹⁵ Ibid., 17(d)-17(e).

on many occasions” by the report’s author, as were the officials on whom he relied for information in his 1915 campaign.¹⁶

These interviews and letters produced a very frightening picture of marijuana. Take, for example, the Sergeant of Police in El Paso, who called anyone who used marijuana “very dangerous and a menace to the community in so far as the user is very prone to start trouble, seems to be insensible to pain and shows marked bravery with real danger.”¹⁷ The Chief of Police wrote that the drug, used especially by Mexicans, caused “surprising” strength and fearlessness among users.¹⁸ The Captain of Police wrote that addicted users became very violent and would attack police even if a gun were drawn, seeming to “have no fear” and “abnormal strength” that required multiple officers to handle a single suspect.¹⁹ Another officer described crimes he was “positive were due to the fact that the user was under the influence of Marahuana” and that users, “insensible to pain,” seemed to gain “almost super-human strength.”²⁰

In terms of scientific backing, the 1917 report was lacking. Even ignoring that the strikingly similar language in these statements suggests a coordinated messaging effort, the official position of the report on the criminogenic effects of marijuana was based on only a handful of interviews with police officers and druggists. The comments on fearlessness and super-human strength are reminiscent of Southern fears of black cocaine users who could resist .32 caliber

¹⁶ Ibid., 6.

¹⁷ Ibid., 33.

¹⁸ Ibid., 35.

¹⁹ Ibid., 36.

²⁰ Ibid., 37.

bullets.²¹ The police statements provided with the report sound more like the racist and classist panics associated with opium smoking among Chinese, cocaine use in the South, and opiate use in urban environments than a rigorous investigation of fact. Indeed, there was no record keeping (or at least none reported) as to the frequency of violent crime associated with marijuana or any clinical evidence of its effects (except scattered interviews with doctors and druggists). Instead, there was a handful of letters and, on the part of the report's author, a federal official, a seemingly uncritical acceptance of the word of law enforcement.

The lesson of the El Paso incident is how little it took to draw conclusions about marijuana at the time. While police apparently interacted with marijuana users with some frequency (at least according to their statements), evidently a single episode—not even in the country, but instead, across the border in Juarez, Mexico—prompted a single man, El Paso deputy sheriff Stanley Good, to take up arms against the marijuana menace in his hometown. After that victory, Good contacted federal officials at the Bureau of Chemistry, who, without any further investigation, agreed to prohibit non-medical importation of the drug.²² The Bureau of Chemistry, two years later, sent a single investigator to investigate the issue, who, on the basis on anecdotal interviews repeated claims that marijuana “fiends” were a real danger, and called for non-medical possession to be

²¹ David F. Musto, *The American Disease: Origins of Narcotic Control* (New Haven: Yale University Press, 1973), 6.

²² Bonnie and Whitebread, *Marihuana Conviction*, 37.

criminalized by including marijuana in the Harrison Act.²³ In the same way that reformers opposed to the use of intoxicants easily added anti-marijuana language to anti-narcotics bills, a minor incident could prompt serious action because there was little opposition to prohibition. That the primary users at the time were foreign immigrants with different linguistic and cultural practices probably did not hamper efforts to restrain its use.

The Bureau of Chemistry's report looks all the more unscientific because it was preceded, more than two decades earlier, by the 1894 Indian Hemp Drugs Commission, a British government report which studied cannabis use in India and was cited in numerous English-language medical journals.²⁴ At more than 3,000 pages long, it was, even many decades later, considered "by far the most complete and systematic study of marijuana undertaken to date."²⁵ The Hemp Commission addressed all the concerns raised in the 1917 Bureau of Chemistry report. As for "injurious" medical effects, the Commission stated that the evidence suggested that, for the "vast majority of consumers," marijuana use was not "appreciably harmful."²⁶

On the issue of marijuana's causal relation to insanity, the Commission, instead of blindly accepting the testimony of doctors and administrators in Indian asylums, investigated each case of insanity supposedly linked to marijuana consumption. In a rebuke that could have easily been directed at

²³ Smith, "Report of Investigation in the State of Texas," 2-6.

²⁴ Bonnie and Whitebread, *Marihuana Conviction*, 130.

²⁵ Tod H. Mikuriya. "Physical, Mental, and Moral Effects of Marijuana: The Indian Hemp Drugs Commission Report," *The International Journal of the Addictions*, 3 (1968): 253.

²⁶ Report of the Indian Hemp Drugs Commission 1893-94, Vol. 1, pg. 223, cited in Mikuriya "Effects of Marijuana," 262.

Sheriff Good and the author of the 1917 report, the Commission accused mental asylum directors of inappropriate generalizations from their “limited and one-sided experience,” which had the effect of “stereotyping the popular opinion and giving it authority and permanence.”²⁷ Instead, the Commission said that, on the basis of the evidence, no conclusive causal connection could be drawn, a subtlety that was not echoed by American government officials.

Finally, on the subject of whether marijuana was criminogenic, the Commission examined the eighty-one case records of crime over the previous twenty years allegedly linked to cannabis use. Even if every case had been caused by marijuana, the problem would still be fairly minor. The Commission in fact found that the vast majority of the crimes were unrelated to marijuana use, concluding that “there is little or no connection between the use of hemp drugs and crime.”²⁸ The Commission counseled readers on the importance of skepticism in considering anecdotal reports, warning that the claims of witnesses often skewed the facts of a case, instead relying on “preconceived notions based on rumour and tradition,” which, in some cases, “seem to prevail to distort the incident altogether and create a picture in the mind of the witness quite different from the recorded facts.”²⁹

The Indian Hemp Drugs Commission’s thoroughness lays bare the state of American marijuana policy in the early 1900s (and for decades to follow). Rather than assiduously investigating the medical and criminal claims regarding the use

²⁷ Ibid., Vol. 1, pg 226, cited in Mikuriya, 263.

²⁸ Ibid., Vol. 1, pg 264, cited in Mikuriya, 269.

²⁹ Ibid., Vol. 1, pg 263, cited in Mikuriya, 268-69.

of marijuana, the 1917 report by the Bureau of Chemistry propagated anecdotal scare stories of marijuana “fiends” with a lust for blood. There was no challenge to law enforcement or medical officials who, as the Hemp Commission put it, might have “preconceived notions[s] based on rumour.” The stereotype put forth by El Paso law enforcement and the 1917 report of Mexicans incited to violence by marijuana use, “led to a particular image of marihuana as a ‘killer weed.’”³⁰ As marijuana use spread to more states and ultimately to the nation as a whole, those same “killer weed” rumors and anecdotes, often targeted at racial minorities, proved sufficient for prohibition.

Rocky Mountain High

While meaningful federal action was still years away, the first decades of the twentieth century saw significant state action aimed at countering marijuana use (or the potential for marijuana use). Far from the nation’s southern border, Massachusetts became the first state to prohibit the possession or sale of marijuana without a prescription in 1911, followed by California, Maine, Indiana and Wyoming in 1913, and Vermont and Utah in 1915. Though prescriptions were allowed and users did exist, medical interest in marijuana was limited at the turn of the century because it was difficult to standardize potency and user effects.³¹ The small consumer market for the drug, which was used primarily in veterinary medicine and corn plasters, likely restricted pharmaceutical industry opposition to these anti-marijuana laws.

³⁰ Himmelstein, *Strange Career*, 29.

³¹ Gieringer, “Origins of Cannabis Prohibition,” 13, 28.

For the most part, these early marijuana regulations were tacked onto other temperance-inspired legislative initiatives that covered a wide range of drugs. Unlike the El Paso ban, they were not reactions to a frightening event or perceived crisis of marijuana use, but were instead situated as part of a larger movement opposed to the use of intoxicants.³² The medical community in the Northeast, where some of the earliest legislation was enacted, was familiar with the psychoactive effects of marijuana and prohibited it before street use emerged.³³ For early adopting states, these marijuana bans were put into effect not as a response to public panic, but by “a new class of professional public policy bureaucrats” brought to power and inspired by Progressive-era sentiments like temperance.³⁴ The early doctors who supported marijuana prohibition did so out of a moral concern for the “drug evil habit,” which, if it were to be defeated, required the strictest possible antidrug laws.³⁵ Some of them, like Opium Commissioner Wright, believed that if opiates and cocaine were outlawed, users would switch to marijuana to get their high.³⁶ Though there was little evidence of that being true, the early laws against marijuana reveal the power of a few interested parties to enact prohibitionist policies in a time of little public concern. Much like Sheriff Stanley Good in El Paso, a single individual on a personal crusade could have great influence.

³² Ibid., 34.

³³ Bonnie and Whitebread, *Marihuana Conviction*, 48.

³⁴ Gieringer, “Forgotten Origins,” 34.

³⁵ Bonnie and Whitebread, *Marihuana Conviction*, 48.

³⁶ Ibid.

And, though the racial fear evident in El Paso did not play as large a role in the very early bans, race became increasingly relevant as time passed. Even in California's 1913 prohibition, one firmly based in bureaucratic concern regarding intoxicants, racial overtones were evident. Henry J. Finger, the member of the California Board of Pharmacy who championed the ban, wrote in a letter that a "large influx of Hindoos" to California had prompted a demand for marijuana, which Finger was concerned would spread to white residents.³⁷ Finger, a delegate to the International Conference on Opium at The Hague, favored strict enforcement of antidrug laws.³⁸ As someone generally opposed to intoxicants, Finger became interested in a ban on marijuana as soon as he began hearing of its use in California.³⁹ As planning toward a ban progressed, Mexican immigrants began arriving in California, which the Board was able to use as fodder for its campaign, ringing alarm in newspapers about Mexican "loco-weed."⁴⁰ Though legitimate racial fears did not motivate the California ban—it was, by all available evidence, the anti-intoxicant efforts of Henry Finger that assured its passage—they do seem to have been used instrumentally to propel legislation; the Board simply added the new and frightening term "loco-weed" to the law it had already planned.⁴¹

As Mexican immigrants spread further from the border, anti-marijuana laws spread with them. A majority of the close to 600,000 Mexican immigrants

³⁷ Gieringer, "Forgotten Origins," 19.

³⁸ *Ibid.*, 18.

³⁹ *Ibid.*, 19.

⁴⁰ *Ibid.*, 21-23.

⁴¹ *Ibid.*, 23.

who arrived between 1915 and 1930 stayed in Texas, but large numbers also settled throughout the West.⁴² These immigrants, employed as laborers on farms and in factories, were economically useful, but also feared as outsiders.⁴³ Not surprisingly, this hostility transferred to the drug of choice among the new immigrants: marijuana. During this period of Mexican migration, almost every state west of the Mississippi River passed anti-marijuana legislation, mostly accomplished with little more than a mention of the drug's Mexican connections and the violent penchants of its users.⁴⁴ As with the vilification of opium smoking, there was little skepticism among white lawmakers of the marijuana scare stories presented to them; the drug's limited reach and connection to a feared minority was sufficient to justify prohibition.

Indeed, Richard Bonnie and Charles Whitebread's detailed investigation of early marijuana legislation reveals both racialized politics and public apathy. Early prohibitions generated little if any media coverage and were largely reactionary efforts by legislators who had briefly heard of the drug and its Mexican origins. Without a constituency in support of liberal marijuana laws, legislators likely had no reason to oppose prohibition. The *Sante Fe New Mexican's* story of New Mexico's prohibition is a good example of this kind of cursory attention. In its one paragraph commentary on the state's 1923 law, the paper noted that the drug had been of concern only for a short time and that the

⁴² Bonnie and Whitebread, *Marihuana Conviction*, 38.

⁴³ Musto, *American Disease*, 219.

⁴⁴ Bonnie and Whitebread, *Marihuana Conviction*, 38-39.

law had passed unopposed.⁴⁵ In testifying in support of Texas’s ban on marijuana, one Texas senator said, “All Mexicans are crazy, and this stuff makes them crazy.”⁴⁶ In Montana, the racial connection was just as transparent (and evidently, comical to lawmakers). The *Montana Standard*, reporting on the 1929 prohibition’s movement through the legislature, wrote:

There was fun in the House Health Committee during the week when the Marihuana bill came up for consideration. Marihuana is Mexican opium, a plant used by Mexicans and cultivated for sale by Indians. “When some beet field peon takes a few rares of this stuff,” explained Dr. Fred Fulsher of Mineral County, “He thinks he has just been elected president of Mexico so he starts out to execute all his political enemies.” ... Everybody laughed and the bill was recommended for passage.⁴⁷

The *Standard’s* report reflects a truth about many of the prohibitions in the west and southwest—that they were not extensively studied public health measure or attempts to legislate temperance, like they were in the northeast. Instead, they were largely haphazard and ill-informed endeavors by various legislators who, taking a generous outlook, were concerned with the arrival of a foreign intoxicant rumored to be dangerous. As Bonnie and Whitebread write of early state prohibitions in the west and southwest, somewhat less generously: “The reader should note that public perceptions of marijuana’s ethnic origins and crime-producing tendencies often went hand in hand, especially in the more volatile areas of the western states.”⁴⁸ This violent, racialized imagery would be

⁴⁵ Sante Fe New Mexican, January 31, 1923, quoted in Richard J. Bonnie and Charles H. Whitebread II, “The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition,” *Virginia Law Review* 56 (1970): 1013-14.

⁴⁶ Martin A. Lee, *Smoke Signals: A Social History of Marijuana—Medical, Recreational, and Scientific* (New York: Scribner, 2012), 42.

⁴⁷ The Montana Standard, January 27, 1929, quoted in Bonnie and Whitebread, “Forbidden Fruit,” 1015.

⁴⁸ *Ibid.*, 1016.

recalled and unquestioned in the years to come, as marijuana eventually reached the national stage.

Killer Weed on the Mississippi

While marijuana reached most states via Mexicans crossing the border, it came to New Orleans by way of sailors smuggling the drug in from the Caribbean.⁴⁹ By the 1920s, New Orleans was one of the only places in the country where marijuana was not just prohibited—Louisiana enacted a ban in 1924—but actually an issue of some public concern.⁵⁰ Unlike in the border states, where, as discussed, marijuana was banned essentially as unremarkable racist reflex, in New Orleans, the new drug was grouped with others already condemned and addressed more extensively. Concern over marijuana and the “dope fiends” who used it was concern over “‘another narcotic’ in a city with a major ‘narcotic problem.’”⁵¹ By the mid-1920s, there was growing local media attention given to marijuana in New Orleans, particularly with regard to children, who were seen as prey for dope peddlers, adding another potential hazard in a city struggling with drug addiction.⁵² The genesis of marijuana’s image in New Orleans was especially important, though, because it stimulated the development of a group of anti-marijuana activists in public health and law enforcement who helped to construct the marijuana menace and who ultimately brought that menace to Washington.⁵³ A brief review of the work of those

⁴⁹ Bonnie and Whitebread, *Marihuana Conviction*, 42.

⁵⁰ Himmelstein, *Strange Career*, 52.

⁵¹ Bonnie and Whitebread, *Marihuana Conviction*, 43.

⁵² *Ibid.*, 44.

⁵³ *Ibid.*, 45.

activists is worthwhile, as their portrait of marijuana was ultimately accepted by federal officials and codified into law for decades.

The first of those activists, Dr. A. E. Fossier, a local physician, published “The Mariahuana [sic] Menace,” in the *New Orleans Medical and Surgical Journal*, beginning with a tale that would become familiar in anti-marijuana publications. He wrote of a religious and military order founded in Persia in 1090 who were a “diabolical, fanatical, cruel and murderous” tribe of Shiite Muslims. Their people were called “Hashishans,” which Fossier claimed translated to “Assassins” and was allegedly derived from the word hashish, a cannabis product. In Fossier’s telling, whenever the Sheik needed someone murdered, an assassin was given hashish and, while intoxicated, was easily convinced to follow the ruler’s every wish.⁵⁴ Interestingly, Jerry Mandel’s attempt to trace the story to its origins suggests that hashish was actually the reward. The assassins did not kill *on* the drug, but killed for the promise of a drug-filled paradise afterward.⁵⁵ Moreover, the etymological link between hashish and assassins is not entirely certain.⁵⁶ Finally, there is no evidence that the Assassins were violent because of hashish use. Instead, they were religious fanatics who fought against the invasion of the Crusaders. As Mandel says, “The supposed hashish-induced ‘visions of paradise’ are as responsible for the assassinations as the religiously fortifying drinking of wine and eating of wafers are responsible for the bloody Crusades.”⁵⁷

⁵⁴ A. E. Fossier, “The Mariahuana Menace,” *New Orleans Medical and Surgical Journal*, 84 (1931): 247.

⁵⁵ Jerry Mandel, “Hashish, Assassins, and the Love of God,” *Issues in Criminology*, 2 (1966): 152-53.

⁵⁶ *Ibid.*, 154.

⁵⁷ *Ibid.*, 155.

Still, Fossier was quick to translate the mythical effects of the hashish-addled assassins to the modern period, writing that the “underworld was quick to realize that marihuana was an ideal drug to quickly cut off the inhibition” of weak minds, which could then be totally controlled for nefarious purposes. To illustrate that point, Fossier cited statistics from the city coroner, who surveyed New Orleans prisoners and determined that one out of four was a “mariahuana [sic] addict.”⁵⁸

Fossier’s work was followed very shortly thereafter by Eugene Stanley, the District Attorney of New Orleans, who wrote “Marihuana as a Developer of Criminals,” essentially affirming Fossier’s argument. He echoed the “Assassins” tale almost verbatim and said that, in his experience, marijuana was associated with criminal behavior. He wrote that “immediately before the commission of many crimes the use of marihuana cigarettes has been indulged in by criminals, so as to relieve themselves from the natural restraint which might deter them from the commission of criminal acts, and to give them the false courage necessary to commit the contemplated crime,” but gave no evidence to suggest that were true.⁵⁹

Finally, the New Orleans Commissioner of Public Safety, Frank Gomila, wrote of the “widely established” marijuana habit in the city that had emerged in the 1910s and 1920s. He cited a 1926 investigation by a local newspaper, showing that the drug was imported by the boatload and sold widely by

⁵⁸ Fossier, “The Mariahuana Menace,” 249.

⁵⁹ Eugene Stanley, “Marihuana as a Developer of Criminals,” *The American Journal of Political Science*, 2 (1931): 255-56.

traffickers, emphasizing that the drug reached school children.⁶⁰ Taking that picture of marijuana use in New Orleans as his starting point, Gomila argued that the crime wave of the next several years was unquestionably “greatly aggravated by the influence of this drug habit.” Despite increased guards at local banks, “this did not prevent some of the most spectacular hold-ups in the history of the city,” which Gomila, citing Fossier and Stanley, claimed were committed by young people emboldened by their marijuana addictions.⁶¹ Generally, Gomila wrote, use of marijuana lowered morals and restraints and was, in that capacity, a breeder of crime.⁶²

The works of Fossier, Stanley, and Gomila engender three important observations—on scientific validity, the role of racism, and the concept of academic literature as campaign material.

In their collective validity, the three writings compare unfavorably even to the 1917 report by the Bureau of Chemistry that, while anecdotal, at least interviewed a substantial number of druggists. First of all, as Bonnie and Whitebread note, there was no mention by any of the authors that the crime wave they attributed to marijuana might actually be connected to the sweeping federal prohibition of alcohol.⁶³ Nor, for that matter, was there suggestion that the swell of bank robberies could be tied to the most devastating stock market crash in the nation’s history.

⁶⁰ Frank R. Gomila and Madeline Gomila Lambou, “Present Status of the Marihuana Vice in the United States,” in *Marihuana: America’s New Drug Problem* ed. Robert P. Walton (Philadelphia: J. B. Lippincott Company, 1938), 29-30.

⁶¹ *Ibid.*, 31.

⁶² *Ibid.*, 39.

⁶³ Bonnie and Whitebread, *Marihuana Conviction*, 67.

More damning, though, is the shadow of the Indian Hemp Drugs Commission report. Not only did Fossier, Stanley, and Gomila each cite the Commission in their writing, Gomila went so far as to praise it. On the need for unbiased information regarding marijuana, Gomila wrote: “The serious-minded observer...has found it difficult to appraise the real extent and gravity of this situation,” and, noting the reliability and thoroughness of the Indian Hemp Drugs Commission, lamented that “no study of a comparable character has been made in any other country.”⁶⁴ Evidently, esteem for the Commission’s methodology did not translate into esteem for its findings. Fossier wrote that marijuana destroyed the “inhibition for crime.”⁶⁵ Stanley claimed that “to its influence may be attributed many of our present day crimes.”⁶⁶ Gomila said it “unquestionably” aggravated New Orleans’s crime wave,⁶⁷ yet the Indian Hemp Commission found that “there is little or no connection between the use of hemp drugs and crime.”⁶⁸ As for the much-feared marijuana addict or “dope fiend,” as they were known in New Orleans, the Commission found that “even the excessive consumer is ordinarily inoffensive,” though, “occasionally, but very rarely indeed, excessive indulgence in hemp drugs may lead to violent crime.”⁶⁹

Even giving Fossier, Stanley and Gomila the most generous reading of the Commission’s report, their conclusions on the causal link between marijuana and violent crime appear ill-founded. The trio seemed content with conjecture

⁶⁴ Gomila and Lambou, “Status of Marihuana Vice,” 28.

⁶⁵ Fossier “Marihuana Menace,” 249.

⁶⁶ Stnaley, “Marihuana as a Developer of Criminals,” 256.

⁶⁷ Gomila and Lambou, “Status of Marihuana Vice,” 31.

⁶⁸ Report of the Indian Hemp Drugs Commission 1893-94, Vol. 1 pg. 264 in “Mikuriya, “Effects of Marijuana,” 269.

⁶⁹ Ibid.

and myth; the only piece of empirical evidence submitted in any of the writings was the coroner's submission that one out of every four criminals in the parish prison were "confirmed marihuana addicts." Even if that were verifiably true, one would have to mistake correlation for causation to draw any conclusion about marijuana's incitement of crime. Considering that Fossier's article was published in the *New Orleans Medical and Surgical Journal* and Stanley's article was in the *American Journal of Political Science*, one would have expected a higher standard of evidence. But, because marijuana was a new drug in a city already greatly concerned about drugs, pseudo-scientific anti-drug activism defined marijuana's effects and image.

Unlike the work of the New Orleans three, the Hemp Commission's findings had been corroborated by further study. Frequent use among soldiers in the Panama Canal Zone, which the United States occupied, prompted concern about soldier discipline from the Army, which prohibited non-medical use among soldiers in 1923. Enforcement, however, was difficult and the Army requested that the governor issue a zone-wide ban in 1925.⁷⁰ The governor responded by appointing a committee to investigate, which undertook a literature review, solicited medical testimony, and actually conducted a controlled laboratory experiment. In December 1925 the committee released its report, recommending that "no steps be taken by the Canal Zone authorities to prevent the sale or use of marihuana" because the committee found no evidence

⁷⁰ Bonnie and Whitebread, *The Marihuana Conviction*, 132-133.

that marijuana was habit-forming or had a “deleterious influence” on its users.⁷¹ Like the Indian Hemp Commission, the committee found no evidence that marijuana causes insanity and only a miniscule record of marijuana-fueled violence or insubordination.⁷² A follow-up report in 1932 stated that, while use continued to be common among soldiers in Panama, there was no evidence of mental or physical deterioration and that observed soldiers showed “no tendency to combativeness or destructiveness,” another refutation of the criminogenic thesis.⁷³

Part of the pseudo-scientific nature of the writings may have been due to the goals of the authors. Unlike the Hemp Commission and the Panama Canal study, which were fact-finding investigations, Fossier, Stanley and Gomila were making calls to action. Their writing was used as activism. Though initially unsuccessful in their calls for federal legislation, the trio helped to define the image of marijuana that emerged at the state and local level in the late 1920s and early 1930s. The anecdotal image they conjured up was “fact” enough for their readers—people like the Commissioner of the Federal Bureau of Narcotics, Harry J. Anslinger, who, as discussed in the next chapter, read and absorbed the material produced in New Orleans.

The unscientific nature of Fossier, Stanley, and Gomila’s work is perhaps linked to the racial and socioeconomic connotations of marijuana use in 1920s

⁷¹ “Canal Zone Report,” 2, quoted in Bonnie and Whitebread, *Marihuana Conviction*, 134.

⁷² Bonnie and Whitebread, *Marihuana Conviction*, 135.

⁷³ Canal Zone Marijuana Committee Report, October 21, 1932. Box 9, File 17, H.J. Anslinger Papers, HCLA 1875, Special Collections Library, Pennsylvania State University. (Hereafter Anslinger Papers)

and 1930s New Orleans, which undergirded each article. Whereas marijuana in the Southwest and West was racialized as only a Mexican drug, in New Orleans, it was attributed to a broader underclass. In his article, Stanley was content to describe the typical user as just a “criminal,”⁷⁴ whereas Fossier made more sweeping claims—that “the dominant race and most enlightened countries are alcoholic,” and connected marijuana use to the mental and physical deterioration of certain races and nations.⁷⁵ Gomila was the most explicit, identifying the primary dealers as “Mexicans, Italians, Spanish-Americans and drifters from ships,” whereas “negroes” who worked on the docks were mentioned as users.⁷⁶ Indeed, Gomila highlighted use of marijuana among blacks in New Orleans, saying that “practically every negro in the city can give a recognizable description of the drug’s effects.”⁷⁷

Given, then, the conception of users as either racial minorities, members of an economic underclass (blue collar laborers and criminals), or both, one wonders whether the conclusions Fossier, Stanley, and Gomila drew might be tainted by prejudice. Indeed, given the clear evidence from earlier, more scientific studies, the negative views the New Orleans activists held of marijuana’s users seem to have affected their view of the drug itself. Moreover, as Jerome Himmelstein points out, their rhetoric about the threat to children conveys “an image of infection,” not necessarily of marijuana itself, but what it represents, the mingling of dangerous classes with innocents, a trope that would

⁷⁴ Stanley, “Marihuana as a Developer of Crime,” 256.

⁷⁵ Fossier “Marihuana Menace,” 249.

⁷⁶ Gomila and Lambou, “Status of Marihuana Vice,” 30.

⁷⁷ *Ibid.*, 32.

continue in the years to come.⁷⁸ One might recall the anti-opium smoking laws in California, aimed at preventing undesirable racial mixing between Chinese men and the women whom they seduced in opium dens as evidence of that infection fear as a trend connecting anti-drug efforts.⁷⁹ Though unadulterated racism is difficult to prove, suffice it to say that the “New Orleans image of marihuana and violence...developed in tandem with a perception of the users as either members of racial minorities or as lower- and working-class whites.”⁸⁰ Of course, that is not the whole story. Given a crime wave and a concern over drug usage generally, marijuana was in some ways just the newest substance lumped in with the rest of the drugs labeled “dangerous.” There is no evidence to suggest a special, particularly racialized campaign against marijuana in New Orleans separate from drugs like cocaine, for example.

Finally, whatever the rationale behind their views on marijuana, Fossier, Stanley, and Gomila were united in a single goal: to include marijuana in the Harrison Act, thereby enacting federal prohibition of non-medical use. The “growing menace,” Fossier warned, could only be dealt with by national regulation.⁸¹ Only with the aid of a federal law could states “suppress a traffic as deadly and as destructive to society” as marijuana, Stanley argued.⁸² Though published in academic journals, these authors made no attempt to hide their campaign for marijuana to be nationally banned. Even before the articles were

⁷⁸ Himmelstein, *Strange Career*, 72.

⁷⁹ Musto, *American Disease*, 43

⁸⁰ *Ibid.*, 52.

⁸¹ Fossier, “Marihuana Menace,” 250.

⁸² Stanley, “Marihuana as a Developer of Criminals,” 257.

published, there was a burgeoning campaign for federal legislation. However, the wide reach of their work and their prominent positions made Fossier, Stanley, and Gomila very effective spokesmen for the movement. That work reached the highest levels the drug control bureaucracy and had a serious influence on the way marijuana was perceived. Though Fossier, Stanley and Gomila failed at their attempt to include marijuana in the Harrison Act, as will be discussed later, the trio had success through a different avenue; their arguments encouraged federal officials to push for uniform state legislation, and, just a short while later, in 1937, the federal Marijuana Tax Act launched prohibition for decades to come.

Chapter Three

Harry Anslinger and the Uniform State Narcotic Drug Act

The first three decades of the twentieth century saw the rise of federal control over opiates and cocaine and the growth of marijuana prohibition at the state and local levels. In the late 1920s and the 1930s, anti-marijuana activists merged those realms, bringing the “killer weed” image from the Southwest and New Orleans to Washington. In 1929, the Narcotic Farm Act was the first federal law to classify marijuana as a “habit-forming narcotic drug.” That definition, in conjunction with other activism, engendered curiosity about marijuana among members of Congress, and ultimately, a desire for federal action against the drug. Though officials in the federal government—most prominently Harry Anslinger, in the newly-formed Federal Bureau of Narcotics (FBN)—resisted initial calls for federal prohibition, they attempted to control policy by promulgating the Uniform State Narcotic Drug Act, a model antidrug law that aimed to standardize drug policies across the states. However, Anslinger’s initial campaign tactic for the Uniform Narcotic Act proved ineffective, which ultimately brought about a new strategy.

The Pressure Builds

As enforcement of the Harrison Act grew more stringent—aided by friendly Supreme Court decisions in *Webb* and *Behrman*, which deemed constitutional the policing of doctors’ decisions to prescribe narcotics to addicts—the law’s costs became evident. By 1928, America’s three federal

prisons were operating at 200 percent capacity, burdened by more than two thousand narcotics offenders, the largest class of offenders in the federal prison system. Understandably, the Justice Department was looking for alternatives to incarceration for Harrison Act violators, a majority of whom were addicted and who at the time represented close to a third of the total federal prison population.¹ To ameliorate the growing problem, Congressman Stephen G. Porter of Pennsylvania, a devoted anti-narcotics advocate, introduced the Narcotic Farm Act in 1928, written in cooperation with the Justice Department. The bill, passed without opposition and signed in January 1929 by President Coolidge, established two “narcotic farms,” ultimately housed in Lexington, Kentucky and Fort Worth, Texas, which would confine and “treat” people addicted to “habit-forming narcotic drugs,” defined as opiates, cocaine, Indian Hemp (marijuana) and peyote.²

In his testimony to Congress, Porter, who was a vocal opponent of the drug scourge and had represented the United States at League of Nations hearings and committees on drug control since 1920, spoke of the horrors of “drug slavery.” His belief was that many addicts could be “cured, or at least substantially helped” with the aid of Federal officials and doctors.³ The bill had the support of Levi G. Nutt, who ran the narcotics division of the Bureau of Prohibition, created as a part of the Treasury Department in 1927. Nutt,

¹ David F. Musto, *The American Disease: Origins of Narcotic Control* (New Haven: Yale University Press, 1973), 204.

² *Ibid.*, 204-206; “Act Establishing Narcotic Farms and a Narcotics Division in the Public Health Service,” *Public Health Reports (1896-1970)* 44, no. 21 (May 24, 1929): 1256-58.

³ Musto, *American Disease*, 197-198; U.S. Congress, House, Committee on the Judiciary, *Establishment of Two Federal Narcotic Farms: Hearings before the Committee on the Judiciary*, 70th Cong., 1st sess., 1928, 12-13.

testifying in front of the Judiciary Committee in support of the bill, said that reducing the number of addicts in the streets would reduce crime and boasted about the number of arrests his (by his account, understaffed) agency had made, a curious decision given that the narcotic farm bill primarily addressed prison overcrowding. At the conclusion of his testimony, Nutt was so supportive of the idea of compulsory treatment that he proposed sending even addicts who had not been convicted to the farms.⁴

While wardens, doctors, members of Congress and other experts testified extensively about the problem of opiate and cocaine addiction in federal penitentiaries, there was virtually no discussion of Indian hemp (marijuana).⁵ This absence, perhaps initially surprising, makes a great deal of sense considering that the bill was almost exclusively targeted at paring down overcrowded, addict-filled federal penitentiaries. While there had been calls to include marijuana in the Harrison Act since before it was enacted, it remained unregulated by federal law (except for labeling requirements under the Pure Food and Drug Act) as of the 1928 hearings. Given that no one was serving time in federal prison for marijuana crimes, the fact that discussion of an anti-crowding bill did not revolve around marijuana is perfectly understandable. What becomes more perplexing, then, is Indian hemp's inclusion in the bill at all. How did Indian hemp—a drug unrelated to federal prisons, rejected as addicting

⁴ Ibid., 37-42.

⁵ Ibid.

by the best science of the day,⁶ and disconnected from the actual meaning of “narcotics” (drugs that dull the senses and could render users unconscious)⁷—come to be classified as a “habit-forming narcotic drug?”

As with much early drug policy, the genesis of marijuana as an addicting narcotic lies in the hands of a powerful individual—in this case, Congressman Porter, the bill’s sponsor. Though Congressman John Cochran had introduced a highly similar bill creating a “Federal prison hospital” earlier in the same Congress, he said at the Porter hearing that, “I frankly admit I did not expect my measure to be enacted.”⁸ Evidently, then, the 1928 bill’s passage had much to do with the strength of Porter’s leadership behind it, demonstrated by the overwhelmingly positive testimony he marshaled from dozens of different local, state and federal officials in support of the bill. As the bill’s author and chief proponent, Porter likely had significant sway over what drugs would be included, so long as inclusion did not jeopardize the bill’s chance of approval.

As Bonnie and Whitebread note, given that there was not concern over marijuana “addiction” in the country at the time, the best explanation for marijuana’s inclusion was “greater awareness within official circles of cannabis’ status as ‘another narcotic,’” which may have stemmed from international discussions of the drug.⁹ Of course, Porter was very much a part of these “official circles,” particularly at the international level, where he served as chairman of

⁶ Richard J. Bonnie and Charles H. Whitebread II, *The Marihuana Conviction: A History of Marihuana Prohibition in the United States* (Charlottesville: University Press of Virginia, 1974), 137.

⁷ *Ibid.*, 28.

⁸ Committee on the Judiciary, *Establishment of Two Federal Narcotic Farms*, 43.

⁹ Bonnie and Whitebread, *Marihuana Conviction*, 56-57.

the American delegation to the Second Geneva Opium Conference in 1924-25. Though proposed controls of marijuana were ultimately weakened due to logistical concerns from the Indian delegation, the relevant subcommittee at the conference had recommended restricting Indian hemp use to medical and scientific purposes only and had condemned other use as “harmful.”¹⁰

Though not entirely conclusive, the most reasonable account of how Indian hemp was classified as an addicting narcotic and included in the 1929 Narcotic Farm Act is thus fairly simple: Porter wanted it included. He had been exposed in Geneva to frightening accounts of Egyptian hashish users driven insane by the drug.¹¹ Perhaps he had followed developments in the various states in the Southwest and the assertions that drug peddlers were seducing young children in New Orleans. Whatever the explanation, Porter deemed the drug as worthy of concern, which, likely due to his recognition as an expert on domestic and international drug policy, went unchallenged. For the reasons above, it was unlikely that any marijuana users would be incarcerated at Porter’s narcotics farms. However its inclusion in his bill was still significant because, by defining marijuana as an addicting narcotic, Porter brought the budding image of marijuana as dangerous to the federal level.

That image provoked a response. After the Narcotic Farm Act was passed, members of Congress grew inquisitive. If, as Porter’s bill announced, marijuana was a “habit-forming narcotic drug,” why was a federal law not in place to address it? Why not amend the Harrison Act and the 1922 Import and Export

¹⁰ Ibid., 58.

¹¹ Ibid.

Acts, which restricted international traffic in narcotics, to include marijuana?¹² Congressmen wanted information. At the request of Colorado Senator Lawrence Phipps, Dr. Hugh Cumming, the Surgeon General, prepared a *Preliminary Report on Indian Hemp and Peyote* in 1929. Cumming's report—much like the 1917 Bureau of Chemistry report that preceded it and the writings of the New Orleans activists that followed it—included no actual investigation and ignored the Indian Hemp Commission and the Panama Canal Zone studies in favor of repeating anecdotes and mythology.¹³

As the first official statement on marijuana by the federal government—and, moreover, one written by the Surgeon General—one would assume Cumming's *Preliminary Report* to be scientifically sound, at least by standards of the time. However, Cumming did little of his own investigative work, limiting himself to visits to southern cities and an inquiring letter to the Mexican Department of Health. Regarding the connection between marijuana use and crime, Cumming wrote that habituated users are “said to develop a delirious rage after its administration during which they are temporarily, at least, irresponsible and liable to commit violent crimes,” referencing only the Hashish-riddled assassins myth and the possibility that the “murderous frenzy of the Malay” might be connected to the use of hashish.¹⁴ Though Cumming rejected the idea of physical dependence like that found in opiate users, he wrote that its

¹² Ibid., 59.

¹³ Ibid.

¹⁴ Cumming, *Preliminary Report on Indian Hemp and Peyote*, quoted in Bonnie and Whitebread, *Marihuana Conviction*, 128.

“stimulating effects” were enough to create habitual use. He concluded by saying that prolonged use “is said to produce mental deterioration.”¹⁵

As has been discussed, however, there were English-language studies on marijuana that conducted actual clinical investigations, however meager by modern standards. Were Cumming and his employees in the Public Health Service completely unaware of the Indian Hemp Commission, which had rejected the link between marijuana and crime, even among the most excessive users? Could they have also missed the Canal Zone study, conducted only a few years earlier, which rejected the insanity charge and the idea that marijuana was addicting like other intoxicants?

Bonnie and Whitebread contend that Cumming had no incentive to prepare a verifiable, fact-based report because use was confined primarily to Mexicans in the Southwest and that “there was no constituency interested in a comprehensive medical evaluation.”¹⁶ They attribute the report’s propagation of rumor to political expediency, writing that “it was easier to conduct a cursory ‘investigation’ and say that corroboration existed for prevalent assumptions without committing oneself one way or the other.”¹⁷

Expediency and the report’s constituency do of course matter, and likely do help illuminate why Cumming wrote what he did, but Bonnie and Whitebread’s interpretation is not entirely logical. Regarding thoroughness, one could understand Cumming’s reticence to expend departmental resources on a

¹⁵ Ibid.

¹⁶ Bonnie and Whitebread, *Marihuana Conviction*, 135.

¹⁷ Ibid.

study of a drug confined to one region and one ethnic group, but that does not properly explain why Cumming chose to rely on anecdotal claims of Malays “running amok” and hashish-addicted Muslim assassin. Assigning someone to read the Indian Hemp Commission or Canal Zone studies and presenting those findings, even without additional research, would not have been an enormous burden. Nor was Cumming’s report particularly ambivalent about marijuana, as Bonnie and Whitebread claim. To the contrary, the Cumming Report did substantially, though not entirely, endorse a menacing image of marijuana, calling it an addictive narcotic and one that may cause violent crime and mental deterioration.¹⁸

Given the report’s unscientific nature, political expediency does seem like a logical explanation for its largely menacing content. If, as Bonnie and Whitebread contend, the report’s constituency was not interested in a “comprehensive medical evaluation” from the Surgeon General, one wonders what they *were* interested in—and for that matter, who the constituents were. Senator Phipps of Colorado—a man who “plagued the Washington bureaucracy endlessly” with his concerns about marijuana—was the impetus for the report, “prodding” Cumming to write it.¹⁹ Phipps saw marijuana—connected almost exclusively to Mexican immigrants—as a growing problem in late 1920s Colorado, where sales had been illegal since 1917 and possession was made illegal in 1927 (with penalties increased in 1929).²⁰ Phipps, citing abuse of

¹⁸ Ibid., 129.

¹⁹ Ibid., 39.

²⁰ Ibid.

marijuana in Colorado, continually lobbied for a marijuana amendment to the Harrison Act, beginning in January of 1929, the same year of the *Preliminary Report*.²¹

If Senator Phipps and other Western and Southwestern politicians are taken as the constituents of the Cumming Report, it is not surprising that their preconceptions of marijuana were not repudiated. Cumming had no reason to conduct an aggressive search for truth when the regionally-specific Congressmen for whom he wrote had already made up their minds about marijuana's danger and wanted a federal law. It should be noted that Phipps was not the sole anti-marijuana voice in Congress. As media coverage of marijuana increased in the late 1920s in Colorado, Texas, and, as previously discussed, New Orleans, Congressmen reacted. Congressmen James O'Connor of New Orleans, for example, had written the Bureau of Prohibition in 1928 seeking a constitutionally valid method to enact federal prohibition.²² Texas Senator John Sheppard actually took action, introducing in 1929 an amendment that proposed adding marijuana to an earlier law prohibiting import and export of various narcotics.²³

While Cumming's *Preliminary Report* in large part verified the opinion of these anti-marijuana Congressmen and, along with the Narcotics Farm Bill, brought the marijuana menace to Washington's attention, it did not have a sudden impact on the course of federal legislation. The Congressmen and local

²¹ Ibid., 62.

²² Ibid., 56.

²³ Ibid., 61.

anti-marijuana activists from their home states, did, however, continue to press for federal legislation, which prompted the federal drug enforcement bureaucracy to develop a stance on the drug, beginning with its response to the Sheppard bill. Though it resisted early demand for a federal law, the Narcotics Division in the Bureau of Prohibition (and later, the Federal Bureau of Narcotics) responded to these regionalized concerns with an effort to encourage more effective state laws against marijuana, which would ultimately incite passage of federal prohibition.

The Narcotics Division Responds

Though there had been earlier calls to add marijuana to the Harrison Act—the 1917 Bureau of Chemistry report, for example—Senator Sheppard’s 1929 bill amending the Narcotic Drugs Import and Export Act to include marijuana was the most serious and actionable effort to date. The Narcotics Drug Import and Export Act, passed in 1922, prohibited the importation of cocaine and opium for non-medical reasons and created the Federal Narcotics Control Board to determine how much imported crude opium and coca leaves were needed for legitimate uses.²⁴ For the purposes of Sheppard’s 1929 amendment, the interesting component of the bill was that it made individual possession of cocaine and opium a violation of the bill by presuming that the drugs were illegally imported and the possessor knew as much.²⁵

²⁴ Thomas M. Quinn and Gerald T. McLaughlin, “The Evolution of Federal Drug Control Legislation,” *Catholic University Law Review*, 22 (1973): 597.

²⁵ *Ibid.*, 598.

At least in Washington, there was no political opposition to Sheppard's bill. The only politicians who cared at all about marijuana—those from the Southwest, like Sheppard himself—were firmly rooted in their vision of marijuana as a dangerous drug used by blacks and Mexicans, a conception not challenged by Cumming's 1929 *Preliminary Report*.²⁶ Nor were the two federal agencies interested in drug legislation—the Public Health Service (headed by Cumming) and the Bureau of Prohibition—opposed to the idea of prohibiting marijuana, at least in principle. The issue that Sheppard's effort faced was not ideological, but legal. Among the relevant actors, "opinion was virtually unanimous" that including marijuana in the Harrison Act or Narcotic Drugs Import and Export Act "was illogical, possibly unconstitutional, and might even endanger the entire federal legislative scheme which experts viewed as the most effective in the world."²⁷

The precariousness of drug control legislation at the time lay in its tenuous constitutional justification. At the time, the constitutional understanding was that states retained police powers, so that, as with the Harrison Act, a federal declaration criminalizing possession of drugs was presumed to be unconstitutional.²⁸ Like the Harrison Act before it, the Import and Export Act had to base its drug control efforts on something constitutionally valid—in this case, the power to regulate foreign commerce.²⁹ However, the constitutionality of the

²⁶ Bonnie and Whitebread, *Marihuana Conviction*, 60.

²⁷ *Ibid.*

²⁸ William Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Harvard University Press, 2011), 175.

²⁹ Bonnie and Whitebread, *Marihuana Conviction*, 61.

prohibition relied on the presumption that possession was a product of illegal importation, which, in the case of marijuana, was not logical. While there was not meaningful domestic production of heroin or cocaine, hemp grew wild throughout the United States, which made an assumption of importation spurious. Based on these concerns, the Narcotics Division opposed Sheppard's bill and it died in committee.³⁰

The Rise of Harry Anslinger

Around the same time the Narcotics Division was working out a response to the Sheppard bill, a major upheaval within the agency was underway. Congressman Porter, right after his Narcotic Farms were approved, set about to create a new Federal Bureau of Narcotics (FBN) in the Treasury separate from the Bureau of Prohibition, where the Narcotics Division had been housed since 1927. His plan sought to combine the Narcotics Division—responsible for enforcing the Harrison Act—with the Federal Narcotics Control Board, which administered the 1922 Narcotic Drugs Import and Export Act. Porter argued that the new Bureau would be more effective and efficient, centralizing functions and creating an independent agency to operate both domestically and internationally.³¹ Although few people besides Porter seemed to think the bill was really necessary, no one had strong opposition either. With a powerful member like Porter lobbying for its passage, the bill passed committee, was

³⁰ Ibid., 62.

³¹ John C. McWilliams, *The Protectors: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930-1962* (Newark: University of Delaware Press, 1990), 37.

adopted unanimously on the floor and was signed into law by President Hoover in June 1930.³²

While Congress considered Porter's bill, however, the Narcotics Division experienced significant turbulence. A number of Division agents in New York City were investigated by a federal grand jury for allowing a drug dealer to go free after having him surrounded, which the jury took to be a sign of a quid pro quo arrangement. There were also numerous other cases of agents withholding evidence, money going missing, and drug use among agents.³³ Perhaps most damning was the discovery that arrest records were falsified to pad numbers, which the Assistant Deputy of Prohibition in Charge of Narcotics said was an order from the Deputy Commissioner, Levi Nutt.³⁴ It was also discovered that Nutt's son and son-in-law had provided legal and accounting services for Arnold Rothstein, a major narcotics trafficker, alcohol distributor, and gambling tycoon (infamous for fixing the 1919 World Series). Although Nutt denied the padding allegation and there was no evidence he knew of his son's activity, it was nonetheless "impossible for him to survive in his Washington position," and he was demoted to a field supervisor.³⁵

Nutt's demotion would prove pivotal. Prior to the arrest-padding scandal and the discovery of his son's relationship with Rothstein, Nutt—who had more than a decade of experience leading the Narcotics Division—was all but guaranteed the Commissioner position with the FBN. But, because Nutt was

³² Ibid., 38-39.

³³ Ibid., 39-40.

³⁴ Ibid., 40-41.

³⁵ Ibid., 41-42.

demoted, a different man, Harry J. Anslinger, the Assistant Commissioner of Prohibition and Secretary of the Federal Narcotics Control Board, was chosen to be Commissioner instead.³⁶ This development—a product of Nutt’s bad choices, but also bad luck—had major implications for the future of American drug control, and for marijuana more specifically.

Nutt, in considering Sheppard’s attempt to amend the Import and Export Act, signed onto a letter suggesting that the “evil” of marijuana “may more properly be met by state and municipal legislation.”³⁷ Anslinger agreed with the Division’s analysis that the constitutional footing was too weak to add marijuana to the current laws, but he had a vision for the future. He believed that marijuana should eventually be outlawed and thought that through a ban on international traffic, prohibition of interstate transportation, and state laws aimed at curbing the growth, use and sale of marijuana, effective federal prohibition could be achieved.³⁸

That Anslinger was a believer in an (eventual) federal prohibition is no surprise considering his history. Born in 1892 in Altoona, Pennsylvania, Anslinger worked for the Pennsylvania Railroad as a detective in the Intelligence Department, after receiving his associate degree from the Pennsylvania State College. After unraveling a scheme to defraud the railroad, he was promoted to captain of the railroad police and eventually became deputy fire commissioner in charge of arson investigations for the state police. In World War I, he served as a

³⁶ Ibid., 32, 42.

³⁷ Bonnie and Whitebread, *Marihuana Conviction*, 62.

³⁸ Ibid., 63.

civilian inspector in the Ordnance Department and then applied to the diplomatic corps, performing intelligence work as an attaché at the American Legation at The Hague. His work for the State Department eventually took him to Hamburg in 1921 and La Guaira, Venezuela in 1923, a placement he disliked strongly.³⁹

In 1926, Anslinger's request to transfer was granted, and he was sent to Nassau in the Bahamas, where he became involved with the battle against alcohol smugglers. The Bahamas at the time were a hub of liquor trafficking and, without cooperation from the British, Treasury agents were essentially helpless to stop it. At a meeting with British officials in London, Anslinger was able to negotiate an agreement combating smuggling that was so effective Treasury Secretary Andrew Mellon "borrowed" him to make similar deals with other nations. As fate would have it, Anslinger never returned to the State Department.⁴⁰

Instead, he headed the Division of Foreign Control in the Prohibition Unit, combining his diplomatic and investigative skills to fight international alcohol trafficking. Anslinger's effectiveness earned him a 1929 promotion to Assistant Commissioner of Prohibition overseeing the Narcotics Control Board and a year later to Commissioner of the FBN, quite a meteoric rise. Through it all, he maintained a belief in the ideals of prohibition, despite seeing the corruption in the Narcotics Division and the difficulties of enforcing the Volstead Act. Indeed, he even submitted a plan to a 1928 national competition to improve the

³⁹ McWilliams, *The Protectors*, 23-31.

⁴⁰ *Ibid.*, 31-32.

functioning of alcohol prohibition, arguing for the employment of the Coast Guard in the battle against smuggling and coordination between Treasury and the Justice Department in criminal investigations. Most revealingly, he proposed amending the Volstead Act to include purchasing alcohol in addition to the restrictions on manufacturing, transporting, or selling it. For possession offenses, he envisioned fines in the thousands, adding imprisonment for repeat offenders.⁴¹

Anslinger's belief in highly punitive enforcement against users of intoxicants may have been linked to a childhood trauma, which Anslinger recalled in his book *The Murderers*:

As a youngster of twelve, visiting in the house of a neighboring farmer, I heard the screaming of a woman on the second floor. I had never heard such cries of pain before. The woman, I learned later, was addicted to morphine, a drug whose dangers most medical authorities did not yet recognize. All I remember was that I heard a woman in pain, whose cries seemed to fill my whole twelve year-old being. Then her husband came running down the stairs, telling me I had to get into the cart and drive to town. I was to pick up a package at the drug store and bring it back for the woman.

I recall driving those horses, lashing at them, convinced that the woman would die if I did not get back in time. When I returned with the package—it was morphine—the man hurried upstairs to give the woman the dosage. In a little while her screams stopped and a hush came over the house.

I never forgot those screams. Nor did I forget that the morphine she had required was sold to a twelve-year-old boy, no questions asked.⁴²

Whatever its origin or motivations, Anslinger's belief in the fundamental philosophy of prohibition did not wane over the course of his tenure.

Disconnected from the failures of alcohol prohibition and the abuses of the old

⁴¹ Ibid., 32-33.

⁴² Harry J. Anslinger and Will Oursler, *The Murderers: The Story of the Narcotics Gangs* (New York: Farrar, Straus and Cudahy, 1961), 8.

Narcotics Division, Anslinger created a remarkably successful career for himself based on that philosophy and good initial timing. Anslinger's rise was contingent on Porter, who died before Anslinger was appointed Commissioner, getting the FBN bill through Congress before his death and it was spurred on significantly by Nutt's demotion. The concurrence of Porter's bill—which at the time seemed like a minor rearrangement of the federal drug control apparatus—with Nutt's downfall ultimately imbued an astonishing amount of power in the hands of Harry Anslinger.

Through firm convictions and deft politicking, Anslinger reigned over American drug control for more than three decades, largely unchallenged. He successfully avoided calls for federal prohibition immediately after his appointment, instead channeling prohibition efforts to the states. Under his leadership, the marijuana menace, invented in the Southwest and New Orleans, was propagated in every state legislature, and eventually, in the halls of Congress. That process began almost immediately after Anslinger's appointment as Commissioner, with his effort to craft an effective and standardized anti-drug law for adoption by the states.

Anslinger in Charge

Anslinger's first several years in charge of the FBN were challenging. Soon after his permanent appointment as Commissioner in December 1930, there came calls from anti-marijuana activists for federal prohibition, especially from members of law enforcement in states like Louisiana and Colorado.⁴³ As

⁴³ Bonnie and Whitebread, *Marihuana Conviction*, 67.

discussed in chapter two, much of that pressure came from New Orleans, where marijuana use was becoming visible, particularly among blacks and poor whites working at the docks. Prominent members of the New Orleans community like Dr. A. E. Fossier and the District Attorney, Eugene Stanley, wrote of the horrors of marijuana. In frightening language, Fossier wrote of how marijuana “cut off the inhibition” of weak-minded people, allowing them to be made into criminals.⁴⁴ Stanley echoed Fossier’s argument about the relationship between marijuana use and crime, appropriately titling his article “Marihuana as a Developer of Criminals.”⁴⁵ Both also made rousing calls at the end of their writings for marijuana to be included in the Harrison Act, blurring the line between academic work and their political beliefs.

Their efforts did not go unnoticed, nor did it only come from them. Stanley’s campaign reached the ears of Anslinger and President Hoover.⁴⁶ Denver newspapers wrote about the alleged connection between marijuana and rising crime rates in 1931, warning of the spread of the drug from Mexicans in the beet fields to “boys and girls of tender years.”⁴⁷ In the *Journal of Criminal Law and Criminology*, M.H. Hayes, a Wichita-area academic, and L. E. Bowery, a Wichita police officer, wrote an influential article on marijuana that reflected the thinking of the time in Western states. The authors recalled incidents from newspapers across the West in which marijuana-crazed Mexicans had

⁴⁴ A. E. Fossier, “The Marihuana Menace,” *New Orleans Medical and Surgical Journal*, 84 (1931): 247.

⁴⁵ Eugene Stanley, “Marihuana as a Developer of Criminals,” *The American Journal of Political Science*, 2 (1931): 255-56.

⁴⁶ Bonnie and Whitebread, *Marihuana Conviction*, 69-70.

⁴⁷ *Ibid.*, 71-72.

committed violent crime and quoted different officials in government, law enforcement, and health professions that supported stronger laws against the drug.⁴⁸ Harsher laws were particularly necessary because marijuana use had “spread to native whites” in the mid-1920s, rather than being “confined to Mexicans.”⁴⁹ Like Fossier and Stanley in New Orleans, Hayes and Bowery repeated the “Assassin” myth, tying the drug to a history of violence. As for the present day, they quoted the Chief of Detectives for the Los Angeles Police Department, who said that marijuana “addicts” had, in the past, killed police officers for no reason except their intoxication and, indeed, “numerous assaults have been made upon officers and citizens with intent to kill by Marihuana addicts which were directly traceable to the influence of Marihuana.”⁵⁰

The localized pressure that was building, however, put Anslinger in a difficult position. Though no evidence suggests he was opposed to federal prohibition in principle, there were a number of problems in practice. As with amending the Narcotic Drugs Import and Export Act, adding marijuana to the Harrison Act, like Fossier and Stanley proposed, presented serious constitutional problems. The Harrison Act as it stood had been challenged and had faced close decisions about its constitutionality. Anslinger and the FBN had no desire to add marijuana to the bill and provoke another constitutional challenge, especially because marijuana, unlike opium and cocaine, had no real medical market and

⁴⁸ M. H. Hayes and L. E. Bowery, “Marihuana,” *Journal of Criminal Law and Criminology*, 23 (1933); 1089-91.

⁴⁹ *Ibid.*, 1091-92

⁵⁰ *Ibid.*, 1088.

therefore would produce little revenue if taxed.⁵¹ In *Nigro v. United States*, the Court's 1928 decision regarding the Harrison Act, it had held that "Congress, by merely calling an Act a taxing act, cannot make it a legitimate exercise of taxing power." While the Court held that the Harrison Act's tax was legitimate, it explicitly referenced the "substantial" income derived from it.⁵² Because marijuana lacked a meaningful licit market, the likelihood it would produce substantial income was very unlikely, and the FBN was worried adding marijuana would invalidate the entire law.

Beyond constitutional concerns, there were also environmental obstacles for the budding bureaucracy. Anslinger took power in the midst of the Great Depression, a time when the Bureau's budgets were lackluster.⁵³ Taking on enforcement of a federal prohibition would have added to an already substantial work burden. Moreover, there was opposition from interest groups like the American Medical Association, which had protested efforts to include marijuana in the Harrison Act from the beginning.⁵⁴ In 1929 and 1930, the AMA's Bureau of Legal Medicine and Legislation, directed by William C. Woodward, had sent out inquiries to physicians seeking responses about marijuana's addictiveness and whether additional regulation was truly necessary.

The responses were fairly uniform: "None to whom I have talked have ever seen or heard of a person becoming addicted to the use of this drug,"

⁵¹ Himmelstein, *Strange Career*, 56-57.

⁵² *Nigro v. U.S.*, 276 U.S. 332, 353 (1928)

⁵³ Jerome L. Himmelstein, *The Strange Career of Marihuana: Politics and Ideology of Drug Control in America* (Westport: Greenwood Press, 1983), 57.

⁵⁴ Bonnie and Whitebread, *Marihuana Conviction*, 48.

Woodward wrote.⁵⁵ Numerous respondents wrote that a law regulating medical preparations was not necessary because there was not “sufficient evidence of misuse of cannabis indica to warrant placing it under narcotic regulation” nor were “pharmaceutical preparations” of the drug—as opposed to the fresh flowers of the plant, which grew wild—likely to be abused.⁵⁶ Others discussed the fact that medical use was “practically abandoned” and called into question the supposed addictiveness of the drug, citing the Canal Zone and Indian Hemp Commission studies.⁵⁷ Consensus seemed to be that a law regulating or restricting marijuana was not necessary and might “over burden” the present laws, with one respondent going so far as to call the idea “absolute rot.”⁵⁸

Woodward summed up the AMA’s position, writing that “It would seem to me that in regard to regulations it [marijuana] would be better left exactly as it is today rather than penalize its use thus bringing publicity to it where there is apparently considerable lack of evidence of its harmfulness.”⁵⁹ Other industry groups, like the Drug Manufacturers’ Association, echoed those sentiments. They wrote to Anslinger, arguing that the only way to prevent recreational use of smoked marijuana would be to prohibit the substantial growth of cannabis

⁵⁵ William C. Woodward, “Extracts from Letters Received by the Bureau of Legal Medicine and Legislation, American Medical Association, 1929-1930, From Pharmaceutical Manufacturers, Relative to the Pharmaceutical Uses and Habit-Forming Properties of Cannabis Indica and Cannabis Sativa,” p. 1, H.J. Anslinger Papers, HCLA 1875, Special Collections Library, Pennsylvania State University, Box 9, File 41 (hereafter Anslinger Papers).

⁵⁶ *Ibid.*, 2.

⁵⁷ *Ibid.*, 5.

⁵⁸ *Ibid.*, 3.

⁵⁹ *Ibid.*, 1.

plants domestically, which would be extremely difficult for the federal government to do.⁶⁰

These hurdles—constitutional questions, Depression-era budgeting, and industry opposition—were substantial. Though Anslinger was what one might call a “true believer”—he bought into the “marijuana menace” and saw it as a vice connected to violent Mexicans and other poor groups in the Southwest and New Orleans—he was also a skilled, pragmatic politician.⁶¹ So while he believed that the federal government should one day ban marijuana, in the early 1930s the FBN told activists like Eugene Stanley in New Orleans that there were numerous unresolved questions to be answered before federal legislation could be sought.⁶² Instead, Anslinger began his tenure as FBN Commissioner with what he believed to be a more achievable goal: uniform state laws that would restrict growth, sale and use of the drug, just as the Drug Manufacturers’ Association said would be necessary. That became the mission of the first five years of Anslinger’s tenure; federal prohibition could wait for the “appropriate time.”⁶³

The Development of the Uniform Narcotic Act

When Anslinger took control of the FBN, the AMA had already been working on model uniform state antidrug legislation for eight years in an effort to create uniformity among state drug controls and to encourage more strenuous enforcement of narcotic laws, which at the time was inconsistent.⁶⁴ In

⁶⁰ Bonnie and Whitebread, *Marihuana Conviction*, 65.

⁶¹ Himmelstein, *Strange Career*, 54-56.

⁶² Bonnie and Whitebread, *Marihuana Conviction* 70.

⁶³ *Ibid.*, 67.

⁶⁴ *Ibid.*, 79.

1924, two years after the AMA's first draft, the issue of a uniform narcotic law was taken up by the National Conference of Commissioners on Uniform State Laws, an organization staffed by delegates from each state that aimed to draft and spread model legislation.⁶⁵ The first two drafts, in 1925 and 1928, included a ban on marijuana for non-medical use, though not at the request of the Narcotics Division, which had no recommendation because marijuana was not federally regulated. It was almost certainly included because it was listed as a narcotic in the Washington and New York laws from which the drafts were based.⁶⁶

By the third draft submitted in 1930, however, marijuana was removed. Due to "many objections raised" about marijuana's inclusion, it was not listed as a habit-forming drug and was included only as a supplement that "may be adopted or rejected, as each states sees fit, without affecting the rest of the act."⁶⁷ Though no official record exists of the "many objections" to marijuana's inclusion, Bonnie and Whitebread argue that the effort to remove marijuana was likely driven by William Woodward, Legislative Counsel for the AMA, whose survey of doctors and pharmacists showed opposition to anti-marijuana legislation.⁶⁸ The status of marijuana in the proposed law became quite contentious once Anslinger took control of the FBN in the summer of 1930.

Anslinger actively involved himself and the Bureau in the drafting process, unlike his predecessor in the Narcotics Division, Levi Nutt, who preferred to remain on the sidelines. Woodward and Anslinger were

⁶⁵ Ibid., 80.

⁶⁶ Ibid., 81.

⁶⁷ Ibid., 82.

⁶⁸ Ibid., 83.

diametrically opposed—Woodward wanted marijuana to be an optional footnote, whereas Anslinger lobbied for total prohibition, even of medical use (which he thought to be insignificant compared to the risk of addiction).⁶⁹ Anslinger was convinced that any effort to stop the traffic in marijuana required full state prohibition, but Anslinger failed to convince Woodward or the Conference of Commissioners in advance of the fourth and second-to-last draft. Before the final drafting session, Anslinger attempted to involve the media, talking about the relationship between marijuana and violent crime that had been reported in the West and Southwest.⁷⁰

Opposition from the medical and pharmaceutical industries, however, was simply too strong for Anslinger to surmount. At the preliminary conference in September 1932—organized by the relevant interests before the final decision was to be made in October by the full Conference of Commissioners—Anslinger realized he needed the support of the various pharmaceutical industries or the entire law might collapse. Thus, he surrendered his initial demand to include marijuana due to opposition from the hemp and medical industries. Instead, marijuana remained a supplement that states could easily add to the list of narcotics, if they wished to. The Conference of Commissioners approved the final draft in October 1932 with little debate.⁷¹ Anslinger, a pragmatist, had, for the time being, premised the stability and success of the law as a whole above the marijuana provision specifically. However, the battle was

⁶⁹ Ibid.

⁷⁰ Ibid., 77, 84.

⁷¹ Ibid., 88-91.

not over. For Harry Anslinger and the Bureau of Narcotics, it had barely begun.

The Uniform Narcotic Act Hits the Road

Anslinger's work did not end after the final version of the Uniform State Narcotic Drug Act was hammered out and approved in late 1932. Without state approval, of course, the model law was a meaningless suggestion. The hard work of convincing the various states to actually pass the law was another job altogether.

A uniform narcotic law—even one stripped of mandatory marijuana prohibition—provided a number of major benefits to the FBN and others interested in antidrug policies. First, a well-designed and enforced uniform state law that was adopted widely might actually succeed in reducing drug use, whereas state laws at the time varied widely and were largely ineffective at curbing traffic.⁷² Even with federal laws like the Harrison Act and the Import and Export Act, Anslinger and the FBN still needed strong laws at the state level; the FBN had fewer than three hundred officers in the early 1930s, clearly insufficient to enforce antidrug laws single-handedly.⁷³ Anslinger correctly believed that local and state police would have to do the grunt work in his burgeoning drug war. His vision of the FBN was one in which federal agents broke up large international and interstate drug trafficking organizations while lower-level offenses were left to the states.⁷⁴

⁷² McWilliams, *The Protectors*, 55.

⁷³ *Ibid.*, 46.

⁷⁴ *Ibid.*, 47.

A successful effort to encourage state adoption of a uniform narcotic law would have been a great boon to Anslinger's vision of separate spheres of enforcement. Anslinger had learned a lesson from his time working for the underfunded and understaffed Prohibition Bureau: resource overextension breeds failure. At a time of decreasing appropriations—after all, Anslinger was operating at the heart of the Great Depression—a uniform narcotic law offered an enticing compromise with respect to federal drug control.⁷⁵ The FBN, by working with the Conference of Commissioners to draft the law itself, could retain control over the content and substance of the law, while passing on the burden of enforcement to the states.⁷⁶ It also included a requirement that state and local police cooperate with federal agents, giving the FBN the ability to interject when it saw fit.⁷⁷ The uniform narcotic law, even absent a marijuana requirement, was a grand bargain for Anslinger and the FBN, if they could convince states to pass it.

To do so, Anslinger began an aggressive lobbying campaign. According to its year-end report for 1932, the FBN “instituted an educational campaign” to entice states to adopt the Uniform Act.⁷⁸ As a part of this campaign, Anslinger sent district supervisors and agents to speak directly with legislators whose states were considering the legislation, asking them to provide in-depth information to convince legislators who were opposed to the act. He also

⁷⁵ Kenneth J. Meier, *The Politics of Sin: Drugs, Alcohol, and Public Policy* (Armonk, New York: ME. Sharpe, 1994), 33.

⁷⁶ Himmelstein, *Strange Career*, 57.

⁷⁷ Meier, *Politics of Sin*, 34.

⁷⁸ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1932: Report by the Government of the United States of America* (Washington, D.C.: Government Printing Office, 1933), 13.

encouraged FBN employees to reach out to the public at large through speeches and appearances at events.⁷⁹ Anslinger himself took to the airwaves, making radio broadcasts and speeches to drum up support for the Uniform Act. Broad efforts were made to attract support from various constituencies—anti-intoxicant messaging to the Women’s Christian Temperance Union and legal arguments to lawyers and lawmakers reading legal journals.⁸⁰

Anslinger’s persuasion effort turned out to be more difficult than he may have anticipated. Though the Bureau’s report for 1931 indicated “generally an attitude on the part of the State officials of interest in the subject of discussion [the Uniform State Narcotic Drug Act, then still being drafted] and a desire to be of assistance,” states did not respond as positively as expected.⁸¹ In 1933, the first full year of campaigning, only four states—Florida, Nevada, New Jersey and New York—adopted the law.⁸² Only five more did so in 1934.⁸³

Even in states like New Jersey, where the law was passed in its first year, it took a significant FBN effort. In 1933, Anslinger wrote that he testified in front of a committee meeting of the New Jersey legislature in support of the law, and “found the Committee, which was composed of doctors and druggists, exceedingly hostile but after several hours of explanation, they finally agreed to

⁷⁹ Bonnie and Whitebread, *Marihuana Conviction*, 95.

⁸⁰ *Ibid.*

⁸¹ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1931: Report by the Government of the United States of America* (Washington. D.C.: Government Printing Office, 1932), 18.

⁸² U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1933: Report by the Government of the United States of America* (Washington. D.C.: Government Printing Office, 1934), 8.

⁸³ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1934: Report by the Government of the United States of America* (Washington. D.C.: Government Printing Office, 1935), 1-2.

redraft the Bill.”⁸⁴ In other states, FBN efforts were not as successful. Indiana, for example, “passed the Act but mutilated it to the point where it is entirely useless,” said Anslinger.⁸⁵ Though Anslinger publically decried state officials who had “the erroneous impression that the problem of preventing the abuse of narcotic drugs was exclusively that of the National Government, and that the Federal law alone, enforced of course by Federal agencies only, would represent all the control necessary over the illicit drug traffic,” their reluctance to pass the uniform narcotic law persisted.⁸⁶

Anslinger seemingly failed to predict state reactions to the Uniform State Narcotic Drug Act. From the perspective of the states, the Uniform Act was objectionable for a number of reasons. First, and most importantly, was the issue of cost. While it served the FBN to encourage strict antidrug laws, for the states, the Depression raged on and enforcement costs would hurt their bottom lines.⁸⁷ Particularly for states that had few drug users or laws believed to be effective as they stood, the incentive to adopt a new law was likely limited. There were a number of more minute criticisms, too. There was wariness from health care providers about licensing and record-keeping requirements, for example. Doctors and pharmacists also objected to the judiciary’s ability to revoke or

⁸⁴ Harry J. Anslinger, “Memorandum for Acting Assistant Secretary: Report for the week ended April 8, 1933.” Anslinger Papers, Box 3, File 7.

⁸⁵ Ibid.

⁸⁶ Harry J. Anslinger, “Drug Law Enforcement Handicapped by States,” *The Sunday Star* (Washington, D.C.), January 15, 1933. Anslinger Papers, Box 5, File 7.

⁸⁷ Bonnie and Whitebread, *Marihuana Conviction*, 97.

suspend their licenses to practice.⁸⁸ Together, these anxieties prevented most states from adopting the uniform act in the first two years after its formulation.

In the first two years of its public relations campaign, the FBN focused on efficient cooperation as the preeminent goal of the uniform legislation. The successful fight against illicit drugs had been “tremendously handicapped by conflicting and inadequate State laws,” Anslinger wrote.⁸⁹ That conflict between state laws was what the Uniform Act was designed to counteract. The FBN year-end report for 1932 highlighted the need for a Uniform Act to promote “the more effective execution of the policy...of concerted action against the narcotic evil.” Uniform laws would help the FBN and the states present a “united front which shall allow the peddler no loophole for evasion.”⁹⁰ In terms of what the “narcotic evil” was, Anslinger focused primarily on the destructiveness of morphine and heroin, emphasizing that the Uniform Act would help to eradicate their use.⁹¹

The problem of opiates, however, was old news to the states. There was nothing new or provocative about it that would make urgent the need for the Uniform Act. Anslinger and the FBN needed a new rhetorical tactic. They needed to “arouse public interest so that the professional objections [of state legislators] would seem inconsequential beside a ‘felt need’ of the legislatures.”⁹² As it turned out, marijuana proved the perfect candidate.

⁸⁸ Ibid.

⁸⁹ Anslinger, “Drug Law Enforcement Handicapped by States,” *The Sunday Star*.

⁹⁰ Bureau of Narcotics, *Traffic in Opium 1932*, 13.

⁹¹ Harry J. Anslinger, “Flood of Dope from Far East Menaces U.S., Declares Anslinger,” *The Washington Herald* (Washington, D.C.), August 5, 1934.

⁹² Bonnie and Whitebread, *Marihuana Conviction*, 97.

Chapter Four

The Marijuana Tax Act of 1937: A Menace Comes to Congress

Anslinger's early struggles to entice states to adopt the Uniform Narcotic Act forced a reevaluation of his campaign strategy. While in the early years of his effort, Anslinger all but ignored marijuana, he had been collecting frightening anecdotes about the drug in his personal files. In the mid-1930s, frustrated by the lack of progress in the Uniform Act crusade, the Bureau of Narcotics and its allies began publicizing frightening information about marijuana in an effort to convince states of the necessity of uniform laws.¹ Though not its original goal, the FBN's anti-marijuana campaign created a feedback loop, and states demanded federal action, culminating in the 1937 Marijuana Tax Act, which effectively prohibited all marijuana use through exorbitantly high taxes and stringent regulation.² This chapter explores how federal prohibition of a relatively unimportant and unremarkable drug came to fruition, in some ways affected by forces that had little to do with marijuana itself. In doing so, it demonstrates the power of a small number of individuals to ossify policy for decades to follow.

The Bureau's Marijuana Evolution

In the FBN's first few years of existence, marijuana played a minimal role.

Aside from Anslinger's efforts to include it in the Uniform Act, the Bureau had

¹ Jerome L. Himmelstein, *The Strange Career of Marihuana: Politics and Ideology of Drug Control in America* (Westport: Greenwood Press, 1983), 27.

² Rebecca Carroll, "Under the Influence: Harry Anslinger's Role in Shaping America's Drug Policy," in *Federal Drug Control: The Evolution of Policy and Practice*, eds. Jonathon Erlen and Joseph F. Spillane (New York: Pharmaceutical Products Press, 2004), 76.

focused little attention on marijuana, both in its official publications and in Anslinger's articles in newspapers, which focused primarily on opiates. In its 1930 report, the Bureau said little that would connote a widespread marijuana problem, noting only that abuse of marijuana was "noted particularly among the Latin American or Spanish-speaking population," and that it was used primarily in "states along the Mexican border and in cities of the Southwest and West."³

The year following, the FBN's report directly addressed the concept of a nationwide marijuana problem, saying:

A great deal of public interest has been aroused by newspaper articles appearing from time to time on the evils of the abuse of marihuana, or Indian Hemp, and more attention has been focused upon specific cases reported of the abuse of the drug than would otherwise have been the case. This publicity tends to magnify the extent of the evil and lends color to an inference that there is an alarming spread of the improper use of the drug, whereas the actual increase in such use may not have been inordinately large.⁴

The report went on to emphasize that any substantial "abuse" that did exist was regionalized, not nationwide. After the uniform act was approved in 1932, the Bureau's report dedicated a paragraph to the optional marijuana supplement, but again did little to indicate an emerging epidemic.⁵ The report for 1933 spent one sentence noting the "apparently increasing use of marihuana by the younger element in the larger cities," which it referred to as a

³ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1930: Report by the Government of the United States of America* (Washington. D.C.: Government Printing Office, 1931), 24-25.

⁴ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1931: Report by the Government of the United States of America* (Washington. D.C.: Government Printing Office, 1932), 51.

⁵ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1932: Report by the Government of the United States of America* (Washington. D.C.: Government Printing Office, 1933), 43.

“disconcerting development.”⁶ That concern was not repeated in the report for 1934, which gave very little space to marijuana except for brief coverage of two small-scale smuggling incidents.⁷ Generally, then, the reports for the first four years of the decade paid little heed to the issue of marijuana and certainly did not suggest a nationwide crisis. If anything, the FBN’s early rhetoric made an explicit effort to deny any notion of a marijuana problem in the United States.⁸

This early dismissal of marijuana makes Anslinger’s and the FBN’s rhetorical shift all the more striking. By the end of 1934, it was obvious that the efficiency argument was not inducing states to cooperate. The nine states that had adopted the Uniform Act by year’s end were a far cry from Anslinger’s ideal of national uniformity. To spur higher rates of adoption, one sees a fairly rapid shift in how Anslinger marketed the Uniform Act. Rather than focusing only on how the federal government needed state and local cooperation to enforce drug laws, Anslinger added, in September of 1934, that uniform laws would “cure the worst of the hashish evil.”⁹

By December, that evil had grown larger. In a speech on “The Narcotic Problem” delivered at the Attorney General’s Conference on Crime, Anslinger brought the Southwestern and New Orleans-based marijuana menace to

⁶ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1933: Report by the Government of the United States of America* (Washington, D.C.: Government Printing Office, 1934), 36.

⁷ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1934: Report by the Government of the United States of America* (Washington, D.C.: Government Printing Office, 1935), 41-42.

⁸ Himmelstein, *Strange Career*, 55.

⁹ Richard J. Bonnie and Charles H. Whitebread II, *The Marihuana Conviction: A History of Marihuana Prohibition in the United States* (Charlottesville: University Press of Virginia, 1974), 98.

Washington. He spoke of the etymology of hashish and the “Assassin” connection, which he said “so aptly describes its [marijuana’s] powers,” because it reduces users “from valor and courage to fear and insanity.” To demonstrate the validity of that link, Anslinger told a story of a young boy in Florida who “butchered his entire family while under the influence of the drug,” an anecdote he would recall frequently in discussions of marijuana.¹⁰ To tie the issue to the Uniform Narcotic Act, Anslinger told of a man caught in Denver with a “trunk load of this deadly weed” who could not be punished severely because there was no federal statute or state law in place. Anslinger reiterated that the federal government could not act unilaterally because it did not have the police power of states, which prompted him to ask, “When will these states and cities wake up?”¹¹ Though he still highlighted how uniform laws would be more efficient, Anslinger used the frightening image of marijuana to imbue the cause with urgency and to encourage adoption of the supplemental section on marijuana, which had been his goal all along.

The Development of the Menace

Anslinger’s behavior earlier in the decade seems to imply that he knew the marijuana menace would become useful eventually, or at the very least that he was paying attention to it. After reports in the early 1930s from New Orleans, Colorado and other Western and Southwestern cities about the supposed criminogenic effects of marijuana, Anslinger had his agents forward him crime

¹⁰ Harry J. Anslinger, “The Narcotic Problem” 6. Speech delivered at The Attorney General’s Conference on Crime, Washington D.C., December 13, 1934. Anslinger Papers, Box 1, File 10.

¹¹ Ibid., 7.

reports from their districts that were allegedly perpetrated by marijuana users.¹² Anslinger would type up summaries of these reports on dozens of small sheets of paper labeled “crime,” which ultimately filled several folders among his papers. These were often brutal crimes that Anslinger would later tell to journalists and lawmakers. In the summary of the case he related in his speech discussed above, Anslinger wrote:

A twenty-one year old boy in Florida killed his parents, two brothers and a sister while under the influence of a Marihuana “dream” which he later described to law enforcement officials. He told rambling stories of being attacked in his bedroom by his “uncle, a strange old woman and two men and two women,” whom he said hacked off his arms and otherwise mutilated him; later in the dream he saw “real blood” dripping from an axe.¹³

In another, he described a frightening incident of rape:

In Alamosa, Colorado, a sex-mad degenerate brutally attacked a young girl. ... Police officers in Alamosa know definitely that the man was under the influence of MARIHUANA when the crime was committed; and at the time it was stated by an Alamosa citizen that this case was one in hundreds of murders, rapes, petty crimes, and insanity that has occurred in Southern Colorado in recent years because of MARIHUANA.¹⁴

Anslinger seemed particularly fixated on disturbing sexual crimes, recording numerous instances in his notes. In West Virginia, Anslinger’s note read, “Negro raped a girl 9 years of age. 2 Negroes took a girl 14 years old and kept her for two days in a hut under influence of marihuana. Upon recovery she was found to be suffering from syphilis.”¹⁵ In a case from Corpus Christi, Anslinger documented the case of “An oil worker, good character, [who] smoked

¹² Bonnie and Whitebread, *Marihuana Conviction*, 145.

¹³ Harry J. Anslinger, Crime Note, Undated. Anslinger Papers, Box 9, File 30.

¹⁴ Harry J. Anslinger, Crime Note, Undated. Anslinger Papers, Box 9, File 7.

¹⁵ Harry J. Anslinger, Crime Note, “West Va.,” Undated. Anslinger Papers, Box 9, File 7.

a cigarette [and] raped his six year old daughter. When his wife returned home in the evening, she found him lying across the bed in a stupor and the little child torn and bleeding. He could not remember. Was sentenced to death.”¹⁶ Even when sex was consensual, the racial mixing marijuana use apparently engendered was a concern to Anslinger. His notes include details about “Colored students Univ. of Minn. partying with female students (white) smoking and getting their sympathy with stories of racial persecution. Result pregnancy.”¹⁷

His notes also included commentary from police officers, one of whom, from Arizona, remarked that he was “of the opinion that those addicted to the use of this drug (Marihuana) are far more dangerous than those addicted to the other forms of narcotics, in that it makes the user of it very brazen and fearless.”¹⁸ Another, from Albuquerque, wrote that “Although Mariguana offenses do not show up directly in many cases, it is estimated that probably fifty percent of our violent crimes in this distract may be traced to mariguana addicts.”¹⁹ The Chief of the Narcotic Enforcement Bureau of California apparently reported that “Marihuana has a worse effect than heroin. It gives men the lust to kill, unreasonably without motive – for the sheer sake of murder itself.”²⁰

Whether or not he collected these stories with the explicit intent of deploying them in support of anti-marijuana legislation in the future is difficult

¹⁶ Harry J. Anslinger, Crime Note, “Corpus Christi,” Undated. Anslinger Papers, Box 9, File 7.

¹⁷ Harry J. Anslinger, “Marihuana,” Undated. Anslinger Papers, Box 9, File 30.

¹⁸ Crime Note, “Law Officer – Arizona,” February 15, 1934, Anslinger Papers, Box 9, File 7.

¹⁹ Crime Note, “Albuquerque, New Mexico,” February, 1934. Anslinger Papers, Box 9, File 7.

²⁰ Crime Note, Undated. Anslinger Papers, Box 9, File 7.

to ascertain for certain. It is relatively clear, however, that Anslinger bought into the crime thesis. Among his papers were copies of Eugene Stanley's—the New Orleans District Attorney—"Marihuana as a Developer of Criminals," and a report by Dr. Frank Gomila and Madeline Gomila—the Commissioner of Public Safety and Assistant City Chemist in New Orleans—titled "Marihuana - A More Alarming Menace to Society Than All Other Habit-Forming Drugs."²¹ In Anslinger's folder on crime and marijuana, he had clipped a fact about the proportion of marijuana criminals in New Orleans prisons that was originally published in Dr. Fossier's article, "The Mariahuana Menace," though Anslinger misattributed it to Stanley, who republished the supposed finding.²²

While one might assume Anslinger spread the word of a marijuana menace because it was the only information that he knew, that does not appear to be the case. Of particular interest are the other materials Anslinger collected. For example, Anslinger had notes on, and excerpts from, the Indian Hemp Commission, which found that moderate use of marijuana "is practically attended by no evil at all," produces "no injurious effects on the mind" and "no moral injury whatever" and that "moderate use of these drugs is the rule, and that excessive use is comparatively exceptional."²³ Is it fascinating to compare the Commission's language to Anslinger's summary, which read as follows:

The conclusions of the Hemp Drugs Commission, India, (1893-1894), were that hemp produced an injurious effect on the mind; that excessive

²¹ Anslinger Papers, Box 9, File 41.

²² Harry J. Anslinger, Anslinger Papers, Box 9, File 7.

²³ Report of the Indian Hemp Drugs Commission 1893-94, Vol. 1, pg. 263-64, cited in Tod H. Mikuriya. "Physical, Mental, and Moral Effects of Marijuana: The Indian Hemp Drugs Commission Report," *The International Journal of the Addictions*, 3 (1968): 269-270.

consumption was physically and mentally injurious; it produces and intensifies moral weakness and depravity; manifest excess leads directly to loss of self-respect and thus to moral degradation.²⁴

Much like his predecessors in New Orleans, Anslinger seems to have either not read the Commission's report at all or to have focused on the worst possible damage from the most excessive use, which the Hemp Commission called "comparatively exceptional." This same disregard for scientific findings is evident also in Anslinger's reading of the Panama Canal Zone study. On a sheet summarizing the findings of the Canal Zone board—which investigated the issue and found that marijuana was not addictive and did it produce "mental or physical deterioration"—there is a type-written comment, presumably by Anslinger, which states: "It is evident that the Panama Board did not have the proper evidence at its disposal when it reached its conclusion."²⁵ Anslinger, then, does not appear ignorant; rather he seems to have purposefully avoided or rejected factual material that deviated from his presuppositions or anecdotal understandings. Anslinger was willing to bide his time and did not want to proselytize in support of marijuana prohibition in a politically or constitutionally risky fashion, but there is little doubt that he believed in the marijuana menace.

The Menace Deployed

When Anslinger was struggling to enlist states to fight the antidrug battle, he played the marijuana menace card he had working on for years. Anslinger utilized every resource he had beginning in 1935, marijuana's first full year in the spotlight. The Bureau launched an educational campaign aimed at informing

²⁴ Harry J. Anslinger, "Effects," Undated. Anslinger Papers, Box 9, File 24.

²⁵ "Panama," Anslinger Papers Box 9, File 51.

local police and state officials about marijuana, calling for states and cities to “assume the responsibility of providing vigorous measures for the extinction of this lethal weed.”²⁶ To encourage such responsibility, the FBN sent representatives to legislatures across the country to discuss marijuana and the need for a Uniform Narcotic Act.²⁷ It also relied heavily on its allies to spread the word about marijuana, delivering hundreds of lectures to police departments, parent-teacher associations, high schools, and organizations like the American Legion and the Women’s Christian Temperance Union.²⁸ The WCTU became an important ally, continuously publishing calls to fight marijuana by passing the Uniform Act in their journal, the *Union Signal*.²⁹

Anslinger also had help from Admiral Richmond P. Hobson, President of the World Narcotic Defense Association, an interest group strongly committed to eviscerating drug use. Although those at the American Medical Association and the other drug trade groups saw the WNDA as extremist, Anslinger took the help he was offered. Hobson was a politically connected man whose organization was “continually in postal contact with almost every state legislator in the country.”³⁰ Hobson worked actively with Anslinger, writing him in 1936 to say that “we [the WNDA] believe that the dangerous state of the Marihuana cigarette exploitation is the best line of advance” in pushing for enactment of the Uniform Act, and

²⁶ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1935: Report by the Government of the United States of America* (Washington, D.C.: Government Printing Office, 1936), 30.

²⁷ U.S. Treasury Department, Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1936: Report by the Government of the United States of America* (Washington, D.C.: Government Printing Office, 1937), 68.

²⁸ *Ibid.*

²⁹ Bonnie and Whitebread, *Marihuana Conviction*, 103.

³⁰ *Ibid.*, 108.

requesting information about “the development of this menace” so that he could present it to state legislators.³¹ The WNDA funded national broadcasting efforts and distributed educational materials on the marijuana menace that, beyond propagating the violent, “killer drug” trope, also made stronger physiological claims, like that “death may result from the effect [of marijuana] on the heart.”³²

Anslinger’s most important ally, however, was the media. Hearst newspapers were particularly active, publishing numerous editorials in support of the Uniform Act and echoing the FBN’s switch to marijuana. Newspapers in various states, like Colorado, Ohio and Missouri, dedicated some coverage to Anslinger’s marijuana menace as well, perhaps because it made for more interesting news than Anslinger’s previous rhetoric about police powers and federalism.³³ Many of the reports on marijuana during this time mentioned the crime and insanity connections and many accepted the FBN’s position on the drug uncritically, using it as their primary or only source.³⁴

As would be expected, the FBN’s position was communicated as extensively as Anslinger could muster. In various opinion articles in 1935, Anslinger communicated the frightening “facts” about marijuana. It was, he said, a “killer drug,” which turned addicts into “cruel monsters” who commit vicious, violent crimes.³⁵ The FBN’s 1935 report expressed grave concern over the “rapid development of widespread traffic in Indian hemp, or marihuana, throughout the

³¹ Richmond P. Hobson to H. J. Anslinger, December 11th, 1936. Anslinger Papers, Box 3, File 4.

³² Bonnie and Whitebread, *Marihuana Conviction*, 108-109

³³ *Ibid*, 100-103.

³⁴ Michael Schaller, “The Federal Prohibition of Marihuana,” *Journal of Social History*, 4 (1970): 67.

³⁵ Harry J. Anslinger, “State Co-operation Vital,” *Washington Herald* (Washington, D.C.), January 20, 1935. Anslinger Papers, Box 5, File 15.

country” and called for “intensified enforcement of marihuana laws.”³⁶ By 1936, marijuana had become, at least according to Anslinger’s radio address, “the quickest, the shortest, the surest road to insanity.”³⁷ The Uniform Act represented the only way to deal with marijuana, which Anslinger assured listeners was a grave menace that was spreading “like wildfire” and needed to be annihilated immediately.³⁸ He called on “all public spirited citizens” to campaign for the Uniform Act, decrying the “appalling indifference on the part of a great majority” of the population.³⁹

In Anslinger’s best-known publication on the issue, “Marijuana, Assassin of Youth,” he used horrifying anecdotes to drive home the point that marijuana was a killer drug. He talked about the alleged invasion of marijuana into schools and playgrounds, making youth “slaves to the narcotic.”⁴⁰ He again told the story of the young boy hacking his family to death with an axe—the same one he had recorded in his notes and had spoken about in 1934. The article is littered with numerous anecdotes of children turned into mindless murderers simply by using marijuana, like the “marijuana fiend” in Michigan who kidnapped a police officer, or the youth in Los Angeles who shot a stranger dead because, while he was high on marijuana, “something just told me to kill him.”⁴¹

Fact or Fiction?

³⁶ Bureau of Narcotics, *Traffic in Opium 1935*, v, 30.

³⁷ Harry J. Anslinger, “The Need for Narcotic Education,” Radio address over the National Broadcasting Network, February 24, 1936. Anslinger Papers, Box 1, File 10.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Harry J. Anslinger and Courtney Ryley Cooper, “Marijuana Assassin of Youth,” *The American Magazine*, July 1937, 19.

⁴¹ *Ibid.*, 150-53.

Of course, the question all of Anslinger's campaigning prompts is whether any of it is actually true. As for a causal link between marijuana and violent crime or insanity, modern science—and even the science of Anslinger's day—casts doubt. Research shows little support for the crime thesis and while there is more support for a connection between heavy cannabis use and the development of mental illness, any connection is qualitatively different and much less instantaneous than Anslinger suggested.⁴² Of course, most of Anslinger's arguments were anecdotal, not scientific. As one might expect, those anecdotes may not have been fully revealing. The story of the Florida boy Anslinger repeated so often was not quite as Anslinger described. Shortly after his arrest, the boy was declared criminally insane, and “subject to hallucinations accompanied by homicidal impulses and occasional periods of excitement.” In his file at the mental hospital where he lived before committing suicide in 1950, his marijuana use was never mentioned.⁴³ One might imagine similar factors existed in other crimes that Anslinger claimed were caused by marijuana intoxication.

The least clear factual inquiry is whether there actually was a major increase in marijuana use in the country at the time of Anslinger's campaign. Certainly, the FBN said so, writing in its report for 1936 of “widespread traffic in cannabis” and “wide abuse” of the drug, even among groups that had not “been

⁴² See, for example, Rosalie Liccardo Pacula and Beau Kilmer “Marijuana and Crime: Is There a Connection Beyond Prohibition,” NBER Working Paper 10046 (2003); Robin M. Murray, Paul D. Morrison, Cecile Henquet and Marta Di Forti, “Cannabis, the mind and society: the hash realities,” *Nature Reviews Neuroscience*, 8 (2007): 885-895.

⁴³ Larry Sloman, *Reefer Madness: The History of Marijuana in America* (Indianapolis: The Bobbs-Merrill Company, Inc, 1979), 62-63.

heretofore contaminated by drug addiction,” which one must assume meant more “respectable” classes of people.⁴⁴ However, as Michael Schaller points out, the FBN never provided any real substantiation to support its claim of a burgeoning marijuana epidemic.⁴⁵ The only evidence provided were statistics on the amount of marijuana seized, which in 1936 was “386 tons of growing plants and dried bulk marihuana and 15,715 cigarettes,” which was a 97 percent increase over the previous year and therefore showed, according to the Bureau, “the rapidity with which the traffic is expanding.”⁴⁶

The Bureau itself cast some doubt on what those statistics indicate, as it admitted that increased seizures could be due to greater familiarity of state officials with the drug.⁴⁷ Given that around 1935 or 1936, the Bureau felt the need to publish “Marihuana: A Hand Book of Essential Information for Enforcement Officers,” to “assist them in identifying marihuana in its natural growing state, in the form of cigarettes and perversions in other ways,” the “greater knowledge” argument might be a reasonable explanation for the increase.⁴⁸

Stephen Norland and Joseph Wright present a more sinister account, demonstrating the statistical manipulation the FBN undertook, potentially as a way to exaggerate the marijuana problem. First of all, though seizures of cigarettes increased from 1935 to 1936, twelve new states were searching for

⁴⁴ Bureau of Narcotics, *Traffic in Opium 1936*, 57.

⁴⁵ Schaller, “Prohibition of Marihuana,” 66.

⁴⁶ Bureau of Narcotics, *Traffic in Opium 1936*, 57.

⁴⁷ *Ibid.*, 58.

⁴⁸ Bureau of Narcotics, “Marihuana: A Hand Book of Essential Information for Enforcement Officers,” Exact date unknown (c. 1935-36). Anslinger Papers, Box 9, File 19.

them, and cigarette yields per state actually decreased.⁴⁹ Much more interesting, though, is how the data was presented in each year. In 1935, the Bureau reported dried bulk marijuana and growing plants separately, with 195 tons of bulk and 1012 plants seized. In 1936, however, those categories were combined to produce total seizures of 386 tons. Though only reported in the appendix, less than four of those 386 tons were bulk marijuana, while 383 tons were growing plants.

According to Norland and Wright, “since growing plants consist mostly of water, in contrast to dried bulk marihuana, combining these categories for 1936 allows for a misleading description of the traffic in marihuana.”⁵⁰ While bulk marijuana was prepared for sale, the plants grew wild across the country and there is no way of determining from the FBN reports if the plants seized were being actively cultivated for illicit sale. So, by reporting an increase in overall seizures, as opposed to a large decrease in bulk marijuana seizures, the Bureau was able to provide evidence of a national problem that may not have actually existed.⁵¹ Though it is difficult to say with any certainty, it can, at the very least, be ventured that any increase in marijuana use was substantially less serious than the Bureau’s claims of “widespread traffic” and “wide abuse” would have one believe.

Anslinger’s Intentions

⁴⁹ Stephen Norland and Joseph Wright, “Bureaucratic Legitimacy and the Drug Menace: Notes on the Marihuana Tax Act,” *Deviant Behavior*, 5 (1984): 244.

⁵⁰ *Ibid.*, 244-245.

⁵¹ *Ibid.*, 245.

There is suggestion, among some authors, that Anslinger had motives quite different than those discussed in this narrative. Because they would meaningfully alter the historical understanding of the marijuana menace's emergence and also the federal prohibition to come, they are worth addressing briefly.

First is Rebecca Carroll's argument that Anslinger deployed the marijuana menace not primarily to encourage adoption of the Uniform Narcotic Act, but to save his job. The threat she cites, the Secret Service Reorganization Act, was a 1936 bill proposed by Congressman Robert L. Doughton, which among other things, would have created a Secret Service Division that combined the Bureau of Narcotics with a number of other agencies under one roof and one chief, presumably, not Harry Anslinger.⁵² There is no question that Doughton's bill was a threat. Anslinger's correspondence from 1936 is filled with letters from concerned allies, like Richmond Hobson of the World Narcotic Defense Fund, writing to promise their support for Anslinger and to tell of their lobbying efforts on his behalf.⁵³

Carroll, however, claims that this threat prompted Anslinger to "declare war on marijuana" to a level much greater than before. Her primary evidence is a change in Anslinger's rhetoric between his December 1935 testimony at a House Appropriations hearing—where he barely mentioned marijuana and

⁵² Carroll, "Under the Influence," 69-70.

⁵³ Anslinger Papers, "Correspondence 1936," Box 3, File 4.

downplayed its dangers—and a February 1936 radio address, where he discussed marijuana in dramatic language and emphasized its perniciousness.⁵⁴

There are three main flaws with Carroll's hypothesis. First is the emphasis on the particular threat of the Doughton bill. As Anslinger biographer John McWilliams shows, the Doughton bill was not the first, or even the second major threat to his job that Anslinger faced. In 1933, the Director of the Budget, Lewis Williams Douglas, introduced a plan to transfer the FBN from the Treasury to the Department of Justice, where it would have merged with the Prohibition Bureau.⁵⁵ The year after the Douglas plan, in 1934, likely successors were named for Anslinger's position after he referred to an FBN informer as a "ginger-colored nigger" and a senator lobbied for his dismissal.⁵⁶ Why, if the marijuana menace was such an effective decoy, would Anslinger have kept it hidden in 1933 and 1934? Ample evidence suggests he had already collected his horror stories and was convinced of marijuana's danger by that time, so there is no logical explanation for his silence, or at least none offered by Carroll.

Even dismissing the two previous threats, Carroll is wrong to assert a dramatic evolution in Anslinger's rhetoric after the Doughton bill was proposed. In a 1934 speech that Carroll herself references, Anslinger said that marijuana produces "fear and insanity" and relayed the Florida axe-murder story, asking when states would "wake up" to the problem and pass the Uniform Act.⁵⁷

⁵⁴ Carroll, "Under the Influence," 69-70.

⁵⁵ John C. McWilliams, *The Protectors: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930-1962* (Newark: University of Delaware Press, 1990), 88.

⁵⁶ *Ibid.*, 84-85.

⁵⁷ Harry J. Anslinger, "The Narcotic Problem" 6-7. December 13, 1934. Anslinger Papers, Box 1, File 10.

Moreover, in a 1935 opinion article in favor of the Uniform Act, Anslinger wrote that marijuana—known as the “killer drug”—was becoming wildly used and turned addicts into “cruel monsters” who committed “some of the most atrocious crimes.”⁵⁸ Though Carroll contends the 1936 rhetoric was more intense, that is a dubious proposition. Her selected highlights from Anslinger’s 1936 speech do not seem significantly more frightening than his 1934 story of axe-murdering children or his 1935 commentary on cruel, atrocious, crime-committing monsters.

Finally, Carroll seems not to recognize that the difference in audience might have much to do with the variation in Anslinger’s level of intensity when it came to marijuana. She recognizes that Anslinger wanted to encourage states to adopt the Uniform Act while keeping the FBN out of enforcement, but does not seem to apply that insight to her analysis.⁵⁹ It seems eminently reasonable that Anslinger would downplay the issue of marijuana when testifying in front of a House committee; if he sought to avoid federal control, at least at the time, it would have been senseless to create a frightening image of marijuana for members of Congress. That would be particularly true if his testimony was unlikely to reach the public, a safe assumption for a Congressional subcommittee hearing on Treasury Department appropriations. On the other hand, Anslinger’s February 1936 radio address is intended for a starkly different audience. Its title, “The Need for Narcotic Education” indicates quite clearly that Anslinger hoped

⁵⁸ Harry J. Anslinger, “State Co-operation Vital,” *Washington Herald* (Washington, D.C.), January 20, 1935. Anslinger Papers, Box 5, File 15.

⁵⁹ Carroll, “Under the Influence,” 69.

to persuade an audience with uncrystallized opinions on marijuana and the uniform narcotic law. Indeed, he decried the public's "appalling indifference" to drug policy issues and called for listeners to "enlist in the campaign to demand and to get adequate state laws and efficient state enforcement on Marihuana."⁶⁰

Though the concept that Anslinger advertised the danger of marijuana only in response to an outside job threat aligns cleanly with Carroll's assertion that Anslinger thought marijuana was a nuisance drug unworthy of attention, it does not align with the historical record.⁶¹ Though there is little question that Anslinger used the marijuana menace strategically, it was as an instrument to induce states to enact the Uniform Narcotic Act, not as a way of retaining his position as Commissioner.

The other questionable historical reading comes from Martin Lee, who argues that Anslinger used marijuana as a way to save his department from "the chopping block."⁶² Lee claims that the emergence of the marijuana menace in 1934 is directly tied to the FBN's declining budget. Anslinger, according to Lee, "set out to convince Congress and the American public that a terrible new drug menace was threatening the country, one that required immediate action by a well-funded Federal Bureau of Narcotics."⁶³ This view, again, considers Anslinger's use of marijuana to be instrumental, but in a different direction—funding, not job security. While it is true that, by 1934, the FBN's budget had

⁶⁰ Harry J. Anslinger, "The Need for Narcotic Education," February 24, 1936. Anslinger Papers, Box 1, File 10.

⁶¹ Carroll, "Under the Influence," 68.

⁶² Martin A. Lee, *Smoke Signals: A Social History of Marijuana—Medical, Recreational, and Scientific* (New York: Scribner, 2012), 49.

⁶³ *Ibid.*

decreased substantially from its high point in 1932, Lee's argument still falls significantly short.⁶⁴ First of all, if Anslinger indeed was aiming for higher appropriations, he failed; the 1934 budget was the largest the FBN would see for the next decade.⁶⁵

More critically, budget issues aside, we know Anslinger was not campaigning for a federal law at the time. Interestingly, Carroll's observation that Anslinger barely spoke of marijuana at the 1935 Appropriations Committee hearing firmly rebuts Lee's claim.⁶⁶ If Anslinger was seeking federal funding to launch a national war on marijuana, there would be no better time to speak of it than at an appropriations hearing in front of the House.

Generally, both Carroll and Lee seem to miss that, at the time, Anslinger had no interest in a federal law because the FBN could not afford to enforce it, nor did anyone know how to guarantee its constitutionality. Even if a federal law could one day pass constitutional muster, it would still be incumbent upon the state and local law enforcement to take action against marijuana growth, sale and usage in their states. Because the supply of marijuana was almost exclusively domestically grown, states would have to have strong laws of their own—like the Uniform Narcotic Act—to make any federal prohibition successful. So, when members of Congress in the early 1930s continued to press for a federal law, Anslinger said that Congress should delay action until all the

⁶⁴ Donald T. Dickson, "Bureaucracy and Morality: An Organizational Perspective on a Moral Crusade," *Social Problems* 16 (1968): 154.

⁶⁵ *Ibid.*

⁶⁶ Carroll, "Under the Influence," 69.

states had passed their own anti-marijuana legislation.⁶⁷ His marijuana menace campaign was an effort to make the states act before the federal government did. Anslinger told a 1934 Appropriations Committee that a federal law would be appropriate as a coordination device, but would be a mistake “until the States become conscious of their own problems.”⁶⁸

Anslinger’s patient strategy paid dividends. Though it is unclear the extent to which public opinion developed against marijuana, adoption of the uniform narcotic law increased dramatically post menace. By the end of 1935, eighteen additional states had adopted the law, and each that had no previous law on marijuana included the marijuana supplement. In fact, three states that did *not* adopt the Uniform Act still legislated against marijuana.⁶⁹ Even in many states where the marijuana scare amounted to one article in the local newspaper, legislation was quickly adopted and then the “issue” disappeared from the public’s radar.⁷⁰ By the end of 1936, all forty eight states had “legislation of some nature for the control of cannabis,” whether regulating sales, possession, or cultivation.⁷¹

Anslinger’s campaign may have worked too well. As states began adopting the Uniform Narcotic Act in large numbers, pressure built for a federal law. This time, it could not be contained.

The Making of the Tax Act

⁶⁷ Bonnie and Whitebread, *Marihuana Conviction*, 119.

⁶⁸ McWilliams, *The Protectors*, 56.

⁶⁹ Bonnie and Whitebread, *Marihuana Conviction*, 112.

⁷⁰ *Ibid.*, 114.

⁷¹ Bureau of Narcotics, *Traffic in Opium 1936*, 58.

In the first four years of his tenure as Commissioner, Anslinger routinely opposed Congressional efforts to regulate marijuana at the federal level. When, in 1935, Senator Carl Hatch and Congressman John Dempsey, both of New Mexico, submitted a pair of bills aimed to prohibit interstate and foreign trade in marijuana, the FBN again opposed the bill because there was “no evidence of an appreciable degree of interstate traffic in or international traffic toward the United States in cannabis for what may be termed improper purposes.”⁷² Acting Commissioner Wood, communicated this to Treasury officials in March with assistance from the FBN’s counsel, A. L. Tennyson, while Anslinger was at The Hague. However, in April, Assistant Treasury Secretary Stephen Gibbons, on advice from Treasury’s counsel, overruled the FBN and advised Congress that the Treasury Department had no objections to the bill.⁷³ Although the pair of bills did not make it to a vote, it became clear that a federal law was imminent.

Treasury’s decision to condone a law over the FBN’s objections is intriguing. The most reasonable explanation seems to be that the FBN’s educational campaign was, in some ways, too effective, creating political pressure for national control. Bonnie and Whitebread note that in 1936, Gibbons, the Assistant Secretary, wrote that if the stories were to be believed, marijuana was “frighteningly devastating,” evidence that the FBN’s campaign convinced not only citizens, but also government officials.⁷⁴ In a 1970 interview, Anslinger told historian David Musto that the pressure was indeed “political,”

⁷² Bonnie and Whitebread, *Marihuana Conviction*, 119.

⁷³ *Ibid.*

⁷⁴ *Ibid.*, 120.

traveling up the food chain from police forces, to governors, to the Secretary of Treasury, to the General Counsel and then to Anslinger.⁷⁵ Anslinger and Tennyson continued to discourage public lobbying for federal legislation until they could sort out a constitutional basis for regulation, but clearly accepted that the time for a national law had arrived.⁷⁶

In January, 1936, the FBN held a conference in New York with a number of experts in an effort to devise a legal plan for a federal law. In a February memo to Assistant Secretary Gibbons, Anslinger wrote that the group “discussed thoroughly every angle of the marihuana situation whereby the Federal Government could control production and distribution, and found that under the taxing power and regulation of interstate commerce it would be almost hopeless to expect any adequate control.”⁷⁷ Presumably, this conclusion was reached for the same reasons the FBN had used earlier when it rejected adding marijuana to the Harrison Act. Because marijuana was a domestic product, effective regulation would require regulating production, a state duty. Moreover, because medical uses were minimal, the tax revenue raised through regulation was likely to be less than the costs of enforcement, making a revenue-based argument difficult.⁷⁸ Though not necessarily damning, the Supreme Court warned in *Nigro v. United States*, a case that upheld the constitutionality of the Harrison Act, that, “Congress, by merely calling an Act a taxing act, cannot make it a legitimate

⁷⁵ David F. Musto, “The 1937 Marijuana Tax Act,” in *Marijuana: Medical Papers 1839-1972* ed. Tod H. Mikuriya (Oakland: Medi-Comp Press, 1973), 430.

⁷⁶ Bonnie and Whitebread, *Marihuana Conviction*, 120.

⁷⁷ Harry J. Anslinger to Assistant Secretary Gibbons, February 3, 1936. Anslinger Papers, Box 3, File 4.

⁷⁸ Bonnie and Whitebread, *Marihuana Conviction*, 121

exercise of taxing power...if in fact the words of the Act show clearly its real purpose is otherwise.”⁷⁹ Thus, if a marijuana taxing act failed to produce net positive revenue, the ruse might be too patent for the Court to approve.

With the taxing power ruled out, Anslinger and his conference allies turned to a different basis: the treaty power. Anslinger said to Gibbons that, because there was smuggling between Mexico and the United States and between the United States and Canada, “if a treaty could be made with Canada and with Mexico to control the production and distribution of marihuana we could probably get a law that would be sustained on the basis of the decision in *Missouri vs. Holland*.”⁸⁰ In *Missouri v. Holland*, the famous case to which Anslinger referred, the Court held that the federal government could, through its treaty power (in this case, the Bird Treaty Act of 1918), regulate behavior otherwise reserved to the states (in this case, dictating when one could hunt migratory birds).⁸¹ So, if the FBN could enter into a treaty with Mexico and Canada to eliminate traffic in marijuana, Congress could then regulate domestic growth of marijuana, normally a right reserved to the states.

Though Anslinger’s superiors in the Treasury Department signed off on the idea, it proved more difficult to put into practice. Canada readily agreed to a treaty, but Mexico, understandably, was wary of whether it could actually enforce such an agreement and ultimately rejected the idea.⁸² Anslinger then

⁷⁹ *Nigro v. U.S.*, 276 U.S. 332, 353 (1928)

⁸⁰ Harry J. Anslinger to Assistant Secretary Gibbons, February 3, 1936. Anslinger Papers, Box 3, File 4.

⁸¹ *Missouri v. Holland*, 252 U.S. 416, 430-32.

⁸² Bonnie and Whitebread, *Marihuana Conviction*, 123.

pursued a different route, trying to add a provision requiring marijuana control to the treaty produced at the 1936 Geneva Conference for the Suppression of Illicit Traffic in Dangerous Drugs, but was unsuccessful.⁸³ It became obvious the treaty strategy was not going to work. Gibbons, pressured by the marijuana menace publicity, demanded a solution out of his counsel, Herman Oliphant. Oliphant, in turn, decided to revert back to the taxing power, but in a bill separate from the Harrison Act, so as not to endanger its standing.⁸⁴

Oliphant began to prepare, in secret, what would ultimately become the Marihuana Tax Act.⁸⁵ The MTA had a number of requirements. First were required registration and yearly occupational taxes for various individuals involved in the marijuana trade—manufacturers, producers, dispensers and prescribers, for example.⁸⁶ Second, it made it illegal to transfer marijuana without a written order form.⁸⁷ Finally, and most importantly, the MTA enacted a transfer tax on marijuana. For a transfer to registered persons, the tax was one dollar per ounce of marijuana, but transfers to unregistered persons were taxed at one hundred dollars per ounce.⁸⁸ Failure to produce an order form legitimizing one's possession of marijuana was considered "presumptive evidence of guilt" and was punishable by a fine of up to two thousand dollars and up to five years in prison.⁸⁹ In practice, a one hundred dollar per ounce tax for

⁸³ Musto, "Marijuana Tax Act," 431.

⁸⁴ Bonnie and Whitebread, *Marihuana Conviction*, 123-24.

⁸⁵ *Ibid.*, 124.

⁸⁶ *Marihuana Tax Act of 1937*, Public Law 238, *U.S. Statutes at Large* 50 (1937): 551-552.

⁸⁷ *Ibid.*, 553.

⁸⁸ *Ibid.*, 554.

⁸⁹ *Ibid.*, 555-56.

unregistered users amounted to prohibition, which was, of course, Treasury's intention.

At the time of the MTA's drafting, the constitutional legitimacy of a prohibitive tax was not assured. Oliphant based the MTA on the 1934 Firearms Act, which enacted a prohibitively large tax on the transfer of machine guns.⁹⁰ The Court heard a challenge to that law in March of 1937. In a unanimous March 29 decision upholding the law, the Court wrote that a law exercising the taxing power "is not any less so because the tax is burdensome or tends to restrict or suppress the thing taxed."⁹¹ The Court rejected judicial speculation into the motives of Congress, and held simply that since the law "operates as a tax, it is within the national taxing power."⁹²

The Treasury Department, obviously waiting to see the outcome of the case, had its bill introduced by Congressman Doughton, Chair of the House Ways and Means Committee, two weeks after the Court's decision, on April 14, 1937.⁹³

Congress Heeds the Call

The House held five days of hearings on the Tax Act between the end of April and the beginning of May, 1937. The first witness who testified in front of the Committee on Ways and Means was Clinton Hester, Assistant General Counsel for the Treasury Department. He detailed the "deadly" effects of marijuana, which he said was widely abused by high-school students. In justifying the need for the law, Hester highlighted the importance of combating

⁹⁰ Bonnie and Whitebread, *Marihuana Conviction*, 126.

⁹¹ *Sonzinsky v. United States*, 300 U.S. 506, 513 (1937).

⁹² *Ibid.*, 514.

⁹³ Bonnie and Whitebread, *Marihuana Conviction*, 126.

marijuana because “of all the offenses committed against the laws of this country, the narcotic addict is the most frequent offender.”⁹⁴ To support his first claims, Hester cited newspaper editorials, some of them from Hearst papers, which called for federal action against marijuana. As for the crime connection, Hester cited “statistics of the Department of Justice” that Anslinger had supplied in testimony to a different committee the week earlier. The rest of his testimony was a long explanation of the constitutional justifications for the bill and an explanation to a Congressman of why it would be unwise to include marijuana in the Harrison Act instead.⁹⁵

Anslinger testified after Hester, and he deployed the full force of the marijuana menace. He began by telling the committee that “this traffic in marihuana is increasing to such an extent that it has come to be the cause for the greatest national concern.”⁹⁶ Then, he told the story of the Assassins in Persia, driven to kill by the effects of hashish. With typical dramatic flair, he told the committee that marijuana was a more pernicious drug even than opium. Whereas opium, Anslinger said, “has all of the good of Dr. Jekyll and all the evil of Mr. Hyde,” marijuana “is entirely the monster Hyde, the harmful effect of which cannot be measured.”⁹⁷

⁹⁴ U.S. Congress, House, Committee on Ways and Means, *Taxation of Marihuana*, 75th Cong., 1st sess., 1937, 6-7.

⁹⁵ *Ibid.*, 7-17.

⁹⁶ *Ibid.*, 18.

⁹⁷ *Ibid.*, 19.

During his testimony, there was some obvious confusion among members of the committee as to what the drug they were about to prohibit even was, which prompted members to ask clarifying questions to Anslinger.

Mr. DINGELL. I want to be certain what this is. Is this the same weed that grows wild in some of our Western States which is sometimes called the loco weed?

Mr. ANSLINGER. No, sir; that is another family.

Mr. DINGELL. That is also a harmful drug-producing weed, is it not?

Mr. ANSLINGER. Not to my knowledge; it is not used by humans.

The CHAIRMAN. In what particular sections does this weed grow wild?

Mr. ANSLINGER. In almost every State in the Union today.

Mr. REED. What you are describing is a plant which has a rather large flower?

Mr. ANSLINGER. No sir; a very small flower.⁹⁸

Anslinger had an ideal audience for his menacing message. Given the ignorance displayed in the previous exchange, it is not surprising that Anslinger's assertions of marijuana's criminogenic danger and health risks went unquestioned. As his testimony continued, Anslinger relayed several of his favorite anecdotes to the committee, including the story of the Florida boy who turned into a marijuana-induced axe murderer and also referenced Eugene Stanley's article about marijuana and crime in New Orleans, which he included in full in his attached statement.⁹⁹

When asked why a federal law was necessary in spite of the successful spread of the Uniform Narcotic Act, Anslinger said that "in spite of the act, we get request from public officials from different States...that have urged Federal legislation for the purpose of enabling us to cooperate with the several

⁹⁸ Ibid., 20.

⁹⁹ Ibid., 23-24.

States.”¹⁰⁰Evidently as evidence of these kinds of requests in favor of a federal law, Anslinger attached to the record a letter he received from the City Editor of the Alamosa Daily Courier in Colorado, which told the gruesome tale of a rape of a young girl by a marijuana user. The writer, calling for a federal law, said that he wished he could show the Bureau “what a small marihuana cigaret can do to one of our degenerate Spanish-speaking residents...most of whom are low mentally, because of social and racial conditions.”¹⁰¹ Though Congress was ultimately convinced, there was no real evidence of a marijuana epidemic or anything close to it in the country at the time.¹⁰²

The only “expert” at the hearings was Dr. James C. Munch, a pharmacologist. However, his expertise centered on the effect of marijuana on animals, not humans, prompting one Congressman to remark that “We are more concerned with human beings than with animals.”¹⁰³ Though Dr. Munch testified to marijuana’s danger (mostly by affirming Congressman McCormack’s leading questions), when he was asked about how much continued use was necessary before damage set in, he replied “I can only speak of my knowledge of animals,” going on to say that the reaction of dogs “closely resembles the reaction of human beings.”¹⁰⁴

Although the absurdity of Munch’s testimony is humorous, it is shocking that the MTA was presented to Congress with no medical testimony apart from

¹⁰⁰ Ibid., 26.

¹⁰¹ Ibid., 32.

¹⁰² Bonnie and Whitebread, *Marihuana Conviction*, 163.

¹⁰³ Committee on Ways and Means, *Taxation of Marihuana*, 49.

¹⁰⁴ Ibid., 51.

that which the Bureau provided itself, and that of an expert on cannabis and dogs. As Bonnie and Whitebread emphasize, it was not for a lack of available experts. There was no statement requested of the Public Health Service, nor were the government's experts or any outside experts in public health asked to testify.¹⁰⁵ Perhaps it was because Anslinger and the Bureau did not think medical experts would be friendly witnesses. In response to a Treasury Department request for an opinion from the Public Health Service on the bill, Dr. Walter Treadway wrote that marijuana was unlike opium in terms of addictiveness, comparing it instead to alcohol, and even coffee or sugar.¹⁰⁶ His statement was never submitted to Congress. Given that the Chairman of the Committee, Congressman Doughton, was the bill's sponsor, and given the ignorance of the committee's other members, it makes political sense that the Bureau chose not to present additional testimony, particularly if that information would have been damaging to its argument.

Thus, besides Munch, who testified on the second day of the hearings, the government's entire case for a law was presented to Congress through the testimony of Hester and Anslinger on the first day. The other four days of hearings were devoted to concerns from the oilseed, bird seed and hemp industries and response from Hester, who agreed to make a few technical edits to the bill as to not burden the industries.¹⁰⁷

¹⁰⁵ Bonnie and Whitebread, *Marihuana Conviction*, 155.

¹⁰⁶ Eva Bertram, Morris Blachman, Kenneth Sharpe and Peter Andreas, *Drug War Politics: The Price of Denial* (Berkeley: University of California Press, 1996), 82.

¹⁰⁷ Committee on Ways and Means, *Taxation of Marihuana*, 43-45, 59-86.

The extent to which the bill's fate was predetermined is most evident in the reaction to the testimony of the House's second to last witness, Dr. William Woodward of the American Medical Association. While Anslinger's anecdote-filled testimony was barely questioned, Woodward—who had previously opposed marijuana's inclusion in the Uniform Narcotic Act and opposed the MTA as well—was pummeled by the committee. Woodward began deferentially, stating that “It is with great regret that I find myself in opposition to any measure that is proposed by the Government, and particularly in opposition to any measure that has been proposed by the Secretary of the Treasury for the purpose of suppressing traffic in narcotics.”¹⁰⁸ He continued, mentioning his role in drafting the Harrison Act and highlighted his continued work with the FBN over the previous decade. But, Woodward said, the MTA unfairly targeted doctors and pharmacists despite there being no evidence of “excessive use of the drug by any doctor or its excessive distribution by any pharmacist.”¹⁰⁹

Woodward's testimony represents a striking indictment of the Bureau's propaganda effort, worth quoting at length. On the problem of marijuana, he said:

That there is a certain amount of narcotic addiction of an objectionable character no one will deny. The newspapers have called attention to it so prominently that there must be some grounds for their statements. It has surprised me, however, that the facts on which their statements have been based have not been brought before this committee by competent primary evidence. We are referred to newspaper publications concerning the prevalence of marihuana addiction. We are told that the use of marihuana causes crime.

¹⁰⁸ Ibid., 87.

¹⁰⁹ Ibid., 90.

But yet no one has been produced from the Bureau of Prisons to show the number of prisoners who have been found addicted to the marihuana habit. An informal inquiry shows that the Bureau of Prisons has no evidence on that point.

You have been told that school children are great users of marihuana cigarettes. No one has been summoned from the Children's Bureau to show the nature and extent of the habit, among children.

Inquiry of the Children's Bureau shows they have had no occasion to investigate it and know nothing particularly of it.

Inquiry of the Office of Education—and they certainly should know something of the prevalence of the habit among the school children of the country, if there is a prevalent habit— indicates that they have had no occasion to investigate and know nothing of it.

Moreover, there is in the Treasury Department itself, the Public Health Service, with its Division of Mental Hygiene. The Division of Mental Hygiene was, in the first place, the Division of Narcotics. It was converted into the Division of Mental Hygiene, I think, about 1930. That particular Bureau has control at the present time of the narcotics farms that were created about 1929 or 1930 and came into operation a few years later. No one has been summoned from that Bureau to give evidence on that point.

Informal inquiry by me indicates that they have had no record of any marihuana or Cannabis addicts who have ever been committed to those farms.

The bureau of Public Health Service has also a division of pharmacology. If you desire evidence as to the pharmacology of Cannabis, that obviously is the place where you can get direct and primary evidence, rather than the indirect hearsay evidence.¹¹⁰

Woodward, in that one page of testimony, evinced the superior thoroughness of his investigation as compared to anyone else on the committee. Besides the baseless nature of most of the Bureau's claims about marijuana, Woodward suggested that the AMA's opposition to the bill mostly concerned the high rate of tax and strict record-keeping requirements it mandated for medical uses. Indeed, Woodward said the AMA was not opposed to marijuana's regulation in the abstract, and would even support it under the Harrison Act,

¹¹⁰ Ibid., 92.

which provided a more reasonable rate of taxation and less burdensome requirements.¹¹¹

The reaction of the committee's members to Woodward's testimony demonstrates how unwelcome his criticisms were. Immediately, he was interrogated on minor facts—his mandate from the AMA and whether he really spoke for them, the details of the AMA's most recent editorial and whether a particular footnote made it obvious that the AMA's editorial was citing Anslinger or proclaiming a position, and Woodward's personal history of support for various kinds of legislation. He faced criticism of the AMA's opposition to New Deal legislation.¹¹² He was questioned endlessly on his personal opinions on the Harrison Act, and asked repeatedly whether he thought it was working.¹¹³ Woodward attempted, continuously, to argue that the states could control the marijuana problem themselves and that, if medical control of marijuana at the federal level were necessary, the Harrison Act was the best route.¹¹⁴

The interrogation of Woodward was so vigorous that members of the committee repeatedly requested that others yield time so that they might get in on the action. The attacks frequently became vitriolic, with Chairman Doughton responding to one of Woodward's answers by remarking that "If the statement that you have just made has any relation to the question that I asked, I just do not have the mind to understand it."¹¹⁵ Doughton went on to accuse Woodward

¹¹¹ Ibid., 96-97.

¹¹² Ibid., 98-104.

¹¹³ Ibid., 105-106.

¹¹⁴ Ibid., 106.

¹¹⁵ Ibid., 116.

of objecting to the bill only because he was not consulted on its drafting, as did several others.¹¹⁶ Over the course of more than 20 pages of questioning, few questions made any reference to Woodward's actual objections to the bill and those that did were seemingly posed only to rebut his opinion or attack him personally. At the conclusion of Woodward's testimony, the next witness was called without any acknowledgment of Woodward or thanks from the committee for his appearance.¹¹⁷ One would not be shocked to learn that for the one day of hearings held by the Senate—which followed essentially the same course as the House hearings, but with significantly less testimony—Woodward chose to submit his testimony in writing, rather than appear in person.¹¹⁸

Not surprisingly, the bill was reported favorably out of both houses of Congress, with the Ways and Means Committee reporting verbatim the FBN's unsubstantiated claims of marijuana as a killer drug spreading to children.¹¹⁹ The proceedings on the House floor, however, make the members of the Committee look like experts. When the bill came to floor on June 10, 1937, there was a manifest level of ignorance among members about the subject matter.

Mr. DOUGHTON. I ask unanimous consent for the present consideration of the bill (H.R. 6906)...

Mr. SNELL. Mr. Speaker, reserving the right to object, and notwithstanding the fact that my friend, Reed, is in favor of it, is this a matter we should bring up at this late hour of the afternoon? I do not know anything about this bill. It may be all right and it may be that everyone is for it, but as a general principle, I am against bringing up any

¹¹⁶ Ibid., 116-118.

¹¹⁷ Ibid., 121.

¹¹⁸ U.S. Congress, Senate, Subcommittee of the Committee on Finance, *Taxation of Marihuana*, 75th Cong., 1st sess., 1937, 33.

¹¹⁹ Bonnie and Whitebread, *Marihuana Conviction*, 172-173.

important legislation, and I suppose that this is important, since it comes from the Ways and Means Committee, at this late hour of the day.

...

Mr. RAYBURN. Mr. Speaker, if the gentleman will yield, I may say that the gentleman from North Carolina has stated to me that this bill has a unanimous report from the committee and that there is no controversy about it.

Mr. SNELL. What is the bill?

Mr. RAYBURN. It has something to do with something that is called marihuana. I believe it is a narcotic of some kind.

Mr. FRED M. VINSON. Marihuana is the same as hashish.

Mr. SNELL. Mr. Speaker, I am not going to object but I think it is wrong to consider legislation of this character at this time of night.¹²⁰

When the bill came to a vote four days later, on June 14, only a few Congressmen asked for clarification, and mostly to ensure that whatever the bill was, it would not interrupt industry. After a brief explanation by Congressman Buck that the bill sought to stop dangerous drugs from ending up in the hands of children, that it engendered violence and crime, and that there was “hardly anyone that appeared before our committee who was not horrified at the growth of the traffic and its effects,” the bill passed.¹²¹ It then passed the Senate and came back to the House on July 26 with minor amendments, lowering the occupational tax on hemp growers and exempting the Canal Zone from the Act’s jurisdiction.¹²² The only substantive question about the Act concerned whether the AMA’s position on the bill was considered. Congressman Vinson, with the last word before the Senate amendments were adopted, said “Dr. Wharton, representing the American Medical Association, testified at length.”¹²³ Of course,

¹²⁰ *Occupational Excise Tax on Marihuana*, HR 6906, 75th Cong., 1st sess., *Congressional Record* 81, pt. 5: 5575.

¹²¹ *Ibid.*, 5689-5692.

¹²² *Tax on Marihuana*, HR 6906, 75th Cong., 1st sess., *Congressional Record* 81, pt. 7: 7624.

¹²³ *Ibid.*, 7625.

his name was actually Dr. Woodward and that he furiously opposed the bill was unstated. President Roosevelt signed the Marijuana Tax Act into law on August 2, 1937 and it went into effect two months later.

Toward a Theory of the Marijuana Tax Act

The motives behind the MTA have been the subject of a significant amount of historical study, particularly in the late 1960s and the 1970s, a time when marijuana came into widespread use and significant legal changes were enacted. It is worth briefly comparing and synthesizing the varying interpretations.

As Stephen Norland and Joseph Wright accurately summarize, there are essentially three narratives of the MTA—one that focuses on Anslinger as a moral entrepreneur, one that focuses on the MTA as an initiative by a bureaucracy attempting to save its own skin, and one that posits anti-Mexican attitudes spurred the legislation.¹²⁴ There are also, of course, hybrid models.

The weakest interpretation, what Jerome Himmelstein coined “The Mexican Hypothesis,” promoted by historians like David Musto and John Helmer, argues that the Marijuana Tax Act was a product of anti-Mexican sentiment at the local level, which then created sufficient political pressure at the federal level to require a law.¹²⁵ Though it is quite clear that anti-Mexican sentiment was a factor in the early Southwestern and Western prohibitions, the effect on federal law is much less convincing. There is no demonstrable political pressure from

¹²⁴ Norland and Wright, “Marihuana Tax Act,” 244.

¹²⁵ Himmelstein, *Strange Career*, 27; Musto, “Marijuana Tax Act,” 426-427. John Helmer, *Drugs and Minority Oppression* (New York: Seabury Press, 1975).

local officials. Musto cites the letter from the City Editor of the Alamosa Courier claiming that “degenerate Spanish-speaking residents” were abusing marijuana and committing horrific crimes and a few other letters from local officials, but nothing shows a swell of grassroots support for the law.¹²⁶

Moreover, as Himmelstein argues, the “Mexican Hypothesis” offers no explanation whatsoever for the dramatic shift in the FBN’s rhetoric about the Uniform Narcotic Act in late 1934.¹²⁷ Unless there was an unrecorded and unsaved surge of mail to the FBN earlier in 1934, localized pressure seems insufficient to have motivated the change. Finally, the idea that the MTA was directed against Mexicans does not stand up to empirical scrutiny. Mexican immigration (and therefore economic competition) was much less of an issue by the time of the MTA, with repatriation figures that far exceeded immigration figures, and thus a drastically falling population of Mexicans nationwide.¹²⁸ Once the MTA had gone into effect, if the Mexican Hypothesis were true, one would expect federal marijuana seizures to be largest in states with the biggest Mexican populations, but that is not the case, either.¹²⁹ While there is no denying the impact of race on the issue—the Mexican connection certainly shaped marijuana’s influence as a violent drug—the facts do not support it being the impetus for federal action.

The second interpretation, articulated by Howard Becker, posits that Anslinger was a moral entrepreneur who, through a concerted media campaign,

¹²⁶ Musto, “Marijuana Tax Act,” 430.

¹²⁷ Himmelstein, *Strange Career*, 29.

¹²⁸ Norland and Wright, “Marihuana Tax Act,” 242-43.

¹²⁹ *Ibid.*, 243.

championed federal prohibition.¹³⁰ Though several authors take issue with Becker's data—the time period he considered as part of the media campaign extended past the law's passage—the flaws are more serious than that.¹³¹ Becker's interpretation provides no insight as to *why* the Bureau did what it did, and also avoids once again the question of timing.¹³² What prompted Anslinger to engage in his media campaign? Why did he choose to do so starting at the end of 1934? The likely answer to those questions centers on the Uniform Narcotic Act, which Becker all but ignores. Most critically, though, Becker seems to have missed that Anslinger and the FBN in 1935 tried to squelch the campaign for a federal law and were overruled by the Assistant Secretary of the Treasury Stephen Gibbons.¹³³ If indeed Anslinger was launching an entrepreneurial campaign for federal legislation, that attempt to shut down federal legislation would be extremely perplexing.

Finally, authors like Donald Dickson argue that the MTA is best understood as a product of a bureaucracy seeking power and appropriations. Dickson points out, correctly, that by 1936, the Bureau's budget had dropped substantially from its high point in 1932.¹³⁴ And, by that time, Anslinger and the Bureau had also succeeded in lobbying for state laws against marijuana. Dickson writes that:

¹³⁰ Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: The Free Press, 1963), 138-142.

¹³¹ For two examples, see: Donald T. Dickson, "Bureaucracy and Morality: An Organizational Perspective on a Moral Crusade," *Social Problems* 16 (1968); John F. Galliher and Allynn Walker, "The Puzzle of the Social Origins of the Marihuana Tax Act of 1937," *Social Problems*, 24 (1977).

¹³² Himmelstein, *Strange Career*, 25-26.

¹³³ Bonnie and Whitebread, *Marihuana Conviction*, 119.

¹³⁴ Dickson, "Bureaucracy and Morality," 154.

Despite this apparent success and despite former questions concerning the constitutionality of the measures, the Bureau in 1937 pressed for the enactment of the federal marihuana act. For Anslinger, the moral entrepreneur, 1936 should have been a year of victory. ... But for Anslinger, the bureaucrat, 1936 seems to have been another year of defeat.¹³⁵

A number of flaws with this theory emerge upon close inspection. First, if the issue was declining appropriations and the MTA was the gold mine, why did Anslinger say nothing of a desire for a federal law in 1935 testimony in front of an appropriations committee?¹³⁶ Second, was Anslinger simply wrong in his bureaucratic reasoning? As Dickson's own data show, the Bureau's budget did not actually increase with the enactment of the MTA.¹³⁷ Most damning, Dickson seems to be, like Becker, unaware of the fact that Anslinger attempted to stop federal legislation rather than advocating for a law. Surely, once the decision was made, Anslinger executed orders from his superiors in the Treasury Department and campaigned for the law. But there seems to be no evidence that Anslinger was a lone ranger fighting alone for prohibition to save his own job.

Though there seems to be a desire in the literature to simplify or assign motive blindly, the origins of the Marijuana Tax Act are complex. Still, a more nuanced application of the varying interpretations is valuable. Becker's entrepreneurial thesis in combination with Dickson's organizational perspective, for example, illuminates much of the history. Where the two go wrong, however, is in applying their theories to the Tax Act itself. Instead, the most reasonable historical narrative is that the marijuana menace deployed in the media

¹³⁵ Ibid.

¹³⁶ Carroll, "Under the Influence," 69-70.

¹³⁷ Dickson, "Bureaucracy and Morality," 154.

generated a feedback loop that pressured the Treasury Department into the MTA. Anslinger did not campaign for the MTA—neither as a moral entrepreneur nor a bureaucratic leader—until after the decision to pursue the law had been made.

What Anslinger did campaign for, though, was the Uniform Narcotic Act, which is the missing link in MTA theory. The MTA may have been the end result, but the proximate cause was Anslinger’s effort to get states to adopt the Uniform Act. For that, there is substantial evidence of a concerted media campaign. The FBN, for example, sent agents to give hundreds of speeches to various interest groups about the marijuana menace.¹³⁸ It also changed the way it presented statistics on marijuana to make the growth in abuse and traffic seem significantly more concerning than it likely was in reality.¹³⁹ With allies like the Women’s Christian Temperance Union, the World Narcotic Defense Association, and Hearst Newspapers, Anslinger was able to spread his message.¹⁴⁰ Though it may not have permeated the public’s consciousness to a significant extent, the message was evidently effective enough with lawmakers, at least judging by the swift uptick in adoption of the Uniform Narcotic Act.

From the bureaucratic perspective, Anslinger’s efforts seem logical, too. Dickson focuses on Anslinger’s efforts to change his bureaucratic environment, but it is just as likely—and better borne out by the later appropriations evidence—that he instead accepted that the Depression would continue to

¹³⁸ Bureau of Narcotics, *Traffic in Opium 1936*, 68.

¹³⁹ Norland and Wright, “Marihuana Tax Act,” 244-45.

¹⁴⁰ Bonnie and Whitebread, *Marihuana Conviction*, 100-109.

engender insufficient budgets.¹⁴¹ From that lens, Anslinger's rejection of federal legislation for as long as possible makes much more sense. And, his work in drafting and campaigning for the Uniform Narcotic Act is the perfect counterpart, allowing FBN control over the content of state laws without being held responsible for the enforcement costs.¹⁴²

In developing any theory of the Marijuana Tax Act, then, it is necessary to reconcile that theory with Anslinger's Uniform Narcotic Act campaign. By doing so, the entrepreneurial and bureaucratic frameworks both have explanatory power worthy of consideration.

¹⁴¹ Dickson, "Bureaucracy and Morality," 155. See 145-146 for a discussion of reacting to versus attempting to alter bureaucratic environments.

¹⁴² Himmelstein, *Strange Career*, 57

Conclusion

The establishment of marijuana prohibition in the United States is the story of how much can be accomplished by so few when no one is watching. While there was likely never any substantial abuse of marijuana or legitimate public concern over its use, it still took less than three decades for prohibition to sweep the nation. At the turn of the century “marijuana” as such was virtually unknown and cannabis was a mild drug sold at the pharmacy. But it took only a handful of individuals who were concerned about the spread of marijuana—or, in the case of early reformers in the northeast, concerned about the *potential* for the spread of marijuana—to take action for the drug to be banned.

Those efforts began at the state and local level, where activists like Dr. Fossier and Eugene Stanley in New Orleans shaped an image of marijuana as a drug that caused insanity and provoked murder. Though rejected by the best science available at the time, like the Indian Hemp Commission and the Panama Canal Zone study, the pseudo-scientific, mythological claims of marijuana-addled “Assassins” that emerged out of New Orleans carried the day. That image won over people like Harry J. Anslinger, Commissioner of the Federal Bureau of Narcotics, who began collecting marijuana horror stories upon his appointment.

Four years after he assumed leadership of the FBN, Anslinger put those stories to use, unleashing the marijuana menace into the media and the halls of state legislatures across the country in an effort to garner support for the Uniform Narcotic Act he had helped draft. While Anslinger achieved that goal, he

also incited calls for federal legislation. That legislation, the Marijuana Tax Act of 1937, effectively created federal prohibition through prohibitively high taxes.

Though it was a critical moment in the historical progression of marijuana prohibition, the Marijuana Tax Act did not fundamentally alter national drug control or public consciousness of drugs. In fact, its passage received little attention in newspapers or yearbook summaries of congressional activity.¹ Nor was Congress eager to appropriate funds for marijuana control; its general apathy was fairly obvious from the confusion about the bill on the floor.² John Galliher and Allynn Walker argue that without new funding, the bill was “largely a technical adjustment in federal law, duplicating existing state laws,” and not an “important legal change.”³ This view, however, overstates the case against the law.

First of all, it was not purely symbolic, as Galliher and Walker imply. The day after the law went into effect, October 8, 1937, a man named Samuel Caldwell of Denver was sentenced to prison for violating the Act.⁴ This was not a one-time occurrence. For as long as the MTA was in effect—it was declared unconstitutional in 1969 and repealed the next year—marijuana cases never represented less than 20 percent of federal drug prosecutions; in some years

¹ Jerome L. Himmelstein, *The Strange Career of Marihuana: Politics and Ideology of Drug Control in America* (Westport: Greenwood Press, 1983), 43

² John F. Galliher and Allynn Walker, “The Puzzle of the Social Origins of the Marihuana Tax Act of 1937,” *Social Problems*, 24 (1977): 375.

³ *Ibid.*

⁴ “Denver Court Imposes First U.S. Marijuana Law Penalties,” *The Denver Post* (Denver, CO), October 8, 1937. Anslinger Papers, Box 6, File 9.

they represented half or more of federal prosecutions.⁵ Moreover, the stringent and complex regulations put into place on medical use after the Act passed effectively ended the use of marijuana as medicine and also prevented medical research that could have disputed the FBN's claims about marijuana's danger.⁶

Perhaps the most important effect of the MTA, however, was that it enshrined the danger of marijuana into federal law. Those activists who had worked to define marijuana as a killer drug would, for thirty more years, go essentially unchallenged. If strict regulations were not enough, Anslinger then successfully had marijuana removed from the *United States Pharmacopeia* in 1941, officially ending its use as a medicine and herald the FBN's almost total control over marijuana's image.⁷ That image control is the true and important legacy of the MTA. When, in 1951 and 1956, Anslinger lobbied for very strict punishments for drug possession and sales, marijuana was included with heroin and cocaine. The MTA, by essentially criminalizing possession, put into legal effect the equivalency of marijuana to cocaine and heroin that had begun when marijuana was listed as a "habit-forming narcotic" in the Narcotic Farms Act.

That strict control over the definition and cultural meaning of drugs is Anslinger's legacy, too. From the early 1930s on, Anslinger was convinced of the truth of the marijuana menace. Although facts, like those presented by the Indian Hemp Commission Report and the Panama Canal Zone study, challenged

⁵ Kenneth J. Meier, *The Politics of Sin: Drugs, Alcohol, and Public Policy* (Armonk, New York: ME. Sharpe, 1994), 38.

⁶ *Ibid.*, 37.

⁷ Kathleen Ferraiolo, "From killer weed to popular medicine: The evolution of American drug control policy, 1937-2000," *Journal of Policy History*, 2 (2007): 155.

Anslinger's assertions, that did not deter him. Though Anslinger used marijuana instrumentally to encourage states to pass the Uniform Narcotic Act, his notes make fairly clear that he truly believed it was a danger. Indeed, his marijuana position stayed firm for decades after the Marijuana Tax Act came into effect. In an interview at the age of eighty, Anslinger said that the proposition of marijuana decriminalization would "legalize slaughter on the highways" because driving under the influence of marijuana was even more dangerous than driving drunk.⁸

For thirty-two years, Anslinger led the FBN and to his dying day was a true believer in the fight against intoxicants. But Anslinger did not let his stringent ideology lead him astray. First and foremost, he was a pragmatic and politically able bureaucrat, first and foremost. A component of that political intelligence, which John McWilliams said actually heightened Anslinger's power, was his "bureaucratic modesty."⁹ As McWilliams shows, Anslinger was judicious in asking for increases in appropriations and, in the case of the Marijuana Tax Act, promised it would not increase his budget. He was not an expansionist empire builder like J. Edgar Hoover of the Federal Bureau of Investigation.¹⁰ Unlike Hoover, whose eyes were everywhere and whose career has been described as "excessive bureaucratic power run amuck," Anslinger had no desire to control every action in Washington or manipulate his way to the top of a

⁸ Roy McHugh, "Legal Marijuana Turns Off Dope Fighter Anslinger," *The Pittsburg Press*, March 5, 1972.

⁹ John McWilliams, "Unsung Partner against Crime: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930-1962," *The Pennsylvania Magazine of History and Biography*, 113 (1989): 229.

¹⁰ *Ibid.*, 230.

bureaucratic food chain.¹¹ Instead, he kept his head down and his aims modest, and in return, was granted more than three decades of drug policy control.

Without Harry Anslinger, the history of marijuana prohibition may very well have progressed differently. Certainly, there were others in the country who wanted marijuana outlawed, but none had Anslinger's bureaucratic and political prowess. From the onset of his career with the Federal Bureau of Narcotics, he began planning for an effective national prohibition. Though Anslinger still opposed federal prohibition in 1935 because he thought states needed to act first, once the decision was made to pursue legislation, he was a zealous advocate for the idea, presenting marijuana's menace to Congress with vigor. As the architect of federal marijuana prohibition, Anslinger truly launched the battle that became a war.

¹¹ Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (New York: The Free Press, 1987), 2-3.

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