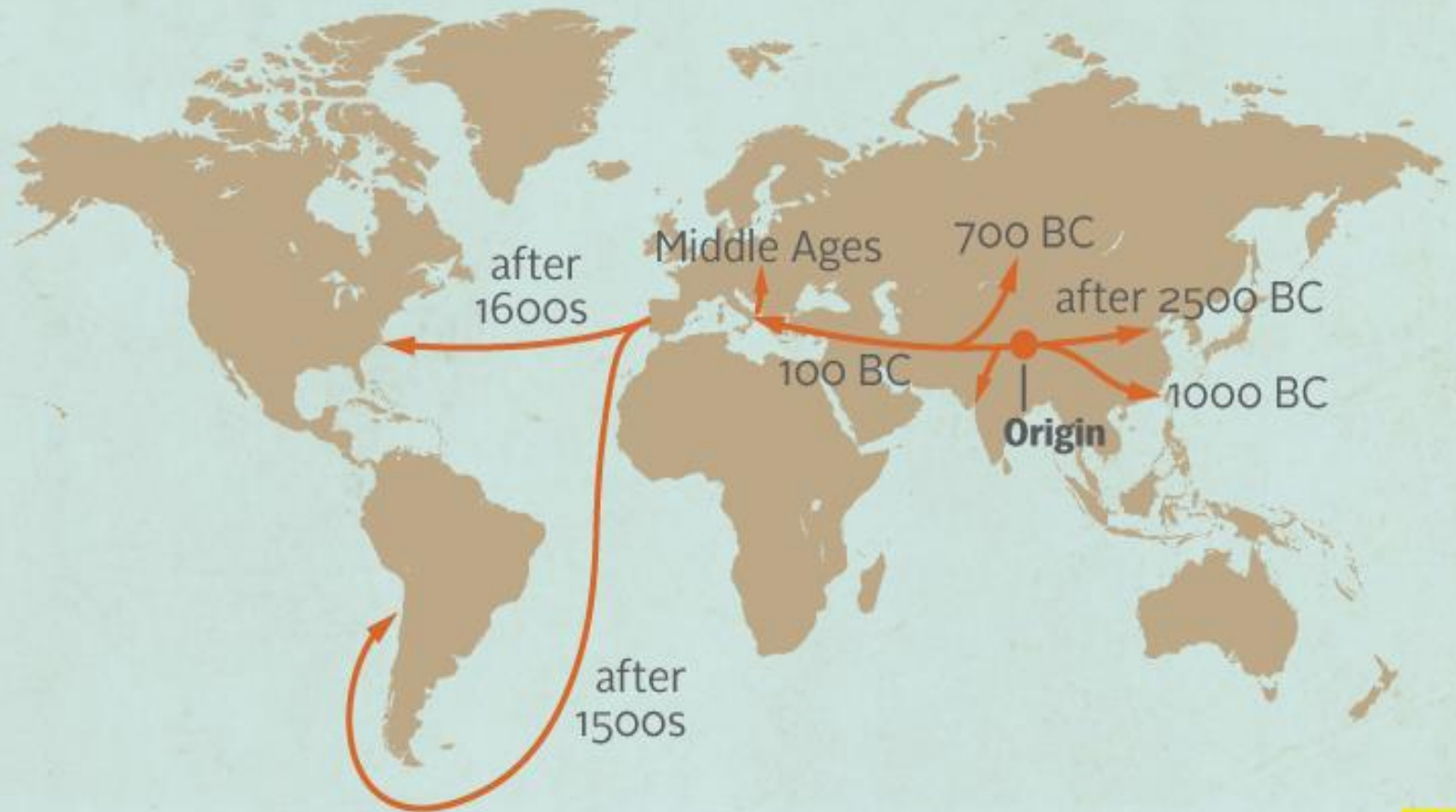


# History of Marijuana Regulation in Vermont

Michele Childs, Esq.

Vermont Office of Legislative Council

# MARIJUANA, ITS ORGINS, AND ITS SPREAD



Sources: Historical records, Natural History Museum



Even 5095

**MRS. WINSLOW'S SOOTHING SYRUP**

GOOD WITH MRS. WINSLOW'S SOOTHING SYRUP

OLDEST & SAFEST REMEDY FOR CHILDREN'S TEETHING

SOOTHES THE CHILD GIVES REST TO THE MOTHER

PRICE 1 1/2 PER BOTTLE

**WAKING!**  
If you don't give him Mrs. Winslow's Syrup you'll see, By holding this up, what the sequel will be.

**SLEEPING!**  
Mrs. Winslow's Syrup has soothed him, His troubles are o'er,—  
Lift this up, And then note what the child did before.

AMERICAN DRUG CO., REGISTERED DESIGN.

BRITISH PATENT

**COCAINE TOOTHACHE DROPS**

Instantaneous Cure!  
PRICE 15 CENTS.

Prepared by the  
**LLOYD MANUFACTURING CO.**

218 HUDSON AVE., ALBANY, N. Y.

For sale by all Druggists.  
(Registered March 1888.) See other side.

**ONE NIGHT COUGH SYRUP**

TRADE MARK

EACH OUNCE CONTAINS

ALCOHOL, (less than 1%)	4/4m.
CANNABIS INDICA, F.E.,	4/2m.
CHLOROFORM,	2/5m.
MORPHIA, SULPH.,	1/8gr.

SKILLFULLY COMBINED WITH A NUMBER OF OTHER INGREDIENTS

**DIRECTIONS**  
DOSE: One-half teaspoonful three times a day.

Prepared by

**HAMLIN'S WIZARD OIL**

HAMLIN'S WIZARD OIL

HAMLIN'S WIZARD OIL

CURES ALL PAIN FROM A MAN OR BEAST

**BEST PAIN REMEDY ON EARTH**

For Headache and Exhaustion

DRINK

**Coca-Cola**

5¢ A GLASS

DELICIOUS & REFRESHING

**Bayer Heroin bottle.**

**BAYER PHARMACEUTICAL PRODUCTS**

Send for samples and Literature to

**ASPIRIN**  
The standard for the world.

**HEROIN**  
The standard for the world.

**LYCETOL**  
The safe and certain.

**SALICIN**  
The standard for the world.

FABRIKUM VON ELBERFELD CO. 40 STONE ST. NEW YORK.

**Dr. Batty's**

For Your Health

**ASTHMA CIGARETTES**

SINCE 1882

For the temporary relief of paroxysms of asthma

EFFECTIVELY TREATS:

ASTHMA, HAY FEVER, FOUL BREATH  
ALL DISEASES OF THE THROAT,  
HEAD COLDS, CANKER SORES  
BRONCHIAL IRRITATIONS

NOT RECOMMENDED FOR CHILDREN UNDER 6.

Bayer Heroin bottle.

Old advertisement for Bayer Heroin

1906

**Pure Food and Drug Act**

Prevents the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors

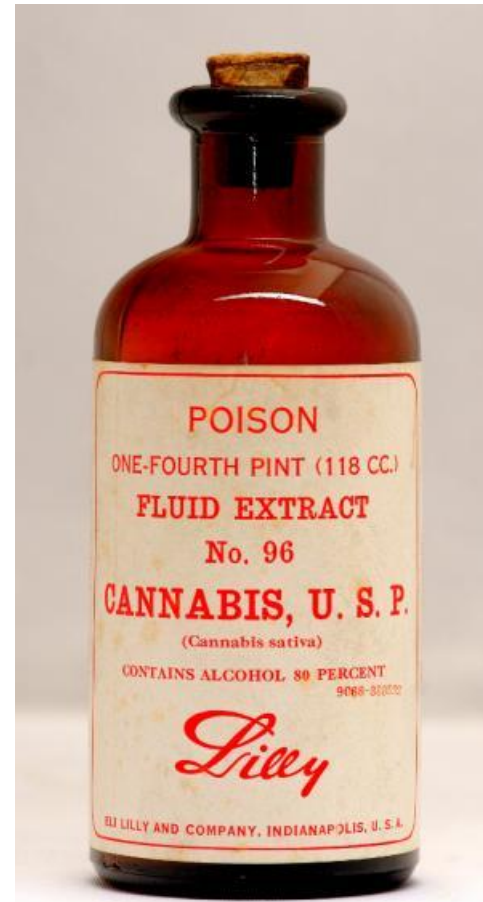
1914

Massachusetts becomes the first state to outlaw possession of cannabis other than through pharmaceuticals. By 1933, 32 states had similar laws.

Cannabis was grouped with opiates and considered a “narcotic” at the time.

1915

Vermont adopts “An act to regulate the sale of opium, morphine and other narcotic drugs” which included cannabis.



# Harrison Narcotics Tax Act of 1915

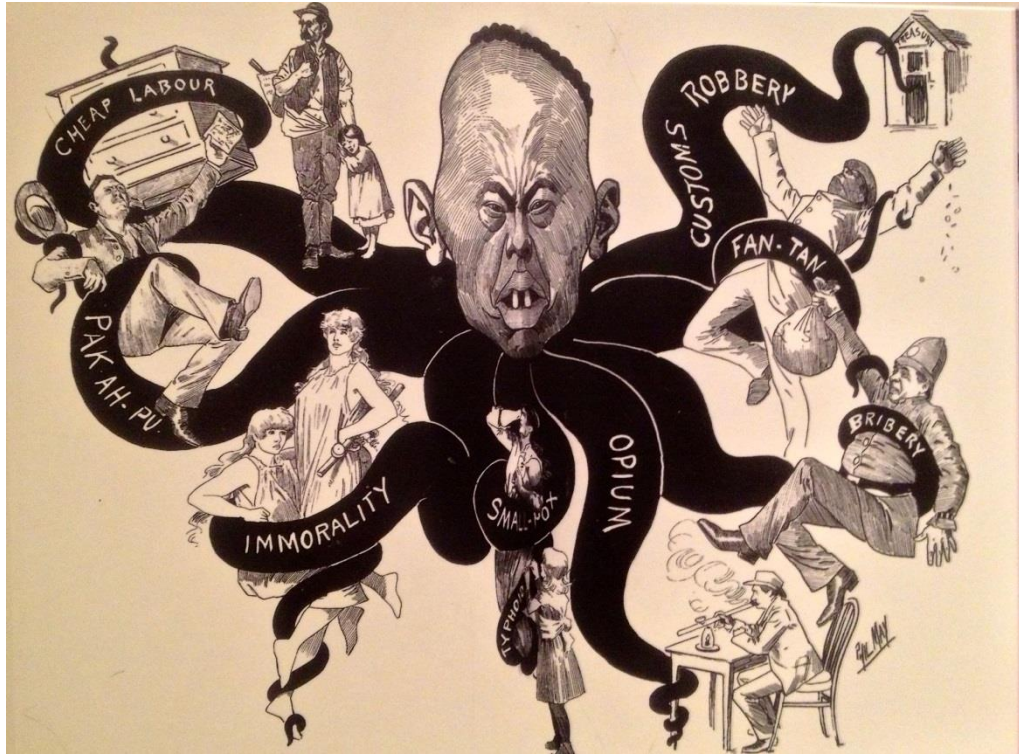
Imposed taxes on the sale, distribution, manufacturing, importation, and distribution of coca leaves, opium, and any products originating from either



By 1918, U.S. farms cultivate over 60,000 pounds of pharmaceutical cannabis

Prohibition, the 18<sup>th</sup> Amendment, the Volstead Act, and an increasing focus on drug use (1920s)





OGDEN, UTAH, SATURDAY, SEPTEMBER 25, 1915.

# IS THE MEXICAN NATION "LOCOED" BY A PECULIAR WEED?

### Deadly Marihuana Rolled In Cigarettes, Becomes the Curse Of the Southern Republic and May Account For the "Bravery" Of "Greaser" Bandits Who Defy the United States—The Insanity Of Queen Carlotta Is Accounted For In the Familiar Historical Legend Of the Poisoned Tea

General Venustiano Carranza is the only one who has been able to keep the Mexican nation from being "locoed" by the deadly weed.

Deadly Marihuana rolled in cigarettes, becomes the curse of the Southern Republic and may account for the "bravery" of "greaser" bandits who defy the United States.

The insanity of Queen Carlotta is accounted for in the familiar historical legend of the poisoned tea.

It is believed that a dose of this weed, administered by an assassin, would Queen Carlotta, wife of Emperor Maximilian, have been killed.

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GENERAL VENUSTIANO CARRANZA



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GENERAL VENUSTIANO CARRANZA



CARLOTTA, EMPRESS OF MEXICO

MAXIMILIAN, EMPEROR OF MEXICO

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The Vicious Part that Potent Marihuana Plays in Stimulating Certain Melody Makers to Fantastic Heights of Inspiration and the Efforts Made to Eliminate the Evil

**THE BLACK SIDE OF SWING**

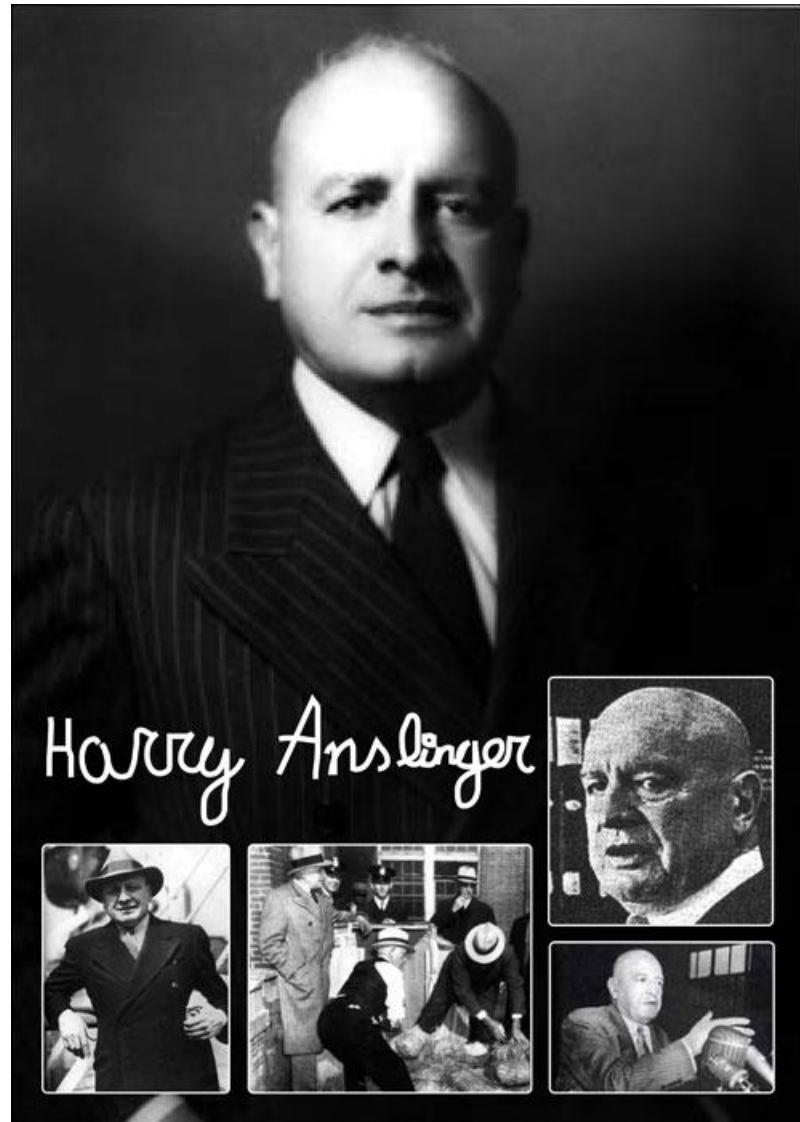
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San Francisco Examiner - Aug 9, 1910

# Federal Bureau of Narcotics and Harry Anslinger 1930s

- Est. within the Department of the Treasury
- Commissioner 1930-1962
- Staunch supporter of prohibition and criminalization of drugs
- Uniform Narcotic Drug Act adopted by the Uniform Law Commission (1934)



*Beware!* Young and Old—People in  
All Walks of Life!

Marijuana Cigarette

This



may be handed you




by the friendly stranger. It contains the Killer Drug  
“Marihuana”—a powerful narcotic in which lurks  
**Murder! Insanity! Death!**



Copyrighted Drawing, See also Note Below on Form 1

**WARNING!**

Dope peddlers are shrewd! They may  
put some of this drug in the  or  
in the <sup>Cen-</sup><sub>ts</sub> or in the tobacco cigarette.

WRITE FOR DETAILED INFORMATION, ENCLOSED 12 CENTS IN POSTAGE—MAILING COST

**Address: THE INTER-STATE NARCOTIC ASSOCIATION**

*(Incorporated not for profit)*

**53 W. Jackson Blvd.**

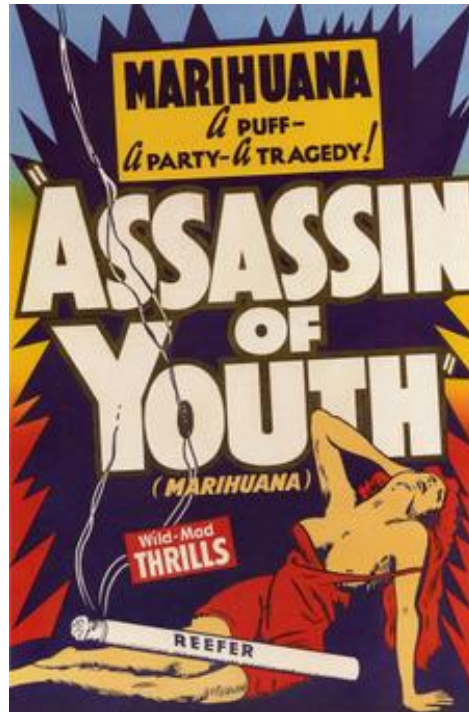
**Chicago, Illinois, U. S. A.**

ADVERTISING AND PAPER are part of the National Campaign Against the Drug, for its abolition, which is being supported in the U. S. since the 1930's by the Federal Bureau of Investigation and the Bureau of Prohibition, Department of Justice.



“Police officials in cities of those states where [cannabis] is most widely used estimate that fifty percent of the violent crimes committed in districts occupied by Mexicans, Spaniards,, Latin-Americans, Greeks, or Negroes may be traced to this evil.”

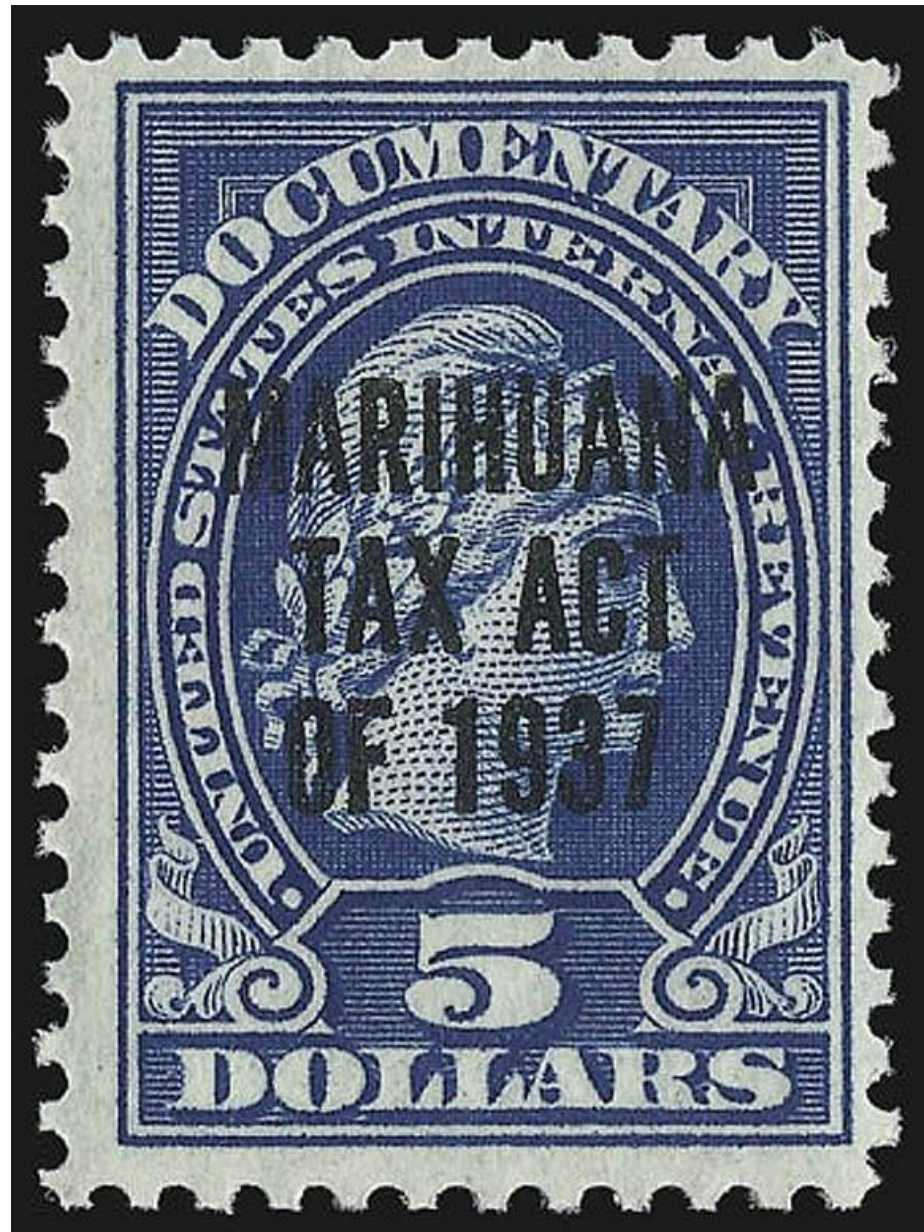
*- Bureau of Narcotics (1935)*

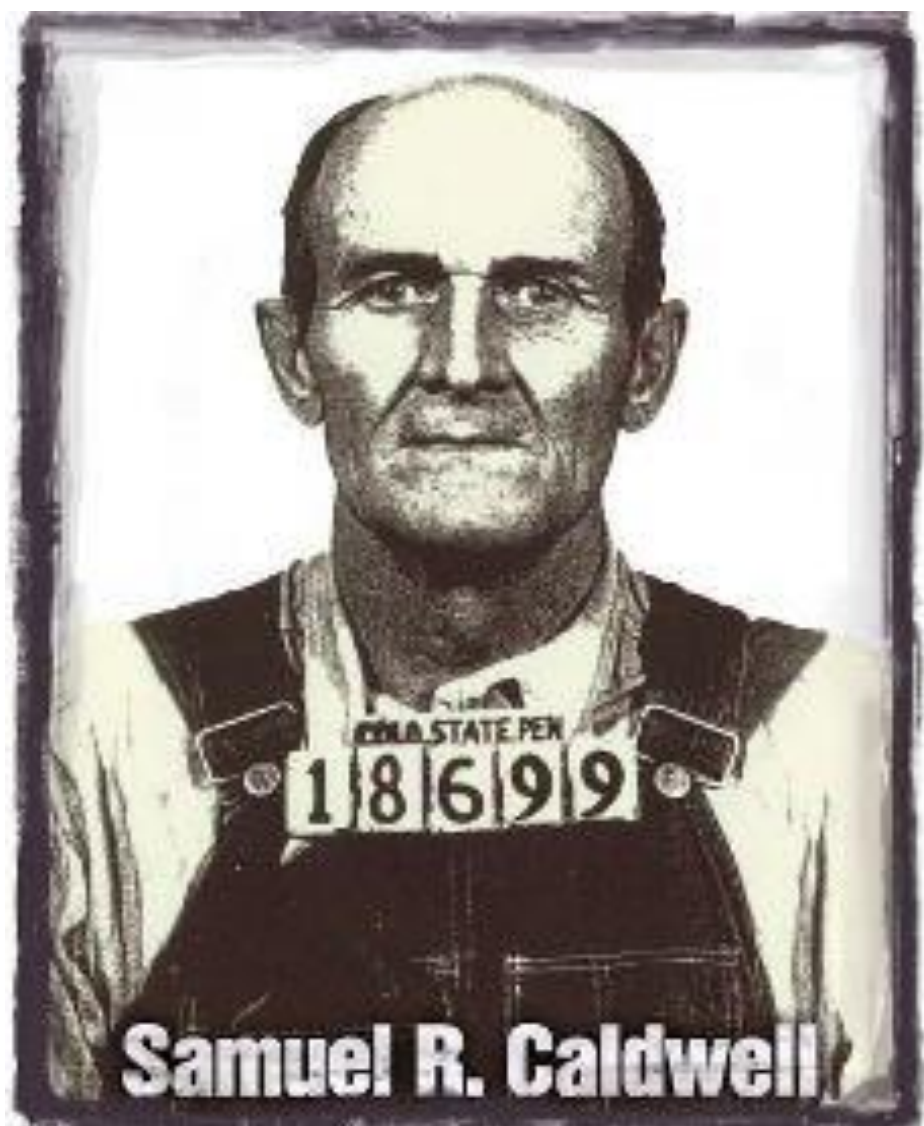




Imposed a tax on the sale of cannabis, hemp, or marijuana.

Required any person who sells, deals in, dispenses, or gives away to register with the Internal Revenue Service and pay a special occupational tax.





**Samuel R. Caldwell**

THE  
PHARMACOPŒIA  
OF THE  
UNITED STATES OF AMERICA  
(THE UNITED STATES PHARMACOPŒIA)

TWELFTH REVISION  
(U. S. P. XII)

---

BY AUTHORITY OF THE  
UNITED STATES PHARMACOPŒIAL CONVENTION  
MEETING AT WASHINGTON, D. C., MAY 14 AND 15, 1940

---

PREPARED BY THE COMMITTEE OF REVISION AND  
PUBLISHED BY THE BOARD OF TRUSTEES

OFFICIAL FROM NOVEMBER 1, 1942

ELECTROTYPED, PRINTED AND DISTRIBUTED BY  
MACK PRINTING COMPANY  
EASTON, PA.



# 1947

Vermont adopts the Uniform Narcotic Drug Act

Violations of the Act were subject to a mandatory sentence of imprisonment of one to five years



The 1950s saw adoption of the “gateway” theory and increasing criminal penalties and mandatory minimums with The Boggs Act (1951) and The Narcotics Control Act (1956)

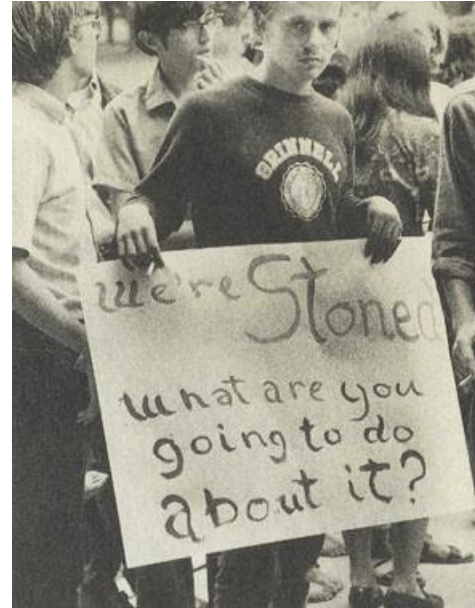


# The Sixties

Collapse of the  
consensus that  
use = abuse

Associated with  
campus life, new  
socioeconomic  
brackets

A time of challenging  
social norms (civil  
rights, anti-war,  
ecology movement)



# Reduction of penalties in the States 1967-1973



- In 1967, Vermont drops simple possession to a minor misdemeanor, 6 months
- By 1972, only 7 states still permitted prosecution of simple possession as a felony

# The Controlled Substances Act of 1970

Created five schedules (classifications) with varying qualifications for a substance to be included in each

Marijuana is “temporarily” designated as a Schedule I Drug, meaning it has a high potential for abuse and no medicinal value

Creates the National Commission on Marijuana and Drug Abuse (Shafer Commission)





## **1971 Nixon declares war on drugs**

“America's public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.”

# “Marihuana, A Signal of Misunderstanding” a.k.a. the Shafer Report - 1972

[T]he criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use... It implies an overwhelming indictment of the behavior which we believe is not appropriate. The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance... Therefore, the Commission recommends ... [that the] possession of marijuana for personal use no longer be an offense, [and that the] casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration, no longer be an offense.



# Response to the Shafer Report

## Federal

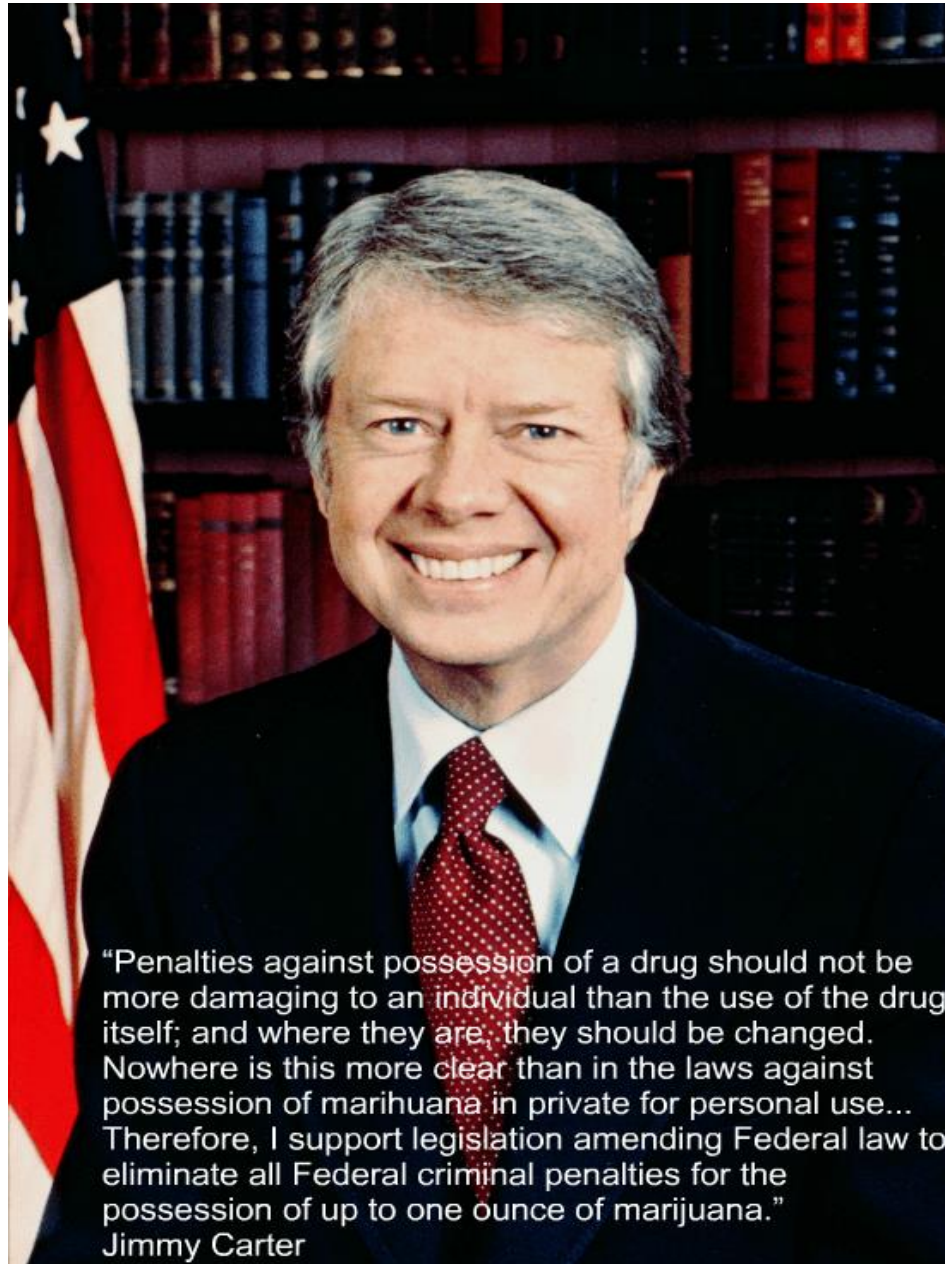
Nixon denounced the Commission and double-downed on his “war” on marijuana.

Congressional hearings in 1974; studied by subcommittees; no formal action.

## The States

Eleven states decriminalized possession of an ounce or less between 1973 and 1977 - AK, CA, CO, ME, MN, MS, NE, NY, NC, OH, OR.



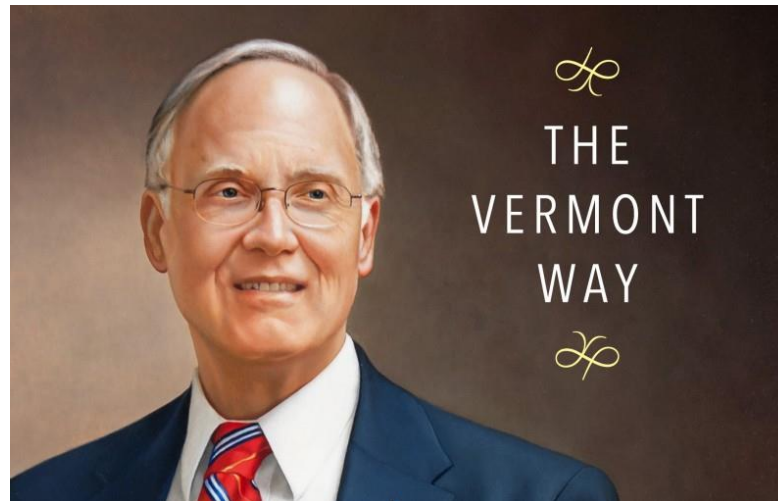


“Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself; and where they are, they should be changed. Nowhere is this more clear than in the laws against possession of marihuana in private for personal use... Therefore, I support legislation amending Federal law to eliminate all Federal criminal penalties for the possession of up to one ounce of marijuana.”  
Jimmy Carter

# Vermont Effort to Decriminalize in 1978

H.669

“The legislature finds that arrests, criminal prosecutions and penalties are inappropriate for people who possess small quantities of marijuana for personal use...The legislature does not encourage or condone the recreational use of marijuana or any other drug. Rather the purpose of this act is to ensure that the many people of Vermont who [use marijuana] are not subject to unduly harsh sanctions”



# Compassionate Investigational New Drug Program

1978

- Robert Randall uses medical necessity defense to charges of growing cannabis
- Federal court finds “medical prohibition not well founded.”
- Settlement in *Randall v U.S.* became basis for Compassionate INDP
- Federal government provided marijuana to up to 30 patients
- Curtailed in 1992 by Bush Sr.



# Medical Cannabis Begins to Gain Traction



- The Vermont Cannabis Therapeutic Research Program (1981) established within the Dept. of Health.
- Permits physicians to prescribe cannabis for treating cancer patients and other medical uses permitted by rule.
- Designates the Dept as the sole distributor of cannabis for VT physicians under the program.
- Distribution directly to a patient may take place only pursuant to the instructions of a physician.



## **1980s – Just Say “No”**

Vermont increases criminal penalties for cannabis possession, dispensing , and sale

# 1990s-2000s

## Medical Cannabis is Back

- 1996 – California becomes the first state to permit medical use (ballot initiative)
- 2001 – VT House passes a bill establishing a framework for possession and cultivation by patients with debilitating medical condition
- Dies in Senate Committee on Judiciary
- “Medical Marijuana Study Committee” created to examine the issue and how VT might implement a program
- The Committee reports favorably on the use of cannabis for medicinal purposes
- 2004 – Vermont becomes the 9<sup>th</sup> state to approve medical cannabis by adopting “An act relating to marijuana use by persons with severe illness” which establishes a registry within the Department of Public Safety for patients and their caregivers who are permitted to possess and cultivate cannabis





## **Decriminalization in Vermont (2013)**

Possession of an ounce or less by a person 21 years or older is subject to a civil penalty similar to a traffic ticket



2015

S.95, An act relating to the regulation and taxation of marijuana

2016

S.241, An act relating to personal possession and cultivation of cannabis and regulation of commercial cannabis establishments

# Federalism

## National

- Declare war
- Maintain armed forces
- Regulate interstate and foreign trade
- Admit new states
- Establish post offices
- Set standard weights and measures
- Coin money
- Establish foreign policy
- Make all laws necessary and proper for carrying out delegated powers

## Shared

- Maintain law and order
- Levy taxes
- Borrow money
- Charter banks
- Establish courts
- Provide for public welfare

## State

- Establish and maintain schools
- Establish local governments
- Regulate business within the state
- Make marriage laws
- Provide for public safety
- Assume other powers not delegated to the national government or prohibited to the states

# Federal Preemption

- The Supremacy Clause states that the Constitution and the laws of the United States shall be the supreme law of the land. As a result, if federal and state law are in conflict, the state law is generally preempted and considered void.
- Types of preemption
  - Express
  - Implied
    - Field preemption
      - Pervasive federal framework
      - Dominant federal interest
    - Conflict preemption
      - Impossibility
      - Obstacle

“No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.”

21 U.S.C. §903

# CSA

- Scheduling may be changed by Congress, through rulemaking by the DEA or HHS, or by petition. In August, 2016 the DEA declined to reschedule marijuana, but will allow more research by licensed universities.
- Civil and criminal penalties are available for anyone who manufactures, distributes, imports, or possesses controlled substances in violation of the CSA (both “regulatory” offenses as well as illicit drug trafficking and possession.)
- Possession of marijuana generally constitutes a misdemeanor subject to up to one year imprisonment and a minimum fine of \$1,000, with penalties increasing for subsequent offenses. Penalties for cultivation, distribution, or possession with intent to distribute range from 5 years to life.

# CSA cont...

- The act has robust forfeiture provisions and property associated with an offense may be confiscated with or without an accompanying criminal charge.
- The civil forfeiture provisions provide a less labor-intensive option for the DOJ to disrupt the operation of marijuana dispensaries and production facilities and this strategy has been used with respect to medical dispensaries in other states.

# Department of Justice Memos

- October, 2009; Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Ogden memo)
- June, 2011; Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (Cole I)
- August, 2013; Guidance Regarding Marijuana Enforcement (Cole II)
- February, 2014; Guidance Regarding Marijuana-Related Financial Crimes (Cole III)
- October, 2014; Policy Statement Regarding Marijuana Issues in Indian Country (Wilkinson memo)

“In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong effective regulatory and enforcement systems to control cultivation, distribution, sale and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten [federal priorities] . . .”

*Deputy Attorney General James M. Cole,  
the U.S. Department of Justice*



# Federal Priorities as Identified by Cole II

- Preventing distribution of marijuana to minors
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels
- Preventing diversion of marijuana from states where it is illegal under state law in some for to other states
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana
- Preventing drugged driving and exacerbation of other adverse public health consequences associated with marijuana use
- Preventing the growing of marijuana on public lands and the attendant public safety dangers posed by marijuana production on public lands
- Preventing marijuana possession or use on federal property

“Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.”

*Deputy Attorney General James M. Cole,  
the U.S. Department of Justice*

