

T H E D A G G A P R O B L E M :

A Sociological Perspective

with Special Reference to the Question of Social Policy

by

François Theron

**Thesis submitted in fulfilment of the requirements
of the Degree of Master of Social Science
in Applied Sociology**

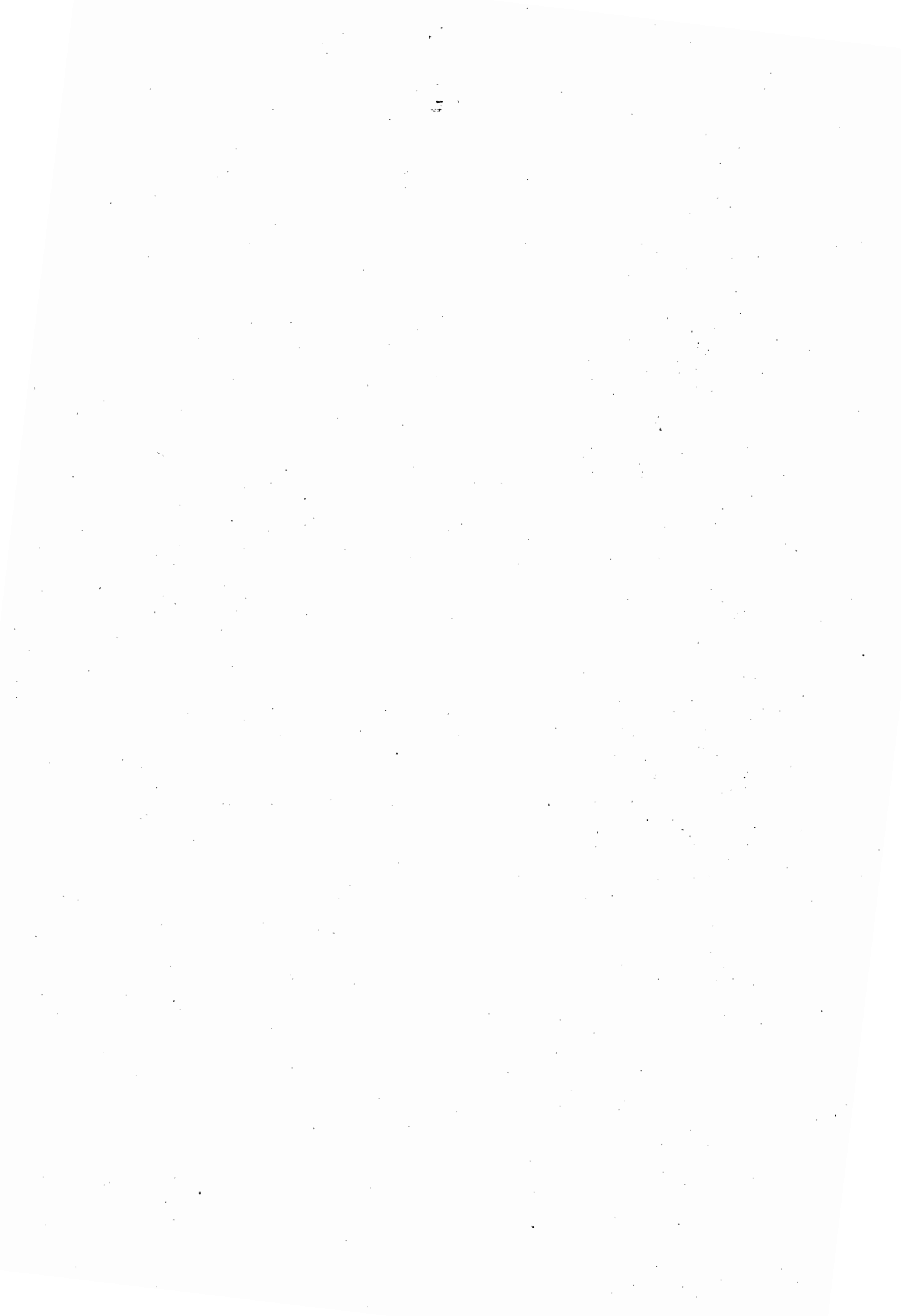
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D E D I C A T I O N

**To the South African National Council on Alcoholism and Drug Dependence
and its workers throughout the Republic of South Africa
this thesis is respectfully dedicated**

PhA

A C K N O W L E D G E M E N T S

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François Theron

That humanity at large will ever be able to dispense with Artificial Paradises seems very unlikely. Most men and women lead lives at the worst so painful, at the best so monotonous, poor and limited that the urge to escape, the longing to transcend themselves if only for a few moments, is and has always been one of the principal appetites of the soul.

———— Aldous Huxley,
The Doors of Perception.

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INTRODUCTION

Statement of the Problem

In Western cultures the escalating problem of drug abuse among young people has in the past decade come to be regarded as one of the most urgent social problems. Public concern about the rapidly-changing pattern of drug use undoubtedly stems from the anxiety that various forms of drug experimentation could lead to the permanent impairment of mental and physical health among an essentially younger generation of users.

This concern also has a broader focus. Contemporary social scientists have been trying to establish the wider meaning of the comparatively recent preoccupation with drug use, and the implications and social significance in the lives of those concerned. This increase in drug-taking has become associated with the emergence of various youth-oriented subcultures: Flower Children, Hippies, and "campus radicals" -- a new generation influenced by cult figures such as Allen Ginsberg and Timothy Leary.¹

In the 1960's, a drug subculture evolved which became inextricably associated with a host of new cultural phenomena: Pop music and fashions, so-called permissiveness and new sexual mores, a "generation gap" quickly exploited (if not created) by contemporary journalism, and a new cultural vision, generally referred to as "psychedelic" -- with obvious connotations of the drug experience. New behaviour patterns also evolved, of which Blum and Associates have said:

It is our impression that of the several forms of student conduct which have been perturbing to some if not most citizens, activism as such has received a greater share of

public interest and mass-media attention . . . than has student drug use. Activism, which includes a variety of protest demonstrations, the construction of experimental programs (for example, free universities), the development of fledgling political movements, and the enunciation of several distinguishable ideologies (for example, the New Left, pacifism, anarchism), has also had the advantage of a great deal more scientific study and scholarly comment. The response to student surprises -- whether activism or Hippie styles -- on the part of public officials, journalists, and probably millions of unquoted adults appears to have been more immediate and their characterizations more negative and sweeping than those of the scholars. Since the former have a wider audience than the latter, the general public has been encouraged, if not induced, to adopt pat judgments as to what is going on.²

Blum also discovered that there were many other factors involved: Drug users were more likely to be irreligious and opposed to their parents' authority, felt that they had experienced more interpersonal disruptions, and tended to be more curious, more venturesome, and more responsive to social pressures than their non-drug-taking peers. He also found that the committed drug user -- as opposed to the casual experimenter -- tended to be more pessimistic, more dissatisfied, and to have felt a greater degree of rebellion against authority. There was also a greater measure of emotional insecurity among drug users.³

This theme has been taken by Donald B. Louria, whose comments on the position in the United States are quoted below:

In 1969, a whole new set of explanations became popular. More and more sociologists and psychologists, as well as educators, began to tie together drug abuse and the mood of rebellion sweeping this country. They suggested that to some extent drug use could be ascribed to the generation gap, to the war in Vietnam, to racial injustice, to urban decay, to environmental pollution, and to the threat of a nuclear holocaust. I have followed the drug scene closely over the last few years, and my personal conviction is as follows: In 1967

the study of drug abuse among young people became extraordinarily popular. At that time, the major reasons given by students for use included boredom, curiosity, and peer group influence. But those who began to investigate the drug scene in depth, and many more who were seeking material for speeches, began to look for less obvious causes than those listed by the students themselves. Thus the generation gap, the Vietnam war, and the inability to control one's future, none of which was listed in 1967, began to creep into talks and articles about the drug scene. Of course, as soon as such explanations were publicised, they were duly acknowledged by the most avid readers of drug scene literature -- namely, the students themselves. Therefore, when students were asked in 1969 why they used drugs, they talked about the terrible war in Vietnam and the arms race.⁴

It is clear that the global problem of escalating drug abuse can neither be studied nor be remedied in a simplistic way. For this reason, as Blum points out, the most important source of difficulty facing most countries in dealing with the drug question is the "destructive legal-punitive approach."⁵ In spite of extensive laws, and agencies and institutions set up specifically to combat the many aspects of drug abuse, most countries have only the crudest facts available. Elementary scientific principles -- such as probability theory, deductive and inductive reasoning, the use of control groups, sampling techniques, and a precise definition of terms -- are not always brought to bear on the problem. This, unfortunately, is also true of South Africa, when the Republic's contribution to the study of this problem -- the Report of the Grobler Commission and the subsequent laws promulgated -- are closely scrutinized.

Cannabis sativa (marijuana, or dagga) has been chosen for special study in this thesis for a number of reasons. The pattern and incidence of dagga smoking has changed considerably over the past decade in most of the countries in the Western world. Originally, as the Shafer Report in the United States pointed out, the use of this drug

was confined to marginal members of the wider community -- the "outsiders" of society, such as prostitutes, itinerant workers, jazz musicians, merchant seamen and the various drifters on the fringes of normal life.⁶⁶ The Report states:

Social perceptions have undergone significant change in response to the emergence of new and challenging social problems. As marijuana use has spread to include the affluent, middle-class, white high school and college-age youth, as well as minority group members of lower socio-economic circumstances in urban core areas, the concept of marginality has become blurred.⁷

This widespread use of dagga by many millions of young people⁸ throughout the West has been looked upon by many people as a threat to the stability and future of the social order. Generally speaking, the non-dagga-using majority in any given society tends to feel that young people who smoke it often reject the essential values and traditions upon which the particular society is thought to be founded, and that this represents a rejection of responsibility and is an indication of a recklessness, hedonism and contempt for the norms and mores of the community that could interfere with the orderly process of socialization and maturation.

Dagga smoking, then, can be seen as more symbolic of the attitudes of this youthful 'counter-culture' than the use of other drugs. It has certainly sparked off more controversy and is characterized by a great deal of conflicting opinion. In the ensuing chapters some of the questions that will be examined are why people smoke dagga, what are its real dangers (if any), and what social and legal restraints, if any, should be placed on its use.

Rationale

The approach to the question of dagga⁹ and the law will be a

comparative, documentary one: What the opinions and findings of national commissions of inquiry have been in the United Kingdom, the United States, Canada, and in South Africa. The first three countries have been selected for the important and definitive reports they have produced on the problem of drug abuse in the Western world.

In Part Two of this thesis special mention will be made of the dagga problem in South Africa, tracing the origins of some attitudes to the drug and examining the background to the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act of 1971. The actual provisions of the Act are many, and for the purposes of this thesis only the provisions of Chapter One of the Act, containing contentious clauses, such as presumption of guilt, detention without trial and forfeitures, will be discussed.

These discussions will be supplemented by a study of some of the decisions handed down by the Superior Courts, when setting aside a number of convictions made by the lower courts in terms of the new Act.

Need and Timeliness of the Study

The problem of drug abuse has received a great deal of critical attention in the past five years, and in South Africa was the subject of a Committee of Inquiry in 1970. This Committee, under the chairmanship of Dr. J.A. Grobler, did not deal with dagga, but recommended that the problem be investigated separately. The Grobler Report also stated:

As to research in general, the Committee is of the opinion that every discipline concerned with drugs and/or their abuse, should develop a bolder research policy . . . Government departments, universities and private undertakings concerned could play an important role in this regard.¹⁰

cannabis sativa as a prohibited dependence-producing drug, along with heroin, without further research into the matter. In view of the penalties attached to the illegal use of drugs in this schedule, this thesis will investigate the dagga problem and will attempt to place it in a rational perspective.

Methodology

The research for this thesis was done on a comparative, documentary level, rather than on an empirical one. The issue as to whether or not dagga is physiologically harmful will probably be finally settled by medical and pharmacological study. (This thesis does not go into these aspects; instead it attempts to set the development of dagga smoking as a social problem in historical perspective.)

Sources

The research has been done from secondary sources. These include the original works of some of the theorists on deviant behaviour, the reports of government committees of inquiry, as well as commentary on drug abuse in various academic and professional journals and in more popular publications.

Special mention must be made of the use of newspaper reports as sources of reference in this study. In evaluating the rapidly-changing problem of drug abuse and social attitudes towards this phenomenon, it is often Press reports that carry the most up-to-date information on current research and changes in social policy.

For this reason references to professional journals and other academic sources have in some instances been supplemented by relevant newspaper articles and reports. The validity of this approach is especially evident when dealing with South Africa. For example, the

dimensions of the drug problem in the Republic were first revealed in a series of reports in a Johannesburg newspaper, the Rand Daily Mail, which brought home to the public the extent to which the problem of drug abuse involved the youth of South Africa.¹¹ These reports contributed directly to the appointment in 1970 of a Committee of Inquiry to investigate the abuse of drugs in this country.

NOTES
ON INTRODUCTION

1. This phenomenon is relevant primarily to the United States.
2. Richard Blum, et al., Society and Drugs (San Francisco: Jossey-Bass, Inc., 1970), pp. 4-5.
3. —————, Students and Drugs (San Francisco: Jossey-Bass, Inc., 1970), pp. 1-28.
4. Donald B. Louria, Overcoming Drugs: A Program for Action (New York: McGraw-Hill, 1971), pp. 14-20.
5. Blum, Society and Drugs, *op. cit.*, p. 242.
6. Marihuana: A Signal of Misunderstanding, First Report of the National Commission on Marihuana and Drug Abuse (Washington, D.C.: U.S. Government Printing Office, 1972).
7. Ibid., p. 92.
8. The Shafer Report also found that marihuana smoking was prevalent among many adults and 'respectable' middle-class people, but that this was a private, recreational use, and the persons concerned maintained a low visibility.
9. The terms cannabis, marihuana and dagga will be used interchangeably in this study, depending on the particular context. The word dagga is used in South Africa, whereas the accepted name in the United States is marihuana. For the sake of consistency "dagga" will be used in this thesis, except where other sources are quoted directly.
10. Report of the Committee of Inquiry into the Abuse of Drugs (Pretoria: Government Printer, 1970), paras. 558, 563.
11. As Freed has pointed out:

The tremendous publicity which the Afrikaans and English press have given in the past 3 years to the rising incidence of drug abuse in the Republic of South Africa has made the public acutely aware of the dangers threatening the morale and the morality of our youth. It is not to be wondered at, then, that the Minister of Social Welfare and Pensions, Dr. the Honourable C.P. Mulder, acting on representations made to him by senior members of the Department of Social Welfare and Pensions, after the National Council on Alcoholism and Interdepartmental Committee on Need of Care, Misconduct and Delinquency among Children and Juveniles had passed resolutions to this effect, announced the appointment of the Committee on 25 July 1969.

See L.F. Freed, "Commentary on the Report of the Committee of Enquiry into the Abuse of Drugs", South African Medical Journal, XXXV, 1971, p. 1327.

PART ONE

THEORETICAL BASIS OF THE PROBLEM

"That's all very well in theory, but it won't do in practice."
In this sophism you admit the premises but deny the conclusions, in contradiction with a well-known rule of logic. The assertion is based upon an impossibility: What is right in theory must work in practice; and if it does not, there is a mistake in the theory; something has been overlooked and not allowed for; and, consequently, what is wrong in practice is wrong in theory too.

———— Schopenhauer,
The Art of Controversy, XXXIII.

CHAPTER I

ANOMIE, DEVIANCE AND SOCIETAL REACTION

THE PROBLEM OF ALIENATION

A contemporary social scientist, casting about for a new manifesto on the human condition in the twentieth century, could well reformulate the famous hypothesis of Karl Marx: A spectre is haunting the modern mind, the spectre of insecurity. Robert A. Nisbet, in The Quest for Community, writes that:

The fears of the nineteenth-century conservatives in Western Europe, expressed against a background of increasing individualism, secularism, and social dislocation, have become, to an extraordinary degree, the insights and hypotheses of present-day students of man in society. The widening concern with insecurity and disintegration is accompanied by a profound regard for the values of status, membership, and community.¹

For the sociologist, one of the leading characteristics of modern thinking on man and society has been its preoccupation with personal alienation and cultural disintegration. As Nisbet points out, in all the social sciences there are at the present time various synonyms for this alienation, from "loss of identity", to investigations of the "unattached", the "marginal", the "obsessive", the "normless", and the "isolated" individual -- all of which points to the central place occupied by the hypothesis of alienation in contemporary social science.²

This concept, however, has not remained in some sort of theoretical limbo. Man's estrangement from society and from himself has been the theme of novelists as disparate as Camus, Kafka and Keruac. In Lord Jim, Joseph Conrad created, probably, one of the first "anti-heroes" of modern fiction. When Gertrude Stein first coined the

phrase the "lost generation", in referring to a group of expatriate writers in Paris (that included Joyce and Hemingway), it became the forerunner of a series of popular catchwords about alienated groups in post-war society: the "Beat Generation", the "drop-outs", "Hippies", and the widely-used "generation gap" theory of journalistic sociology.

In one way or another the concept of alienation has dominated the history of sociological thought, from classical writings to recent authors. It is a central theme in the works of Marx, Weber and Durkheim, and in contemporary sociology has been the core of a vast spectrum of social problems examined by writers such as Merton, Becker, Clinard, Ohlin, Cloward and Cohen. The theories of some of these sociologists will be referred to later in this chapter.

The notion of alienation in sociology developed from German idealistic philosophy,³ especially from Hegel, but Marx first made it a diagnostic tool of sociological inquiry. For Marx, alienation meant, in the words of Erich Fromm, "that man does not experience himself as the acting agent in his grasp of the world, but that the world (nature, others, himself) remain alien to him. They stand above and against him as objects, even though they may be objects of his own creation."⁴

Nisbet sees the problem of alienation as "one of the determining realities of the contemporary age", and defines it as "the state of mind that can find a social order remote, incomprehensible, or fraudulent; beyond real hope or desire; inviting apathy, boredom, or even hostility."⁵

The concept of alienation, as opposed to that of anomie,⁶ is a problem seen from the point of view of the individual actor, and implies a personal sense of estrangement. In other words, alienation

can be conceived as the expectancy or probability held by the individual that his own behaviour cannot determine the occurrence of the outcomes, or reinforcements, he seeks.⁷ Anomie can be described briefly as a condition of normlessness, a kind of spiritual or moral vacuum, experienced by groups of individuals in a community or society when there is a "breakdown in the cultural structure, occurring particularly when there is an acute disjunction between cultural norms and goals and the socially-structured capacities of members of the group to act in accord with them."⁸

In this definition of Merton's, social structure refers to that organized set of social relationships in which members of the society or group are variously implicated.⁹ Before examining the question of anomie more closely, it is necessary to consider Seeman's five basic interpretations of alienation from the standpoint of the actor.¹⁰ He identifies five alternative meanings of alienation: powerlessness, meaninglessness, normlessness, isolation and self-estrangement. These five approaches are necessitated because this concept, so central in sociology, is clearly laden with implications and value judgements and needs special clarity.

The first of Seeman's five approaches refers to alienation in the sense of powerlessness. This, in other words, is the notion of alienation that first emerged as Marx's view of the worker's position in a capitalist society. In this society the worker is alienated in the sense that choices, decisions and the ownership of the means of production are in the hands of capitalist entrepreneurs. Marx, however, was also interested in other aspects of alienation that flowed from the industrial system -- such as the alienation of man from man, and the "degradation of men into commodities".¹¹

A second construction of powerlessness deviates from the Marxian

tradition by removing the critical, polemic element in the idea of alienation. In this version the individual's expectancy for control of events is distinguished from (a) the objective situation of powerlessness as some observer sees it, (b) the observer's judgement of that situation against some ethical standard, and (c) the individual's sense of discrepancy between his expectations for control and his desire for control.

Seeman says: "I would initially limit the applicability of this first meaning (powerlessness) of alienation to the arena for which the concept was originally intended, namely, the depiction of man's relation to the larger social order." ¹²

Meaninglessness is the next usage of Seeman's alienation concept, which refers to the individual's sense of understanding the events in which he is engaged. High alienation occurs when the individual is unclear as to what he ought to believe when the individual's minimal standards for clarity are not met. Normlessness is the third variant of alienation, and is derived from Durkheim's description of "anomie" denoting a situation, in the traditional usage, where the social norms regulating individual conduct have broken down or are no longer effective rules for behaviour.

The fourth type of alienation is isolation, which Seeman defines in terms of reward values: The alienated (in the isolation sense) are those who assign low reward value to goals or beliefs that are typically highly valued in the given society. ¹³ This definition, clearly, indicates the degree of "apartness" of the individual (such as intellectuals, radical students, and so on) from his society. The fifth and final approach to alienation Seeman calls self-estrangement.

Here Seeman examines the theories of Fromm, and quotes him as saying:

. . . I have chosen the concept of alienation as

the central point from which I am going to develop the analysis of the contemporary social character . . . By alienation is meant a mode of experience in which the person experiences himself as an alien. He has become, one might say, estranged from himself.¹⁴

Seeman comments on this. He feels that it is difficult to say or to specify what the alienation is from. To speak simply of "alienation from the self" is insufficient. What apparently is being postulated is some ideal condition from which the individual becomes estranged. To be self-alienated, in the final analysis, would mean to be something less than one might ideally be if the circumstances in society were different.¹⁵ X

From these aspects of alienation the focus must move on to a discussion of the historical and theoretical implications of the problem of anomie and social structure. This theory was first formulated by the French sociologist Emile Durkheim (1858-1917) who used the term anomie in his first work, the Division of Labour in Society.¹⁶ From Durkheim's idea of a disintegration of normative order Robert K. Merton re-conceptualized a more comprehensive analytic model of anomie and social structure.¹⁷

ANOMIE: THEORY AND DEVELOPMENT

At least from the time of Socrates and the Greek philosophers man has examined the nature of his society and the relationship of the individual to a larger social order. The behaviour of men, for Plato, varied according to the type of political order.

Social theorists, such as Hobbes, Locke and Rousseau, investigated the conflicts and the contracts of the political and social order of their times. August Comte (1798-1857) attempted to formulate the conditions that account for social stability, and concentrated

on the collective nature of man. He viewed social phenomena from within the general structure of society.¹⁸ An examination of the larger social order in determining man's behaviour, emphasizing the role of the group and social institution, was made by Simmel, Ward, Giddings, Ross, Cooley and Durkheim.

For the purposes of tracing anomie theory and the problem of deviant behaviour, as it relates to the modern phenomenon of drug abuse and drug subcultures, the theories of the French sociologist Emile Durkheim and the American Robert K. Merton will be briefly examined here. The views of Alfred Lindesmith and John H. Gagnon on anomie and drug addiction will be dealt with later in this chapter.

(i) Emile Durkheim

In De la Division du travail Social, first published in 1893, Durkheim used the term anomie in demonstrating the frequent tendency of an increasing division of labour to be accompanied by an imperfect co-ordination of the parts -- a decline in the solidarity of social classes and an increase in conflict among classes. His book dealt with the question of how a country, such as the France of his day, could maintain some sort of balance and social cohesion. Because of this division of labour in a society there was increased social differentiation, and like Comte he believed that this led to an instability of social relationships.

Developing a theoretical framework for this problem, Durkheim pointed to two kinds or types of unity in a society: A mechanical solidarity (such as displayed by less advanced societies) and an organic solidarity, that of a more complex and advanced European society. Within a society where the division of labour and organic solidarity prevail, the "collective consciousness" diminishes, and individual differences become more marked.¹⁹ He went on to distinguish aspects

of the division of labour into which he injected his anomie theory: There are three abnormal forms; the forced division of labour where talent and occupation do not necessarily coincide, where the worker has no sense of participation in a common enterprise, and where the body of common rules for the regulation of relationships within the social system breaks down. This normlessness, or de-regulation, he called "anomie".

However, the concept anomie played only a small role in the total theory of the division of labour. Four years after The Division of Labour, which was Durkheim's doctoral dissertation at the University of Bordeaux,²⁰ he published Suicide²¹ in which he formulated a considerably revised version of his anomie theory. (He had, in fact, alluded to a possible relation between anomie and suicide in the earlier work).

For Durkheim, suicide, generally and in its specific aspects, was not an individual phenomenon but related to certain features of social organization. These were: The degree of control or regulation in a society, the degree of group unity, and the actual strength of the ties binding the individuals. A unified and well-regulated society diminished both egoistic and anomic suicide.²²

Clinard, however, says:

Durkheim's use of anomie was far from precise, and a careful reading of his works leaves one with some confusion. For example, the individual in egoistic suicide suffers from lack of collective purpose; the anomic individual lacks restraint placed on his activities. Egoistic suicide arises because the individual is no longer able to find a meaning for life; anomic suicide results from a lack of regulation of man's basic nature.²³

(ii) Robert K. Merton

Durkheim, as we have seen, developed a concept of "anomie", but

the implications were not developed into a general theory of deviant behaviour; such a theory was outlined by Merton, in a now famous paper, in the year 1938.²⁴ So important has been the significance of this new formulation of Merton's that it has been described as the most influential single formulation in the sociology of deviance in the last 25 years, and Merton's paper, in its original and revised versions, is possibly the most frequently quoted single paper in modern sociology.²⁵

Although Merton based his theory of anomie on the postulates of Durkheim, his overall concept is broader and has a more specific application: While Durkheim saw normlessness as arising out of a clash of aspirations and a breakdown of regulatory norms, Merton emphasizes that pressures towards deviation in society could be viewed as being psychologically as normal as conformist behaviour. This is an important point, as it has a great deal of relevance to the debate over overly harsh punitive measures for drug offenders.²⁶ In emphasizing normative structures, Merton, like Durkheim, feels that behaviour such as crime is a "normal" response in given social situations.

While Durkheim, on the one hand, confined his application of anomie theory principally to suicide, Merton has tried to explain such modern problems as juvenile delinquency, alcoholism and drug addiction. Clinard, however, feels that Merton is not very clear in his definition of deviant behaviour, but refers in this aspect to his (Merton's) two earlier essays. Later, Merton was to write that deviant behaviour was "conduct that departs significantly from the norms set for people in their social statuses . . . and must be related to the norms that are socially defined as appropriate and morally binding for people occupying various statuses."²⁷

There is an important distinction between the explanations given

by Durkheim and Merton for deviant behaviour: In contrast to Durkheim, Merton does not think that man's biological nature is important in explaining deviation. Where Durkheim considered a problem, such as man's ambition to realize unattainable goals, as an innate desire, Merton feels that these ambitions are the result of the social structure. Thus Merton does not focus on the individual but on the social order. He differentiates between (i) cultural goals, and (ii) institutional means of achieving these goals.

He then divides his concept into cultural structures (culture) and social structure (society). Culture is "that organized set of normative values governing behavior which is common to members of a designated society or group."²⁸ Social structure, or society, consists of institutional norms which define and regulate the acceptable means of obtaining these goals.

Merton, therefore, makes an explicit threefold distinction:²⁹

1. Culture goals are the wants and aspirations of a particular culture; they thus construct one aspect of the "culture structure".
2. Norms are the means of legitimately striving to attain these goals, and constitute a second aspect of "culture structure".
3. Institutionalized means are the distribution of facilities and opportunities for achieving culture goals in a way that is compatible with the norms. This is an aspect of the "social structure".

The interaction of these three variables determines the distribution of "socially structured strain". A disjunction between goals and means leads to what Merton calls strain toward anomie, in that the ability to achieve the goals of society by legitimate means is differentially distributed through the social system.

The next stage of Merton's general theory deals with the ways in which a person can adapt to a given situation where legitimate means in achieving a goal are not open to him. The following is the paradigm given by Merton.³⁰

A TYPOLOGY OF MODES OF INDIVIDUAL ADAPTATION

Modes of Adaptation	Culture Goals	Institutionalized Means
Conformity	+	+
Innovation	+	-
Ritualism	-	+
Retreatism	-	-
Rebellion	±	±

This schema shows in which ways the actor can adapt to the goals-means disjunction: He can either accept or reject the cultural goals, or accept or reject the institutionalized means. There are, in other words, two variables, each of which can be given two values. In the table, (+) shows acceptance, (-) shows rejection, while (±) indicates a rejection of prevailing values and a substitution of new values.

The most common adaptation is conformity to both cultural goals and institutional means. Although Merton claims that all five forms of adaptations relate to deviant behaviour, the two that are important here are retreatism and rebellion. Retreatism Merton calls one of the adaptive activities of "Psychotics, autists, pariahs, outcasts, vagrants, tramps, chronic drunkards and drug addicts."³¹

He sees retreatism as a private form of adaptation, rather than a collective activity: "Although people exhibiting this deviant behavior may gravitate toward centers where they come into contact with other

deviants and although they may come to share in the sub-culture of these deviant groups, their adaptations are largely private and isolated rather than unified under the aegis of a new cultural code." ³²

X In a way it can be said that retreatism is not so much an adaptation, since it rejects both cultural goals and institutional means. This type of "adaptation" is derived in many cases from the social structure which the individual has sought to repudiate. As Clinard says:

The retreatist form of adaptation is particularly condemned by conventional society because it is nonproductive, nonstriving, attaches no value to the success-goal of a society and does not use institutional means. The conformist keeps the wheels of society running; the innovator is at least "smart" and actively striving . . ." ³³

X
Rebellion, according to Merton, is a form of adaptation in which individuals reject the conventional social structure and try to create a new social structure or a greatly modified one. In other words, rebels "withdraw from the 'rat race' by abandoning both goals and means . . . [and] withdraw allegiance to a culture and social system they deem unjust and seek to reconstitute the society anew, with a new set of goals and prescriptions for attaining them." ³⁴

There have been a number of extensions and reformulations of Merton's theory of anomie, which can only be referred to in passing: Talcott Parsons's broader theory of interaction analyses, ³⁵ Robert Dubin's extension of innovation and ritualism, ³⁶ Richard Cloward's addition of illegitimate means and opportunity structures, ³⁷ and Albert Cohen's focus on the need for more adequate considerations of social interactive processes. ³⁸

Clinard, however, in summarizing the above formulations, strikes a critical note. He feels that there is "a common tendency in

sociology to accept intriguing and well-formulated theories in advance of adequate empiric support through research or the incorporation of other relevant conceptual frameworks." ³⁹ A number of important objections hinge around the relation of anomie theory to deviant behaviour, and Clinard lists eleven such points criticizing this theoretical relation. ⁴⁰

In passing, mention must be made of Rushing's paper, which describes a survey of a group of affluent landowners in the State of Washington, U.S.A., and 1 031 poverty-level farm workers in the same area. Rushing examined a number of hypotheses derived from Merton's study of social structure and anomie, and tested them in this empirical study. ⁴¹

ANOMIE AND DRUG ADDICTION

The anomie theory of addiction deals with four basic variables: Anomie, deviance, retreatism and drug use. Lindesmith and Gagnon have developed their ideas on the last-mentioned variable in a fairly concise paper. ⁴² Basically their standpoint is that the Mertonian formulation, and its extension by others, is a theory that has been elaborated beyond the empirical investigations required to test it.

According to Lindesmith and Gagnon, the theory of anomie implies, at least, a positive statistical association between addiction rates and levels of anomie. In other words:

If anomie is viewed as a cause of addiction or as a factor favourable to its appearance, it must be present prior to the addiction. One cannot, of course, use high addiction rates as proof of the prior existence of a high level of anomie; the latter must be demonstrated by independent evidence. A further implication is that rates of addiction will change with changes in the level of anomie if other relevant variables are constant. It is therefore of critical significance to note what distribution patterns of drug use exist in various societies,

and to see what historical changes have taken place, particularly in the United States.⁴³

In relating the theory of anomie to the actual problem of drug addiction Cloward and Ohlin have postulated a "double failure" hypothesis.⁴⁴ This theory proposes that persons most likely to become addicts are those who experience a double failure in that they are frustrated by the fact that both legitimate and illegitimate means to succeed are not open to them.

In the Cloward-Ohlin hypothesis there is implicit a procedure or process in which the individual attempts innovative adaptation in the local delinquent opportunity structure. In this attempt he (the individual) fails in a role adaptation, and then changes to a drug-using adaptation -- which is categorized as retreatist. This is a modification of anomie theory, since in the original theory the retreatist was unable to use illegitimate means.⁴⁵

Of the above hypothesis Lindesmith and Gagnon say:

The assumption that addiction is precipitated by failure in the criminal or delinquent world is dubious. Empirical studies which demonstrate the point are lacking. Also lacking are specific criteria of success and failure in the delinquent world. Gang members who become addicted are often rejected by gangs which are not composed of addicts and such a rejection might be called failure. Such failure, however, comes as a consequence of the addiction and is not relevant to the theory which requires that the failure precede the addiction.⁴⁶

The last-mentioned point by Lindesmith and Gagnon seems to be the most important, as the double-failure hypothesis has little relevance to addiction in many societies in the world where addiction and criminality are not linked.

DEVIANCE AND SOCIETAL REACTION

In approaching the problem of deviant behaviour and social disorganization, the definition of these terms is obviously important: A theoretical framework must be constituted, and this requires a defined set of problems and hypotheses. These should concern things that are in the same class, in the sense that "they are all definable in terms of the presence or absence of the same attributes or in terms of values of the same variables."⁴⁷

The purpose of such a theoretical framework, then, is to account for the variant possibilities presented by the scheme. There is also a need, as Cohen points out, for terms to be defined sociologically. Much that deals with the sociology of deviance is essentially psychological in content, and Cohen gives the example of Sutherland's theory of differential association.⁴⁸ In other words, a psychological question deals with the problem of how people become the kind of individuals who commit deviant acts. A sociological question asks: What is it about the structure of social systems that determines the kinds of deviant acts that occur in these systems, and the way in which these acts are distributed within the system?

Broadly speaking, a sociological line of inquiry concerns itself with the structure of interactional systems -- not with personalities -- and the distribution and articulation of events and occurrences within those systems. Taking the sociological approach, the first problem is to construct a definition of deviance. The simplest approach is a statistical one, defining deviant as anything that varies too much from a norm or average. In this way it is possible for an investigator to describe anything that differs from that which is most common as a deviation. In assessing any particular problem it is necessary only to calculate the distance of the behaviour involved.

from the average.

A more common view of deviance is the "pathological" approach -- deviance as an illness, in that the human organism does not function properly. This medical analogy is the cause of some disagreement, when the analogy is used to describe kinds of behaviour that are regarded as deviant. Becker says:

But it is harder in practice than it appears to be in theory to specify what is functional and what is dysfunctional for a society or social group. The question of what the purpose or goal (function) of a group is and, consequently, what things will help or hinder the achievement of that purpose, is very often a political question.⁴⁹

(Deviance can be defined as that behaviour which violates institutionalized expectations.) In other words, expectations which are shared and recognized as legitimate within a social system. Following this definition, Cohen sees two implications: Firstly, deviant behaviour is defined in terms of the relationship of action to institutionalized expectations, and not in terms of its relationship to personality structure. This means that neurotic, psychotic, or other types of behaviour that are pathological from a psychiatric point of view, are not necessarily the subject matter of the sociology of deviant behaviour.⁵⁰

A second implication, Cohen says, is that since the sociology of deviant behaviour is concerned with explaining the departure of behaviour from institutionalized expectations, it follows that:

The sociology of deviant behavior is not the sociology of prostitution plus the sociology of drug addiction, etc. in general. This is so, first, because no behavior is per se and universally deviant, and, secondly, because any behaviour can be subject matter for many different sociological fields, of which the sociology of deviant behavior is but one. One reason for the under-developed state of the sociology of deviant behavior is the tendency to focus on a

few kinds of behavior that are usually deviant in our society and to study these in a diffuse and encyclopedic way, rather than to concentrate on the theoretical problems inherent in the fact of deviance itself.⁵¹

Cohen's argument then, is that in attempting to formulate a general theory of deviant behaviour the concept must be abandoned that the deviant, abnormal, the pathological and related problems "always come wrapped in a single package."⁵² Deviation, as Erikson suggests, should be looked at in the light of Durkheim's statement -- that it can often be understood as a normal product of stable institutions.⁵³ Erikson's paper, which first appeared in Social Problems in 1962,⁵⁴ has been widely anthologized in standard works on deviance and social problems. In it he states that deviant behaviour is likely to occur "when sanctions governing conduct in any given social setting seem to be contradictory."⁵⁵ In a way, Erikson's perspective is an interesting one -- an inverted approach to the ambiguity of various types of conflict in any "normal" situation.

If, he says, the individual observes one set of demands imposed upon him, he can risk violating another set of rules and may find himself caught in "a deviant stance" no matter how he tries to avoid it.

As Erikson points out: "In this limited sense, deviance can be viewed as a 'normal' social response to 'abnormal' social circumstances, and we are therefore invited to assume that every act of deviation results from some imbalance within the social order -- a condition of strain, anomie, or alienation."⁵⁶

Generally, then, he views deviance as that conduct which is considered by the majority as requiring the attention of agencies of social control. This is actually the critical variable in the study of deviant behaviour. Deviance is not an inherent thing or

constituent part of certain types of behaviour; it is, as Becker and Young have also argued, a property conferred upon certain types of behaviour by a social audience. It is this audience, rather than the individual actor, that is the variable, because it determines, eventually, whether or not any particular type of behaviour is going to be labelled as deviant. }

Becker puts this case more clearly, perhaps, when he criticizes the assumption by some social scientists that those who infract rules constitute a homogeneous category, because they have committed the same deviant act. He feels that such an assumption ignores what he considers to be the central fact about deviance, namely that it is created by society. However, he says:

I do not mean this in the way it is ordinarily understood, in which the causes of deviance are located in the social situation of the deviant or in 'social factors' which prompt his action. I mean, rather, that social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender.'

Becker further adds:

If we take as the object of our attention behavior which comes to be labeled as deviant, we must recognize that we cannot know whether a given act will be categorized as deviant until the response of others has occurred. Deviance is not a quality that lies in behavior itself, but in the interaction between the person who commits an act and those who respond to it.⁵⁷

In many ways Becker's analysis suffers from repetitiveness, and a certain amount of over-generalization. His central theme hovers around the "labelling" of deviant behaviour, an approach which has, nevertheless, influenced much of the theoretical discussion of the

problem by his contemporaries. Obviously, Becker's contribution to the study of deviant behaviour cannot be dismissed lightly, especially his classic paper on marihuana.⁵⁸

For the purposes of this chapter Becker's view can be summarized in the following six points:

- (i) Deviance, among other things, is a consequence of the response of others to a person's act. The study of deviant behaviour cannot, therefore, assume that what is being dealt with is a homogeneous category -- when dealing with people who have been labelled as deviant.
- (ii) Deviant behaviour can be viewed as the product of a transaction which takes place between some social group and one who is viewed by that group as a rule-breaker. Rather than the personal and social characteristics of deviants, it is the process by which they come to be thought of as outsiders that is important.
- (iii) Whether or not an act is deviant depends on how other people react to it -- it is this response of others that must be regarded as problematic.
- (iv) The degree to which other people will respond to a particular act as being deviant varies greatly, particularly when there is a variation in time: Certain acts come in for more attention at a particular historical moment, such as Prohibition in the United States in the 1920's and the current permissive attitude to homosexuality and abortion.
- (v) The reaction to a certain act as being deviant depends on who commits the act, and who feels he has been harmed by it. Rules tend to be applied more to some persons than others, a common example being the race or social class of the person concerned, such as Blacks in the United States being apprehended by the

police on suspicion of being in possession of drugs, or in South Africa where non-Whites are more likely to be charged for loitering.

- (vi) Some rules are only enforced when they result in certain consequences. Differential enforcement of rules can be seen in attitudes to unmarried mothers: Although illicit sexual relations do not always result in severe social disapprobation, if a girl becomes pregnant as a result of such behaviour societal reaction is likely to be severe. (Becker also notes that unmarried fathers do not receive as much censure as unmarried mothers.)⁵⁹

In order to integrate some of the theorizing about deviant behaviour there are two critical components which must be examined: The first one is the question why and how certain deviant acts elicit the social responses that they do -- the process by which 'abnormal' behaviour is conceived, as opposed to "normal" behaviour. Secondly, there is the question of how a person or group that is labelled as deviant will respond to this characterization of deviance by others.

Specifically examining the roots of societal reaction against drug-taking, Young has set out what he feels is the basis of social disapproval.⁶⁰ He mentions four major groups who initiate action against the drug-taker: Moral crusaders, experts, law-enforcement agencies and mass media. "Human action," says Young, "Even though it hurts no one but the agent himself, is seldom free from outside interference and control."⁶¹ In examining societal reaction against deviance, social scientists generally fall into two categories, Absolutists and Relativists.

The absolutists are those who note the reaction of society against deviancy, such as drug-taking, without questioning the

rationale or validity of this reaction and why, for example, society usually condemns marihuana smoking but not tobacco smoking, despite the fact that the effects of the latter have to a certain degree been found to be injurious to health. [On the other hand, relativists (such as Becker, Kitsuse and Young) look upon deviance as something that is conferred upon a particular activity, and is not inherent in it. They give their attention, then, not just to the person who takes drugs, but also to the people who are opposed to drug-taking.]

The relativists examine the structure of society, and the various pressure groups that operate within it, attempting to explain why certain groups have the ability to proscribe the behaviour of others and how these actions are legitimized. Becker outlines three reasons why there is reaction against drug use, and these he terms direct conflict of interest, moral indignation and humanitarianism. Of these three, the conflict of interest is perhaps the least important -- Becker uses the example of Prohibition in the United States, when industrialists supported the measure as they felt it would ensure a greater reliability and stability among workers, and opposition came from brewers and distillers.⁶²

Becker's second category, moral indignation, enjoys a great deal of current popularity as an explanation of societal reaction against drug-taking. He says:

. . . Deviant activities, even although they may have no direct effect on the interests of those who observe them, may be condemned because they represent concrete examples of individuals who are, so to speak, dodging the rules. For if a person lives by a code of conduct which forbids certain pleasures, which involves the deferring of gratification in certain areas, it is hardly surprising that he will react strongly against those whom he sees to be taking shortcuts. This is a partial explanation of the vigorous repression against what Schur calls "crimes without

victims": Homosexuality, prostitution, abortion and drugging.⁶³

Cohen's view is that:

The dedicated pursuit of culturally approved goals, eschewing of interdicted but tantalizing goals, the adherence to normatively sanctioned means -- these imply a certain self-restraint, effort, discipline, inhibition. What is the effect of others who, through their activities do not manifestly damage our own interests, are morally undisciplined, who give themselves up to idleness, self-indulgence, or forbidden vices? What effect does the propinquity of the wicked have on the peace of mind of the virtuous? ⁶⁴

Humanitarianism as the basis for social reaction against drug use, according to Becker, occurs when powerful groups in society (the 'Establishment' as youthful dissidents call it) attempts to change the behaviour of others. On the face of it they act in what is given to be the "better interests" of a group deemed socially inferior -- they constitute a "social problem". Young, whose views are challenging, if provocative, says ". . . Humanitarianism is, I would argue, an exceedingly suspect motive; for it is often -- though not necessarily -- a rationalization behind which is concealed either a conflict of interests or moral indignation." ⁶⁵

Turning away from a world-view on the problem of deviant behaviour, it is possible to focus on the "moral outrage" aspect of societal reaction as being, in many cases, the result of a Calvinistic ethic. It is an attitude that can be traced in many modern societies -- such as South Africa and the United States -- that have inherited this tradition. Ranulf has made a detailed study of the ideological foundations of the Calvinistic middle-classes, and concludes that they (the middle-classes) have a near monopoly on moral indignation. ⁶⁶

Much of the moralizing and the emphasis on punishment for violating certain societal norms (such as attitudes toward homosexuality,

abortion and drug abuse) have their historical roots in the philosophy of Calvinism and Max Weber's concept of the Protestant Ethic.] The latter's concern with self-control and obedience to the will of God can be traced to current attitudes in many Anglo-Saxon countries. [In seeking to suppress manifestations of hedonism, the middle-class morality has the legitimizing ethic that the individual should exercise complete responsibility for what he does and what happens to him: He should never do anything that might cause loss of self-control.]

This theme has recently been developed by Duster, who points out the anomaly that, given the trend in Western civilization toward an increasingly humane view of physical and mental illness, there is an anachronistic attitude toward drug addiction, which is treated with such "passionate and moral outrage". Because the problem of addiction and habituation is inextricably tied to the moral problem of willful sensual pleasure and the shirking of responsibilities, attitudes and reactions to drug abuse take on a moralistic tone.⁶⁷

NOTES

ON CHAPTER I

1. Robert Nisbet, The Quest for Community (New York: Oxford, 1970) p. 3.
2. Ibid., p. 15.
3. Lewis Coser and Bernard Rosenberg, Sociological Theory: A Book of Readings (London: Macmillan, 1964).
4. Ibid. See also: Jonathan Wacks, "The Dialectics of Alienation: A Critical Analysis of Marx's Concept of Alienation." Paper presented at the Graduate Seminar, Department of Sociology, University of Cape Town, March 26, 1973.
5. Nisbet, op. cit., ix.
6. The term first appeared in the English language circa 1591, in the works of the historian Lambarde, who wrote "To set an anomie and bring disorder, doubt and uncertaintie over all." (See James Midgley, "Crime and Normlessness: An Attempt to Isolate Conditions of Anomie." Chapter III of unpublished Ph.D. dissertation, University of Cape Town, 1971). Herbert McClosky and John H. Schaar write:

The word is Greek in origin. It is transliterated into Latin as anomia and into English as anomy. In that spelling the word was frequently used by 17-century writers. Durkheim transliterated the word into French as anomie, and recent American writers have adopted the usage . . . we thought it appropriate to restore the word to its English spelling. ("Psychological Dimensions of Anomy", American Sociological Review, XXX, No. 1 (February, 1965), pp. 14-40.

7. Melvin Seeman, "On the Meaning of Alienation", American Sociological Review, XXIV, No. 6 (December, 1959), pp. 783-791. John P. Clark describes the concept of alienation as having proved useful to many contemporary sociologists, social philosophers and social historians in describing and interpreting man's social behaviour. Clark's definition of alienation is "the degree to which man feels powerless to achieve the role he has determined to be rightfully his in specific situations." (American Sociological Review, XXIV, No. 6 (December, 1959), p. 849. See also: Gwynn Nettler, "A Measure of Anomie", ibid., pp. 670-677.
8. Robert K. Merton, Social Theory and Social Structure (New York: Free Press, 1957), p. 162. Some sociologists have come to use the term alienation to refer, in part, to the subjective aspects of what Merton called anomie. The distinction is not always clear, but the alienated individual is considered to be marginal, normless and isolated.
9. Ibid.
10. Seeman, op. cit., p. 783.
11. Ibid., p. 784.

12. Ibid., p. 785.
13. Ibid., p. 789.
14. Erich Fromm, The Sane Society (New York: Rinehart, 1955).
15. Seeman, op. cit., p. 791.
16. Emile Durkheim, The Division of Labour in Society, translated by George Simpson (New York: Free Press, 1947).
17. Robert K. Merton, "Social Structure and Anomie", American Sociological Review, III (1938), pp. 672-682.
18. Lewis A. Coser, Masters of Sociological Thought (New York: Harcourt Brace, 1971).
19. Marshall B. Clinard, ed., Anomie and Deviant Behavior: A Discussion and Critique (New York: Free Press, 1967), pp. 1-56.
20. Coser, op. cit., p. 146.
21. Emile Durkheim, Suicide, translated by John A. Spaulding and John Simpson (New York: Free Press, 1951).
22. Durkheim distinguished between egoistic suicide, when an individual loosened the bonds that previously held him to his fellows, and anomic suicide -- when the normative regulations surrounding an individual's conduct are relaxed, i.e. when the "collective conscience" is relaxed.
23. Clinard, op. cit., pp. 8-9.
24. Merton, op. cit., These ideas were extended in his Social Theory and Social Structure.
25. Albert K. Cohen, "The Sociology of the Deviant Act: Anomie Theory and Beyond", American Sociological Review, XXX, No. 1 (February, 1965), pp. 5-14.
26. As opposed to drug pedlars, for example.
27. Robert K. Merton, "Social Problems and Sociological Theory", in Robert K. Merton and Robert A. Nisbet, Contemporary Social Problems (New York: Harcourt Brace, 1961), pp. 723-724.
28. Merton, Social Theory and Social Structure, p. 134.
29. Whereas the distinctions were implicit in Durkheim's theory of suicide.
30. Merton, op. cit., p. 140.
31. Ibid., p. 153.
32. Ibid., p. 155.
33. Clinard, op. cit., p. 21.

34. Albert K. Cohen, Deviance and Control (New Jersey: Prentice Hall, 1966), p. 77.
35. Talcott Parsons, The Social System (New York: Free Press, 1951), and Talcott Parsons and Edward A. Shils, eds., Toward a General Theory of Action (Cambridge: Harvard University Press, 1951).
36. Robert Dubin, "Deviant Behavior and Social Structure: Continuities in Social Theory", American Sociological Review, XXIV, No. 2 (April, 1959), pp. 147-164.
37. Richard Cloward, "Illegitimate Means, Anomie, and Deviant Behavior", American Sociological Review, Ibid., pp. 164-176.
38. Albert K. Cohen, Delinquent Boys: The Culture of the Gang (New York: Free Press, 1955).
39. Clinard, op. cit., p. 55.
40. Ibid., pp. 55-56.
41. William A. Rushing, "Class, Culture, and 'Social Structure and Anomie'", American Journal of Sociology, LXXIV, No. 5 (March, 1971), pp. 857-872. Rushing found that the results indicated that disjunction between educational aspirations for children and perceived opportunity is greater among Anglo-American farm workers than the farmers themselves. In both classes, however, disjunction was related to what he called "normative alienation" or normlessness. The relationships appeared to depend on cultural background.
42. Alfred R. Lindesmith and John Gagnon, "Anomie and Drug Addiction", in Clinard, op. cit., pp. 158-188.
43. Op. cit., p. 164.
44. Richard A. Cloward and Lloyd E. Ohlin, Delinquency and Opportunity (New York: Free Press, 1960), pp. 179-184.
45. Ibid., p. 180.
46. Lindesmith and Gagnon, op. cit., p. 175.
47. Albert K. Cohen, "The Study of Social Disorganization and Deviant Behavior", in Robert K. Merton, Leonard Broom and Leonard S. Cottrell, Jr., eds., Sociology Today (New York: Basic Books, 1959), pp. 461-474.
48. See Albert K. Cohen, Alfred R. Lindesmith and K.F. Schuessler, eds., The Sutherland Papers (Bloomington: University of Indiana Press, 1956).
49. Howard S. Becker, Outsiders: Studies in the Sociology of Deviance (New York: Free Press, 1963), p. 7.
50. Cohen, op. cit., p. 463.
51. Ibid.

52. Ibid.
53. Kai T. Erikson, "Notes on the Sociology of Deviance", in Howard S. Becker, The Other Side: Perspectives on Deviance (New York: Free Press, 1964).
54. Social Problems, IX (1962), pp. 307-314.
55. Ibid.
56. Erikson, op. cit., p. 10.
57. Becker, op. cit., pp. 8-14.
58. Howard S. Becker, "Becoming a Marihuana User", American Journal of Sociology, LIX, No. 3 (November, 1953), pp. 235-242. This paper has become a classic, and is widely referred to by theorists in social deviance. Kitsuse takes up a position similar to Becker's. See John Kitsuse, "Societal Reaction to Deviance: Problems of Theory and Method", Social Problems, IX (Winter, 1962), pp. 247-256.
59. For a lucid, in-depth analysis of some of Becker's themes, see Edwin M. Schur, "Reactions to Deviance: A Critical Assessment", American Journal of Sociology, LXXV, No. 3 (November, 1969), pp. 309-320. See also Edwin Lemert, Social Pathology (New York: McGraw-Hill, 1951).
60. Jock Young, The Drugtakers: The Social Meaning of Drug Use (London: Paladin, 1971), pp. 94-123. Young's views are particularly challenging; he is a member of the Committee of the National Symposium in Deviancy, a radical group of criminologists in the United Kingdom who have advocated drastic reforms in Britain's drug laws.
61. Ibid., p. 94.
62. Becker does not, however, mention the powerful pressure groups that had bootlegging interests and a strong lobby in the American Congress at the time.
63. Young, op. cit., p. 96.
64. Albert K. Cohen, "The Sociology of the Deviant Act", op. cit., pp. 5-14.
65. Young, op. cit., p. 96.
66. Swend Ranulf, Moral Indignation and Middle-Class Psychology (New York: Schocken Books, 1964). Originally published in Copenhagen by Munksgaard in 1938.
67. Troy Duster, The Legislation of Morality: Law, Drugs and Moral Judgement (New York: Free Press, 1970), pp. 235-241.

CHAPTER II

THE MODERN DRUG SUBCULTURE

A GENERAL APPROACH: SUBCULTURE AND CONTRACULTURE

Although the new International Encyclopedia of the Social Sciences, issued as recently as 1968, does not discuss the concept, the word "subculture" has been used increasingly in the past decade by social scientists in attempting to explain how various types of group behaviour -- usually considered to be "deviant" -- arise, persist, change and often disappear altogether. Most of these analyses have not been cumulative in the scientific sense, and Cressey points out that the usage of the term varies in meaning from the idea of a delinquent gang to the implied inferiority of the "sub" in subcultures.¹

The accelerated use of the term subculture as an analytical tool of social science, alongside such concepts as "function", "social class", and "role", has led to an anomalous situation: The emergent significance of the concept in explaining group behaviour on the one hand and, on the other, an increasing confusion as to what it actually means. This is a confusion, as Cressey says, that "has arisen in part because so few persons have bothered to explore the history of the concept, or tried to show its relationship to other concepts and theories that help make sense of the seemingly chaotic mess that sociologists and social psychologists call social structure and social process."²

One of the most important contributions to understanding this phenomenon has been made by Albert K. Cohen, who has made the first sustained attempt to develop a general theory of subcultures. He recognizes the fact that an understanding of delinquent subcultures

must rest upon a formulation of subcultures in general. He has therefore presented an interactionist, process model of subcultures by examining some ideas about social structure and differential social interaction.³

In attempting to explain the subculture phenomenon, or in fact explaining any particular event or phenomenon, a basic theory or set of rules must be presupposed. This becomes a "model" or explanatory system to which all events or phenomena of the same class must conform. Thus in every case the particular theory which is postulated must "fit" other phenomena of the same class, otherwise the explanation is not considered to be satisfactory.

Cohen's point of departure is the "psychogenic assumption" that all human action, and not just deviant behaviour, is a continuing series of attempts at solving problems. In other words, action is problem-solving.⁴ He says:

What people do depends upon the problems they contend with. If we want to explain what people do, then we want to be clear about the nature of human problems and what produces them. As a first step, it is important to recognize that all the multifarious factors and circumstances that conspire to produce a problem come from one or the other of two sources, the actor's "frame of reference" and the "situation" he confronts. All problems arise and all problems are solved through changes in one or both of these classes of determinants.⁵

Not every change is a successful solution, for some choices result in unresolved tensions, or generate new and unanticipated consequences and pose new problems. Cohen isolates two factors that he sees as being important in building a theory of subcultures. Seemingly insurmountable problems, for which there are no immediate resolutions, will create feelings of tension, frustration, anxiety, or hopelessness. The inadequacy of solutions for these problems are

mainly the result of the frame of reference through which the solutions are contemplated. According to Cohen, then,

It follows that an effective, really satisfying solution must entail some change in that frame of reference itself. The actor may give up pursuit of some goal which seems unattainable, but it is not a "solution" unless he can first persuade himself that the goal is, after all, not worth pursuing; in short, his values must change.⁶

Having done this, the actor uses certain mechanisms of adjustment to give himself a new perspective in looking at himself, others, and the world around him: A particular sense of "failure" can be obviated or turned into something less humiliating by ascribing or transferring to others the guilt for the failure. He may continue to strive for seemingly unattainable goals by changing the means to the goal by illicit means -- but this solution is satisfactory only in that it eliminates a certain amount of guilt by a change in moral values.

The second factor to consider in building a theory of subcultures is how actual solutions to cultural conflicts arise. Given the difficulty for the individual in distancing himself from the cultured models of his community or society -- the peer group pressure that forces him to conform and thus avoid cultural innovations -- how is it possible for these innovations to emerge when there is powerful pressure on the individual to conform to the community's norms?

At the levels of both overt action and the basic frame of reference there are strong pressures from the individual's own milieu⁷ not to deviate from acceptable behaviour. If these pressures are sufficiently strong the individual is not tempted to drift into a sub-cultural group with a frame of reference that he might find more acceptable. "One fascinating aspect of the social process", says Cohen, "is the continual realignment of groups, the migration of

individuals from one group to another in the unconscious quest for a social milieu favorable to the resolution of their problems of adjustment." ⁸

The central theoretical problem in Cohen's whole argument emerges from this paradox of innovation; the structure of any particular cultural model usually militates against the individual actor seeking innovation, yet, as Cohen writes:

. . . These models and precedents which we call the surrounding culture are ways in which other people think and other people act, and these other people are likewise constrained by models in their milieu. These models themselves, however, continually change. How is it possible for cultural innovations to emerge while each of the participants in the culture is so powerfully motivated to conform to what is already established? ⁹

A critical interpretation here is that the theorist should realise that the important condition for the emergence of new cultural forms, is the existence, in effective interaction with one another, of a number of actors with similar problems of adjustment. ¹⁰ A solution to this problem of adjustment could be innovated by an entire group, such as a conglomerate of university undergraduates with the same socio-economic background, or by certain individuals within that group (for example: campus activists with similar political leanings or affiliations).

This would require for each participant an adjustive solution, motivated by the fact that he could safely anticipate a corresponding, simultaneous change in the frames of reference of his peers. It would require reassuring signs from contemporaries that there would be approval and support for a new cultural departure.

But how does one know whether a gesture toward innovation will strike a responsive and sympathetic chord in others or whether it will

elicit hostility, ridicule and punishment?
Potential concurrence is always problemat-
 ical and innovation or the impulse to in-
 novate a stimulus for anxiety.¹¹

At a research level this could be measured by the use of socio-grams. To borrow a term from psycho-analysis, this problem could also be examined in terms of the degree of Angst experienced by any individual actor.

This individual anxiety acts, in the final analysis, as a pointer for resolving the paradox. Subgroups tend to evolve tentatively, and this process may be summed up in four interlocking stages:

- (i) Exploratory gestures;
- (ii) Mutual exploration and joint elaboration of a new solution;
- (iii) Mutual conversion;
- (iv) The emergence of new group standards.

Innovation develops by degrees, usually tentative and suitably ambiguous. This allows the individual actor to retreat if there is an unfavourable reaction and leaves him in a position of not having become identified with an untenable position. This is the exploratory gesture. Such initial probing indicates to the individual the measure of support he will enjoy and what direction away from the basic framework of action, on the other hand, will lack support. These responses are the clues that point the way and the direction for further change.

Cohen makes the important point that if these probing gestures are motivated by tensions common to other participants they are likely to initiate a process of mutual exploration and joint elaboration of a new solution.¹² Mutual probing, testing and catalytic give-and-take leads to an evolutionary type of compromise. Participants become

Angstok
 Youth

progressively committed, in a process that may not culminate in the precise framework of action that has been anticipated. This process may be described as mutual conversion.

Mutual conversion also entails a change in group values, without which process there is resistance to change by the individual, or, as Lewin says: "As long as group values are unchanged the individual will resist changes more strongly the farther he is to depart from group standards. If the group standard itself is changed, the resistance which is due to the relationship between individual and group standard is eliminated." ¹³

The emergence of a distinct subculture will begin with the emergence of these new group standards. The process is a cultural one

. . . because each actor's participation in this system of norms is influenced by his perception of the same norms in other actors. It is subcultural because the norms are shared only among those actors who stand somehow to profit from them and who find in one another a sympathetic moral climate within which these norms may come to fruition and persist . . . Once established, such a subcultural system may persist [and] . . . may achieve a life which outlasts that of the individuals who participated in its creation . . . ¹⁴

Looking at the subculture phenomenon analytically, there follows a stage of examining the problem of explanation from the interactionist point of view. Many attempts to explain subcultures have, in fact, been attempts at explaining attitudes, and the behaviour of individuals who adopt these subcultures. However, these two types of problem are not unconnected: the same process that leads to the development of a subculture which has previously not existed can also be the reason for an individual's affiliation with one that is already in existence.

This proposition can be broken down into two distinct models. In the case of the model explaining the creation of subcultures

generally, it will be seen that individuals sharing common values and attitudes will interact more with each other, and that out of this process there evolves a subsystem of norms and beliefs (a subculture) that is unique and which can be traced back to the initial problems that have given rise to the phenomenon.

Where this model is applied to the individual actor, when a viable subculture is already in existence, it should be found that a similar interaction process takes place between new and potential members and the established subculture -- a process, in fact, that socializes "outsiders" into adopting the whole framework of norms, beliefs, values and statuses of this subculture. This ultimately leads new individuals to conform more or less to its prescriptions.

This would also seem to bear out Sutherland's hypothesis that criminal patterns are adopted when an individual's interaction with holders of "criminal patterns" is greater than his interaction with holders of anti-criminal patterns -- although, as Arnold¹⁵ points out, this does not explain why this greater interaction occurs in the first place.¹⁶ The question remains: Who adopts the subculture, why and how is this done, and what effect is there on the individual who adopts it?

The three main approaches to explanation in sociology are the functional, the structural, and the interactionist. Arnold discards functionalism as a means to answering questions about subcultures, and turns his attention to the remaining two methods of explanation. He says:

Whereas functionalists have realized that the most fruitful application of their frame of reference occurs when combined with the structural in a structural-functional format, no similar rapprochement has developed between structuralists and interactionists. Yet by

combining these two we can avoid the gaps that the use of either one independently builds into our attempts at explanation.¹⁷

What Arnold envisages then is using structure as an independent variable and interaction as an intervening variable. His structural-interactionist model has four basic elements, which can be summed up as follows:

- (i) There is, firstly, structural position or what he calls "specification and description" of the particular subgroup or segment of the population that is under consideration.
- (ii) The second is differential interaction; persons who belong to the same population segment tend to interact more with each other than with those belonging to another segment.
- (iii) The next element of the model is the segment-related subculture -- which is the actual subculture arising out of this differential interaction of individuals sharing the same structural position. Out of this repeated interaction the subculture develops, and once this has occurred further interaction serves to transmit and reinforce this subculture in routine situations.
- (iv) The final element (or set of elements) is the individual manifestations of subcultural membership, being the variations in attitudes and behaviour by individuals within the group.

The interactionist approach in sociology has many protagonists, such as Becker, Cicourel, Goffman, Lemert and Matza, but at the level of explaining subcultures it tends to over-simplify the process as it

occurs in the empirical world.

Probably the most important theoretical paper on the concept subculture has been written by Milton Yinger, in which he suggests a new term, contraculture, in order to distinguish between normative systems of sub-societies and emergent norms that appear in conflict situations.¹⁸

His analysis highlights the failure, on the part of most theorists, to distinguish adequately between role and subculture. He feels there is also a tendency to obscure -- by the term subculture -- what are actually two levels of explanation (the sociological and the social-psychological) without understanding the causal forces at work. Part of the fault lies in a tendency to use the same term to refer to phenomena that share some elements in common without taking into account important differences. Thus:

To sharpen our analysis, I suggest the use of the term contraculture wherever the normative system of a group contains, as a primary element, a theme of conflict with the values of the total society, where personality variables are directly involved in the development and maintenance of the group's values, and wherever its norms can be understood only by reference to the relationships of the group to a surrounding dominant culture.¹⁹

In Yinger's thesis, contraculture is characterized by a distinctive element of conflict, in the sense that many of its values specifically contradict the values of the dominant culture.²⁰ To a certain extent his ideas seem to conflict with those of Arnold, in that he (Yinger) says:

A subculture, as a pure type, however, does not require, for its understanding, intensive analysis of interaction with the larger culture; that is, its norms are not, to any significant degree, a product of that interaction. But a contraculture can be understood only by giving full attention to the interaction of the group which is its bearer

with the larger society.²¹

Yinger concludes that hypotheses for guiding the study of subcultures can best be derived from a general theory of culture. As an example, he says it may be hypothesized that a subculture will appear initially as a result of social mobility or an extension of communication that brings groups of differing cultural backgrounds into membership of the same group or community, followed by physical or social isolation, which prevents full assimilation.

On the other hand, hypotheses about countercultures can best be derived from social-psychological theory. This includes theories of collective behaviour, frustration-aggression and group formation. In other words:

One might hypothesize, for example, that under conditions of deprivation and frustration of major values . . . and where value confusion and weak social controls obtain, contracultural norms will appear. . . An important empirical question concerns the extent and results of their interaction.²²

The empirical testing-ground for some of the above theories about subcultures and countercultures will, in the first part of this thesis, be the world of marihuana smoking²³ as the most controversial and debated aspect of the modern drug subculture.

THE DAGGA SUBCULTURE

In little more than a decade, since the early 1960's, there has occurred a major social revolution in the Western world considering the short time span in which this upheaval took place. It has been a pivotal decade of change, during which:

Many ideas and forms of behavior practiced by those at the margins of society have been absorbed into groups that represent, if not the mainstream, then at least the growing edge, of . . . social life. In less than half a generation from 1960 to 1970, fundamental

changes have taken place that will permanently alter the shape of history. The most important of these changes have been cultural, not technological. That man has walked the surface of the moon, as this century lumbers into its last quarter, tells us very little about the texture of a single man's life; on the other hand, the fact that huge segments of . . . society are irretrievably disenchanted with legitimate political channels tells us a great deal about the quality of life in this society at this particular point in time.²⁴

One of the most dramatic of social changes in the past decade has been that of the increased use of illegal drugs, and of these it is the essentially youth-oriented phenomenon of dagga smoking that has attracted the most attention and elicited the greatest amount of controversy. In most countries the legal penalties for possession of the drug are severe, and because an entire subculture has evolved around its use and because it relates to many other activities and attitudes, the study of its use has become vitally important in attempting to understand the problem.²⁵

For centuries alcohol has been used as a social drug, both as a regulator of human emotions and as a device for shutting out those aspects of life that an individual may not want to meet head on. The evidence on contemporary dagga smoking seems to point to it as being a similar mechanism for problem solving, and which is possibly as symptomatic a reaction to contemporary problems as the abuse of alcohol.

This alcohol-dagga dichotomy can be seen as a horizontal one, the basic criterion of difference being that of age group.²⁶ In Hochman's view

It is critical that drug use be seen as primarily a symptom of a fundamental illness in society, not as the illness itself. (My italics). Just as fever betrays underlying pathology, the abusive use of drugs in part reveals a fundamental disorder, the specific

character of which requires further investigation . . . One major cause of the epidemic of self-medication which is sweeping Western society lies within the nature of that very society. As mechanical-technological mass society has swept away old assumptions and patterns of behavior, more and more people have turned inward, through drugs, religions, meditation, etc., in search of some fundamental respite from change and disorder.²⁷

This change and disorder is nowhere more evident than among the disaffected youth of the 1960's and 70's, whose world-view differs greatly from that of today's older generation. The crux of the current drug debate should be seen as essentially an issue of competing values and world-views. Thus the conflicts created by the drug phenomenon arises out of a cultural hiatus: The individual emphasizes, through his illegal dagga-smoking, as opposed to the larger or parent culture, his self-definition, and the definition of his own value system.²⁸

Whereas some types of deviant behaviour occur in relatively isolated conditions, without the support of group activity, dagga smoking is predominantly a group activity. This means the activity is predominantly "cultogenic" or "sociogenic".²⁹ For example, chronic use of sedatives, barbiturates and similar drugs by housewives or professional persons, for example, to counteract the problems or stresses of their work does not form the basis of a drug-related subculture -- in that it creates the mutual bond of a shared experience.

There is no group identity and escalating interaction on a subgroup level, arising out of a common identity with drug-induced problem solving. On the other hand, the sociogenic nature of dagga smoking may be summed up by the following postulates:

- (i) It is a characteristic of dagga smoking that it usually takes place in small groups;

- (ii) The members of these "pot" smoking circles are generally friends and confidants, and engage in this activity on a regular basis -- it is not a gathering of total strangers;
- (iii) As intimates in an illegal activity dagga smokers tend to have a continuing social relationship with each other; they share a common focus in "turning on" and develop a certain cohesiveness which centres about a type of mystique; a personal philosophy characterized by a jargon or drug argot relating to their activity;
- (iv) Participants will inevitably share a certain amount of value consensus;
- (v) It is a self-perpetuating activity in that it reinforces the group's cohesion, reaffirming its social bonds by repeatedly engaging in the activity;
- (vi) Participants look upon their behaviour as legitimate, irrespective of the laws of the parent culture, because it forms the basis of their identity, defining themselves and other members in terms of having participated in the activity;
- (vii) One of the essential ingredients of this group activity is that of companionship and peer acceptance. Sharing a "joint" (which, typically, is passed around from smoker to smoker) creates group intimacy and has a distinct socializing power. Schofield, a member of Britain's Advisory Committee on Drug Dependence, says that because dagga is a social drug, and nearly always smoked in a group, there is no equivalent of the secret drinker who develops an

addiction which may be unknown to family or close friends.³⁰

According to Schofield:

A group also provides valuable psychological support. Before a beginner smokes pot, he must overcome a powerful set of deterrents. He knows that it is illegal and the punishment will be severe if he is caught. He knows this behaviour can lead to social ostracism by people who are important to him -- his family and friends. It is also likely that he has, to some degree, accepted the traditional views which look upon cannabis as a sign of moral degradation. He needs a demonstration that the drug is pleasurable and not harmful. In other words, he must become an "insider" before he can become a regular pot smoker.³¹

This aspect of group smoking also has a symbolism that more accepted behaviour lacks: It resembles, as Goode points out, communal eating in civilizations where eating is a rare or "intermittent festivity".³² He adds that ". . . The clandestine nature of the activity, illegal and underground, lends an air of excitement and collective intrigue to marijuana smoking that would be absent in a context of licitness, as with drinking."³³

The final stage of socialization into the dagga smoking sub-community occurs, in Becker's words, when a person feels free to use the drug to the degree that he "comes to regard conventional conceptions of [dagga smoking] as the uninformed views of outsiders and replaces those conceptions with the 'inside' view he has acquired through his experience with the drug in the company of other users."³⁴

Much of the activity in dagga circles revolves around discussions of the drug, its effects, and other topics related to "tripping".³⁵ There is, as Hochman says, "a wealth of lore about the quality, storage, preparation, and use of the drug . . . [and] the marijuana user is taught by an experienced user how to obtain, preserve, clean,

smoke and experience the drug." ³⁶ If the relatively new smoker is to feel at ease among his dagga-smoking peers he must be able to talk knowledgeably on the subject "in the same way that a connoisseur talks about wine." ³⁷ As Schofield says:

His life will centre around cannabis. He will be influenced by close friends, all of whom smoke pot. But this decision to join the group goes beyond the desire to smoke when he wants to. It is not just the drug which will monopolize his interests and absorb all his time. It is the different way of life which he will find so compelling. ³⁸

All of the above factors contribute in making the use of dagga an extremely significant and emotionally-charged experience for those concerned. In this way the actual smoking of dagga becomes linked to group influences, and participation in it makes the individual highly susceptible to the group's definition of reality and of right and wrong.

Symptomatic of the inevitable controversies engendered by the phenomenon of dagga smoking is the fact that even among scientists and social commentators conflicting opinions and verdicts exist as to its causes and results. If there is a certain amount of inconclusiveness about the pharmacological dangers of the drug (or lack of them), there is at least some consensus on the process of acculturation into dagga-smoking sub-communities.

That dagga use is an essentially youthful phenomenon has been accepted by most social scientists. ³⁹ One of the major reasons that dagga smoking has found favourable reception among young people is that it serves, according to Hochman, "as a symbol and a sacrament for this group whose members have already been forced into a role of social outsiders by social convention." ⁴⁰

He goes on to point out that:

Teenagers, excluded into a role of subcitizen, through marijuana see themselves as part of a cultural dynamic. This youth cult has also identified itself with other expressions of "radicalism" in dress, appearance, and behavior, even though their behavior often seems secretly and unconsciously to act out the forbidden impulses of the parent society. Pot has become a rallying point -- initially as a special experience and world unavailable to parents. Later, as values and attitudes alter with continued use and eventual subculture membership, a certain evangelism occurs, from which many of the young have sincerely attempted to turn on the adult world, too, to gain company in their culture.⁴¹

Although Schofield, among others, would accept this view, he is critical of the fact that these subcultures all suffer from the defect of being exclusive. Because dagga is illegal the sense of self-protection tends to create a "closed shop" ethic around the use of dagga. This would lead to a situation where the attitudes of such groups, which are often biased and unstable, are likely to become dogmatic and less open to change. "The absence of outside streams of thought," he says, "is restricting and unhealthy, and leads to the development of introverted minority groups."⁴² The evolution of these inverted minority groups is self-defeating in that society at large, when encountering minorities within itself, tries to assimilate them.⁴³ If this is not possible -- as in the case of illegal drug-taking -- then the minority suffers discrimination, resulting in the formation of these introverted groups.

In summing up the sociological approach to the modern drug-culture scene, the following postulates may be set out:⁴⁴

- (i) The different groups in any one society will have different problems.
- (ii) Various forms of drug taking, for some of these groups, have become a common means of problem-solving.

- (iii) These groups will select drugs which have psychotropic properties (i.e. substances which bring about psychological changes), selected as being suitable panaceas for their problems.
- (iv) The effects of these drugs are shaped and interpreted within the framework of the drug subculture.
- (v) When the drug is found to be dangerous or not easily controlled (in terms of the subculture's aims), it is discarded.⁴⁵
- (vi) Individual drug users learn the administration and method of using the drug from experienced users.
- (vii) If there are no norms for using and interpreting the resultant experiences of the drugs, there is the danger of overdosing, psychosis and physiological/psychological damage to the individual user.
- (viii) The final postulate can be broken down into four sub-categories, namely that these normless (anomic) situations (in (vii) above) will occur when:
 - (a) the individual user is isolated from any subculture which has norms and rules governing the appropriate use of the drug (as in the case of the middle-aged barbiturate addict),
 - (b) the drug in question has only recently been introduced into a country, for example LSD in South Africa,⁴⁶
 - (c) the number of drug takers increases rapidly without the transmission of subcultural norms, e.g. heroin addiction in Europe,
 - (d) a harsh socio-legal reaction destroys an originally viable subculture, such as some of the early Hippie communes in England and the United States.

From this general view of the drug subculture, and the dagga-smoking community in particular, it is now necessary to examine the critical problem of social policy toward this phenomenon, especially

the question of legalizing the drug as opposed to strengthening the existing legal sanctions. Of all the controversies surrounding dagga use, this is perhaps the most important. The following chapter will focus on it.

NOTESON CHAPTER II

1. Donald R. Cressey, in David O. Arnold, The Sociology of Subcultures (Berkeley: Glendessary Press, 1970), iii.
2. Loc. cit.
3. Albert K. Cohen, "A General Theory of Subcultures", in Arnold, op. cit., pp. 96-111. Reprinted from Delinquent Boys: The Culture of the Gang (New York: Free Press, 1955).
4. Ibid., p. 97.
5. Ibid., p. 98.
6. Ibid., P. 99.
7. This is the particular term Cohen uses frequently in his argument. A criticism here is that the word does not have a really precise meaning. He also refers, in some instances, to "groups" without specifying the type -- whether peer or pressure group, for example.
8. Cohen, op. cit., p. 101.
9. Loc. cit.
10. Ibid., p. 102.
11. Loc. cit.
12. Loc. cit.
13. Kurt Lewin, "Frontiers of Group Dynamics", Human Relations (June, 1947), p. 35.
14. Cohen, op. cit., p. 104.
15. David O. Arnold, "A Process Model of Subcultures", in The Sociology of Subcultures, op. cit., chapter 10.
16. See Edwin H. Sutherland and Donald R. Cressey, Principles of Criminology, 7th edition (Philadelphia: Lippincott, 1966), chapter 4.
17. Arnold, op. cit., pp. 113-114.
18. J. Milton Yinger, "Contraculture and Subculture", American Sociological Review, XXV, No. 5 (October, 1960), pp. 625-635.
19. Ibid., p. 629.
20. Loc. cit.
21. Loc. cit.
22. Yinger, op. cit., p. 635, passim.

23. The word is also spelt marijuana, and is scientifically referred to as cannabis (cannabis sativa, L.). In South Africa it is commonly known as dagga. Throughout this thesis these basic usages will be taken as interchangeable, as they mean the same thing and usage varies only according to country of origin. There are also innumerable slang variations, e.g. "pot", "grass", "tea", "Mary Jane", "weed", "bhang", "ganja", as well as the terms hemp and hashish, which refer to different preparations and mixtures of cannabis, and botanical variations. In this thesis the word dagga will be used for the sake of standardization, except where another term is used because of the particular context.
24. Eric Goode, The Marijuana Smokers (New York: Basic Books, 1970), p. 3.
25. Goode says: Marijuana use today is not a fad, not a craze. It is not going to be wished away, and legal measures to eradicate it will be only partially successful. Whether we like it or not, pot smoking is here to stay. It might be wise to try to understand it. (Op. cit., p. 4).
26. This is a generalization in that many people who are not part of the "youth culture" are now smoking dagga. It has become popular, for example, among middle-class Americans in the over-30 age group. See "Marijuana: The Law vs. 12 Million People", Life, XLVII, No. 10 (November, 1969), p. 21.
27. Joel S. Hochman, Marihuana and Social Evolution (Englewood Cliffs: New Jersey, 1972), p. 2.
28. Ibid., p. 3.
29. This term is used by Daniel Freedman in "Perspectives on the Use and Abuse of Psychedelic Drugs", in Daniel Efron, et al, eds., Ethnopharmacologic Search for Psychoactive Drugs (Washington: U.S. Government Printing Office, 1967), pp. 88-89. Quoted in Goode, op. cit., p. 21.
30. Except that the dagga smoker will not usually smoke the drug in the company of strangers, or those who are known to him to be opposed to the "pot" smoking ethic.
31. Michael Schofield, The Strange Case of Pot (Harmondsworth: Penguin, 1971), p. 131.
32. Goode, op. cit., p. 23.
33. Loc. cit.
34. Howard Becker, "Becoming a Marihuana User", in Outsiders: Studies in the Sociology of Deviance (New York: Free Press, 1966), p. 78.
35. "Tripping" or being on a "trip" refers to the intoxication from smoking dagga. This expression also refers to the hallucinogenic effects of LSD.
36. Hochman, op. cit., p. 24.

37. Schofield, op. cit., p. 24.
38. Loc. cit.
39. Inter alia by Young, Hochman, Louria, Goode and Becker. A valuable empirical study has been made by Harrison Pope, Jnr., in Voices from the Drug Culture (Boston: Beacon Press, 1971). Pope has made use of extensive tape-recorded interviews with respondents on numerous American campuses, and particularly with run-away youths who have passed through the referral centre at "The Sanctuary", in Cambridge, Mass., U.S.A.
40. Hochman, op. cit., p. 25.
41. Loc. cit.
42. Schofield, op. cit., p. 134. He refers to these groups as "coteries".
43. Schofield does not elaborate on this point, which, it could be argued, is a weakness in his argument (albeit a small one). As a result this contention could be challenged as being a rather vague generalization.
44. This summary is based largely on that given by Young in The Drug-takers: The Social Meaning of Drug Use (London: Granada, 1971), pp. 41-42.
45. It could be argued that this is not always the case, particularly in respect of LSD.
46. This point was made by a spokesman for the South African Railways and Harbours Police at the Sixteenth General Meeting of the South African National Council on Alcoholism and Drug Dependence in Cape Town (July 30 - August 2, 1973).

CHAPTER III

THE QUESTION OF LEGALIZATION

The main difficulty in determining whether or not dagga should be legalized, whether, instead, existing sanctions should merely be eased, is that scientists have yet to reach some sort of consensus on the drug's real or imagined dangers. In the absence of conclusive evidence to lend support to either end of the spectrum of controversy the entire debate remains unresolved. Meanwhile, the present scale of legal enforcement against dagga is in danger of creating further problems.

"One of the mysteries of recent social research", says Goode, "is the seemingly contradictory conclusions about marijuana use."¹ His belief that perhaps no sector of contemporary social behaviour is more disputed is shared by most commentators on the dagga phenomenon.² Some of the basic questions that Goode asks are (i) Does dagga cause psychic dependence? (ii) Can one, in fact, speak of "dependency" in regard to dagga smoking? (iii) Does the drug cause organic damage? (iv) Are its effects criminogenic? (v) Is there conclusive evidence that it affects the overall performance and attitude of the individual -- in other words, does it cause lethargy and lack of ambition?³ (vi) Does its use promote "psychotic episodes"?⁴ (vii) Does dagga smoking necessarily escalate to an addiction to more dangerous drugs?⁵

Part of the reason for the discrepancies in opinion over dagga is that there is a tendency among some researchers to fall into an elementary trap in the misuse of statistical method, namely that correlation means causation.⁶

On the other hand, scientific research in most countries has been restricted to examining the patterns and the behavioural aspects of dagga use without being able to experiment with the drug itself (tetrahydrocannabinol) and its effects on human physiology.⁷ Because legislation in most Western countries, including South Africa, forbids use and possession of cannabis for any purpose whatsoever this state of affairs is likely to remain, until some sort of legal concession is made to allow legalized research.

Some sort of middle ground in the controversy is proposed by Beckett, a British consultant psychiatrist, who has suggested that

It is too early to talk about full-scale legalisation of cannabis. We need properly conducted physiological and sociological research into what it does. At the moment, as I have said, the law prevents even this being carried out. A relaxation in this direction could prepare the ground for a rational decision on the wider issue.⁸

In the interim the laws remain, not only as a stumbling block to in-depth research, but as an exacerbating force which may dislocate, in many instances, the already tenuous links between today's young people and their wider community. It can be argued that the history of punitive-repressive measures against the use of certain social drugs offers little in the way of support for the view that the best way to remedy, for example, the widespread use of dagga is through Draconian legislation.

The introduction and eventual acceptance of tobacco in the Western world has indicated that social controls are often inadequate when a society is confronted by a pleasurable psychoactive substance, "even if that substance serves no primary physiological need or traditional interpersonal function".⁹

Goode gives some examples of sanctions against psychoactive drugs

defeating its own purpose through the social substitution of other substances, which in some instances were palpably more dangerous than the originally proscribed drug.

- (i) From 1956 to 1960 the cultivation of cannabis sativa was totally prohibited in Tunisia and Algeria, with the result that alcohol consumption replaced that of dagga, not demonstrably improving in any way the general standard of public health. Sigg holds that this is an example of a situation where, when large segments of a population are in the habit of using non-addictive euphoriant, repressive laws are futile.¹⁰
- (ii) There are indications that opium smoking has been declining around the world, but in the areas of Asia where it has been prohibited the use of heroin has become a far more dangerous substitute.¹¹
- (iii) At the end of the Second World War, amphetamines were legally and freely available in Japan, which eventually escalated into a major medico-social emergency. In 1953 an extremely punitive law was passed in that country, aimed at both the sellers and users of this drug. Although the amphetamine problem was considered solved by 1955, the number of narcotic addicts had started to increase steadily. This resulted in the passing of another law, intended to be as repressive as that against amphetamines ten years previously. Again, this solved the heroin problem, but the incidence of barbiturate users began to rise sharply, in addition to the phenomenon of solvent inhaling ("glue sniffing"). At this time, up to the

late 1960's, dagga smoking was considered to be a minor problem.¹²

- (iv) In the United States, the prohibition of alcohol in terms of the 1919 Volstead Act¹³ failed hopelessly because violations of the law were so frequent, blatant and uncontrollably widespread through all the social groups in American society that the public increasingly doubted that the drug (alcohol) was as dangerous and undesirable as the statute laid down. The general level of credibility and respect for the law dropped significantly, and contributed in no small way to the ultimate social forces that edged that measure off the statute book.¹⁴

That constantly changing public conventions and values are usually in the vanguard of social attitudes which ultimately change statutory proscriptions is clearly evident. This is no less true of the current dagga controversy. A recent proposal by the American Bar Association might be an indication that what happened in the case of the Volstead Act may recur with respect to dagga laws.

In August, 1973, the Association proposed that criminal laws against the possession of small amounts of dagga should be waived altogether. "With the A.B.A. behind the decriminalization of pot", asked Time magazine, "can the rest of the nation be far behind?" The report goes on to say that since 1971 state legislatures across the country have reduced possession of small amounts of dagga from a felony¹⁵ to a misdemeanour.¹⁶ Support for this view (in the United States) has come from lawyers, judges, legal experts, and government officials who are responsible for drafting legislation. This approach is also backed by the American Medical Association, which

favours a relaxing of stringent measures for possessing small quantities of the drug, but at the same time, however, advocating that more research be carried out into its effects.¹⁷

A survey by the National Commission on Marijuana and Drug Abuse in the United States showed that some 26 million Americans have tried dagga, of whom about 13 million are reported to be regular users.¹⁸

Commenting on this, Time said:

Just how far the weed has come with the middle class since the first furtive puffs in college dormitories in the 1960's was evident at the A.B.A. convention. A year ago, Whitney North Seymour, Sr., past president of the A.B.A., helped water down a decriminalization motion. This year Seymour was the first speaker in favor of the revised resolution. Says he: "Reflecting on the consequences of criminal penalties to the 20-odd million young people using marijuana, I decided that we ought to concentrate on trying to stop sales and start removing penalties for possession."¹⁹

In Australia, as another example, medical authorities seem to have I come to conclusions similar to those of the American Bar Association. A recent bulletin of the West Australian Health Education Council²⁰ stated that if the rate of increase in dagga smoking (in Australia) continued, public opinion could lead to the drug eventually being made legal in that country. The Vice-Chancellor of Newcastle University, England, has recently claimed²¹ that British police are finding it impossible to enforce the country's dagga legislation. As Beckett has pointed out, full-scale legalization without further research would be of dubious value.

Here again, the socio-legal anomaly turns full circle. A few years ago New Society predicted that "sooner or later, pot smoking will be legalized in Britain . . . cannabis is now too widely accepted to be driven out."²² Yet the legal stumbling block mentioned by Beckett is the fact that intensive research is still proscribed.

This anomaly is highlighted by New Nation:

More research is always a good cry. But, in this case, more research calls for a change in the law since the present illegality of cannabis stretched even to a government committee of inquiry trying to do research about it. Lady Wootton's team could not call for controlled experiments in the use of cannabis and observe the results.²³

In the final analysis, says Grinspoon, it is increasingly the middle class that is experiencing first-hand the problems of prohibition against dagga. In some cases it is their own children who are arrested, and sometimes it is themselves.²⁴ In this process, ultimately, there is the prospect that the morality of the middle classes will change under the exposure to arrest of members of their families. "Cannabis smoking", New Nation observes, "seems largely a middle class pleasure. That, too, makes its legalisation seem likely to come before long."²⁵

The basic rationale behind all anti-dagga legislation is that dagga (i) is harmful to the individual and (ii) is potentially a threat to the order and well-being of the larger society. Yet, the critical question with regard to damage to the social fabric is whether the extremely repressive trend in Western legislation against dagga -- with its punitive emphasis -- is not more harmful and costly than the consequences of the use of the drug itself.

A study of legalization also gives rise to a philosophical issue: whether or not the proscription of behaviour which affects the individual only (such as homosexuality, drug-taking), should be the concern of the State at all.

John Stuart Mill postulated the doctrine that there should be a separation between what concerns the welfare of the individual and that of the State. As the intellectual leader of a liberal tradition

in the nineteenth century which profoundly influenced Western political thought, his work On Liberty remains to this day a classic defence of individuality against all forms of authoritarianism. His comments, as a background to the controversy over dagga legislation in the West today, are apposite to much of what has been said by contemporary social scientists on the subject. He wrote:

. . . the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise or even right . . . This, then is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness . . . Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong.²⁶

A significant counterpoint to this view is the Calvinist ethic, on which much of the rationale behind certain legislation in South Africa is based. One of the strongest proponents of this ethic in the local milieu has been the Minister of the Interior, Dr. C.P. Mulder, who piloted South Africa's drug legislation through Parliament.²⁷ At a recent church symposium, Mulder said that the Government had the right to act against people²⁸ because the constitution of the State was based on a Protestant concept of God.²⁹

The Minister of the Interior also quoted from Article 36 of the Nederduitse Geloofsbelydenis (Confession of Faith) to support his view:

We believe that our good God, because of the corruption of the human race, appointed kings,

rulers and governments, so that the unruliness of the people can be controlled . . . Moreover everyone, no matter of what position, circumstances or rank, is compelled to submit himself to authority, to show them respect and obey them in everything which does not conflict with the word of God . . . ³⁰

It is this ethic, common to some Western countries such as South Africa and the United States which have inherited a Calvinist tradition, that has created the punitive approach to contemporary social "crimes without victims" and which must be taken into account when considering the possibilities of legalizing dagga use. Political aspects apart, this view of the State's authority in dealing with certain types of social problems is especially apparent in South Africa, in the resorting to detention without trial, minimum and compulsory sentences, presumption of guilt and the confiscation of property in combating the drug problem. ³¹

Social policy toward the dagga smoker, where that policy is a punitive one, invariably acts as a double-edged sword: the rationale behind the legislation is ostensibly a humanitarian one (albeit often masking a degree of "moral outrage" ³²) but the effects of the policy often serve to create a further problem. Draconian legislation in South Africa against dagga use is comparatively recent, but in the United States repressive sanctions have been in force for a considerably longer period, and date back to the Marihuana Tax Act of 1937. ³³

In the United States, therefore, there has been a period of observation of the results of strict dagga legislation, and the general fears and criticisms of social scientists in this aspect can be projected as being relevant to South Africa. In the State of California an estimated 70 per cent of those arrested for dagga offences have previously had either only minor or else no difficulties with the police. Of those arrested in this State, fully one-third are gaoled

for some period of time.³⁴

The most apparent danger arising out of this sort of situation is that it throws a basically innocent individual, usually in the most formative and suggestible period of his life, into the closest contact with those who are guilty of more serious offences.³⁵ As commentators such as Grinspoon³⁶ and Kaplan³⁷ have pointed out, it is manifestly dangerous and unhealthy for a society to turn a large percentage of its young people into criminals or to define them as such.

Even those offenders who are not actually imprisoned have their future seriously jeopardized in that their arrest record may follow them in their future employment, their social life, or in becoming members of various organizations.

Although Grinspoon believes that dagga itself is not criminogenic, he feels that there is a real relationship between crime and dagga in such societies that place criminal sanctions on its use. He says:

. . . the criminogenic character of the present laws [in the United States] against the possession, sale, or even giving away of marihuana; and this constitutes a great irony. The unique nature of this criminogenic effect in the United States is that antimarihuana laws have intensified -- and to some extent -- the basic but complex sociological and legal problems they were ostensibly designed to avoid or eliminate. The laws which prohibit the possession, sale and giving away of cannabis passed by the individual states and the federal government since the mid-1930's have created an entirely new species of "criminal", very often an individual who is truly unable to see himself, in any real sense, as engaged in any criminal activity, and whose typical attitude toward the antimarihuana legislation is a combination of scorn, indifference and frustration.³⁸

Having criminalized an otherwise law-abiding individual for a single transgression of what is clearly a contentious legal approach, there can be no assurance that those who have violated laws carrying

severe and sometimes mandatory sentences will not be more pre-disposed to violating progressively more serious misdemeanours -- having been exposed to the trauma of being classified with and placed in the company of a more distinct class of criminal.

The sense of alienation from society and bitterness over the seeming unfairness of this punishment -- a judgement which comes naturally to most young people -- can only be enhanced by the present repressive trend in contemporary dagga legislation. Following on this reaction comes the obvious seeking of a shared status: The laws lend themselves to a catalytic process in which young people, constituting the larger element of offenders, develop a sociologically structured cohesiveness which ultimately fosters the subculture mentality (described in the previous chapter) leading to an alienation from the larger society.³⁹

Many of those who are against the legalizing of dagga oppose this measure in the belief that "legalization" implies wholesale and unrestricted use of the drug, without social controls of any kind. However, the very concept of "legalization" must imply a certain measure of statutory definition and control. In other words, a mode of behaviour or some agency or substance undergoes a process of legal change. There is a shift of status, involving a shift in societal norms and values, which becomes formally enacted.

Clearly, then, the more widely the use of dagga as a social drug becomes accepted the sooner the legal path will be cleared for legalization. At present, in Western countries such as the United States, the status of dagga seems to be lodged in a controversial limbo: It remains an illegal drug yet it is so generally used (especially by a younger generation) that it can no longer be simply ignored as the vice of a small lunatic fringe of society. Increasingly it is being

smoked by an older, middle class generation as well as by young people. The result, Grinspoon predicts, is that a "widespread ignoring of the antimarihuana laws will very shortly come to pass."⁴⁰

In cases where new mores evolve among sections of a society, ahead of legal or constitutional thinking, a period of bitter social conflict seems inevitable. Whether it be homosexuality, drug-taking, abortion, or divorce,⁴¹ the latter half of this century is increasingly being characterized by the emergence of new social norms that have clashed dramatically with older statutory proscriptions.⁴² Grinspoon feels that

The legal institution cannot remain insensitive to these changes without incurring damage to itself. But, of course, courts lack the flexibility and prerogatives to provide solutions to social problems; ultimately it is the legislatures which can experiment, improvise, change direction, and even reverse field when necessary. In fact, just because a court has so few alternatives, it exercises great caution: A court may strike down a statute as unconstitutional, but in doing so it may leave a major social problem without an adequate solution.⁴³

Erich Goode postulates five functions of current anti-dagga legislation in the United States, which would apply equally to South African laws:

- (i) Deterrence
- (ii) Rehabilitation
- (iii) Public Safety
- (iv) Vengeance
- (v) Symbolic Representation.

The first three of these functions can be described as instrumental goals, and the latter two as expressive goals. Thus deterrence, public safety, and rehabilitation are goals whose attainment can at least be ideally determined. Theoretically the first three goals

are tangible, even though conflicting ideas may exist as to what kind of deterrence is necessary, what constitutes rehabilitation, and to what extent public safety is actually endangered by the dagga cult.

The last two goals are intangible, in that they are based on conflicting approaches, "rightness" or "wrongness", and on emotion, sentiment and preconceptions.⁴⁴

Given this theoretical approach to dagga legislation, how effective are the above-mentioned postulates in implementing the punitive-repressive philosophy? Recent arrest statistics and patterns of sentencing for dagga offences, both in the United States and in South Africa would indicate that the problem is by no means being systematically eradicated. In South Africa, however, the Minister of the Interior, Dr. C.P. Mulder, pointed out to a drugs conference in Pretoria that in the first year of the application of the Prohibition of Dependence-Producing Substances and Rehabilitation Centres Act (No. 41 of 1971) prosecutions for drug offences dropped by 10,5%.

Some people, Dr. Mulder explained, might indicate that this meant that the problem had merely been driven underground. He defended this possibility as evidence that the Act had succeeded in making drugs less readily available.⁴⁵ Yet, in the Republic, greater and greater quantities of dagga are being destroyed yearly according to the annual reports of the Commissioner of the South African Police. Individuals continue to be prosecuted in South African courts for possessing and selling dagga, in spite of the increased penalties for this offence.⁴⁶

As far as rehabilitation is concerned, it is predicted on the assumption that the subject of this treatment thinks that his behaviour is wrong, or that he is in need of aid as a consequence of his

indulgence. As many commentators have pointed out, this rehabilitation view on dagga smoking by non-smokers is not shared by those who use the drug. Lindesmith sums this point up:

. . . an occasional judge, ignorant of the nature of marihuana, sends a marihuana user to prison to cure his nonexistent addiction. The writer was once in court when a middle-aged Negro defendant . . . was charged with having one marihuana cigarette in his possession . . . This man had no previous record, and this was stated in court. Nevertheless, a two-year sentence was imposed to "dry up his habit." 47

Far from being rehabilitative, many penologists feel that a period of incarceration will have a degree of criminogenic effect on the individual. "By being sent to prison", says Goode, "along with professional criminals, drug addicts, and the violent, a lawbreaker with little or no commitment to crime as a 'way of life' will absorb many attitudes, practices and skills which will contribute to their [sic] post-release criminality." (My italics).⁴⁸ In this sense, then, prisons can "train" people to become criminals, especially in the case of young offenders.

The issue of "public safety" or morality is a difficult one to assess. Were dagga to be legalized, would it lead to an increase in traffic accidents, murder and assault, where a great deal of this is a result of the legal consumption of alcohol? ⁴⁹

In many ways, perhaps, the issue over the legalization or proscription of dagga use is a bogus one. While so much controversy still exists as to the long-term effects of the drug, and in view of the degree of emotion it engenders, among both its supporters and antagonists, one is led to the conclusion that there is a wider issue; that dagga smoking is symbolic of other problems and other controversies. It also serves, says Goods, to crystallize a number of other

issues, "none of which bear any relation to empirical and rational issues connected with public safety." 50

An examination of the conflict generated by the contemporary dagga debate, in South Africa as well as in other Western countries, demonstrates that two opposing types of Weltanschauung are at the root of the problem. Dagga smoking, because of its very illegality, is primarily a symbolic rebellion against authority, and a way of showing youthful disaffection with traditional values of the parent culture -- a phenomenon which is probably as old as civilization itself.

At the other end of the scale some of the antagonism toward the "pot" subculture stems not so much from a fear of the potential harm of the drug, or out of altruistic concern for those who smoke it, as out of a dislike and rejection of the various life-styles associated with its use: political radicalism, new sexual mores and the popularity of a growing counterculture of fashion, music and speech that serves to accentuate the basic dichotomies between youth and a larger, more mature establishment.

Considering the overly harsh penalties for dagga smoking in some modern societies, the humanitarian or ethical argument against the legalization of the drug (bearing in mind that alcohol is freely available) would seem to an objective observer to be rather spurious.

Some of the theoretical problems underlying the question of the dagga subculture having been examined in this first section, the next will focus on the question of social policy and examine the legislation in regard to dagga that is being implemented in South Africa.

NOTES

ON CHAPTER III

1. Erich Goode, The Marijuana Smokers (New York: Basic Books, 1970), p. 50.
2. Except for those who take up an absolutist position, holding that there can be no debate on the evidence (to their own satisfaction) that the drug is harmful and addictive.
3. One could further divide the question into one of whether the observed effects are caused by long- or short-term use of dagga, and whether there is an automatic progression (or "escalation") to harder drugs.
4. In Levine's opinion it does. As the head of the South African Defence Force's drug research team, Colonel Levine found a 1,79% incidence of psychotic disturbance among 448 National Servicemen who were known to use drugs. He does not, however, indicate clearly which patients used dagga only and which used dagga and harder drugs, or just the latter, without having smoked dagga. For a report, see the Cape Times, August 30, 1973.
5. See Goods, loc. cit.
6. Of which, it seems, Levine is guilty.
7. Schofield points out that "There is little precise knowledge about the way THC acts in the human body." In The Strange Case of Pot (London: Pelican Books, 1971), p. 30.
8. Dale Beckett, "Should We Legalise Pot?", New Society, IX, No. 242 (18 May, 1973), p. 721.
9. R.H. Blum and Associates, "Drugs, Behavior and Crime", in Society and Drugs: Social and Cultural Observations (San Francisco: Jossey Bass, 1969), Vol. 1, pp. 277-291. There were numerous attempts during the early period of tobacco smoking to curb or outlaw the habit. In 1642 Pope Urban VIII issued a formal bull against tobacco, and Pope Innocent X issued another in 1650. Clergy and laymen, however, continued to smoke. Smoking was also prohibited in various states in Europe during the seventeenth century; in Bavaria in 1652, Saxony in 1653 and Zurich in 1667. These prohibitions had little or no effect. In 1633 the Sultan Murad IV decreed the death penalty in Constantinople for the smoking of tobacco. Similarly, the first of the Romanoff Czars, Michael Feodorovitch, laid down severe penalties for smoking, in 1634. Tobacco was introduced into Japan by Portuguese sailors in the middle of the sixteenth century but when the habit spread in that country various edicts were proclaimed prohibiting the cultivation of the leaf, with penalties such as confiscation of property being meted out to those who disobeyed this order. These curbs had no effect, and according to Corti the habit was well established in Japan by 1615, and even the officers of the Shogun had taken up the habit. (See Egon Corti, A History of Smoking, translated by Paul England (London: Harrap, 1931), pp. 69-147.

10. B.W. Sigg, cited in Blum, ibid., p. 74. (From Le Cannabisme Chronique: Fruit de sous Development et du Capitalisme (Algiers: 1963). Blum, however, feels that there are many inconsistencies and contradictions in Sigg's thesis. (Blum, op. cit., p. 75).
11. Lester Grinspoon, Marijuana Reconsidered (Massachusetts: Harvard University Press, 1971), p. 345. His sources here are R.N. and G.S. Chopra, "The Present Position of Hemp Drug Addiction in India", Indian Medical Memoranda, XXXI (1939), pp. 1-19. This reference is, I feel, far too dated for contemporary arguments, although it serves a theoretical purpose in demonstrating the point that Grinspoon is putting across. (The work of the Chopras is, nevertheless, still widely cited in most contemporary works on drug addiction).
12. Grinspoon, op. cit., pp. 345-346.
13. This Act was repealed in 1933 on a State-wide, rather than Federal basis. At the time of this referendum, rejected in only two of the forty-eight States -- where bootlegging interests controlled the local legislature -- organized racketeering had control of gambling, prostitution, and other vices. This situation developed directly out of the Prohibition era, when bootleggers controlled the illegal sources of alcohol for millions of otherwise law-abiding Americans. These syndicates (notably the Mafia) are still flourishing in the United States forty years after the repeal of Prohibition.
14. Grinspoon, loc. cit.
15. An American legal term, roughly equivalent to a punishable crime or offence.
16. A less serious infraction of the law (U.S.).
17. "Grass Grows More Acceptable", Time, September 10, 1973, p. 56.
18. Loc cit. This statistic overtakes the estimate made by Life in "Marijuana: The Law vs. 12 Million People", XLVII, No. 10 (November, 1969), p. 21.
19. Time, loc. cit.
20. The original report was not available locally at the time of writing this thesis. The information was made available through the South African Press Association in the Argus, August 14, 1973.
21. Dr. Henry Miller, in his book Medicine and Society, recently published. (This book was not available in South Africa at the time of writing this thesis.) Reported in the Argus, August 24, 1973. One of the points reputedly made by Miller was that because scientific evidence on dagga was so inconclusive the law was in danger of falling into disrepute.
22. "Pot, Permissiveness and Parliament", New Society, XII, No. 323 (December 5, 1968), p. 827. (Editorial).
23. Loc. cit. To date this has also been the case in South Africa. See "Dagga Breathalyser Being Developed", Cape Times, November 1, 1973.

24. Grinspoon, op. cit., p. 348.
25. New Nation, loc. cit.
26. John Stuart Mill, On Liberty (London: Walter Scott, n.d.), pp. 17-22. Mill also speaks of the "fanatical moral intolerance" of Puritanism. Ibid., p. 156.
27. The passage of the Prohibition of Dependence-Producing Substances and Rehabilitation Centres Act is discussed in Part Two of this thesis.
28. The Minister's speech was mainly in a political context, but he said in the course of his address that he had rejected hundreds of representations made to him objecting to the Drugs Bill of 1971. (My italics). He did so because from his "knowledge of people" (mensekennis) he was right. (My italics). (Argus, April 27, 1973).
29. Loc. cit.
30. Ibid.
31. Prohibition of Dependence-Producing Substances and Rehabilitation Centres Act (No. 41 of 1971), Sections 13, 10(3), 8(1), C and D, and the amendment (Act No. 80 of 1973), Sections 2(a)(iii), and 2(b)(iv).
32. As pointed out by such commentators as Young, Becker and Ranulf.
33. On May 19, 1969, the United States Supreme Court declared in an 8-0 vote that the statute (a Federal one) was unconstitutional. However, marijuana laws are strictly enforced by the individual States. The penalties for possession vary from a 20- to 30-year sentence (Texas) to a simple misdemeanour (Nebraska). See Joel Fort, "Crug Use and the Law", Current, December, 1969, No. 113, pp. 4-13.
34. Grinspoon, op. cit., p. 354. This estimate is based on statistics up to the year 1970.
35. It is generally alleged (although the Prisons Act forbids the dissemination of this type of information) that dagga is often easily available in local prisons, which would create a certain cynicism toward the law on the part of those who have been incarcerated for the crime of being in possession of the drug outside the prison.
36. Grinspoon, op. cit., p. 355.
37. John Kaplan, Marijuana: The New Prohibition (New York: World Books, 1971).
38. Grinspoon, op. cit., p. 347.
39. Loc. cit.
40. Op. cit., p. 367.

41. This last-mentioned example would be relevant, say, to a Roman Catholic country such as Italy or Spain.
42. Grinspoon, op. cit., p. 365.
43. Loc. cit. In South Africa, however, the Supreme Court cannot declare statutory laws as "unconstitutional", and can only rescind or overturn sentences from the lower courts. With passing of the amendment to Act 41 of 1971 (No. 80 of 1973), a magistrate is compelled (by sections 2(a) and (b)) to impose minimum sentence in accordance with the new Act.
44. Goode, op. cit., p. 287.
45. Argus, June 11, 1973. See also a discussion by Francois Theron: "Dagga and the Law: A Sociological Perspective", Crime, Punishment and Correction, 11, No. 3 (October, 1973), pp. 43-48.
46. In terms of the amended Drugs Act (No. 80 of 1973).
47. Alfred R. Lindesmith, "The Marijuana Problem -- Myth or Reality?", in The Addict and the Law (Bloomington: Indiana University Press, 1965), p. 239.
48. Goode, op. cit., p. 29.
49. Halleck is of the opinion that whereas alcohol used to be a problem on most American campuses a decade or more ago, the change to dagga as an intoxicant has resulted in a corresponding drop in alcohol abuse at universities. See Seymour Halleck, Marijuana and LSD on the Campuses (Madison: Health Services, University of Wisconsin, 1968).
50. Goods^e, op. cit., p. 296.

PART TWO

DAGGA AND SOCIAL POLICY

The Minister of Information, Social Welfare and Pensions, Dr. Connie Mulder, warned last night that he might find it necessary to insert tough, "extraordinary measures" into the Bill to curb illicit drug-taking in South Africa. Dr. Mulder told a meeting of about 300 Nationalists that the long-awaited Bill would come before Parliament within the next few weeks. The Government would be "merciless" in its efforts to stamp out the drug evil.

He was waiting to see whether the Opposition would support the Government on all measures in the Bill. "But if it is necessary to insert extraordinary measures into that legislation, then I will do it and nobody is going to stop me."

———— Cape Times, April 17, 1973.

CHAPTER IV

BRITAIN AND NORTH AMERICA: RECOMMENDATIONS ON THE DAGGA PROBLEM

In contrast to the historical use of types of dagga, such as ganja, bhang, or hashish in the near East, Africa, India, and in other countries where the plant flourishes, the phenomenon of "pot" smoking is now endemic among young people in Europe, North America, the United Kingdom, and most other Western countries. Apparent for the first time during the 1960's, its use reached critical proportions toward the end of that decade.

As noted in previous chapters, the rapid increase in the incidence of dagga smoking during this period was coincident with a widely-spreading disenchantment with traditional values, which manifested itself in campus radicalism, revolutionary changes in music and fashions, and an antithetical code of behaviour, of which dagga smoking became a central aspect.

In the United States, for example, a national survey (Gallup, 1969) revealed that 12 out of every 100 young adults had tried the drug. Extrapolated nationally, this poll established a 4 in 100 ratio of the total population, or some five million people. The survey was repeated a number of times in the next few years, and the following percentages of "yes" answers were obtained in reply to the question "Have you ever tried marijuana?"

NUMBER OF PEOPLE WHO HAVE TRIED MARIJUANA ¹

Year	Respondents Per Cent
1967	5
1969	22
1970	42
1971	51

This trend has also been evident in the United Kingdom. Young, writing in 1971,² pointed out that ten years previously the occurrence of dagga smoking was negligible and largely limited to West Indian immigrants. The problem escalated to the extent that when the Wootton Committee reported on the subject a decade later the phenomenon had grown to a point where nearly a quarter of a million people (mostly of a younger generation) had tried the drug.

Of this situation, Young says:

Both in America and Britain the use of this drug is increasingly associated with white, middle-class youth and particularly students who often embrace a new form of bohemianism which has been popularly termed hippie. Moreover, unlike the vast majority of drug-using subcultures, there are pronounced ideological overtones associated with marijuana use . . .³ [My italics].

In South Africa, given the traditional use of the drug by underprivileged ethnic groups, a cultural inveteracy that had excited little public comment, the emergence of the dagga phenomenon among young, urban Whites soon sparked off general concern. The year 1969 in the Republic marks a critical turning point in a hitherto laissez faire attitude.⁴

During 1969 the Johannesburg newspaper, the Rand Daily Mail, published a series of exposés of the nature and extent of drug abuse

among young people on the Witwatersrand, followed by a number of actuality⁵ reports on conditions prevailing at many local night clubs in the Johannesburg area, where drugs were freely available. In the same year Rose and Chilvers published The Broken Link, a lay analysis of the phenomenon of alienation and anomie among a section of South Africa's youth and concomitant social problems such as homosexuality and drug-taking.⁶

The year 1969 also saw the publication of the Sixteenth Report of the World Health Organization's Expert Committee on Drug Dependence.⁷ The Committee stated that the non-medical use of cannabis sativa "persists and has been increasing in a number of countries."⁸ The WHO report went on to say:

This Committee strongly reaffirms the opinions expressed in previous reports that cannabis is a drug of dependence [my italics], producing public health and social problems, and that its control must be continued.⁹

This report did not clearly specify what it meant by "a drug of dependence", and whether psychological or physical dependence was meant. However, by the end of the 1960's, the proliferation of reports and articles in the Press and in popular journals had made a significant contribution to the controversy surrounding the topic.

Between 1968 and 1972 four countries published reports of national commissions of inquiry into the problem of drug dependence, namely: Report by the Advisory Committee on Drug Dependence (United Kingdom, 1968), Interim Report of the Commission of Inquiry into the Non-Medical Use of Drugs (Le Dain Report, Canada, 1970), First Report of the National Commission on Marihuana and Drug Abuse (Shafer Report, United States, 1972), and the Report of the Committee of Inquiry into the Abuse of Drugs (Grobler Report, South Africa, 1970).

The present chapter will be concerned with some of the findings of these inquiries that relate specifically to dagga use. One of the central problems to be examined in later sections of this work will also be whether existing legislation in South Africa reflects the fruits of the same degree of scientific research as is the case in the rest of the world, especially where the use of dagga is concerned.

THE WOOTTON REPORT

In 1968 the British Home Office published a series of reports by the Advisory Committee on Drug Dependence. This Committee was under the general chairmanship of Sir Edward Wayne. These reports expressed the findings of various sub-committees on drug abuse, in the case of amphetamines and LSD, cannabis, and dealt with the rehabilitation of drug addicts, and the powers of arrest and search in relation to drug offences in the United Kingdom.

The Advisory Committee's Hallucinogens Sub-Committee was under the chairmanship of the Baroness Wootton of Abinger. Of the various reports submitted by this Hallucinogens Sub-Committee, the one on cannabis will be examined in this chapter and compared with opinions on dagga by other commissions.

The main body of the Wootton Report ¹⁰ consists of six sections, followed by reservations, or minority opinions, by Messrs. Schofield and Brodie, two sub-committee members. In its general introduction, the Report noted that, while the initial inquiries of the sub-committee were being made, a significant event changed the approach of the sub-committee.

This was the advertisement in the Times of July 24, 1967, by a group of interested persons claiming that the long-asserted dangers of cannabis use were exaggerated and that the related law was socially

damaging, if not unworkable.¹¹ This was followed by a wave of debate on the issue in the British Parliament and in the Press. "This publicity", the report commented, "made more explicit the nature of some current 'protest' about official policy on drugs; defined more clearly some of the main issues in our study; and led us to give greater attention to the legal aspects of the problem."¹²

Against this background the sub-committee focused on three controversial topics: the effects of cannabis in different cultures, the place of the drug in the contemporary British "scene", and the existing provisions relating to the drug in the Dangerous Drugs Acts.¹³

Dealing with the social aspects of dagga smoking, the Report stated that "much of the main controversy about the dangers of cannabis has attached to the claims that its use leads to opiate addiction and to the commission of violent crime."¹⁴ As to the first allegation, the sub-committee found that

It can clearly be argued on the world picture that cannabis use does not lead to heroin addiction. So far as the United Kingdom is concerned no comprehensive survey has yet been made, but a number of isolated studies have been published, none of which demonstrate significant lines of progression. Our witnesses had nothing to add to the information already available, and we have concluded that a risk of progression to heroin from cannabis is not a reason for retaining the control over this drug.¹⁵

This point was later emphasized by Baroness Wootton, when she wrote an editorial for the Science Journal. "If I were asked to summarize in a single sentence the message of the Wootton Report on cannabis", she said, "it would be: 'Cannabis is not heroin.'"¹⁶ As in South African legislation¹⁷ laws in the United Kingdom do not make a distinction between dagga and the opiates, a position, according to Wootton, as inappropriate as failing to discriminate, in criminal law,

between murder and common assault.¹⁸

On the second imputation, that dagga smoking leads to crimes of violence, the Report is equally clear in its findings, and lends support to many of the arguments refuting this that have been made by social scientists in recent years.

The Wootton sub-committee interviewed some 600 witnesses, who were asked if they knew of any instances where dagga smoking had caused violent or psychotic behaviour. Very few did, according to the sub-committee. The Wootton team also pointed out that the link between criminality and dagga smoking was an artifact of the law. Published statements on these links tended to confuse the consequences of enforcing legal restrictions on non-conforming drug users with alleged criminogenic effects of dagga smoking itself. (My italics).

Since possession of dagga in the United Kingdom, as in the United States and South Africa, is illegal the person so caught would automatically acquire a criminal record. Again, to obtain a supply of the drug an illegal source must be involved. One of the earliest studies of the drug was the Indian Hemp Drugs Commission of 1894, which had concluded that "the connection between hemp drugs and ordinary crime is very slight indeed."¹⁹ This view, however, is contradicted by existing British legislation on the subject, and by some contemporary commentators. On this aspect it is necessary to quote the Wootton sub-committee's opinion at some length:

Probable reasons for this divergence of views are: Criminals in some countries have based their defence on alleged cannabis-intoxication which provoked behaviour which they could not remember and for which they could not be held fully responsible; many of these users had combined cannabis with opium, heroin, amphetamine, barbiturate or alcohol, and it was impossible to identify which of these if any was to blame for an individual's criminal

behaviour; samples of persons investigated have mostly been small and the history of drugtaking, its duration and its degree in each individual has been provided exclusively by the man himself, who often believed it to be in his interests to lie about it. The most that emerges from the welter of conflicting statements is that an excessive dose of cannabis may lead to an attack of disturbed consciousness, excitement, agitation, or panic, and reduce self-control. The extent to which the affected person may commit a violent crime in this state of mind depends much more on his personality [my italics] than on the amount or preparation of cannabis which he has been taking. The evidence of a link with violent crime is far stronger with alcohol than with the smoking of cannabis.²⁰

Further to this, the Report reiterated that it is the "personality of the user, rather than the properties of the drug, that is likely to cause progression to other drugs."²¹ Some of the witnesses who testified before the sub-committee felt that the possession of dagga should become legalized as soon as possible. The Wootton Committee, however, ruled this out in the near future, in view of the uncertainties mentioned above, and before an "exhaustive study" (the identical words used by the Inter-Departmental Inquiry in South Africa in 1952) of the problems of transition and of the necessary safeguards had been made.

On the other hand, the sub-committee argued that penalties for dagga offences had gone unreviewed for too long.²² Now that experience in the United Kingdom and elsewhere had shown that the misuse of drugs was a complex and rapidly-changing social problem, it seemed essential that the law should progressively be recast to give greater flexibility of control over individual drugs, and to adjust the relevant penalties.²³

The Report underscored two recommendations; namely that the association of dagga with heroin and other opiates in legislation is

"entirely inappropriate",²⁴ and that the new, separate legislation should be enacted speedily to deal with dagga.²⁵

The Wootton Report also made some significant comments on the principles of dagga legislation. From a study of the statistics and other evidence about the supply of dagga in the United Kingdom, it was concluded that the traditional view of the supplier as a large-scale criminal was an over-simplification, and that heavy maximum penalties for possession exaggerated the criminality of drug-taking itself.

"It seems clear", the Report stated, "that in cannabis 'society' there is a regular give-and-take of the drug and that many users are in a position to supply it, and do supply it, in very small quantities without real criminal intent."²⁶ In considering the scale of penalties, the main aim of the Wootton sub-committee was stated as "removing the prospect of imprisonment for possession of a small amount [of cannabis] and to demonstrate that taking the drug in moderation is a relatively minor offence."²⁷

The final recommendation of the Report under the legislation section is particularly important. It states that:

It is our explicit opinion that any legislation directed towards a complex and changing problem like the use of cannabis cannot be regarded as final. For the foreseeable future, however, our objective is clear: to bring about a situation in which it is extremely unlikely that anyone will go to prison for an offence involving only possession for personal use or for supply on a very limited scale.²⁸

The main conclusions and recommendations of the Wootton Report are summarized below:

- (i) It must be accepted that an increasing number of people, mainly young, in all classes of society, are experimenting with dagga, and substantial

numbers use it regularly for social pleasure.

- (ii) There is no evidence that this activity is causing violent crime or aggressive, anti-social behaviour, or is producing in otherwise normal people [my italics] conditions of dependence or psychosis, requiring medical treatment. There are indications in many Western countries where interest in mood-altering drugs is growing that dagga smoking is becoming a functional equivalent of alcohol.
- (iii) In spite of the threat of severe penalties and strict enforcement of the law, the use of dagga in the United Kingdom does not appear to be diminishing.
- (iv) The controversy that has arisen in the United Kingdom about the proper evaluation of cannabis in the list of psycho-active drugs should be resolved as soon as possible.
- (v) Although the Wootton sub-committee agreed with other scientific bodies that dagga was a "dangerous" drug, it nonetheless considered dagga less dangerous than the opiates, amphetamines, barbiturates and alcohol.
- (vi) In the interests of public health it was necessary to maintain restrictions on the availability and use of dagga, and for the purpose of enforcing these restrictions there was no alternative to the criminal law and its penalties. Dagga smoking may be an act of simple enjoyment, a demonstration of self neglect, rebellion, or an indication of social irresponsibility. Distinctions such as these could not be written into the law, but can and should be recognised by the courts in their consideration of dagga offences.

Reservations to the above findings and recommendations were made by one of the sub-committee members, Mr. Michael Schofield, who felt that his colleagues were "putting all their trust in the behaviour of the police and the discretion of the judiciary."²⁹ He felt that Government reports may be the first step to changing the laws, but were not particularly effective in enlightening the judiciary.

Further to this, the views of Schofield, as a sub-committee member, bear repeating verbatim:

Nothing emphasizes the generation gap more than a drug offence. The drug user and the magistrate are basically out of sympathy. The cannabis-user is partaking in a form of enjoyment -- that is how he looks at it -- which was unknown to the magistrate when he was young. In addition to this the clothes, hair style and attitudes of many young drug-takers are unlikely to please the magistrate. Even if we adults feel inclined to put our trust in the magistrate's ability to understand these differences in the generations, it is quite certain that most of the young people of this country do not believe this wide gap can be bridged except by a very few. Why should they have to take their chance whether they get an informed and understanding magistrate or not? The administration of the law should not be a matter of luck.³⁰

Schofield agreed with his colleagues on the sub-committee that there should be a clear distinction between possession intended for use and possession for supply. Unlike them, he felt that this distinction should be written into the law, and that the distinction should be based on the quantity found in possession. (My italics). This introduction of a quantitative formula would have an effect on trafficking: It would tend to make it more difficult. Schofield's meaning seems quite clear; in these circumstances the dagga user would want to buy (from a supplier) in smaller quantities, and in order to sell in the same amounts the supplier would have to make more sales -- placing himself at a greater risk of being caught by the police.

At the other end of the scale the reservations of sub-committee member Mr. P.E. Brodie were that those who trafficked dagga in large quantities should be faced with the liability (on conviction) to more serious consequences than his colleagues proposed. He was of the opinion that where a substantial quantity of the drug was traced to the possession of an individual the court should be given the powers to impose a sentence of imprisonment not exceeding five years, in addition to an unlimited fine.

The Wootton Report was published on January 8, 1969, but not before a great deal of prejudicial comment had been made in the popular Press.³¹ Schofield, in The Strange Case of Pot, refers to the many inaccurate and biased reports in the Press prior to the publication of the Wootton Report.³² Among these was an editorial in the Sun which repeated the "escalation theory" of dagga smoking which had in fact been examined and rejected by the Wootton sub-committee.

"Surely", commented Schofield, "the first time a newspaper has used its leading article to discuss an incorrect report about the unpublished recommendations of a Government committee."³³ Speculation and misreporting continued apace, with the result that even responsible weeklies, such as New Society, commented on the original inaccuracies as if they were correct summaries of the unpublished Report. The main disadvantage of these leaks, as Schofield says, was that the general public really believed that the Report had been published. Moreover, he said:

Not only do they get an inaccurate summary of the recommendations, but when the real report is published, there is a danger that it may be thought of as stale news. In fact even the journalists may be misled, for James Wilkinson in the Daily Express referred to a "committee report just out" and the Evening News wrote about "the Wootton Report on drugs, just released," on the 28 November, forty two days before the Report was published.³⁴

In the long run the Wootton Report was ignored, and the combined medical, psychological, police and judicial experiences of the committee rejected out of hand. The final comment must come from Lady Wootton, who later said in the House of Lords:

The causes of the [hysteria] are familiar to students of social psychology. They occur in other connections as well, particularly in relation to sexual crimes, and they are always liable to recur when the public senses that some critical and objective study threatens to block an outlet for indulgence in the pleasures of moral indignation.³⁵

THE LE DAIN REPORT

The Commission of Inquiry into the Non-Medical Use of Drugs was appointed by the Canadian Government, under Part I of the Inquiries Act, on May 29, 1969, on the recommendation of the Minister of National Health and Welfare, John Munro. During the year preceding the appointment of the Commission, members of Parliament had called for an inquiry into the use of drugs in Canada, especially the increase in dagga smoking. Of particular concern, as one member of Parliament expressed it, was the "extreme urgency of . . . the number of young people tragically being paraded daily before the courts."³⁶

In its introductory remarks the Report stated that the Commission believed that it had correctly focused its primary attention in the initial phase of its inquiry on the non-medical use, by young people, of psychotropic drugs, such as dagga. Basically, the Commission's terms of reference were as follows:

- (i) to marshal from available sources, both in Canada and abroad, data and information comprising the present fund of knowledge concerning the non-medical use of drugs
- (ii) to report on the current state of medical knowledge

in respect of the effects of the drugs and substances under review

- (iii) to inquire into and to report on the motivation underlying the non-medical use of such drugs
- (iv) to investigate the philosophical, social, educational, and economic factors relating to drug abuse, especially the age groups and the problems involved
- (v) to make recommendations on which the Federal Government could act to reduce the dimensions of the problem.

Writing in the Canadian Bar Review, Grygier noted that the Commission had interpreted its terms of reference as applying to all drugs and substances which altered sensation, mood, consciousness, or other psychological or behavioural functions. Yet, as in the case of so many other studies of drug abuse elsewhere in the world, it was dagga that "received the most attention and continued to create the most controversy." ³⁸

The Le Dain Commission approached some 750 individuals and organizations, asking them to submit written or oral evidence. This number, although more than the 600 witnesses who testified before the Wootton sub-committee, was still far short of the 1 193 persons who appeared before the Indian Hemp Drugs Commission of 1894.³⁹ In addition to this, the Report also included many references to the existing literature on dagga, the total number of which is estimated to be in the region of 2 000 publications. Few of these, the Report stated, "meet modern standards of scientific investigation." ⁴⁰

In view of the opinions expressed in the Wootton Report, supra, the comments of the Le Dain Report are significant to students of drug legislation:

. . . [publications on dagga] are often ill-documented and ambiguous, emotion-laden and incredibly biased, and can, in general, be relied upon for very little valid information. Scientific expertise in the area of cannabis is limited by the simple fact that there is little clearly established scientific information available, and preconceived notions often dominate the interpretation of ambiguous data. The resulting confusion is exemplified by current legislation in many parts of the world, including Canada and the United States, which classifies cannabis with the opiate narcotics, even though these drugs are pharmacologically different. [My italics].⁴¹

However, if there are any criticisms of the Le Dain Committee, it is because it did no direct research, and many basic questions about dagga, and about drugs in general, have remained unanswered.⁴²

The Le Dain Commission's frame of reference placed particular emphasis on the need to understand the sociological causes of the non-medical use of drugs. The Commission regarded this aspect of its inquiry as one of the most important themes of the Report. The Commission's terms of reference spoke of motivation, the crux, surely, of an investigation into the cause of any type of non-normative social behaviour.

By cause, the Report says, is meant not merely the immediate, direct motivation for a particular drug experience, but the larger social significance of the phenomenon -- how it relates to various aspects of contemporary life, such as work, play and social relations generally.

In what ways is it a response to the problems of modern living? What are its philosophical or spiritual implications? How does it reflect the way people think about the future? ⁴³

The brief examination which now follows of the Le Dain Commission's views and findings on the motivation behind youthful drug use, especially in the case of cannabis sativa (or dagga), shows that the

first problem faced by the Commission was getting at the facts behind the actual motivation. The inquiry took several forms: public hearings on submitted briefs followed by full discussion; private hearings with groups and with individuals; discussions between drug users and experts with theoretical training and experience related to the problem; the presentation of evidence about law enforcement and correction by suitably experienced professionals.

Because the Commission felt that the question of motivation was too subtle and full of complexities, it decided that these nuances would not be adequately reflected if questionnaires alone were used. It therefore placed much more reliance on impressions gained from hearings of actual drug users and their interpretations of their experiences.⁴⁴

Initially, two points arose out of these hearings:

- (i) Explanations of motivation and other related factors, tended to vary considerably. They varied between the different drug-orientated sub-communities, and among members of a particular sub-community. "It is idle", the Report points out, "to seek a single, unifying explanation or theory."⁴⁵
- (ii) The motivational patterns underlying drug use also vary (to some extent) from drug to drug. In the case of dagga a major factor, according to the Le Dain Commission, appears to be that of simple hedonism: Those who smoke dagga seem to do so because they enjoy it. (The inference here seems straightforward, especially in answer to those who describe the drug as producing "psychological dependence". Many studies of human behaviour have shown that

individuals tend to repeat a pleasurable experience).

Following on these two observations, the Le Dain Commission makes an important point: Many people tend to think of human behaviour in general as a consequence of needs that are either inherited or learned. Moreover, there is an inclination to view behaviour such as drug use as a consequence of pathological need patterns. The Commission felt that to do so would be a serious error, at least as far as dagga was concerned.

To think of dagga smoking simply as symbolic of, or manifesting a pathological psychological or sociological state, would be far from a satisfactory explanation, particularly in view of the growing number of adult users, who "share little else but their taste for cannabis with the members of the 'hip' culture."⁴⁶ Is there a wider perspective? The Report says:

It is no doubt true that for some the use of drugs is a reflection of personal and social problems. But the desire for certain kinds of psychological gratification or release is not peculiar to the drug user or to our generation. It is an old and universal theme of human history. Man has always sought gratifications of the kind afforded by the psychotropic drugs.⁴⁷

Although the Report does not mention Aldous Huxley in this context, the sentiments of the preceding paragraph have also been expressed by him. In his work The Doors of Perception Huxley chronicled his experiences and experiments with peyote and mescaline. His view was

That humanity at large will ever be able to dispense with Artificial Paradises seems very unlikely. Most men and women lead lives at the worst so painful, at the best so monotonous, poor and limited that the urge to escape, the longing to transcend themselves if only for a few moments, is and always has been one of the principle appetites of the soul.⁴⁸

In relying primarily on the evidence of drug users themselves, what they had to say about their personal motivation, the Report stressed that these statements were carefully weighed and interpreted as they were considered the best source for understanding the individual's motivation. On another level, this was the approach of the philosopher William James, in his Varieties of Religious Experience, a topic with certain affinities with the inquiries of the Le Dain Commission.

The Commission felt that there was a strong suggestion of community, of cultural solidarity among dagga smokers and a clear tendency to proselytize; to encourage others to smoke it. This was probably due to "the illicit status of the practice which makes users want to increase the numbers involved and thus the concern of society about its present policy." ⁴⁹

Modern drug use also seemed to be related to a certain measure of the collapse of old religious values and the ability to find a religious meaning in life. The Commission said that it found that "the positive values that young people claim to find in the drug experience bear a striking similarity to traditional religious values, including concern with the soul, or inner self." ⁵⁰

Other points also made by the Commission in examining the possible attitudes and motivations of youthful drug use seem to bear out what has been postulated by sociologists such as Young, Goode and Grinspoon, whose views were discussed in the previous chapter. The chief findings of the Commission are summarized below:

- (i) Young drug users are highly critical of many aspects of modern life, such as the values of middle-class affluence, a rapid rate of technological progress, the increasing importance of nuclear power, and the

- problems of overpopulation, environmental pollution, racial hostility and global conflict.
- (ii) The goal-orientation of the drug-using generation is not the same as that of the previous generation, coupled with a sense of uncertainty about the future.
 - (iii) Role rejection was an important theme of the cultural reaction that is associated with much of contemporary drug use. This was particularly true of the rejection of the achievement-oriented role.
 - (iv) Many of the witnesses appearing before the Commission spoke of anomie and alienation in referring to the estrangement of many young people from the institutions, values and processes of the dominant culture. The Commission felt that this could only be part of the explanation, and that these two terms had to be used "carefully and critically".⁵¹
 - (v) Contemporary drug use was also associated with a loss of faith in reason, and a new emphasis on emotion, feeling, and immediate experience, often expressing itself in an interest in the arts and in nature.⁵²
 - (vi) It seemed, also, that much of contemporary drug use stemmed from a need to escape the stress and the tension which most people, young and old, experience in modern living. It was the main function of alcohol and nicotine, which are still the most prevalent drugs among all age groups, and was also true of the large amounts of barbiturates consumed by adults. "In the vast majority of cases", the Commission's Report concluded, "it is idle to look

beyond the relief of tension for an explanation [of drug taking]."

Concluding its section on the causes of drug use, the Report commented:

The Commission has very often been told by young people that they reject all that is traditional, conventional and stereotyped, because they consider it to be hypocritical, phony, dehumanizing, threatening, and ugly. As a result, they may become alienated and some may be plunged into a frantic search for an identity which may be acceptable to them by their own standards. This search for identity may go in two directions: one leading to a pathological adjustment -- the other simply to a non-pathological parting from conformity.⁵³

The dangers of a pathological choice was that the individual could substitute a spurious identity for an authentic one, and settle for chemically-induced comfort rather than a true resolution of conflicts and tensions. The Report strongly emphasized that the sick individual who relies on psychotropic drugs as a crutch (and structures his whole existence around them) is in need of psychiatric and psychological treatment.

In view of this, the importance of a congruent and humane social policy toward the drug user -- one of the major themes of the present study -- cannot be overestimated. For a number of reasons, however, the Le Dain Commission was not prepared at that time to recommend the legalization of dagga.

Other considerations apart, the proposal for legalization raised important issues of international and constitutional law. The Report points out that if Canada were to legalize cannabis or any of its derivatives it could not do so without violating its obligations under the Single Convention on Narcotic Drugs of 1961.⁵⁴

Arising out of the Commission's hearings, five important recommendations were made by the Le Dain Report:

- (i) that dagga be classified as a restricted drug under the Food and Drugs Act, rather than as a drug prohibited under the Narcotic Control Act
- (ii) that the creation be avoided of a contempt for the law by the use of entrapment and physical violence (by means of "writs of assistance") to obtain evidence
- (iii) that courts should be allowed to use conditional or unconditional release to reduce the number of convictions and thus avoid the stigma of a criminal record in the case of first offenders
- (iv) that those individuals summarily convicted should have their criminal records destroyed after a crime-free period of two years from the end of the sentence
- (v) that the situation should be kept under constant review, mainly by means of scientific research.

THE SHAFER REPORT

The United States' First Report of the National Commission on Marihuana and Drug Abuse, arising out of Public Law 91-513, was published on March 22, 1972. The chairman of the Commission was Raymond P. Shafer. Since dagga smoking is largely a "child of the sixties" (to use a phrase of the Shafer Report ⁵⁵) which has become a symbol of so many significant social changes, the Commission felt justified in tackling this question exhaustively in its first Report. ⁵⁶

By isolating the dagga question from the other aspects of drug abuse, the Commission has been better able to analyze the unique position that the drug currently occupies in contemporary society. In

focusing on dagga, the Shafer Report presents the most significant information hitherto gathered about the drug, and concludes with recommendations for the most appropriate social policy towards dagga smoking.

As was the case with the Le Dain Commission in Canada, the Shafer Commissioners held both formal and informal hearings and solicited all points of view, from public officials and professional experts to students, and also conducted separate surveys of opinion among judges, probation officers, and university health officials.

The Report identified one problem of dagga use as a highly visible pattern of behaviour, which has created fear, anger, and confusion among large segments of the American public. The most apparent feature of this behaviour is that it is against the law, and this very illegality may have been a necessary condition for the growth of the problem. The Commission felt that there were three inter-related factors that have created the view of dagga as a major social problem:

- (i) The illegality of dagga smoking is highly visible to all segments of the society
- (ii) The use of the drug is perceived to threaten the health and morality of not only the individual but of the society itself
- (iii) The use of the drug has evolved in the late 1960's and early 70's as a symbol of wider social conflicts and public issues.⁵⁷

Visibility:

For many decades the use of dagga in the United States (as in South Africa) was mainly confined to underprivileged socio-economic groups, and as such had a negligible impact on the dominant social order. This situation became markedly changed in

the mid-1960's when it became a common form of recreation for many middle- and upper-class youths, and the trend spread to the affluent suburbs and the middle-aged. "In recent years", says the Report, "use of the drug has spanned every social class and geographic region."⁵⁸ Public concern became increasingly apparent at this time, and was augmented by increasing publicity.

The drug's youthful users abetted the media in this regard by flaunting their disregard of the law. Few of us have not seen or heard of marihuana being used en masse at rock concerts, political demonstrations and gatherings of campus activists.⁵⁹

Perceived threats:

On the basis of a national survey, the Commission tried to identify the ways in which the public felt threatened by dagga use. Essentially these fell into three general categories: threats to public safety, threats to public health, and threats to the dominant social order. In terms of public safety, the threats were perceived as being in the form of aggressive behaviour, crime, and juvenile delinquency. Threats to public health initially referred to the effect on the user himself, such as lethality, psychosis or addiction, and the potential escalation to more dangerous drugs.

The threat which dagga smoking is perceived to present to the dominant social order is, in the view of the Shafer Report, the most important undercurrent of the entire controversy. People tended to see the drug as "fostering a counterculture which conflicts with basic moral precepts as well as with the operating functions of our society . . . Marihuana becomes more than a drug; it becomes a symbol of the rejection of cherished values."⁶⁰

Symbolism:

According to the Commission, the decade of the sixties was --

for the adult society -- a distressing time: the effects of racial unrest, campus disruption, political assassination, economic troubles, and an unpopular war in Vietnam led to a general uneasiness. Accordingly:

The symbolic aspects of marihuana are the most intangible of the items to which the Commission must address itself, and yet they may be at the heart of the marihuana problem. Use of marihuana was, and still is, age-specific. It was youth-related at a time in American history when the adult society was alarmed by the implications of the youth "movement": defiance of the established order, the adoption of new life styles, the emergence of "street people", campus unrest, drug use, communal living, protest politics, and even political radicalism. In an age characterized by the so-called generation-gap, marihuana symbolizes the cultural divide.⁶¹

The use of certain drugs, such as dagga, is against the law. For many people dagga smoking symbolized disorder in a society wracked by increasing lawlessness, to the extent that Americans developed a general fear that they were witnessing the disintegration of their country. This led to a vociferous insistence on "law and order" -- which hardened attitudes and polarised viewpoints, while "escalating still further the use of marihuana as a symbolic issue."⁶²

One of the guidelines followed by the Shafer Commission in making policy recommendations, was the belief that "the State is obliged to justify restraints on individual behavior"⁶³ (my italics). Too often, it commented, individual freedoms are subjugated by current controversies, with the result that public policy is decided more by rhetoric than by reason.

In a free society the State seeks to provide conditions in which each of its members may develop his or her potentialities to the fullest extent. "Responsible behavior", the Commission felt, "through

individual choice, is both the guarantor and the objective of a free society." ⁶⁴ Although the use of drugs is not in itself an irresponsible act, it becomes so when it interferes with or obviates the individual's integration into the social and economic system. Thus, within the framework of the American value structure, the Commission emphasized the policy-maker's duty to support a general preference for individual productivity and for making a contribution to social progress.

At the same time, in light of the emerging leisure ethic and the search for individual meaning . . . we cannot divorce social policy from the questions raised by the recreational use of drugs. Productivity and recreation both have a place in the American ethical system. They are not inconsistent unless the individual's use of leisure time inhibits his productive role in society.⁶⁵

Consequently, in formulating a social control policy on dagga use, the Commission's strongest concern was with irresponsible use of the drug. The excessive use of any drug was a serious social problem, including dagga use, since so little was actually known about its effects, yet the Shafer Commissioners had "little doubt" that the greater majority of users did not, and would not, engage in irresponsible behaviour.⁶⁶

In attempting to identify the proper social control policy toward dagga use, the Report has set out the following "policy options":

Approval of Use

This option the Report categorically rejects. Society should not approve of, nor encourage the recreational use of any drug. This would increase the possibility of abuse, and would remove from a sociological and psychological viewpoint an effective support of individual restraint. (Presumably the Report means, by this, that the process of internalization of norms to regulate

individual behaviour would be seriously weakened.)

Elimination of Use

In previous decades official policy toward dagga use was not only discouragement, but aimed at the total elimination of the drug. Dagga-related offences were severely punishable, arising out of a distorted concept of the drug's effects; the problem was not adequately distinguished from that of more serious drugs. With a rapid increase in the use of dagga, and its spread to middle and upper socio-economic groups, there has been an informal adoption of a modified social policy.

The Commission felt convinced that the public and law enforcement agencies were no longer as punitive toward dagga use as in previous years. Within the criminal justice system the major concern no longer seemed with use of the drug per se, but with the tendency of some users to engage in other irresponsible activity, particularly the use of more dangerous drugs.

Therefore, according to the Report

Official sentiment now seems to be a desire to contain the use of the drug as well as the drug subculture, and to minimize its spread to the rest of the youth population. Law-enforcement policy, both at the Federal and State levels, implicitly recognizes that elimination is impossible at this time.⁶⁷

Active attempts to suppress all dagga use have now been replaced by efforts to keep it within reasonable grounds. "We believe this is an inappropriate social response", the Report says. "Marihuana's relative potential harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it." ⁶⁸

Having rejected the approval policy ("option one") the Report also rejects the second option -- elimination of use. This

policy would require a great deal of time and resources to eliminate a drug "which simply does not warrant that kind of attention." 69

Discouragement of Use

The question of whether society should try to dissuade its members from using dagga remains unresolved. The choice here is between options three and four; whether to actively discourage the use of the drug or remain neutral in the controversy. The Commission found the choice a difficult one, in view of the limited knowledge and the dynamics of social change. Certain indications, however, must point at the present time to a discouragement policy.⁷⁰

Furthermore, there are four major pointers that support, in the Commission's opinion, this policy:

- (i) Continuing scientific uncertainty precludes finality,
- (ii) Society's value system is in a state of transition,
- (iii) Public opinion presently opposes dagga use,
- (iv) Neutrality is not 'philosophically compelled'.

In summing up its deliberations, the Shafer Commission concludes that society should actively discourage dagga use, while concentrating on the prevention and treatment of heavy and very heavy use. The Commission also felt that the criminalization of any individual for the possession of dagga for personal use was socially self-defeating. What should be attempted should be a balancing of individual freedom against the wider social good.

"The law must be stable", the Report says, quoting Roscoe Pound, "but it must not stand still." In this context the law relating to dagga use, within a framework of social policy that is fair and

sensible, should be proportionate to the actual danger it might pose. One of the most telling points made by the Report is that the existing social and legal policy relating to dagga in the United States is disproportionate to the individual and social harm engendered by the use of the drug.⁷¹ [My italics].

The Report thus advocates a policy of demythologizing, desymbolizing, and de-emphasizing the drug. This would go a long way toward designing a social policy that would be fair, cautious, and "attuned to the realities of our time."⁷²

NOTES

ON CHAPTER IV

1. Taken from Joel Hochman, Marijuana and Social Evolution (Englewood Cliffs: Prentice-Hall, 1972), p. 9.
2. Jock Young, The Drugtakers: The Social Meaning of Drug Use (London: Paladin, 1971), p. 11.
3. Loc. cit.
4. This is not to say that no legislation existed at this time prohibiting the use or possession of dagga. Prior to the 1960's there was little controversial public debate on the dagga issue, which is now so evident because its use has spread to White, urban youth.
5. In newspaper terminology, "actuality" reporting refers to participant or eye-witness accounts by journalists of significant events or crises as they occur. The two reporters of the Rand Daily Mail who "broke" the story of drug abuse on the Witwatersrand were subsequently awarded the National Press Award for Enterprising Journalism in 1969.
6. Brian Rose, and Bryan Chilvers, The Broken Link (Johannesburg: Nasionale Boekhandel, 1969). The book was based on a series of SABC programmes of the same title, broadcast in 1968, and which focused considerable popular interest on the incipient dagga-smoking, "drop-out" phenomenon in the Republic.
7. United Nations, World Health Organization, Expert Committee on Drug Dependence (Technical Report Series), Sixteenth Report, No. 407 (Geneva, 1969).
8. Ibid., p. 19.
9. Ibid., p. 20.
10. Hereafter referred to as the Report, or the Commission.
11. Britain's Dangerous Drugs Act of 1968.
12. Great Britain, Home Office, Report of the Advisory Committee on Drug Dependence, Cannabis (Wootton Report), para. 2. See also Michael Schofield, The Strange Case of Pot (Harmondsworth: Penguin, 1971), p. 76.
13. The Dangerous Drugs Act of 1965, and 1967.
14. Wootton Report, op. cit., para. 47.
15. Ibid., para. 51.
16. Wootton, Barbara, "Cannabis is not Heroin", Science Journal, V, No. 3 (September, 1969), Editorial.
17. Prohibition of Dependence-Producing Substances and Rehabilitation Centres Act, No. 41 of 1971, and the amendment, Act 80 of 1973.

18. Loc. cit.
19. Quoted in the Wootton Report, op. cit., para. 53.
20. Wootton, op. cit., paras. 54, 55.
21. Ibid., para. 50.
22. In South Africa, the last review of the dagga question was in 1952, by an inter-departmental committee of inquiry. (See next chapter).
23. Wootton, op. cit., para. 78.
24. Ibid., para. 81.
25. Loc. cit. See also next chapter.
26. Wootton, op. cit. This also bears out the view of Grinspoon, who says:

. . . Nowadays, at least where marijuana is concerned, the user and seller are largely indistinguishable; almost half the users sell to some extent, and almost all sellers use. To think of the marijuana dealer as "preying" on and profiting from a hapless, helpless victim -- the pot smoker -- [is] to use opiate addiction as a paradigm and to entertain a view which is ludicrously inappropriate. (Lester Grinspoon, Marihuana Reconsidered, Cambridge: Harvard University Press, 1971, p. 359.)
27. Wootton, op. cit., para. 87.
28. Ibid., para. 90.
29. Ibid., para. 36.
30. Loc. cit.
31. In South Africa the situation was similar in some ways. Even while the Grobler Committee was hearing evidence in 1969, the local Press had a field day publishing "horror" reports of drug-taking in the Republic, while some members of Parliament began calling for the death penalty for drug trafficking. (See last chapter).
32. Schofield, op. cit., pp. 86-88.
33. Ibid., p. 87.
34. Loc. cit. For a discussion of the British reaction to the Wootton Report, see Schofield, ibid., chapter 8.
35. The London Times parliamentary report, March 27, 1969. (Quoted in Young, op. cit., p. 201.)
36. Canada, Department of National Health and Welfare, Interim Report of the Committee of Inquiry into the Non-Medical Use of Drugs (Le Dain Report) (Ottawa: Queen's Printer, 1970), para. 3.

37. Grygier, T., in the Canadian Bar Review, XLIX (1971), pp. 384-409. Book review.
38. Loc. cit.
39. Loc. cit.
40. Le Dain, op. cit., para. 147-
41. Loc cit.
42. Grygier, op. cit., p. 390.
43. Le Dain, op. cit., para. 317.
44. Ibid., para. 319.
45. Ibid., para. 320.
46. Ibid., para. 322.
47. Loc cit.
48. Aldous Huxley, The Doors of Perception (London: Chatto and Windus, 1960), p. 49.
49. Le Dain, op. cit., para. 326.
50. Ibid., para. 331.
51. Ibid., para. 341.
52. Ibid., paras. 342-343.
53. Ibid., para. 352.
54. Sanctions against trafficking or possessing dagga are contained in Article 36 of the Convention. However, in terms of the Single convention any country can withdraw on January 1st of any year by giving six months notice.
55. The Second Report, as in the case of the Final Le Dain Report, was not available locally at the time of writing the present work.
56. The First Report was published under the title Marihuana: A Signal of Misunderstanding.
57. Shafer, op. cit., p. 6.
58. Ibid., p. 7.
59. Loc. cit.
60. Ibid., p. 9.
61. Loc. cit.
62. Loc. cit.

63. Shafer, op. cit., p. 127.
64. Ibid., p. 128.
65. Loc. cit.
66. Ibid., p. 129.
67. Ibid., p. 130.
68. Loc. cit.
69. Ibid., p. 131.
70. Loc. cit.
71. Ibid., p. 167.
72. Loc. cit.

CHAPTER V

SOUTH AFRICA: EMERGENCE OF THE DAGGA PROBLEM

INTRODUCTION

Evidence from the earliest travellers and observers in Southern Africa indicates that dagga smoking is an ancient custom among the Bushmen, Hottentots and other indigenous peoples of the subcontinent.¹ The extent to which the drug was used before European colonization is difficult to assess, and its introduction along the East coast of Africa is generally believed to have come from Arab traders during the sixteenth century.²

These Arabs established the plant in Zanzibar and Mozambique, where it took root and proliferated botanically as well as socially. Its use was, for instance, entrenched among the Hottentots at the Cape at the time of Jan van Riebeeck. His diary notes the fact that the use of the drug was a way of life among these people even before his arrival in 1652. The Governor's descriptions of dagga were most probably the first written records of the drug in Southern Africa.

Among his observations were that "De Haucumguas, welcke . . . mede lantbouwen, daar se dacha in teelen, sijnde een droogh cruijt dat de Hottentoos eeten ende droncken van worden."³ The word "dagga" is historically derived from the Hottentot word dachah; the Afrikaans way of writing it, "dagga", is today the term used throughout South Africa. In its slang form (as boom, intsangu and other variations), it is synonymous with marijuana or cannabis.

Whatever the particular name used, dagga has been used by various

South African ethnic groups for some three centuries, and the social norms surrounding the frequency and occasion of its use have varied from group to group.

The undesirable effects of excessive dagga smoking were known to the indigenous people of South Africa, and those who abused the drug were ostracised by the rest of the community. Moderate dagga smoking did not carry a stigma, although among many communities women and youths were not allowed to smoke it. It was not a recreation confined to the lower ranks of a tribe, since chiefs and highly-placed tribesmen also indulged in the habit; intemperate use of dagga was frowned upon, but no sanctions were attached to this except in cases where it violated the rights of others.⁴

Some nations, such as the Zulu, encouraged their warriors to smoke dagga, and Bryant has recorded that under its influence these young men were able to perform great feats of daring and bravery, whether hunting or on the warpath.⁵ An allegation frequently made by social historians is that Zulu impis who attacked the Voortrekkers were under the influence of dagga.⁶ Among other communities in the Nguni group dagga smoking was accepted as a purely social custom, and the drug was always used in company.

However, in recent times, the sociability of smoking dagga has also been adopted by the erstwhile warlike Zulus of Natal, in spite of the present day legislative penalties. James writes that "a man wanting company would sound the impalampala, a deep-sounding signal horn that carried far and invited those similarly inclined to join him in a smoke."⁷

In view of contemporary opinions by commissions of inquiry in Britain and North America the traditional attitudes of African tribes

is, according to James, interesting to note:

. . . It is opportune to notice how the Bantu, who have indulged themselves for centuries in the drug, are convinced about the effect experienced with its use. Their views agree in great measure with those of reputable investigators in the western world who have been commissioned to evaluate the influence of its use upon society. [They believed] the effect is closely tied to the inborn temperament of the smoker . . . of dagga. They do not, despite the law's opposition, regard the habit as reprehensible unless it be taken to excess.⁸

One of the earliest studies made this century of dagga smoking among indigenous tribes was that by Bourhill in 1913.⁹ It is significant, perhaps, that his study was being quoted as recently as 1970 in a Department of Social Welfare and Pensions report.¹⁰ This would indicate the relative absence of authoritative contemporary investigation into the general effects of dagga.

The 1970 report, for example, gives Bourhill's figures relating to "toxic insanity" and dagga smoking. These were based on investigations of 627 male patients admitted to the Pretoria Mental Hospital between 1908 and 1912. What is worth noting, in view of the comments by James, supra, is Bourhill's statement that the mental and physical effects of dagga are not dependent so much on the quantity smoked or consumed as much as on "the individual himself, his nervous organization, his disposition, his character and his temperament, and . . . the effects of the drug vary greatly both in kind and in degree among different smokers."¹¹

Although current legislation on dagga in South Africa has created a major social issue, with a broad base of public and professional comment -- both favourable and unfavourable -- the roots of the controversy go back many years. In 1922, for example, one observer in the Farmers Weekly wrote: "That stricter police surveillance should be

enforced to prevent the growing and consumption of the poison, is a question that, to my mind, is worthy of being brought up in Parliament." ¹²

Two years later the Department of Public Health issued a memorandum on dagga smoking, ¹³ which has been widely referred to, up to the present time, in various publications, including those by James, Watt and Breyer-Brandwijk, and the 1952 Inter-Departmental Committee on the Abuse of Dagga.

Watt and Breyer-Brandwijk ¹⁴ -- writing in 1936 -- attempted to place the dagga problem in a conclusive and undebateable perspective. Much of their evidence, again, is based on Bourhill and on the 1924 report of the Union Department of Public Health, mentioned above, although their approach is perhaps not as polemical as that of recent publications. Some of their evidence seems to support contemporary opinions in South Africa, but their findings run contrary to those of recent commissions of inquiry, dealt with in Chapter IV.

An interesting perspective on the paper by these two pharmacologists is that it was motivated by a series of newspaper articles at the time, criticising the Annual Report of the Department of Public Health for the year ending June 30, 1934. ¹⁵ These Press articles stated that, contrary to the views of the Department of Public Health, cannabis sativa was harmless; that dagga smoking did not affect "Natives"; and that the drug was not habit-forming.

"The criticisms", wrote Watt and Breyer-Brandwijk, "were so serious in view of the number of prosecutions and convictions under the Medical Act ¹⁶ that, on the suggestion of the Secretary for Public Health, we agreed that the matter called for an investigation." The article, drawing largely on Bourhill's work, concluded that (i) dagga

smoking did "form a habit".¹⁷ (ii) There was evidence that dagga smoking was the cause of a proportion of the male admissions (non-European) to the Mental Hospitals of the Union. However, (iii) there was little or no evidence that dagga smoking caused permanent "mental deterioration" among these patients.¹⁸ The writers concluded their paper with the following recommendation:

We feel that it would be worth while to institute a controlled investigation into the relationship of dagga smoking to the production of acute psychosis and of permanent mental deterioration. This will take many years, and will involve the drawing up of a suitable report form and questionnaire for use in all Mental Hospitals. These should be so framed as to elicit the information desired, and should be meticulously filled up [sic] in all cases where there is a suspicion that dagga is a factor in the case.¹⁹

REPORT OF THE INTER-DEPARTMENTAL COMMITTEE ON THE ABUSE OF DAGGA (1952)

As has been noted in previous chapters, the phenomenon of dagga smoking is at present endemic among White, middle-class youths in South Africa, as it is in other parts of the world. This has been a comparatively recent trend, as a documentary study of previous investigations into the dagga problem in South Africa will show.

One of the recommendations of the 1937 Cape Coloured Commission of Inquiry was that more effective steps should be taken to ensure the eradication of the sale and consumption of dagga. This plea was specifically mentioned under the heading "Reasons for the Appointment of the Committee" in the Report of the Inter-Departmental Committee of Inquiry into the Abuse of Dagga.²⁰ Implicit in the preamble to Chapter 1 of the Report was the contention that dagga smoking was basically a "non-White" problem and that it contributed to the commission of crimes of violence.²¹

The appointment of the Committee and its terms of reference were

announced in a Government Gazette, on November 4, 1949,²² under the chairmanship of Dr. L. van Schalkwijk of the Department of Social Welfare. At the time of the Committee's hearings the law relating to dagga was contained in the provisions of the Medical, Dental and Pharmacy Act, No. 13 of 1928.

In view of this legislation²³ the Committee's terms of reference were to inquire into and report on:

- (i) The extent of the cultivation and the traffic in dagga and its use by the various race groups, and the effects of such use upon them;
- (ii) The effectiveness or otherwise of existing legislation and other measures designed to curb the use of dagga;
- (iii) The need, in respect of (i) and (ii) supra, to submit recommendations that would make these legislative and other measures more effective "where they are found to be inadequate to deal with the problem."²⁴

The procedure followed in conducting the inquiry was basically the same as with the Grobler Commission, some eighteen years later. The Van Schalkwijk Committee took written and oral evidence at 49 major centres in what was then the Union, and in the three High Commission Territories of Swaziland, Basutoland and Bechuanaland. A total of 354 persons of all race groups appeared before the Committee -- from technical experts in the field to those who were able to give evidence of "the emotional experiences of the dagga addicts themselves."²⁵

The final report was completed at Pretoria, in February, 1951, and for the purposes of this chapter some of the chief findings and recommendations will be reviewed here.

Briefly tracing the historical pattern of dagga smoking in

Southern Africa, the Van Schalkwijk Committee attempted to gauge the extent of the drug's use at that time (1952) and the attitudes of the various population groups toward this use. Predictably, on the evidence of other observers, and on the evidence of their own hearings, the Committee found that "The Native view that there is nothing reprehensible about dagga-smoking in itself, as distinct from smoking to excess which is frowned upon, has not been changed by the fact that the law of the white man now forbids the practice." ²⁶

This fact was also brought home quite forcibly to the Committee at one of its public hearings, when the chairman "somewhat hesitantly" called for a show of hands from the Africans present as to who among them smoked dagga. More than half those present indicated that they smoked it regularly, and showed no hesitation in admitting the fact. On another occasion a Paramount Chief gave evidence that headmen and other members of the tribal community saw no harm in the habit, and that it was fairly widespread. ²⁷

In contrast to this, the Coloured community generally eschewed the habit, and those among them who did smoke dagga were regarded as an undesirable element. This attitude was consistently found among better educated and middle-class Coloured persons, yet the Committee pointed out that the percentage of persons prosecuted for dagga offences was highest among the Coloured population. In 1949 the Coloured population was estimated to be 980 000, and the number of prosecutions for dagga offences was 3 286, or 3,8 per thousand, which was twice the ratio for Africans (1,48 per thousand). ²⁸ What the Committee did not indicate, however, was that members of the Coloured population were more likely to be caught and prosecuted for dagga offences, although this did not necessarily mean that more Coloureds smoked dagga than Africans. The latter, living predominantly in

rural areas, were less likely to be apprehended than the urban Coloured dagga smoker, due to greater police surveillance in the cities.

One of the problems encountered by the Committee was the inconsistency of the evidence from Coloured witnesses who appeared before it. Witnesses seemed unanimous, on the one hand, that among Coloured people it was mainly juveniles who smoked dagga, and not older people. However, they found it difficult to explain what became of young "addicts" when they grew up. The Committee's Report stated:

If they did not carry the practice with them to their maturer years, then it must be assumed that they had abandoned it, but this cannot be reconciled with the statement of these same witnesses that that was something that rarely happened. There is, therefore, no conclusive information on which to base even an approximate estimate of the extent of dagga smoking amongst the Coloured population, or to say whether there has actually been an increase in their numbers in recent years.²⁹

The Committee was equally unsure about the incidence of dagga smoking among Asiatics (which remained a "matter for conjecture")³⁰ and among pure Bushmen and Hottentots ("There is nothing certain that can be said about them").³¹ The Committee's view of dagga smoking among Whites seems to indicate the vast transformation this problem has undergone over the past twenty years. Only two paragraphs are devoted (in Chapter Two) to this question. Namely, (i) that the habit was mainly confined to "hoboes, tramps, criminals . . . and prostitutes."³² (ii) The smoking of dagga tended to be a gang activity, on the part of [White] youths from poor homes, and who drifted into petty crime. Significantly, the Report also mentions that there was this tendency among "boys from better class homes."³³

Evidence put before the Committee at this time indicated that one

of the major changes in the pattern of dagga use was that it was on the increase among juveniles (mainly African youths). Rather than being a surreptitious imitation of elders, the habit had become a problem in the towns and cities, as opposed to the rural areas. As the Committee saw it, this was a result of the influx of families from the reserves. The ensuing dislocation of family life, resulting in divorce, destitution, unmarried motherhood and child neglect contributed greatly to the increasing delinquency of urban African youths, who indulged in, among other things, the practice of smoking dagga. The Committee saw this increase in youthful delinquency as "disconcerting", but found a strangely misplaced reassurance (and ironic from a contemporary perspective) in the belief that increase in dagga smoking among juveniles was transitory.

The view expressed was that dagga smoking was a by-product of the process of rapid urbanisation and industrialisation

. . . which is entirely man-made and neither beyond control nor likely to continue indefinitely at so abnormal a pace. As the new urban populations become stabilized and their living conditions improve, so we may expect that addiction to the drug will wane. It is not any particularly deadly quality in the dagga plant itself which presents a social problem; rather it is the economic and social maladjustment of the age which confronts us.³⁴

Thus, while correctly recognizing the degree to which social and psychological dislocation can give rise to the problems of addiction to drugs or alcohol, the Committee was at the same time far out in its estimate of the direction in which the problem would go. The pressures of urbanization and modern living have increased in the past twenty years, rather than decreased, as the Report predicted. As a result, the degree of strain toward anomie³⁵ in modern urban conditions has now spread to the White, middle-class youth.

The majority of witnesses appearing before the Van Schalkwijk Committee agreed that youths and young men were predominant among all those who smoked dagga, borne out by the following table which the Committee supplied.

TABLE 1
AGE OF DAGGA OFFENDERS IN THE CAPE PENINSULA OVER A
PERIOD OF TWO YEARS

	7 to 14 Years	15 to 19 Years	20 to 30 Years	Over 30 Years	Total
European Male	-	9	42	15	66
European Female	-	-	1	-	1
Coloured Male	13	421	1 721	769	2 924
Coloured Female	-	1	36	27	64
Native Male	-	13	188	127	328
Native Female	-	-	15	13	28
Total	13	444	2 003	951	3 410

From the above table ³⁶ the Committee inferred that there was a discrepancy between the actual statistics and the "oft-repeated evidence of witnesses" ³⁷ that youthful addicts never abandoned the habit of dagga smoking. The table indicates that 58% of dagga offenders in this two-year period were in the age group 20 to 30 years, while those over the age of 30 constituted only 28% of the total. Accordingly, the Report strikes a critical note:

There is some difficulty in reconciling these figures with the oft-repeated statements of witnesses that youthful addicts never abandon the habit, unless it were assumed that a large proportion of the addicts die after the age of 30 -- which is absurd; or that they grow more wary as they grow older and are therefore caught less frequently -- which is unlikely, as dagga prosecutions are, as pointed out, a fortuitous by-product of police activity. The conclusion at which the Committee arrives to explain the apparent inconsistency is that

a proportion of youthful smokers do, in fact, in the course of time abandon the habit.³⁸

The Committee also pointed out that there were convictions in 96% of all dagga prosecutions during the five-year period, 1945-1949.³⁹

TABLE 2

	Prosecutions	Convictions	Percentage
1945	9 101	8 744	95,8
1946	7 786	7 493	96,2
1947	10 197	9 771	95,6
1948	14 648	14 016	95,6
1949	16 170	15 395	95,3

The Van Schalkwijk Report also commented on some of the uses and effects of dagga, drawing upon the research of Wolff⁴⁰ and, as did Watt and Breyer-Bandwijk, the work of Bourhill.⁴¹ Giving a resumé of Wolff's findings, the Report drew attention to the fact that he found a disquieting tendency for the habit to spread to "what is known as the 'best society', including boys and girls, and even schools and colleges." [Sic].⁴²

Other relevant findings and recommendations of the Committee can be summarized as follows:

(i) Relation between dagga smoking and crime:

The fact that most dagga offences were discovered when the police made searches and arrests in connection with other offences seemed to suggest a criminological syndrome. The Committee felt that only where an individual had basic anti-social tendencies would the drug accentuate this type of behaviour, which could result in crimes of violence.

(ii) Dagga and sexual behaviour:

The Committee felt it must conclude that dagga did not

act as an aphrodisiac, but rather that it had the opposite effect, that of a sedative.

(iii) The physical and psychological effects of dagga:

The drug was apparently the least dangerous of habit-forming drugs. When used in moderation and in the traditional manner by Africans, such as being smoked through water, the effects were not serious; "in fact no more deleterious", the Committee reported, "than smoking tobacco." ⁴³

(iv) Scientific Research into the effects of dagga:

The Committee recommended that scientific research into the drug's effects should be encouraged. This was especially important in view of the "divergence of views among leading technical authorities on the effects of dagga." ⁴⁴

(v) Penalties for possession or trafficking:

The first legal sanction against dagga in South Africa was the Dagga Prohibition Ordinance (No. 48 of 1903) in the Orange River Colony, making it an offence to supply, sell or receive (but not to possess or use "the herb cannabis indica, commonly known as dagga', or Indian hemp). It was subsequently prohibited by the Prisons and Reformatories Act (No. 13 of 1911). In terms of the Customs and Excise Duties Amendment Act (No. 35 of 1922) section 10 prohibited the import, conveyance, sale, supply, possession or use of a habit-forming drug. The list of these drugs was contained in Proclamation 181 of 1922 (in the Government Gazette of November 10, 1922, No. 1108), and included dagga, Indian hemp or the whole or any part of the plants cannabis indica or cannabis sativa. At the time of the Van Schalkwijk Committee's hearings the legislative

sanctions against growing, possessing or selling dagga were contained in three separate Acts, namely:

- (a) The Medical, Dental and Pharmacy Act, No. 13 of 1928 (Chapter VI, Sections 61-72).
- (b) The Weeds Act, No. 42 of 1937.
- (c) The Criminal Procedure and Evidence Act, No. 31 of 1917 (Sections 51, 55 bis, and 366). In addition to the powers of entry and search in respect of habit-forming drugs which were provided by Section 71 (1) of the Medical, Dental and Pharmacy Act, supra, special powers of search and entry were conferred on certain persons by Section 51 (1) of the Criminal Procedure and Evidence Act.

In terms of the Medical, Dental and Pharmacy Act the maximum penalty that was imposed at this time for dagga offences was a fine of £100 or six months imprisonment. These penalties were the same, regardless of whether the person convicted smoked, cultivated or trafficked in dagga. Here the opinion expressed was:

The Committee agrees with the present practice of the courts to deal lightly with the smoker. Through human weakness he cultivates the habit just as, for the same reasons, others take to smoking, drink or drugs. Experience has shown that imprisonment has little, if any deterrent effect on the smoker and that he will in all probability resume the consumption of dagga on his release.

The Committee felt that the law should make a distinction between the penalties applicable to the grower and trafficker, on the one hand, and those applicable to the smoker.

As regards the trafficker, the Committee felt that, for a first

and subsequent conviction, a term of imprisonment of up to one year (without the option of a fine) should be imposed, together with a fine of up to £500.

In spite of the difficulties experienced by the Van Schalkwijk Committee, of which all the members were full-time officials of the Public Service, who were required to carry out their normal duties while serving on the Committee, the resultant Report was fair and perceptive. The comments and recommendations of the Report as a whole, however, were never implemented.⁴⁶

Although contemporary perspectives on the dagga subculture reflect many new insights and opinions, some of the comments by the Van Schalkwijk Committee show a degree of positive evaluation that measures up to much of what has been said in recent years. One of these judgements may be quoted here in its entirety:

There is a sort of camaraderie amongst dagga smokers which attracts the moral weaklings who feel themselves to be the step-children of society. Addicts quickly recognize one of their kind amongst strangers, as they have signs whereby to discover kindred spirits and sources of supply, and like all people breaking the law, a jargon of secret terms known mostly to themselves. This camaraderie encourages dagga smokers to smoke in company, and even to some extent lay aside race and other prejudices with regard to fellow addicts. Such addicts seldom give one another or their suppliers away. For weak and mal-adjusted personalities the idea of belonging to a closed group of this kind must hold considerable attraction. [My italics].⁴⁷

In 1970 the Department of Social Welfare and Pensions issued a publication entitled Drug Dependence and Some of its Concomitant Aspects in the Republic of South Africa, of which the first part was devoted to the dagga problem.⁴⁸ Statistics furnished by this publication show that there had been a steady escalation in the number of

dagga prosecutions during a twenty-year period, from 1945 to 1964.

In 1945 the total number of prosecutions instituted for dagga offences (all races) was 9 101, twenty years later, in 1964, the figure was 26 071. In about 90% of these prosecutions a conviction resulted.⁴⁹ The most recent figures released regarding dagga offences indicate that the problem has reached critical proportions. In the period December 6, 1971, when the Prohibition of Dependence-Producing Substances and Rehabilitation Centres Act (No. 41 of 1971) came into force, to June 30, 1973, some 70 000 persons were convicted of dagga offences.⁵⁰

However, it was during the period 1966 to 1970 that the increasing proportion of the dagga problem first began to invite attention. The Department of Social Welfare and Pensions Publication No. 3 of 1970⁵¹ sounded a completely different note from that of the 1952 Van Schalkwijk Committee, and other previous commentators on dagga smoking. It pointed out that:

The use of dagga is not confined to certain races or groups in society: rich, poor and criminals alike are guilty of the abuse. It is particularly striking that the use of dagga is on the increase among White youths.⁵²

Nevertheless, at this time (before the series of Press reports of 1969) the Department could still say that dagga smoking was rare among White children at ordinary schools.

The Department of Social Welfare and Pensions' publication outlined some of the basic personality traits that were considered to be associated with dagga smoking. It stated that merely by observation it was not possible to determine a particular personality type, but that certain characteristics could be identified.

Escapism: Dagga smoking offered many an escape from reality. The habitual smoker was a person who could not face the problems and realities of life, and in this way the drug played the same role in his life as did alcohol in the case of an alcoholic.

Self-confidence: Persons who smoked dagga lacked self-confidence, and the drug increased their self-esteem and courage. This could also lead to assertiveness, aggressiveness, and in some cases the commission of crimes.

Increased sociality: Because dagga was seldom smoked by individuals on their own, and was basically a group activity, a sense of belonging was created. Dagga smokers preferred to use the drug in small groups -- a basically anti-social tendency.⁵³

Inferiority: Considering the fact that the dagga smoker lacked self-confidence⁵⁴, it could be argued that he was ipso facto a person with strong feelings of inferiority. Unable to cope with normal stresses in everyday life, he turned to dagga to restore his confidence and to help dispel his feeling of inadequacy.

The above personality traits, according to the publication, seemed common to most inveterate dagga smokers, but no concrete empirical evidence is brought in support of these contentions. Under a section entitled "Investigation and Research" the publication makes some interesting comments.

The investigations of researchers in other parts of the world are discussed under four sub-headings: Physiological, Sociological, Psychiatric and Psychological.⁵⁵ Quoting from the work of Allentuck in the United States, the Department of Social Welfare and Pensions

pointed out that dagga acted on the central nervous system and the higher cerebral functions, but from the data available (by 1970) it was evident that "no important physiological and pathological conditions [resulted] from dagga smoking." ⁵⁶

Under "Sociological" the Department listed four social characteristics of the dagga smoker. ⁵⁷

- (i) In 85% of cases studied at an American hospital, dagga smokers showed a "defiance of authority" and were unfit for military service.
- (ii) Another 85% of cases had experienced "disturbed family relationships", resulting from broken homes or alcoholic fathers.
- (iii) All were to some extent emotionally unstable, but were mentally normal. Various sexual aberrations were also evident in the group studied.
- (iv) The average age at which members of the group had taken to dagga was 15,3 years. ⁵⁹

The work of Bourhill, cited a number of times in this chapter, is again presented in the Department's publication -- some sixty years after it was first published. His findings on toxic insanity and dagga smoking are presented in the section on the "psychiatry" of dagga smoking.

Further comments by the Department are worth noting, in view of the legislation which was enacted a year after these views were published.

Drawing again from previous research in other countries, and on findings at the Magaliesoord Retreat for Men (a sample of 78 dagga smokers at this centre was studied) the Department of Social Welfare

and Pensions made some general observations on the causes and effects of dagga smoking:

- (i) On the basis of medical examination of dagga addicts it had been established that there had been no organic impairment, and that psychotic symptoms were of a temporary nature.⁵⁹
- (ii) The use of dagga did not change the basic personality structure. The real problem was not the actual drug, but the person himself.⁶⁰
- (iii) From the literature on dagga that was available, it appeared that practically all investigators were in agreement that the drug as such did not cause criminal behaviour, but could have an effect on tendencies toward criminality.⁶¹
- (iv) Although no definite proof existed, most authorities were of the opinion that dagga caused no physical dependence.⁶²

The findings at the Magaliesoord Retreat emphasized that the effects of dagga were far more serious on the mental faculties of a person than on his body. The heavier a dagga smoker an individual became, the more reckless he tended to become, and the more prone to anti-social and violent behaviour.

The heavy dagga smoker was always in a "state of mental stupor, with hallucinations which later developed into a comatose sleep. However, certain doubts about the drug's effects remained. One of the conclusions was that:

The findings at Magaliesoord . . . gave rise to doubt as to whether the smoking of dagga had an addictive effect, whether it was habit-forming and whether even a heavy smoker would be able to give it up without any effort.⁶³

Nevertheless, it was found that dagga was habit forming, and that it brought "ruin and destruction of the character" as well as anti-social behaviour, moral degeneration and "psychiatric conditions."⁶⁴

The considerations, opinions, and findings of this publication, as with those of other investigations and commentaries, reveal a welter of conflicting and pseudo-scientific judgements that have shed little further light on the problem as it exists today. In view of the far-reaching and contentious legislation that now exists in South Africa to deal with this problem, it is vital for the social scientist to reach some sort of consensus on the real or imagined dangers of smoking dagga.

It would be apposite, therefore, to summarize at this stage the general perspective on the problem as seen by the Department of Social Welfare and Pensions, just prior to the passing of the Prohibition of Dependence-Producing Substances and Rehabilitation Centres Act of 1971. The Department pointed out that

During the 20th century scientists have carried out numerous investigations to determine the more deepseated causes of the use of this drug. According to the results of sociological investigations, dagga smokers are to a large extent persons who come from unstable and broken homes. These family relationships must of necessity make for a lack of security in the children. This is merely one of the many factors that may result in a child's going out into life with a sense of insecurity. He is, therefore, constantly seeking ways and means of bolstering his inadequate personality, ways of compensating for his personality defects. One of the things to which he resorts is the use of dagga, for the very reason that it helps him to escape reality which to him is fraught with so much danger. Under its influence he feels adequate as a human being; he has self-assurance, pluck and courage, all of which he lacks greatly in the normal course of life.⁶⁵

"It is generally accepted that the use of dagga causes

psychological dependence", the Department stated, "and this is in line with the idea that it cannot be classified in the same category as morphine, cocaine and other similar drugs."⁶⁶ (My italics). Since the Grobler Commission of 1970, the same year as this publication, did not investigate the problem of dagga smoking, the question which logically arises is on what evidence was the scheduling of dagga (in Act 41 of 1971) as a prohibited dependence-producing substance based?

Also important to note, in view of the legislation of 1971, is the following comment by the Department of Social Welfare:

Often the solution to the problem is sought solely in the imposition of higher fines and more severe penalties, but the question arises whether this is really the only way to combat the problem. Does it not rather justify a thorough and exhaustive study of the fundamental causes of the problem? Perhaps these causes will be found in the person and his social setting and background.⁶⁷

At this time, too, there were strong opinions expressed by leading medical practitioners on the inherent dangers of dagga as a drug of dependence, and the views of Bensusan,⁶⁸ Levine,⁶⁹ and Marlow⁷⁰ have been published in the South African Medical Journal between 1970 and 1972. The arguments put forward by these writers incorporate investigations on a pharmacological level, but these, as yet, have not been systematically co-ordinated into a full-scale research programme into the effects of dagga.

In conclusion, mention must be made of the Report of the Committee of Inquiry into the Abuse of Drugs in 1970, under the chairmanship of Dr. J.A. Grobler of the Department of Social Welfare and Pensions.

The decision to appoint this Committee of Inquiry was announced in the House of Assembly on June 9, 1969, by the then Minister of Social Welfare and Pensions, Dr. C.P. Mulder. The Committee's terms

of reference were to inquire into and report on the abuse of drugs in South Africa, with special reference to the following problem areas:

- (i) Types of drugs and their effects on people;
- (ii) The nature and extent of drug abuse in South Africa;
- (iii) Data on people who abuse drugs;
- (iv) The aetiology of drug abuse;
- (v) The social effects of drug abuse;
- (vi) Preventive and control measures;
- (vii) Co-ordinating services to combat smuggling;
- (viii) International agreements and obligations;
- (ix) Research.⁷¹

While the hearings of the Grobler Committee covered all aspects of drug abuse in South Africa, the Committee did not conduct any investigation into the use of dagga. The Committee's Report stated:

This problem has already been investigated by an inter-departmental committee. That was done eighteen years ago, however, and the Committee feels that the dagga problem has undergone considerable change over the years. The Committee recommends that another Committee of Inquiry be appointed to inquire into the dagga problem as it exists in the Republic today, because the abuse of dagga is so closely connected with the abuse of other drugs.⁷²

As will be seen in the following chapter, the legislation that followed the Grobler Report scheduled dagga as a prohibited dependence-producing substance without further official inquiry.

NOTES

ON CHAPTER V

1. For a detailed and scholarly history of cannabis sativa, with special reference to South Africa, see Theodore James, "The Chronicles of Cannabis", Medical Proceedings, XVII, Nos. 17, 18, 20, 21, 22, 24 (1971).
2. James, ibid., p. 257.
3. E.T. Baker-Bates, in Lancet, 1935, 1, p. 811. Quoted in Theodore James, "Dagga: A Review of Fact and Fancy", South African Medical Journal, XLVI (May, 1970), p. 575.
4. See the Department of Social Welfare and Pensions' publication, Drug Dependence and Some of its Concomitant Aspects in the Republic of South Africa (Pretoria: Government Printer, 1970), Publication No. 3. (Previously published in the Research and Information Series, No. 5 of 1966).
5. A.F. Bryant, The Zulu People (Pietermaritzburg: Shuter and Shooter, 1949), pp. 221-222.
6. Department of Social Welfare and Pensions, Publication No. 3 op. cit., p. 2.
7. James, "Chronicles", op. cit., p. 326.
8. ———, "Dagga: A Review", op. cit., p. 576.
9. C.J.G. Bourhill, The Smoking of Dagga (Indian Hemp) Among the Native Races of South Africa, and the Resultant Evils. M.D. thesis at the University of Edinburgh, 1913.
10. Publication No. 3, op. cit., p. 15.
11. Bourhill, op. cit., quoted in J.M. Watt and M.G. Breyer-Brandwijk, "The Forensic and Sociological Aspects of the Dagga Problem in South Africa", South African Medical Journal, X (August 22, 1936), p. 576. See also Watt and Breyer-Brandwijk, "Mental Symptoms Associated With the Smoking of Dagga", South African Medical Journal, XII (1938), p. 85.
12. J.S. van Pletzen, "Dagga and its Evils", Farmers Weekly, January 4, 1922, p. 1600. This article, however, is more anecdotal than scientific. See also H. MacKinnon, "They're Beating the Dagga Menace", Outspan, April, 1955, pp. 30-31. A.R. Todd, "The Hemp Drugs", Endeavour, 11 (1943), pp. 69-72.
13. Union of South Africa, Department of Public Health, Dagga Smoking and its Evils, pamphlet series No. 389, June, 1924. This publication is not available locally, as it is missing from the two legal deposit libraries in Cape Town -- the Library of Parliament and the South African Library.
14. Watt and Breyer-Brandwijk, op. cit., pp. 573-578.

15. Annual Report of the Department of Public Health (Pretoria: Government Printer, 1934), U.G. 40/1934, pp. 83-84.
16. The Medical, Dental and Pharmacy Act, No. 13 of 1928, Fifth Schedule.
17. Watt and Breyer-Brandwijk, op. cit., p. 578. In saying "form a habit", the authors do not make it clear whether they mean habitu-
tuation, addiction, or dependence.
18. Loc. cit. The authors' use of the expression "mental deteriora-
tion" would seem to be unsatisfactory, as they do not clearly
show what they mean by it.
19. Loc. cit. This recommendation is essentially the same as one
passed the previous year at a medical congress in Grahamstown in
October, 1935.
20. Report of the Inderdepartmental Committee of Inquiry into the
x Abuse of Dagga (Pretoria: Government Printer, 1952), U.G. No.
31/1952. (Van Schalkwijk Report).
21. Van Schalkwijk, ibid., paras. 1-4.
22. In Government Notice No. 2347.
23. Which remained in force until December 6, 1971, when the Pro-
hibition of Dependence-Producing Substances and Rehabilitation
Centres Act (No. 41 of 1971) came into effect.
24. Van Schalkwijk, op. cit., para. 11.
25. Ibid., para. 14.
26. Ibid., para. 34.
27. Ibid., para. 43.
28. Ibid., paras. 35-44.
29. Loc. cit.
30. Ibid., para. 45.
31. Ibid., para. 40.
32. Ibid., para. 46.
33. Loc. cit.
34. Ibid., para. 50.
35. This term of Merton's was discussed in Chapter I.
36. Op. cit., para. 83. No dates are given for this two-year period.
37. Ibid., para. 84.
38. Loc. cit.

39. Ibid., para. 77.
40. P.O. Wolff, Marihuana in Latin America (Washington, D.C.: Linacre Press, 1949).
41. Van Schalkwijk, op. cit.
42. Wolff, op. cit., pp. 7, 28, 41. Quoted in Van Schalkwijk, op. cit., para. 147. This observation was made by Wolff nearly 28 years ago, indicating the deep roots of the present world problem.
43. Van Schalkwijk, op. cit., para. 339.
44. Ibid., para. 340.
45. Ibid., para. 230.
46. This was confirmed for the writer on December 14, 1973, by Mr. J.D. van Zyl of the South African Pharmacy Board and a member of the 1970 Grobler Committee of Inquiry into the Abuse of Drugs.
47. Van Schalkwijk, op. cit., para. 61. Expressed differently, the views of modern sociologists, such as Becker, Goode, Grinspoon, Young, and Goffman, support this comment by the Committee.
48. Department of Social Welfare and Pensions, Publication No. 3, op. cit., in the section entitled "The Dagga Problem".
49. Ibid., p. 3.
50. These figures were released on December 19, 1973, by the Commissioner of Police, Gen. Gideon Joubert. Argus, December 20, 1973.
51. Publication No. 3, op. cit.
52. Loc. cit.
53. By "anti-social" the publication presumably means a rejection of the wider social community.
54. This is according to the publication, supra. No empirical tests have yet established facts to the contrary.
55. Ibid., pp. 13-16.
56. Ibid., p. 14.
57. Loc. cit. These sociological pointers arise out of research done at "a regional hospital at Fort McClennan, Alabama", but no other bibliographical or research details are supplied.
58. This data, as presented in the Department's publication, is entirely unsatisfactory and incomplete, relying basically on hearsay and anecdotal evidence.
59. Publication No. 3, op. cit., p. 15.
60. Ibid., p. 16. It is interesting to note that the Wootton Report, discussed in the previous chapter, had this to say: "It is the

personality of the user, rather than the properties of the drug that is likely to cause progression to other drugs." (Para. 50).

61. Loc. cit.
62. Ibid., p. 17.
63. Ibid., p. 19.
64. Loc. cit.
65. Ibid., p. 24.
66. Loc. cit.
67. Loc. cit.
68. A.D. Bensusan, "Drug Pollution -- The Problem of Abuse", South African Medical Journal, XLV (July 31, 1971), pp. 834-838.
69. Aubrey Levine, "The Pattern of Drug-Taking Among Drug-Dependent South African National Servicemen", South African Medical Journal, XLVI (November, 1972), pp. 1690-1694.
70. H.F. Marlow, "The Pharmacological Basis of Drug Dependence", South African Medical Journal, XLVI (May, 1970), pp. 610-615.
71. For a comprehensive critique and summary of the Grobler Report see L.F. Freed, "Commentary on the Report of the Committee of Enquiry (sic) into the Abuse of Drugs", South African Medical Journal, XIV (December, 1971), pp. 1327-1333.
72. Republic of South Africa, Report of the Committee of Inquiry into the Abuse of Drugs (Pretoria: Government Printer, 1970), paras. 563-564.

CHAPTER VI

ABUSE OF DEPENDENCE-PRODUCING SUBSTANCES AND REHABILITATION CENTRES ACT NO. 41 OF 1971

INTRODUCTION

On December 8, 1970, the Minister of Social Welfare and Pensions, Dr. C.P. Mulder, was presented with the final draft of the Grobler Committee's Report on the Abuse of Drugs in South Africa. This was presented to him by the Chairman of the Committee, Dr. J.A. Grobler, at a ceremony in Pretoria.

Although, as pointed out in earlier chapters, the drug problem had been widely publicized in the Western world since the early 1960's, it was the period 1969-1970 that brought the matter to a head in South Africa. As noted in Chapter IV, Press publicity at this time culminated in a series of reports alleging the epidemic proportions of the problem on the Witwatersrand.

On receiving the Grobler Report the Minister of Social Welfare and Pensions cancelled arrangements he had made to go on leave, so as to be able to study the Committee's findings, and was reported as saying that he would consult with the Departments of Health and Justice with a view to changing existing legislation in the Republic pertaining to drug abuse.¹

One of the first indications that the Government was considering the implementation of harsh penalties for drug-taking came from a statement by the Member of Parliament for Hercules, Mr. F.J. le Roux. On January 8, 1971, he was quoted in the Press² as calling for the

death penalty to be introduced to deal with the "masterminds"³ behind organised drug peddling, saying that he would raise the matter at the next Parliamentary session.

This sentiment was criticised at the time by Professor Ellison Kahn, Dean of the Law Faculty of the University of the Witwatersrand, who said he viewed drug peddling in a serious light, but hoped that the Government would leave the courts with fairly wide discretion in applying sentences. He became the first legal figure to oppose the campaign, started by le Roux, to introduce capital punishment for drug peddling.

A fortnight later, on January 22, the Cabinet met for the first time in the New Year, amid Press speculation about proposed legislation on drug abuse that might be introduced during the coming parliamentary session. Early in February John D'Oliveira of the Argus⁴ voiced his presentiments about the Government's plans to introduce new legislation on drug abuse. As a political and social commentator, he had noticed a recurring theme in previous weeks in the pre-parliamentary speeches of both the Prime Minister and the Minister of Social Welfare and Pensions.

Speaking to a group of social work students at Stellenbosch on March 1, Dr. Mulder had referred to the drug problem in South Africa, and had said "We dare not let hundreds of young lives be sacrificed on this modern altar of self-destruction."⁵

The head of the South African security police, Brigadier P.J. Venter, also issued a statement at this time, linking the dramatic increase in drug abuse in the Republic with Communist subversion. He said:

It is generally accepted in South Africa that drugs are being used by the Red countries to

bring the Western nations to their knees. Very definitely I view the drug abuse problem in political terms. The Communists are using drugs to influence the youth and degenerate [sic] the country's morale.⁶

The Grobler Report, which was tabled in Parliament on March 19, 1971, contradicted this view however. It pointed out that

On the face of it, the theory seems tempting that enemies can undermine the morale of a nation and the will to resist, as well as to encourage susceptibility to foreign ideologies, by making drugs available on a large scale. The Committee went thoroughly into the idea, but in the evidence received by it no proof could be found which . . . pointed indisputably to the existence of such an organised subversive movement . . .⁷

On the other hand, in introducing the second reading of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Bill, the Minister of Social Welfare and Pensions hinted at a link between drug abuse and the safety of the State, saying:

I submit, Sir, we are justified in taking measures which are commensurate with those available to us when the security of the State is at stake. If we fail to do so when it is necessary we might very well be before long be fighting for our very existence.⁸

Before examining some of the more controversial provisions of Act 41, it is necessary to refer briefly to the remarks of the Minister of Social Welfare and Pensions (Dr. Mulder) in introducing the second reading of the Bill.

The Minister stated that the abuse of drugs had been "receiving the attention of the Government for a long time", yet admitted that the Grobler Committee had not found it possible to determine the extent of the problem with certainty.⁹ Much of the language used by the Minister in this debate would strike a social scientist looking at

drug-taking as a contemporary phenomenon, as highly colourful and emotive, tending to give the impression of trying to create the maximum effect by the use of hyperbole.¹⁰

The Government's rationale in introducing this legislation was, in the first instance, based on five basic findings of recent investigations:

- (i) Statistics had shown that the problem was rapidly gaining ground in South Africa;
- (ii) illegal traffic in drugs was well-organised and was "flourishing";
- (iii) since the closing of the Suez Canal a new market had been created in South Africa among young people;
- (iv) circumstantial evidence pointed toward certain night-clubs as being distributing points for drugs;
- (v) the number of people in South Africa who abused drugs had increased sharply.¹¹

The Bill itself was placed before the house at very short notice. A few "flimsies" of the proposed legislation were made available on the Sunday before Wednesday's second reading. Many Members of Parliament had not seen the provisions it contained until the Bill itself was tabled on the morning of the debate.¹²

Anticipating criticism of certain measures in the Act, Dr. Mulder commented that "honourable members will undoubtedly have observed that the sting of this Bill is contained in clauses 2, 3, 6, 8(i)(c) and (d) and 13."¹³ He further added:

I am aware that the penalties prescribed in the clauses under consideration might appear to be harsh but let me say at the outset that they are intended to be severe. No persons, however, need fear those penalties if he would but resist the temptation to fill his pockets at the expense of others.¹⁴

A careful examination of the provisions in Act 41, and the amendment (Act 80 of 1973), will reveal, however, that the measure goes further than just bringing drug pedlars to justice. At the same time many of the recommendations of the Grobler Committee were not acted upon, and this was pointed out by the Leader of the Opposition, Sir de Villiers Graaff, in replying to the Minister:

From a general point of view, I may say that I had hoped that more use would have been made of some of the findings of the Grobler Commission. [sic]. I may say that it is also a disappointment that all or more [sic] of their recommendations are not being implemented by this legislation.¹⁵

The Opposition, however, with Mrs. Helen Suzman dissenting, accepted the Bill in principle, with certain reservations.

Mrs. Suzman opposed the Bill in principle, and during the resumption of the second reading she moved the following amendment to it:

To omit all the words after "That" and to substitute "this House, while anxious to strengthen the laws against the abuse of drugs, and especially the laws against drug pedlars, and while desirous of improving the facilities for the rehabilitation of drug users, declines to pass the Second Reading [of the Bill] because, inter alia --

- (i) it interferes with the discretion of the courts of law;
- (ii) it will result in large numbers of young drug users going to gaol;
- (iii) it introduces presumptions which greatly increase the onus of proof on the accused; and
- (iv) it infringes the rule of law and diminishes civil rights." ¹⁶

At the conclusion of the second reading the question was put that all the words after "That" stand as part of the motion, and fewer than four members (viz. Mrs. Suzman) having supported the demand for a division, the question was declared affirmed and the amendment dropped.

ACT 41 OF 1971 -- A SOCIO-LEGAL OVERVIEW

After a formal first reading on May 4, 1971, the Bill was discussed at a second reading on May 5 and 6. It entered the committee stage on May 7, and the report stage and third reading on May 10. It went to the Senate for consideration on May 12.¹⁷ The Act was gazetted on May 26, 1971,¹⁸ coming into operation six months later, on December 6.¹⁹ Among the criticisms of the Act, the fact was advanced that it added another law to the statute books that interfered with the Rule of Law in South Africa, and removed certain discretion from the courts.

The Schedule to the Act lists three categories of dependence-producing drugs:

- (i) Prohibited dependence-producing drugs
- (ii) Dangerous dependence-producing drugs
- (iii) Potentially dangerous dependence-producing drugs.

Part I of the Schedule includes cannabis or Indian Hemp, cannabis resin, dagga, intsangu, or the whole or any part of the dagga plant. In view of the penalties for selling or possessing any prohibited dependence-producing drug, the inclusion of dagga under this heading in Part I of the Schedule has possibly caused the greatest amount of controversy, since scientific opinion has been divided on the exact effects of the drug and because -- as has been noted in earlier chapters -- it is in fact widely used, especially by juveniles and young adults.

Part II of the Schedule lists some 106 dangerous dependence-producing drugs, such as cocaine and morphine, while Part III lists eighteen potentially dangerous drugs, most of them barbiturates.

The Act itself is divided into four chapters, the first section

being the 36 definitions covering the scope of the Act.

Chapter 1 covers sections 2 - 15 and deals with offences, interrogations, presumptions, punishments, and forfeiture.

Chapter 2 covers sections 16 - 17, which deal with the establishment of a national advisory board, its composition and functions.

Chapter 3 covers sections 18 - 48, dealing with rehabilitation, registration of institutions and their classification, the establishment of hostels and their registration, inspections, the appointment of a director, the financing of institutions, the procedure for dealing with those eligible for admission and their committal, temporary custody, transfer (to another institution), leave, release of licence, admission of voluntary inmates, and the discipline in those centres mentioned above.

Chapter 4 (sections 49 - 65) is entitled "General" and deals with the admission to rehabilitation centres from other territories in Africa, the making of regulations, amendment of the Medical, Dental and Pharmacy Act (No. 13 of 1928), and the repeal of other Acts such as the Retreats and Rehabilitation Act (No. 86 of 1963). It also (in section 62) repeals section 341(i) of the Criminal Procedure Act (No. 56 of 1955).

In this way, if at a trial it appears to the judge or presiding officer that the accused person is probably dependent on dependence-producing drugs, and consequently squanders his means or impairs his health, or endangers the peace, or harms his own welfare or that of his family, the judge may -- with the consent of the prosecutor -- stop the trial (under section 30 of the new Act) and order an inquiry, which can lead to the person's committal to a rehabilitation centre.

The provisions of the Act are wide, and encompass many aspects of

the drug problem. For the purposes of this chapter, and the thesis generally, special attention will be given only to certain aspects of Chapter I, mainly because it contains those provisions that were singled out by the Minister of Social Welfare and Pensions, as well as the official Opposition, Mrs. Helen Suzman, and other commentators as inviting special examination, albeit for differing reasons.

Zeffert, for example, has stated that "The legislature [was] not backward in 1971 in tinkering at [sic] the general rule that the prosecution must prove the guilt of an accused beyond reasonable doubt. Nowhere is this more dramatically seen than in [Act 41 of 1971]." ²⁰ Kahn said at the time that "It is a piece of legislation that [has] aroused considerable misgivings as regards its punitive aspects among not only certain members of the public, who, aware of the gravity of the problem of dependence-forming drugs, nevertheless felt that it went too far in its invasion of the liberty of the citizens and traditional processes of the criminal law; but also among professional legal bodies." ²¹

"In terms of this Act", notes Costa "some of the most drastic penal measures were placed on our statute book, which together with the provisions for minimum sentences, detention without trial, onerous presumptions and increased powers given to magistrates, make severe inroads into the Rule of Law." ²²

Criticism in the popular Press, drawing upon the views of many social scientists and professional people, was widely published during and after the passage of the Bill. Most of this criticism was directed at the linking of dagga, in Part I of the Schedule to the Act, with "harder" drugs, such as heroin.

Bearing in mind then that dagga is classified as a prohibited

dependence-producing drug, according to the Act, section 2 of this measure should be carefully examined:

2. Notwithstanding anything to the contrary in any law contained, any person --

- (a) who deals in any prohibited dependence-producing drug or any plant from which such dependence-producing drug can be manufactured; or
- (b) who has in his possession or uses any such dependence-producing drug or plant; or
- (c) who deals in any dangerous dependence-producing drug or any plant from which such drug can be manufactured; or
- (d) who has in his possession or used any dependence-producing drug or plant referred to in paragraph (c),

shall be guilty of an offence and liable on conviction --

- (i) in the case of a first conviction for a contravention of any provision of paragraph (a) or (c), to imprisonment for a period of not less than five years, but not exceeding fifteen years;
- (ii) in the case of a second or subsequent conviction for a contravention of an offence referred to in paragraph (i), to imprisonment for a period of not less than ten years, but not exceeding twenty-five years;
- (iii) in the case of a first conviction for a contravention of any provision referred to in paragraph (b) or (d), to imprisonment for a period of not less than two years, but not exceeding ten years;
- (iv) in the case of a second or subsequent conviction for an offence referred to in paragraph (iii), to imprisonment for a period of not less than five years, but not exceeding fifteen years. ²³

In other words, a first conviction under (a) or (c) for dealing in dagga, for example, carries a mandatory prison sentence of from five to fifteen years, and a second or subsequent conviction carries from ten to 25 years.²⁴ A first conviction under (b) or (d) (for possessing or using dagga) means a sentence of imprisonment of from two to ten years. This is also mandatory. However, under section 7 of the Act (based on section 335A of the Criminal Procedure Act of 1955), if the court is satisfied that there are mitigating factors for the imposition of a lighter sentence, this must be recorded and a sentence for a first conviction of up to two years imprisonment must be recorded.

Section 3 concerns dealing in or possessing any potentially dangerous dependence-producing drug. The Act states:

3. Notwithstanding anything to the contrary in any law contained, any person --

(a) who deals in any potentially dangerous dependence-producing drug; or

(b) who uses or has in his possession any drug referred to in paragraph (a),

shall be guilty of an offence and liable on conviction --

(i) in the case of a conviction for a contravention of any provision of paragraph (a), to imprisonment for a period not exceeding ten years;

(ii) in the case of a conviction for a contravention of any provision of paragraph (b), to imprisonment for a period not exceeding five years.²⁵

The possession and administration of any drug in terms of section 3, supra, is lawful if it is sold or supplied and administered by means of a prescription from a medical practitioner, dentist, or veterinarian, in terms of section 5 of the Act. No minimum sentences have been laid down in this section.

Section 6 imposes a duty on certain persons to report information about drug-taking to the police. The owner, occupier, or manager of any place of entertainment who has reason to believe that a person in or on such a place of entertainment possesses, uses, or deals in any dependence-producing drug proscribed by the Act, has the onus placed on him to report the matter to the nearest police station or police officer. Failure to do so is liable to result (on a first conviction) in a sentence of imprisonment of not less than five years but not exceeding 15 years.

For a second or subsequent conviction, the sentence is a term of imprisonment of not less than ten years, but not more than 25 years. In other words, the penalties in terms of section 6(2)(b) are the same as for dealing in a prohibited or dangerous dependence-producing drug.

However, no prosecution shall be instituted in respect of an offence under this section of the Act without the written authority of the Attorney-General.²⁶

The provisions of section 6 of the Act, then, clearly reflect the feeling of the Government on the role of certain nightclubs, and referred to repeatedly by the Minister during the second reading debate.²⁷

Provision is made in section 7 for those minimum sentences (referred to in section 2) not to be imposed in certain cases. This refers to those convicted of possessing prohibited dependence-producing drugs. Where there are circumstances which justify the imposition of a lighter sentence than the minimum prescribed, the magistrate must enter this fact on the record and can impose a lighter sentence than two years for a first conviction and five years for a second or subsequent conviction.

There are stringent provisions for forfeiture and the confiscation of property in section 8, set out below:

8.(1) Notwithstanding anything to the contrary in any law contained, the court convicting any person of an offence under this Act shall declare --

- (a) any dependence-producing drug or any plant from which such drug can be manufactured, which was used for the purpose of or in connection with the commission of the offence or which was found in the possession of the convicted person;
- (b) any vehicle, vessel, aircraft or receptacle or other thing which was used for the purpose of or in connection with the commission of the offence or for the purpose of conveying or removing any dependence-producing drug or any plant referred to in paragraph (a) which was used for the purpose of or in connection with the commission of the offence, or the rights of the convicted person to such vehicle, vessel, aircraft, receptacle or thing;
- (c) in the case contemplated in section 2(a) or (c), 3(a) or 6, any immovable property which was used for the purpose of or in connection with the commission of the offence, or the rights of the convicted person thereto;

- (d) if it is a second or subsequent conviction for any offence under section 2(a) or (c), any money found in the possession of the convicted person or which the court is satisfied is standing to his credit in any banking institution, building society or financial institution as defined, respectively, in the Banks Act, 1965 (Act No. 23 of 1965), the Building Societies Act, 1965 (Act No. 24 of 1965), or the Financial Institutions (Investment of Funds) Act, 1964 (Act No. 56 of 1964), or which is standing to his credit in any other savings account established by law,

to be forfeited to the State.

These provisions, according to Kahn, are unique in South African legislation -- no similar forfeiture penalties exist in other laws, especially in the case of 8(d) which are not even applied in cases of murder or treason or any other offence against the State.²⁸ Under subsection 2 of the main section, however, the owner of any immovable property, aircraft, vessel, or vehicle may not be subjected to forfeiture if he can prove that he was unaware of the purposes for which his property was being used.

In section 10 the Act deals with a number of presumptions, and (except for section 13) is the section that has been the most critically received by the legal profession. There are a number of important points to note about this section of the Act:

- (i) In section 10(1)(a) it is stipulated that an accused who is charged with a contravention of section 2 is presumed to have dealt in dagga or a prohibited dependence-producing drug unless the contrary is proved (my italics) if he is found in possession of dagga exceeding 115 grams in mass, or of any other such drug.
- (ii) In section 10(1)(b), if an accused is charged with dealing in prohibited dependence-producing drugs (or plants from which the drugs may be manufactured), he is presumed to have dealt in dagga should it be proved that he was the

"owner, occupier, manager or person in charge of cultivated land on a date on which dagga plants were found on such land, of the existence of which plants he (the accused) was aware or could reasonably be expected to be aware." ²⁹

- (iii) There are three other rebuttable presumptions relating to contraventions of section 2 of the Act: Sections 10(1)(c), (d), and c f . section 10(1)(e) which relates to contraventions of sections 2(a),(c), and section 3(a).
- (iv) A debatable and contentious provision is contained in section 10(3). If a dependence-producing plant or drug is found in the "immediate vicinity" of the accused, he is deemed to have been in possession of it, unless the contrary is proved. A weak point in this provision is the definition of "immediate" and "vicinity", which may be difficult for courts to decide, and lead to the "planting" of evidence on people by unscrupulous persons.
- (v) Section 10(6) relates to places of entertainment, and if it is proved that the accused was the owner or occupier or manager of a place of entertainment where dependence-producing drugs were found or were dealt in by any other person, the accused is deemed to have dealt in those drugs.

The measures in section 10 above run contrary to the traditional concept in Roman Dutch law that a person is innocent until proven guilty. In recent years, too, there has been a public controversy over detention without trial provisions in South African law that relate to the security of the State. Similar provisions have also been made in Act 41, and are contained in section 13, which is given below in full:

13.(1) Whenever it appears to a magistrate on the ground of information submitted to him upon oath by the public prosecutor that there is reason to believe that any person is withholding any information relating to an offence under paragraph (a) or (c) of section 2 or section 3(a) or 6 from the public prosecutor or a policeman, he may, at the request of the public prosecutor, issue a warrant for the arrest and detention of such person.

(2) Notwithstanding anything to the contrary in any law contained, any person arrested by virtue of a warrant under subsection (1), shall as soon as possible be taken to the place mentioned in the warrant and detained there, or at any other place and subject to such conditions as the magistrate may from time to time determine, in custody for interrogation until the magistrate orders his release when satisfied that the detainee has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention.

- (3)(a) Any person arrested in terms of a warrant issued under subsection (1), shall be brought before a magistrate within sixty hours of such arrest and thereafter not less than once every fortnight.
- (b) The magistrate shall at every such appearance of such person before him enquire whether such person has satisfactorily replied to all questions at his interrogation and whether it will serve any useful purpose to detain him further.
- (c) Any person detained under subsection (1) may at any time make representations in writing to the magistrate relating to his detention or release.
- (d) The attorney-general in whose area of jurisdiction any person is being detained under subsection (1) may at any time stop the interrogation of such person and thereupon such person shall be released from custody immediately.

(4) No court of law shall pronounce upon the validity of any action taken under this section, or order the release of any person detained under subsection (1).

(5) No person, other than an officer in the service of the State acting in the performance of his official duties, shall have access to a person detained under subsection (1), or shall be entitled to any official information relating to or obtained from such detainee.

Apart from the civil rights issues raised by this section, there is the additional problem that any person detained for interrogation for being found in possession of drugs has more than likely obtained them from ((a) a friend, or (b) a professional pusher. The person is thus placed in a position where he does not want to betray his friend or risk the retribution of the pedlar, but faces detention for repeated periods of fourteen days until he reveals his source of supply. Alternatively, the detainee may supply the name of any person without real justification, and incriminate an innocent person.³⁰

Particular opposition to this section came from the Association of Law Societies, who approached the Minister of Social Welfare and Pensions and handed him a memorandum outlining the Association's objections to section 13. The proposals in the memorandum were rejected by the Minister, but consequently the law was amended in respect of this section so as to create a provision empowering the Attorney-General to effect a release of a person detained.³¹

In the memorandum, the Association said:

Die hoof beswaar is egter teen artikel 13 gemik. Die huidige artikel be-oog dat 'n landdroos op aansoek van 'n aanklaer kan gelas dat 'n getuie vir 'n onbepaalde tyd aangehou word. Dit is 'n baie verregaande regsmiddel en indien 'n landdroos 'n verkeerde beslissing maak, of hy weier om 'n persoon vry te laat, kan niemand sy beslissing in twyfel trek of omverwerp nie en kan die persoon teoreties vir altyd in die gevangenis bly.³²

In a reply to the memorandum,³³ the Secretary for Social Welfare and Pensions (on behalf of the Minister) conceded that the Act increased the punitive jurisdiction (strafjurisdiksie) of magistrates' courts.

The point was made, however, that these courts had already had extensive powers under the Medical, Dental and Pharmacy Act of 1928, but that, if anything, the law would now be simpler to apply because the legislature had prescribed minimum sentences and that the presumptions were necessary to combat the drug trafficker. In any case, the reply went on, the Supreme Court would not be able to cope with the number of prosecutions.

Kahn's paper states that his purpose was not to "flagellate or praise the enactment, but to pose the question, asked by many lawyers, whether dagga (cannabis, marijuana, marihuana, Indian hemp, hashish, bhang, 'pot', etc.) should be subject to its drastic provisions."³⁴ It is a question that has been asked many times, not only by lawyers, and in other countries other than South Africa. Some of these questions, too, have been asked in previous chapters of this thesis: At this juncture, however, it is necessary to turn to some of the judgments handed down by the Supreme Court in respect of sentences meted out in the lower courts since the implementing of Act 41 of 1971.

In this regard Costa feels that:

In practical terms the vastly increased jurisdiction given to the magistrates to deal with offences under the Act has not led to satisfactory results. Not only have the Superior Courts by way of review and appeal radically altered sentences imposed by the inferior courts, but have also had to intervene to clarify very elementary procedural questions.³⁵

This intervention was exemplified in State v Mkenkana,³⁶ heard by

Mr. Justice Kannemeyer in the Eastern Cape Division. The accused in the case had been charged with and pleaded guilty to a contravention of section 2(b) of the Act, namely "being in possession of dagga for the purpose of sale."

The accused was sentenced to five years imprisonment. The magistrate, on review, said that he had not appreciated that the accused had been charged with a contravention of section 2(b) of the Act, and not Section 2(a), otherwise he would have sentenced the accused to two years, of which 21 months would have been conditionally suspended. Accordingly the sentence was set aside and the accused sentenced to two years imprisonment, of which 21 months were conditionally suspended.

Other significant reviews by the Superior Courts were contained in cases such as State v Naman,³⁷ State v Sibisi,³⁸ -- a judgement of particular value when it is considered how many unrepresented persons will be appearing before magistrates in connection with Act 41 -- and State v Ncobo.³⁹

On February 17, 1972, at the direction of the Judge President, the full court of the Natal Provincial Division delivered a detailed review of 21 cases of unlawful possession of, or dealing in dagga -- contrary to section 2 of the Act. This judgement, in State v Shangase and Others, was handed down by Justice Harcourt with Judges Kennedy and Muller concurring.⁴⁰ State v Shangase and Others was the first and most comprehensive to be reviewed under Act 41 and has served "to consider a number of new cases presenting different problems which have already arisen in practice and to give detailed and comprehensive decision which may serve as a guide in other review cases."⁴¹

The Harcourt decision became a landmark in review cases of Act 41,

and the learned judge's pronouncement on the Act as being "one of unique and manifest severity" and one which authorises punishments which the courts of South Africa would not have imposed had the Act not been passed, has now become history.⁴²

The learned judge also outlined the areas in which some difficulty had been experienced by the lower courts:

- (i) The ability of the court to suspend the sentence obligatorily imposed and the desirability of the court taking such a step
- (ii) The proper interpretation of section 7 with particular emphasis on the proper meaning to be attributed to the "circumstances" mentioned therein
- (iii) Certain procedural matters with particular emphasis on such matters as the necessity to advise (and the correct time and manner of advising) unrepresented accused persons of and concerning the relevant presumptions applicable to their cases and of the provisions of section 7 of the Act where such are potentially of application
- (iv) The ability of the court to deal with juveniles charged under the Act in accordance with the provisions of the Code, Act 56 of 1955.⁴³

In interpreting what "circumstances" should be taken into consideration by the court in exercising its discretion with regard to section 7, which deals with mitigating circumstances justifying the imposition of a lighter sentence than prescribed, the learned judge clearly set out a number of factors which seemed to him to be relevant and of importance. They are:

- (i) The age of the accused and his condition particularly in regard to his cultural, physical, mental and emotional states and any established immaturity whether attributable

- to such states, lack of sophistication or education or the like.
- (ii) The factual context in which the crime was committed and the motive of the accused, for example, the absence of premeditation, any degree of temptation to which he was subjected, the absence of any tendency for his conduct to deprave others.
 - (iii) The limited quantity and nature of the dependence-producing substance in his possession including the fact that dagga is almost certainly not as dangerous and harmful as some of the substances with which it is coupled in the relevant penal provisions of the Act.
 - (iv) The absence of previous convictions or, if any exist, the nature, number and dates thereof and the time which has elapsed since the last relevant such conviction.
 - (v) Whether or not the accused is in regular employment and has dependants.
 - (vi) The local conditions and incidence (including the falling off of the crime if the Act should, desirably, achieve its effects) of the specific crime in the area in question as indicating that severe penalties are not particularly called for.
 - (vii) Any pressure exerted on the accused by persons in authority over, or having influence upon, the accused, for example, orders (or perhaps even requests) from an employer, parent, husband or the like as well as duress or intimidation.
 - (viii) As a limited and transient consideration, the question whether or not the offence had been committed so soon after the coming into force of the Act that the particular accused was unlikely to have been aware of the new and more drastic approach to the whole question of dagga.
 - (ix) The probable effect upon the accused of a long or substantial period of imprisonment.
 - (x) Any other factor, bearing on the commission of the crime, which reduces the moral blameworthiness of the accused.⁴⁴

Judge Harcourt also pointed out in his remarks that:

It is not correct to speak of there being an onus on an accused to bring mitigating circumstances to the attention of the court although he might well be expected to do so . . . the court should itself consider, and, if necessary, investigate, the question, particularly if the accused is unrepresented and unsophisticated, uneducated and even primitive.⁴⁵

During 1973 the powers of the court to suspend the whole or any part of a sentence in cases of those who "deal" in prohibited or

dangerous dependence-producing drugs was taken away by the provisions of Act 80 of 1973, namely the insertion of section 2A in the principal Act, after section 2.

Commenting on this, Steyn has said:

. . . it is a significant indicator of the attitude of the Legislature toward the control of anti-social behaviour. It is too early to say what effect the legislation will have on the prevalence of the offence. That it will lead to a significant increase in the South African prison population -- both short-term and long-term -- is beyond question.⁴⁶

The conclusions to this thesis, given in the next chapter, will examine some theoretical and philosophical aspects of the South African Legislature's attitude to social deviance.

NOTES
ON CHAPTER VI

1. Argus, Cape Town, December 12, 1970.
2. Ibid., January 8, 1971.
3. The word "masterminds" was also used in this context by the Minister of Social Welfare and Pensions in piloting the Drugs Bill through Parliament. (See House of Assembly, Debates, Vol. 34, May 5, 1971, col. 5950). The Nederduitse Vroue Helpdiens of the N.G. Kerk also called for the death penalty for the peddling of drugs, in a memorandum to the Grobler Committee -- in para. 542 of the Report.
4. Op. cit., February 2, 1971.
5. Cape Times, Cape Town, March 2, 1971. The Minister later used the image of youth being "sacrificed on the altar" at least twice in introducing the second reading of the Drugs Bill in the House of Assembly. (See Debates, op. cit., cols. 5951, 5957).
6. Sunday Express, Durban, January 24, 1971. The phrase "generally accepted" was also used by the Minister during the parliamentary debates, col. 5953.
7. Republic of South Africa, Report of the Committee of Inquiry into the Abuse of Drugs (Pretoria: Government Printer, 1970), para. 344. The Surgeon General of the South African Defence Force, nevertheless, went on record, after the Report was tabled, as claiming that "Communist drug pedlars [are] active in every military camp in South Africa, supplying dagga to national servicemen as part of terrorist action against the country." (Argus, May 15, 1971).
8. Debates, op. cit., col. 5950.
9. Ibid., col. 5950.
10. The Minister used the word "evil" repeatedly in referring to the problem of drug abuse. The use of this word seems to be almost mandatory in official publications since Bourhill's paper of 1912. It has appeared consistently in various reports and discussions up to and including the parliamentary debate of 1971. Dr. Mulder also employed such expressions as "diabolical underminer and destroyer of Western man and his morals", "casting its evil shadow", "diabolical attack on and subversion of the lives and souls of people", "murderers of the human race", "souls and lives of our young people are sacrificed on this altar", "menace", "scourge", "onslaught on our national life", "monster in our midst", "plunged into the consuming fire and grey abysses", et seq. Debates, ibid., cols. 5950-5962, passim.
11. Debates, ibid., cols. 5950-5951.
12. This fact, and the haste with which the legislation was pushed through Parliament was to cause a great deal of criticism once the Act had been passed.

13. Debates, ibid., col. 5955.
14. Loc.cit.
15. Ibid., col. 5962.
16. Ibid., col. 6105.
17. See Debates, ibid., cols. 5858, 5949-5963, 6086-6130, 6184-6302, 6317-6382, 6515-6525. On May 15, three days after the Senate received the Bill the Minister (Dr. Mulder) left for Europe and the United States, which might indicate the reason for the Bill's hasty passage through Parliament.
18. Government Gazette, May 26, 1971, No. 3118.
19. In terms of section 65 of the Act, by Proclamation R.265 in the Government Gazette, Vol. LXXVIII, No. 332, of December 3, 1971.
20. David Zeffert, "Law of Evidence", in University of the Witwatersrand Annual Survey of South African Law (Juta: Cape Town, 1972), p. 417.
21. Ellison Kahn, "Dagga and the Drugs Act", South African Law Journal, LXXXIX, Part 1 (February, 1972), p. 105.
22. Kenneth J. Costa, "Parliament, the Judiciary, and the New Drugs Act", De Jure Ac Legibus, 11 (September, 1972), p. 21.
23. Abuse of Dependence-Producing Substances and Rehabilitation Centres Act (No. 41 of 1971), section 2.
24. In terms of the amended Act (No. 80 of 1973) this is a compulsory sentence and cannot be suspended.
25. Act 41 of 1971, op. cit., section 3.
26. This latter stipulation, section 6(3), was one of the amendments obtained by the official Opposition.
27. Debates, op. cit., passim.
28. Kahn, op. cit., p. 107.
29. A recent implementation of this section was the case of a 21-year-old man found guilty in Newcastle, Natal, on a charge of growing dagga in his room in the town's Afrikaanse Christelike Vrouevereeniging youth hostel. The accused claimed that his friends had smoked dagga in his room, and had emptied the ashes into his pot plants. Allegedly the seeds in the ashes grew into plants, but he did not recognize them as dagga plants, nor did he smoke dagga himself. He wanted to get rid of the plants but his friends had dissuaded him, as they had wanted to keep the plants. The hostel warden had discovered the plants, and reported the accused to the police. As a result he was found guilty of dealing in dagga in terms of the amended Act, and received the mandatory sentence of five years imprisonment. (Argus, Cape Town, January 18, 1974).

30. See the discussion by A.B. Widman, "Drug Abuse and the Law", in Papers Delivered at the South African Law Conference, The Association of Law Societies of South Africa (Durban, May 1-4, 1972), p. 132.
31. This memorandum was published in the Association's journal. See "Wet op Dwelmmiddels", De Rebus Procuratoriis, No. 43, Julie, 1971, pp. 285-286.
32. De Rebus, ibid., p. 285.
33. De Rebus Procuratoriis, No. 46, Oktober, 1971, p. 430.
34. Kahn, op. cit., p. 111.
35. Costa, op. cit., pp. 22-23.
36. S v Mkenkana 1972 (2) SA 200 (OK).
37. S v Naman 1972 (2) SA 202 (N).
- 38.] S v Sibisi 1972 (2) SA 466 (N).
39. S v Nocobo 1972 (2) SA 557 (N).
40. S v Shangase and Others 1972 SA 410 (N).
41. Ibid., at 411-412.
42. Ibid., at 410.
43. Ibid., at 414 A-C.
44. Ibid., at 423.
45. Ibid., at 431 A-C.
46. Justice J.H. Steyn, Some Aspects of Criminal Justice in South Africa -- Some Developments over the Past Decade and the Prospects for Reform (Cape Town, 1973) p. 9 (mimeographed).

CHAPTER VII

CONCLUSIONS

Since the beginning of the Industrial Revolution in the Western world, modern society has experienced a plethora of social problems associated with the human condition in an urban existence. Although suffering is doubtless as old as Mankind itself, the social diseases of crime, poverty, unemployment, and overcrowding are "pathologies" recognized in a special way in urban, industrial, present-day communities.

While none of these have been successfully eliminated as the world enters the last quarter of the twentieth century, the material quality of life has nevertheless improved concomitantly with scientific and technological advances. Inasmuch as there has, however, been an improvement in substance for modern man there has, at the same time, been a traumatizing of spirit. As noted in Chapter I, personal disintegration and social dislocation under the subtle as well as acute pressures of modern life are increasingly being experienced.

Among the indications of this widespread alienation have been the phenomena of juvenile delinquency, increasing divorce rates, the growth of post-war gang subcultures, and increasing alcoholism and drug addiction. Various investigations have been made into the origins and nature of this latter phenomenon, and the results of many of these inquiries have been reflected in the social legislation that has been introduced in those countries that have studied the problem.

The latter half of this thesis has focused on dagga smoking in

South Africa and the recent legislation that has been introduced in an attempt to curb the problem. In South Africa, as well as in other countries, the subculture of youthful dagga smoking has evoked mixed responses, and has generated feelings ranging from acceptance to hysteria. These conflicting emotions, combined with the fact that scientific opinion is as yet divided on the question, have unfortunately clouded the issue even more and may well, in the harsh and punitive measures contained in Act 41 of 1971 (which have already resulted in 70 000 convictions since the Act was promulgated), have produced a greater social problem than the initial deviancy.

Coombes has pointed out that current South African legislation has added an entirely new dimension to the drug problem, that of criminality. Various types of drug abuse have been illegal in this country for many years, but the new legislation has now introduced the concept of a criminal act, with the emphasis on punishment for offenders.

Consequently the medical, sociological, psychological, cultural and spiritual factors appear to have been eclipsed, certainly in the public mind. This is confirmed by the tremendous amount of publicity in the Press about arrests for various drug offences. The resulting controversy has focused on the substances themselves. Many of them are invested with lurid properties of evil and debauchery -- rather than focusing on the medical, psychological and cultural factors, of which improper drug use is symptomatic.¹

The basic criticism of the Act stems from the fact that, in dealing with what is fundamentally a social problem, it has resorted to detention without trial, minimum sentences, presumption of guilt, and the confiscation of property. Perhaps part of the answer to the question why the problem of drug taking has resulted in such Draconian measures from the South African legislature, and why it has caused such controversy, lies within opposing philosophical positions.

One is a form of idealism, which expresses itself in moral absolutism; the other is pragmatic and has a relativist stance.² It can be said that the social issues which surround the abuse of drugs illustrate, to a certain extent, the problems and the value conflicts in the society. The value position that a person takes on the dagga issue is generally part of the larger fabric of his whole outlook. The absolutist, on the one hand, has a moral sense of duty which is derived from his faith in traditional values, rooted in a respect for and an obedience to authority.

The pragmatist, on the other hand, is utilitarian and empirical in the philosophical tradition of Bentham and Mill. In modern society he would also be sustained by an idealism which springs from the same cultural heritage as the idealism of the absolutist, but would reject faith in traditional authority as the basis of an ethical system: Rather he accepts innovation and takes up a position on "good" and "bad" that is relativistic.

Because social science is pragmatic, social scientists would tend to be more empirical, relativistic, and humanistic in their approach to laws on drug abuse. This hiatus between political and philosophical positions is apparent in the controversy over dagga.

The severity of the Republic's drug legislation and its emphasis on punishment has its historical roots in the philosophy of Calvin and the concept described by Max Weber as the Protestant Ethic.³ Typically, too, this would also reflect the tradition of St. Paul and the later spirit of anti-hedonism contained in the views of the Reformation. A cursory reading of Hansard and the remarks of the Minister of Social Welfare and Pensions during the second reading debate of the Drugs Bill reveals, perhaps, a preoccupation with divine retribution rather than social rehabilitation.

Again, much of the absolutist view on drug abuse finds common ground with Piaget and his description of the second stage of moral development, in which laws are looked upon as sacred and derived from unchallengeable sources.⁴

In the event of pressure to change such laws, the reaction is one of hostility, since the orientation toward this type of legislation involves a "sense of religious respect for what is and what has been handed down as the proper order of things."⁵ The views of Blum and Funkhouser are interesting and germane to the study of South Africa's drug legislation:

In the absolutist view good and bad exist, and may be inherent in acts without reference to the effects of those acts. Drug abuse, because it does involve -- in the user and in the observer -- strong feelings about pleasure, impulse control, spontaneity and constraint, and authority relations, is one of the acts requiring moral evaluation and is, in that framework, sinful and wrong. The abuser, having made his responsible choice between good and evil, must be punished. Legislation which would fail to affirm the stigma of innate evil is in itself immoral, regardless of its effects. Convinced of this much, the moral absolutist will approach the legislation of pleasure and pain with a very strong pre-commitment.⁶

The philosophical base of the South African State is often said to be the Calvinist ethic, exemplified for instance by statutory sanctions against gambling, lotteries, "immorality", undesirable films and publications, and various forms of public entertainment and recreation on the Sabbath. Ranulf has made a detailed study of the Calvinist middle-classes and concluded that they have a near-monopoly on "moral indignation".⁷

Harsh laws against various forms of drug abuse have, in some cases, the legitimizing ethic that the individual should exercise complete control over himself, and drugs that cause him to lose control

or avoid responsibility are considered evil.

South Africa and the United States both have severe statutory penalties for dagga use ⁸ and both have inherited a Puritanical tradition: in the latter country it was typified by the Volstead Act which ushered in the Prohibition era, after various campaigns by the Anti-Saloon League and the Christian Temperance Union.

There is an interesting parallel between Ranulf's analysis and the provisions in section 29 of Act 41. Ranulf states:

Calvin condemned indiscriminate almsgiving . . . and urged that ecclesiastical authorities should regularly visit every family to ascertain whether its members were idle, or drunken, or otherwise undesirable . . . all mendicancy was strictly forbidden; no inhabitant (of Zurich) was able to be entitled for relief who . . . failed to attend church, or who played cards or who was otherwise disreputable . . . ⁹

Section 29 of Act 41 makes provision for a clerk of the court, at the request of the public prosecutor, to summon a person to appear before a magistrate if that person -

- (a) is dependent on alcoholic liquor or dependence-producing drugs and in consequence thereof squanders his means or injures his health or endangers the peace or in any other manner does harm to his own welfare or the welfare of his family; or
- (b) because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise) habitually fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or
- (c) habitually begs for money or goods or induces others to beg for money or goods on his behalf; or
- (d) has no sufficient honest means of livelihood; or
- (e) leads an idle, dissolute or disorderly life.¹⁰

For the social worker, the aspect of the Act which causes the most concern is that of minimum sentences, and, where a person is convicted of dealing in prohibited or dangerous drugs, the imposition of

mandatory sentences.

Becker's opinion, which would apply to the case of severe sentences for first offenders, is that one of the mechanisms that lead from casual experimentation to a more sustained pattern of deviant activity is the development of deviant motives and interests. He states that one of the most crucial steps in the process of building a stable pattern of deviant behaviour is likely to be the experience of being caught and publicly labelled as a deviant.¹¹

It should be evident that severe statutory punishment for first offenders leads to a very real danger of escalating the initial deviancy.

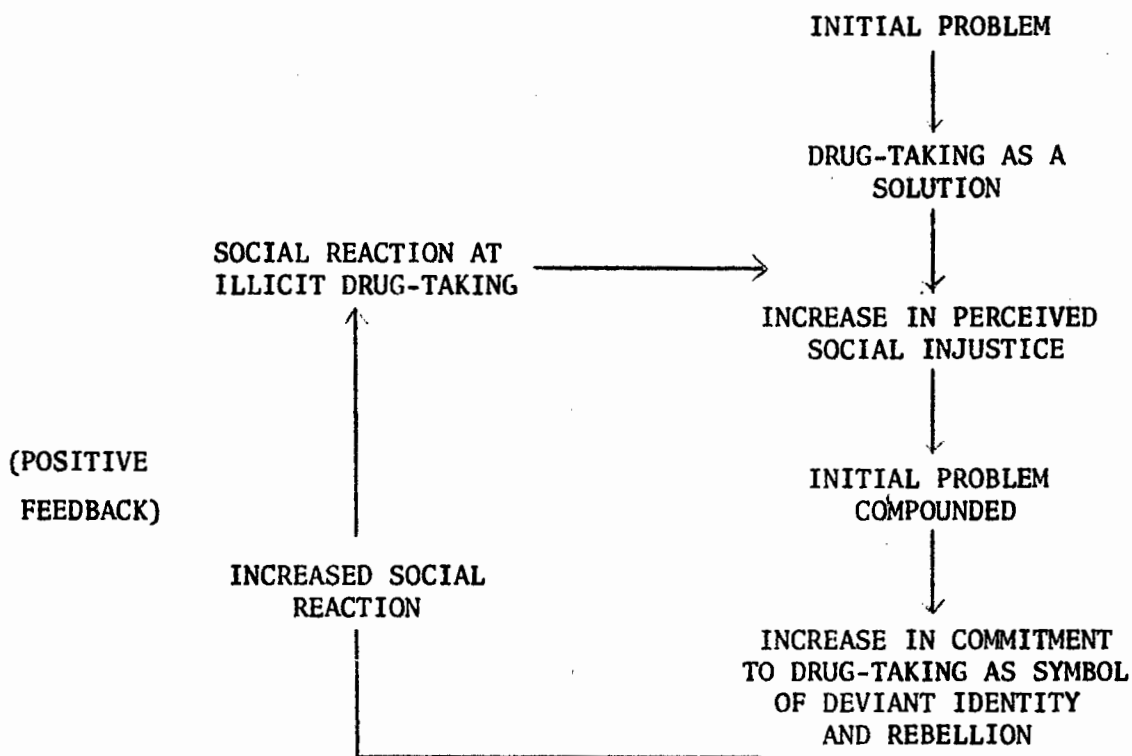
A single criminal conviction stigmatizes and labels the individual, and tends to create a number of connotations about his "criminality". These connotations may include speculations about the individual's shiftlessness, lack of responsibility and tendency to other types of deviancy. Thus the treatment of a person in this situation as someone who is generally, rather than specifically, deviant creates a "self-fulfilling prophecy" which tends to cut the person off from participating in conventional group activity.¹²

If the addict, then, is looked upon as a disreputable person, having been convicted in a court of law of indulging in illegal drug-taking, he is treated repressively and prevented from using drugs. Since he cannot get drugs legally he resorts to procuring them illegally to support the habit.

Legal sanctions force the market underground, pushing up the price to a level at which the addict can no longer afford to buy the drug on an ordinary salary. This can lead the addict to commit crimes to help support his habit. This in turn reinforces the

public's reaction to the initial deviancy.¹³

Duster also argues that a set of moral beliefs about the drug taker "creates, sustains, perpetuates, and exacerbates the deviance".¹⁴ As an example, he gives the 1914 Harrison Act in the United States, when thousands of addicts were driven by legal sanctions into underground and criminal activity. Similar conclusions were drawn by Wilkins, and demonstrated by means of a Deviancy Amplification Spiral:¹⁵



There are many opinions on the efficacy of penal legislation as a means of combating dagga smoking, and a report of the British Home Office in 1970 concluded that blanket legislation, permitting the imposition of long terms of imprisonment, was inadvisable. Whereas a medical approach is concerned with the individual, the social scientist's approach is concerned more broadly with social policy toward the dagga smoker as a member of a deviant subculture.

In South Africa, as in many other countries, this policy is

essentially a punitive one, which, for the social scientist, raises grave doubts as to its long-term effectiveness in countering a social problem. Steyn, in an unpublished paper,¹⁶ has examined some aspects of criminal justice in South Africa. He states:

The South African Legislature has for some decades placed great emphasis upon sanction as the principal force sustaining law and order. Much legislation was enacted creating offences and prescribing penalties . . . a system of compulsory sentences was introduced and mandatory sentences were prescribed for offences viewed with particular disapproval.¹⁷

The learned judge pointed out that the results of this approach were not those sought by the architects of this legislation. The most evident result was an abnormally high prison population, while there was little if any sign of a significant decline in anti-social behaviour. "Despite . . . protestations from the judiciary and academicians", says Steyn, "there has been no perceptible change in the attitude of the legislature toward punishment over the past 25 years."¹⁸

Although provision is made in Act 41 for rehabilitation centres and a committal procedure is prescribed, "it seems highly unlikely -- bearing in mind the †[sic] 30 000 annual convictions for the use of dagga and the few facilities for treatment -- that any significant number of dagga addicts or users would ever be committed for treatment. They will almost certainly be dealt with in the mainstream of the Criminal Justice System only." ¹⁹

This, in fact, is what has happened. Statistics supplied by the office of the Commissioner of Police in 1974 have revealed that, from among the 70 000 convictions for dagga offences over the past two years since the Act has been in force, there has been "only a handful of recommendations from local magistrates for arrests to be converted into 'inquiries' and for the offenders to be sent to rehabilitation

centres." 20

The dangers inherent in this situation have been ably summed up by Steyn, and his words bear repeating at some length:

The process of criminal justice is primarily directed at the maintenance of stability in the community which it serves. Its impact is profound. Those responsible for drafting and enacting criminal laws and stipulating sanctions often have an incomplete appreciation of the effects which statutory provisions of a criminal nature have upon the tone and contentment of those whose lives are governed by their terms. The draftsman and the legislator are confronted by a social ill. The seriousness and extent of the disease are often measured only by repute. Reaction is sometimes governed significantly by the maturity and proclivity, initially of the individual, ultimately of the group responsible for launching the legislative process. In most societies there is very little attempt to diagnose the causes and to relate control measures at least in part to such causes as are capable of ascertainment. Individualization of treatment, bearing in mind the object of the legislative exercise, rarely receives consideration. Over-reaction and a reliance upon fear as the stimulus for conforming conduct are often the major ingredients of the legislative dish.

In the short term such measures may produce results. Moreover, they have the advantage, especially among communities unsophisticated and immature, of being politically rewarding. In the long term, because of the broad moulds in which they are cast, their net is flung so wide that they tend to ensnare also the innocent and to subjugate the guiltless. They produce discontent and a refusal to participate in the enforcement of legislative provisions. They tend to strengthen power structures not subject to public scrutiny or independent control.²¹

It is often argued that the existence of government in any society implies that restraints will be put on the individual; certain of his freedoms will be sacrificed in the wider interests of the society itself. Therefore it could be argued that the State in principle is justified in prohibiting the use of certain drugs, where the

social fabric of the society is thought to be threatened. There is a basic premise, then, that the State has a broad prerogative to administer its social policy in the over-all public interest.

Equally basic, however, is the concurrent premise that the authority of the State cannot be limitless. Limitation is based upon objective assessment: Inasmuch as the freedom of the individual is founded on the idea of individual responsibility, the State's power should rest on the delicate balance between the right of the individual and the general well-being of the society and community.

Relativist views on social policy toward the drug user, and the legislation such policy probably implies, focus on the philosophical question as to whether behaviour affecting only the individual ought to be the concern of the State at all.

There are those, however, who see the solution to the problem of drug abuse in increasingly stringent legislation; and there are those who define the problem in terms of chronic illness and advocate it being treated as such. Yet, as a social problem, it must also be treated socially -- and social policy toward the offender must therefore include social therapy. The drug-taker is a product of the times in which we live, and is often as much a victim of the structure and strain of his community as a victim of the drug itself.

NOTES
ON CHAPTER VII

1. Murray Coombes, "Treatment and Welfare Facilities for Alcoholics and Drug Dependants" (Cape Town: SANCA, 1971). Mimeographed.
2. This particular view has been discussed by Jock Young, The Drug-takers: The Social Meaning of Drug Use (London: Granada, 1971). See also Richard Blum and Mary Lou Funkhouser, "Legislators on Social Scientists and a Social Issue: A Report and Commentary on Some Discussions With Lawmakers About Drug Abuse". The Journal of Applied Behavioral Science, VI (1965).
3. This aspect was referred to in Chapter III.
4. This is the view of Blum and Funkhouser, op. cit.
5. Ibid., p. 103.
6. Ibid., p. 104.
7. Svend Ranulf, Moral Indignation and Middle Class Psychology (New York: Schocken, 1964).
8. In the United States, however, penalties vary from State to State.
9. Duster, op. cit., p. 12.
10. Under sub-section 2(a) of the Act a public prosecutor may not, however, request a summons to be issued unless he has obtained a report from a social welfare officer as to the social circumstances of the person(s) concerned, and other relevant matter affecting the case.
11. Howard Becker, Outsiders: Studies in the Sociology of Deviance (New York: Free Press, 1963), pp. 135-136.
12. Ibid., p. 34. See also: John P. Reed and Dale Nance, "Society perpetuates the Stigma of a Conviction", Federal Probation, XXXVI, No. 2 (June, 1972).
13. See: Drug Addiction: Crime or Disease? Interim Report of the Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs (Bloomington, Indiana: University of Indiana Press, 1961).
14. Duster, op. cit., p. 239.
15. Leslie Wilkins, "Some Sociological Factors in Drug Addiction Control", in D. Wilner and G. Kassenbaum (eds.), Narcotics (New York: McGraw-Hill, 1965).
16. J.H. Steyn, Some Aspects of Criminal Justice in South Africa -- Developments over the Past Decade and Prospects for Reform (Cape Town, 1973). Mimeographed.
17. Ibid., p. 2.

18. Ibid., P. 10.
19. Loc. cit.
20. Argus, Cape Town, December 20, 1973.
21. J.H. Steyn, "Crime and its Control", Acta Juridica (1971) at 204.

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