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To cite this article: John Kaplan (1971) Drug Laws Handicapping Control and Education, Clinical Toxicology, 4:1, 141-146, DOI: [10.3109/15563657108990157](https://doi.org/10.3109/15563657108990157)

To link to this article: <https://doi.org/10.3109/15563657108990157>



Published online: 25 Sep 2008.



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Drug Laws Handicapping Control and Education*

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The editors of MEDICAL TRIBUNE have asked me to comment briefly on the major points of my new book, *Marijuana: The New Prohibition*, as they relate to physicians. The first and most obvious point of the book is that in large and growing areas of the United States, the laws against marijuana have become every bit as widely flouted as were the Prohibition laws of the 1920s. The second point is that, as a result, the marijuana laws now impose costs upon society far out of proportion to the good they do.

Certainly one cannot blame the medical profession for this. After all, the American Medical Association raised the sole dissenting voice against passage of the Marijuana Tax Act, the initial Federal prohibition of marijuana. On the other hand, it is true that the problem of changing the law has been aggravated by the enormous number of statements by medical societies and committees, as well as by individual physicians, which not only draw conclusions far more positive and sweeping than the scientific data warrant but which are wrong in three very fundamental ways.

A DANGEROUS FALLACY

First, it is a dangerous fallacy to confuse, as these pronouncements often

*Reprinted from *Medical Tribune*, Monday, June 8, 1970.

do, prescribing for the welfare of the individual patient with, as it were, prescribing laws for society. In the case of the individual patient, the physician has no coercive powers but applies his medical knowledge and persuasion to oppose the use of any substance whose harm to the patient outweighs its benefits—whether the substance is marijuana, tobacco, alcohol, or even fried foods.

The decision to use the criminal law to prevent people from harming themselves involves far more complicated issues, however. For instance, by making the use of marijuana a crime, we are turning a large percentage of our young people—and indeed many of the best and otherwise most highly motivated ones—into serious criminals. And although the proportion of young people using the drug is not everywhere as high as it is in California—about 30 per cent of the total state population between the ages of 15 and 30—the proportion throughout the United States is by all reckoning unacceptably high. Moreover, even if one neglects the unhealthy condition of the society which turns such a large number of its young people into criminals, it is harder to ignore the danger that criminal behavior in the marijuana area may make one more ready for criminal activity of other, more destructive kinds. This danger is considerably increased among those (50,000 young people in California alone in 1968) who were arrested for marijuana violations—most commonly for possession of very small amounts of the drug—and have been alienated by this most untherapeutic experience in far more serious ways than merely by the realization that they are criminals. And as a crowning irony, we must pay a high price (a total of \$72,000,000 in California in 1968) in scarce law enforcement and correctional resources to achieve this result.

It is not amiss to point out here several ways in which the marijuana laws contribute to the use of other drugs which constitute a far more serious medical problem.

The first and most obvious is that the marijuana laws make drug education among the young very difficult, if not impossible. The drug educator will typically address groups of young people and warn them of the dangers of narcotics, amphetamines, and hallucinogens and will do his very best to avoid mentioning marijuana. Eventually, however, he will be asked about marijuana, and then he will be in a very difficult position. Either he can state that marijuana is no more dangerous than alcohol—in which case he will probably lose his job—or he can tell the students about all the dangers of the drug that he has learned from pamphlets issued by law enforcement agencies and, regrettably, even by organized medicine. If he does this, he will not only not be believed about marijuana but will not be believed about any of the other drugs either, though he has told the truth about them.

Entirely apart from its educational effect, the criminalization of marijuana has managed to associate in the minds of the young a popular product, marijuana, with the other illegal and highly dangerous drugs. Perhaps to some this makes marijuana less attractive, but to many others it has tended merely to make the other drugs more so. Moreover, when an illegal drug-distributing network is called into being by the enormous demand for marijuana, those operating it eventually realize that they can also handle and have a ready market for considerably higher-priced and more dangerous wares. Although it is perhaps not entirely accurate to blame the theory of the stepping stone from marijuana to heroin entirely on the fact that the same people push both drugs, it is true that by criminalizing marijuana on the basis that it leads to heroin use, we have managed only to increase considerably whatever effect might exist in the absence of the law.

DANGERS OVERESTIMATED

The second fundamental error in most medical statements is a purely factual one. In forming the basis for their societal prescriptions, the medical statements almost universally have considerably overestimated the dangers of marijuana. Partly, of course, this is due to the fact that physicians see only the casualties and not the vastly greater number of uneventful marijuana users; partly, it is due to the fact that as a psychological matter one can more easily impute ill consequences to a practice one regards as immoral.

This, of course, is not to deny that marijuana is dangerous. As every physician knows, there are few substances that are not in some cases dangerous, a fact which hardly excuses listing some serious effects of marijuana use—like the toxic psychosis—without even hinting how extremely rare these are.

In *Marijuana: The New Prohibition*—I have collected and analyzed with some care the data available on this issue. Suffice it to say here that it is virtually impossible to make a rational case for the proposition that marijuana, as used in this country, is more damaging than alcohol; indeed, this appears to be an understatement. Medical pronouncements to the contrary only appear disingenuous to the young—who, after all, do in some sense know a considerable amount about the drug. The consequences of this are serious. First, it has weakened the confidence of the young in the ability and integrity of the medical profession as a whole. Even more important, the weakening of credibility caused by the marijuana issue has severely lessened the impact of warnings—all too accurate—as to far more dangerous drugs.

INTRUDE ON NONMEDICAL MATTERS

The final major defect in the medical pronouncements on marijuana is that they so often intrude on nonmedical matters with no consideration of the issues they raise or of the contributions other disciplines might make to the solutions. The easy jump from the proposition that marijuana does no good and can do harm to the view that therefore it should be prohibited shows no recognition of the problems and social costs involved in enforcing a law against the determined opposition of a large and growing proportion of our youth—many of whom are legally competent adults.

The same is true of the “liberal” pronouncements which commonly reason that even though marijuana may be no more harmful than alcohol, this in no way justifies treating the two drugs similarly. Although the argument that two wrongs do not make a right has a superficial appeal, it completely neglects the fact that this abandons any resort to a moral suasion without which laws are likely to prove unenforceable. We must remember that the argument that alcohol and marijuana are equally dangerous but that alcohol is so damaging to society that we cannot afford both is far too easily translatable by the young into the older generation’s statement, “Admittedly your drug is no more dangerous than ours, but since we cannot afford the ravages of both, we will legalize ours and make yours a serious crime.”

Perhaps the most dramatic example of the unknowing intrusion of medical groups into areas far from their expertise is drawn from the widely quoted joint report of the Council on Mental Health and the Committee on Alcoholism and Drug Dependence of the American Medical Association and the Committee on Problems of Drug Dependence of the National Research Council. That report cited as a major objection to the legalization of marijuana the fact that such a course would increase the use of hashish—a concentrate of the same plant from which vegetable marijuana is obtained. The problem is not only in the assumption of the vastly greater danger from hashish—a possibility that finds relatively weak support in the data available; more important, the dangers of hashish may be an argument for criminalizing that form of the drug, but a little thought reveals that criminalizing the weaker marijuana, if anything, increases the use of hashish. Since dealing in both types of drugs is equally criminal, the law exerts no pressure away from dealing in the stronger form. And economics, in terms of ease of smuggling and concealment, exerts a pressure in the wrong direction.

A licensing system for marijuana, however, can exert pressure away from stronger drugs. So long as marijuana of sufficient potency is available, even though it is not perhaps as strong as desired, the preference for legal and

convenient drug purchasing will incline users toward the more available, rather than the stronger, drug. Our experience during Prohibition illustrates this. Then there was a movement toward the use of more powerful alcoholic drinks, such as gin and bourbon, and away from the less powerful beer. This was in great part a consequence of the fact that the higher value per gallon of the stronger drinks made them more profitable for bootleggers to produce, transport, and sell. Interestingly, since the repeal of Prohibition, the ratio of hard-liquor sales to beer sales has dropped.

Indeed, once we see the issue as to which is the better way to arrest the spread of hashish—licensing or forbidding its principal and most logical competitor—the answer becomes fairly clear.

Despite the fact that the great bulk of official pronouncements—medical and otherwise—are hardly persuasive if examined carefully, they have had one major effect. The great majority of our population—at least of those above the age of 30—believes that marijuana is far more dangerous than alcohol and strongly opposes any major revision of the criminal law on the issue.

PENALTY REDUCTION NOT ENOUGH

Nonetheless, it should be obvious to all that mere reduction of the penalties for the use of marijuana will not be enough to prevent the situation from continuing to worsen; and while research is certainly needed, calls for more research are typically used to postpone any attempt at solution as the problem becomes more acute. The answer, of course, insofar as there is any answer to the serious medical and social problems raised by drug taking, is a drastic change in the marijuana laws in favor both of more flexible means of drug control and of greater medical involvement with the inevitable casualties. Nor will it be only an abstract dedication to therapeutics that will impel the medical profession to help pave the way for the changes that are necessary. After all, their children are at issue too.

For rationality to become a political possibility, however, a sizable job of public education is necessary. The field can no longer be left to the moral entrepreneurs and to those whose sole researches involve reading one of the numerous law-enforcement “fact sheets” on marijuana. It is to be hoped that that before the situation becomes even more acute, the medical profession will inform itself of the facts and take a leading part in working out a rational solution to this serious problem.

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Professor Kaplan is the author of *Marijuana: The New Prohibition*, published by the World Publishing Company, New

York. He is serving this year as the first Fellow of the Institute for the Study of Drug Dependence in London. As a reporter to the Joint Legislative Committee to revise the California Penal Code, he and five other reporters approved the recommendations of the marijuana section; as Professor Kaplan states it, the six "were thereupon fired by the state Legislature."