

# THE NEW DUTCH AND GERMAN DRUG LAWS: SOCIAL AND POLITICAL CONDITIONS FOR CRIMINALIZATION AND DECRIMINALIZATION

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The "drug wave" of the late 1960s was widely perceived as a threat to the legitimacy of normative expectations in Dutch and German society. Although the overwhelming reaction of public opinion to drug users in both countries was hostile and punitive, the German legislature passed even more repressive laws whereas the Dutch legislature adapted the normative system to the use of both "soft" and "hard" drugs. Although in each instance the initiative for legal change came from the political and moral "progressives," the conservative "moral center" retained a veto power. Why it used this veto power in Germany but actively supported the reform bill in Holland is explained in terms of the macrostructure of each society.

## I. INTRODUCTION

The relation between social structure and change in substantive criminal law has attracted renewed interest among criminologists and social historians in Germany (Feest *et al.*, 1977; Lüderssen and Sack, 1975; Blasius, 1976). In this paper, processes of criminalizing and decriminalizing drug use in Germany and the Netherlands are compared with regard to the political patterns followed, the actions taken by organized social groups, and the underlying structural variables influencing the content and direction of legal change. My central concern is the conditions for successful decriminalization processes.

From a functional perspective, the norms of a society can be seen as a specific subsystem incorporating basic expectations of that society about its members; the criminal law can be viewed as its moral core. Because of their normative quality these generalized expectations are for the most part impervious to disappointments: even if the norm is frequently broken and sanctions are rarely imposed, the expectation can remain largely unscathed (Luhmann, 1964:56). Sometimes, however, noncompliance with a norm is perceived as a threat to the identity of the social system (see Erikson, 1966:68). This is most likely to occur in a context of structural strain (Smelser, 1962:15-17, 290) generating violations of normative expectations that do not simply attempt to evade the law on a particular occasion but rather question the legitimacy of the norm itself.

The drug users of the late 1960s, unlike most criminals (thieves, for instance), were not just trying to dodge the effects of the law but were attacking the norm as such.

Where deviance is directed against the very existence of a norm, public awareness of the inefficacy of law can endanger both the moral authority of those social groups or classes whose beliefs it symbolizes and the political authority of the agencies of social control. The issue becomes a central concern for social and political groups who are threatened by delegitimization (see Popitz, 1968). A legal system can adapt to such a challenge in two ways. One is to restore confidence in the existing normative order through ritual affirmations of the norm by means of increased penalties, purges, and witch-hunts that eliminate the hard-core deviant while forcing others to conform to the conventional normative order. The second possibility is to accommodate the normative order to the challenging behavior. Such an adaptation requires the system to adjust its moral boundaries to incorporate the hitherto deviant behavior into the realm of normality while the behavior itself remains unchanged, at least as far as formal sanctions are concerned (see Lüderssen, 1972:3ff). All legal change falls in one or the other category.

Criminalization can be defined as the creation of new moral boundaries within a social system or the affirmation of existing ones, in an attempt to assimilate normative challenges. Decriminalization can be defined as the adjustment of moral boundaries to social change or, to retain the vocabulary borrowed from Piaget (1955:350-56), as normative accommodation. The Federal Republic of Germany (hereafter referred to as Germany) and the Netherlands both witnessed a sudden increase in the use of cannabis (and later heroin) among youths, which became known as the "drug wave." Although Holland fell prey to this innovative deviance somewhat earlier than did Germany, conditions of diffusion and public reaction were similar in most respects: representative surveys conducted in both countries showed attitudes toward all illegal psychoactive drugs that were equally puritan, and strong public emotions in favor of a punitive legal response to cannabis use.<sup>1</sup> Yet despite

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1. The drug wave started somewhat earlier in Holland than it did in Germany. Dutch figures for 1970 and German figures for 1971 show the similarity in levels of initial hostility. In the Netherlands, a majority advocated the idea that drug use "should be punished," 45 percent wanted "severe punishment," 5 percent wanted treatment instead, and 4 percent thought that no intervention would be best. In Germany, 73 percent of a representative sample were in favor of tougher measures against drug use and drug users, whereas 22 percent were of the opinion that everybody should make

these similarities legislative responses are strikingly different: the normative system of the Netherlands accommodated to cannabis (and partly even to heroin) use but the German system reaffirmed existing moral boundaries by increasing prescribed penalties. A comparison of the two, therefore, should generate some hypotheses about the conditions underlying the legislative process.

The Dutch legislature amended the Opium Law in 1976 to decriminalize consumption of both hard and soft drugs while significantly increasing the sanctions for large-scale dealing in illicit hard drugs.<sup>2</sup> On the other hand, the German legislature amended the Opium Law in 1971 to increase the penalties for soft and hard drug users and dealers.<sup>3</sup> Whereas Dutch policy provides for the legal administration of methadone, and in some cases heroin, to heroin addicts German policy gives freedom from drugs the highest priority, subjecting doctors who supply addicts with methadone or other substitutes to prosecu-

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his own decision (Noelle-Neumann, 1971; Nederlandse Stichting voor Statistiek, 1970). For the epidemiology of drug use in both countries see Cohen (1975), Jasinsky (1973), Kreuzer (1975).

2. The prior law of 1928 contained maximum penalties of 4 years for consumers and dealers of soft and hard drugs alike. The new "Opiumwet" (*Staatsblad*, 1976:424), in effect since November 1, 1976, increased sanctions for national trafficking in hard drugs to 8 and international trafficking to 12 years. Sanctions for the same offenses involving cannabis remained at 4 years for international trafficking, and were lowered to 2 years for national trafficking. Buying, selling, trafficking in and possessing hard drugs for personal use only are defined as a felony with a maximum penalty of 1 year imprisonment, but penal sanctions are only used to induce addicts to accept treatment and help. Penal sanctions are not, in themselves, thought to be a useful instrument for treating addicts. Cannabis use is formally defined as a misdemeanor punished by a fine of 500 guilders or detention up to one month. This sanction exists only on paper, however, since nonenforcement of this article was officially intended from the start. The political sponsors of the bill did not expect an intensification of prosecution to result from the downgrading of punishment, as occurred in the United States (Gallihier *et al.*, 1977:75). Rather, the misdemeanor solution was employed to meet the formal international obligations of the Single Convention on Narcotic Drugs (see Netherlands, Ministry of Public Health, 1977:3). For more information on the old and new law, see generally Cohen (1976), Meijring (1974).
3. The German "Betäubungsmittelgesetz" (*Bundesgesetzblatt*, 1972:I, 10, in effect since December 25, 1971, does not distinguish between "hard" and "soft" drugs on the ground that cannabis may "eventually prove even more harmful to the community than 'hard' drugs" (Deutscher Bundestag, 1971b:15). The law prescribes a maximum of 3 years for "normal" cases and 10 for "especially severe cases." The very broad definition of the latter permits many a tourist engaging in small-scale smuggling or a student who let his friend try a joint at a party to be labelled a dangerous criminal. Of the 35,000 drug arrests a year, 20 to 25 percent are charged with "dealing and smuggling." On the other hand, the new law authorizes the court to refrain from sentencing offenders found guilty of possessing or buying a small quantity of drugs for personal use only. This loophole (Art. 11, § 5) allows middle class youth who experiment with drugs to avoid acquiring a criminal record, since the statute gives the judge no criteria to constrain his discretion.

tion, fines, and imprisonment. Felony charges for possession of marijuana or other drugs are common in Germany, whereas punitive sanctions for consumers only exist on paper in the Netherlands (Ministry of Public Health, 1977:3). The difference is experienced most acutely by Dutch youth who are arrested and severely punished in Germany for acts they are, de facto, free to engage in just a few miles to the west in their own country. In fact, it has been reported (31 *Wirtschaftswoche*, 18 February 1977, 108) that German courts like to hand out tough sentences to Dutch citizens reasoning that they must aid the Dutch people since their authorities are evidently unable to meet the obligation of the state to do so.

The criminological literature offers several explanations for these variations in legal response. The relativity of crime is constantly reaffirmed; the fact that what is considered proper in one society is a heinous crime in another has best been illustrated by Sutherland and Cressey (1974:15-16). There has been considerable research on the impact of economic development on crime, law, and sanctions by scholars such as Chambliss (1969), Hall (1952), and Rusche and Kirchheimer (1939). Others have pointed to the importance of governmental organizations (Becker, 1963; Dickson, 1968) and of norm-oriented collective behavior, often aroused by issues such as pornography (Zurcher *et al.*, 1973). Finally, it is important to know the mechanisms of legislative politics (Heinz *et al.*, 1969; Steiner and Gove, 1960) and consider the attitudes and idiosyncrasies of legislators (Blum and Funkhouser, 1965).

Yet despite all this research, progress toward a general theory of the emergence of criminal laws has been modest. Much ado has been made of the debate between consensus and conflict models, the former explaining legal change as a consequence of changing social consensus on norms, whereas the latter proclaims that law is both an expression of the interest of and a means of domination by a powerful group or class (see Quinney, 1969; Carson, 1974; Turk, 1976). Although the conflict perspective seems to provide a more fertile framework for analysis, the consensus model also has its merits as long as it is not seen as an adequate "theory" by itself but merely as one important aspect of legal change. Even for conflict theorists consensus plays an important part in the legitimation of interests and domination, which can be seen as the process by which rule is justified to the ruled and domination thereby transformed into (or based upon) differing degrees of consensus. This view, which refuses to see conflict and consensus as mutu-

ally exclusive “theories,” is supported by most case studies on drug (Lindesmith, 1965; Bean, 1974) and other legislation (Sutherland, 1969). Not surprisingly, Galliher, McCartney and Baum (1977:81) had to borrow from both the conflict and consensus models to explain the success of the effort to decriminalize marijuana in Nebraska.

It therefore seems more fruitful to examine the relationships between social structure variables and historical patterns (such as the trend away from punishment and toward treatment and its economic and cultural foundations) as well as the roles of organized social groups (such as the strategies pursued by conservative and liberal parties to retain or regain power, and changes in their attitudes). There has recently been renewed interest in the influence of macrosocial variables on the criminal law (Blasius, 1976; Feest *et al.*, 1977). As Sutherland has shown, this relationship is “vague and loose” at best, requiring consideration of the intermediate sphere between macrosocial trends and their concretion in politics (Sutherland, 1969:96). How this can be done has been shown by Zurcher and his associates (1973), who borrowed the “value-added framework” invented by Smelser (1962) for the analysis of norm-oriented movements. His framework is appropriate for describing and explaining criminal laws that emerge in response to strong public feelings and interests, but because it is derived from a theory of collective behavior it is incapable of analyzing instances of criminalization or decriminalization that occur without popular support.

These cases of lawmaking “from above” are by no means rare, as demonstrated by the decriminalization of marijuana. The vast majority of bills decriminalizing marijuana in the United States were passed in conservative, rural, Protestant states; even if the Nebraska bill was passed for reasons of efficiency, its effect in decriminalizing marijuana had to be carefully concealed from the eyes of a punitive public (Galliher *et al.*, 1977:81). In Holland, a majority has long favored stricter punishment for users of marijuana and other drugs, and an opinion poll taken today would probably show that they still do:

I think that one would find today a rather large majority still who would be opposed to liberalization of cannabis. I think there would be flat 65 percent against it.<sup>4</sup>

4. Field interview with Dr. Samsom, Ministry of Public Health, The Hague, August 11, 1977. In many respects, the legal systems of Western societies are more progressive than they would be if public opinion were translated directly into law. In Germany, for instance, popular opinion supports the introduction of the death penalty (see Noelle-Neumann, 1977:144), and would never have favored decriminalizing homosexuality. In both cases

Criminal legislation "from above" is directed not by public opinion but by the powerful. In legal democratic societies the powerful are organized social groups and the bureaucratic apparatus of government. It is their perception that determines where legislative action is needed. When they articulate their legislative interests the articulation alone is sufficient to create a political vacuum or a "policy deficit,"<sup>5</sup> which every government must fill with some activity if it has not completely lost interest in remaining in power. These groups exercise a high degree of control over the political process. They are seldom progressive, and often morally conservative. But if public opinion is punitive and repressive, the morally conservative masters of policy deficits are the only ones who can successfully decriminalize. And the remarkable thing is that they do.

This is not to say that a few elitist groups are free to do whatever they want. But the variable upon which their actions depend is certainly not public opinion. Indeed, hardly any indicator of the direction of legal change is as unreliable as public opinion. States generally regarded as "liberal" have passed extremely "tough" laws (Cagliostro, 1974), and others with solidly conservative publics have "liberally" reduced penalties. The commonplace assumption that a given society has liberal laws because it is inhabited by a liberal public therefore seems unfounded. Decriminalization normally occurs in spite of a punitive and repressive public, and not because it is welcomed by a community of liberal eggheads. My point is that the key to decriminalization is actually held by the moral conservatives, the "moral center" of society. Even if the initiative for decriminalization is taken by liberals, it will be the moral center that determines its success. Yet the powerful organizations of the moral conservatives are still not entirely free in choosing the direction of legal change. The decision to criminalize or decriminalize is dependent on the activities of organized social groups and the position of the government officials. Both of the latter are influenced by the political culture in which they are embedded, which in turn is a function of social structure. Because these relationships are not mechanical,

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the law is more liberal; indeed, practically all legal reforms since the Weimar Republic have been enacted in the face of hostile public opinion.

5. By analogy to the concept of "relative deprivation" (if a little farfetched) we will define a policy deficit as an ensemble of circumstances perceived and articulated as such by the bureaucratic institutions of the state, organized interest groups, or the public at large. If the public remains inactive (as it generally does in controversies over decriminalization) and decriminalization still occurs, we naturally turn to bureaucracy and interest groups as the remaining sources of legislative action.



but loose and vague, their explication cannot result in a deterministic model. We thus must be content with outlining a few conditions for successful criminalization and decriminalization.

## II. A POLITICAL HISTORY OF THE GERMAN REFORM OF 1971: LINEAR CRIMINALIZATION

Small groups favoring liberalization of the drug policy have been active in both Germany and Holland. In Germany, however, the movement encountered rigid opposition from all potential political sponsors and never got off the ground. Although the literary works of Charles Baudelaire, Thomas De Quincey, Aldous Huxley, and Timothy Leary had been translated, and had “turned on” quite a number of intellectual journalists, anarchists, students, and scientists, neither the publications nor their adherents had any influence on the law-making process. They did stimulate public debate, inspired some liberal journalists to take decriminalization seriously and even recommend it (e.g., Leonhardt, 1970), and attracted the sympathy of individual members of the Liberal and Social Democratic parties, but neither of the latter groups—the natural allies of such a reform—would endorse it. Without any sponsor for these more radical views, the German “reform” of the Opium Law was hardly more than a linear continuation of the conventional politics of drug prohibition.

Although the Social Democrats and the liberals formed a coalition government, the key to their stand against legalizing cannabis lies with the strong Christian Democratic opposition. The Christian Democrats (CDU/CSU) had ruled the country during the entire reconstruction period, from 1949 through 1966. That year, they had been forced to take in the Social Democrats (SPD) as a junior cabinet partner, one that was to oust them completely after the 1969 elections, when the SPD formed the government with the Liberal Party (FDP). With almost half of the popular vote behind it, the CDU/CSU used every chance to topple the government even before the next general election. Four important state elections scheduled for 1970 seemed to provide a good testing ground for the stability of the new socialist-liberal government. There appeared to be a great deal of public fear about and hostility toward drug use that could be mobilized and directed against a “liberal” government that just sat there and looked on while the youth of the country was being corrupted by foreign criminals and noxious weeds. The moral “liberals” could do little to counteract this political strategy. Had they taken a strong stand in favor of liberaliza-

tion, the dramatistic strategy of the opposition would instantly have succeeded, in view of the repressive nature of public opinion. To do nothing in the face of the opposition's credible proclamation of a policy deficit would also have led to defeat. The "liberals" therefore thought it wise to accept the definition of the situation advanced by the "conservatives" and outdo the opposition by simply passing a "tough" law.

To keep, or regain, the trust of conservative voters who gave the new government its fragile majority, the SPD proclaimed an emergency situation in drug use early in 1970. Laws are relatively easy to make and yet have enormous symbolic impact on a public which sees its central concerns publicly proclaimed. In the drawers of the Ministry of the Interior the government found a draft reform bill providing for stricter penalties. When the Ministry of Health had polished this bill and adapted it slightly to present needs, the government presented it as evidence of an ability to cope with the challenge of hostile and deviant life styles. As a consequence, the government's official commentary on the proposed law was rather sensational, portraying it as an instrument urgently needed to protect individual life, liberty, and existence—even the basic functions of society itself (Deutscher Bundestag, 1971a:5). Political pressure from the moral conservatives proved so strong that even postponing action until a scientific inquiry could be made would have been regarded as a weakness. Therefore no commission was appointed. Nor were there attempts to learn from the findings of government commissions on marijuana in other countries. There were no hearings, and no organized process of information gathering. Some legislators met privately with clergymen, social workers, and friends to discuss the dangers of cannabis. Others, like the health expert of the SPD, explained that they did not trust foreign reports, contending that personal experience offered more reliable evidence: "There are many pictures, photo series, from Algier, Morocco, where you can see the physical decay after years of [cannabis] use."<sup>6</sup> This expert had also met Rudolf Gelpke, the renowned orientalist and advocate of decriminalization, at a television debate. After the debate, the expert refused an offer to try cannabis in the hotel lounge with Gelpke—a wise decision, the expert later said, because he insisted, Gelpke shortly thereafter lost weight, turned yellow, fell into total decay, and died the

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6. Interview with the Health Expert of the Social Democratic Party, Bonn, May 3, 1977.



tragic death of a cannabis addict: "His end must have been terrible."<sup>7</sup>

The government's bill confused the dangers of hard and soft drugs, proclaiming that the difference was immaterial since soft drugs would lead to hard drugs sooner or later. Criminalization of cannabis users was defended on the ground that it was necessary to combat "people who possess no conscience and who profit from other people's misery" (Deutscher Bundestag, 1971a:5). Drug dealers, it was said, were organized like foreign intelligence services (and paid by them). Children were being used at the lowest level of distribution: "Normally, they are already addicted and are being paid with so-called 'stuff,' so they are willing instruments in the hands of the gang leaders" (*ibid*). There are a few legislators who questioned the wisdom of the proposed policy during the committee sessions, warning that further repression of cannabis users would contribute to the development of a drug subculture and inhibit access to official aid and therapeutic institutions. But they could not resist the arguments of ministry officials, who asserted that cannabis involved a terrible risk for the structure of society itself (Deutscher Bundestag, 1971b).

Despite all this, the true moral conservatives held the better cards. The opposition simply copied the government's draft bill, adding even tougher sentences and a few vague clauses, and presented this as the only way to deal effectively with the drug scene (Deutscher Bundestag, 1970). Of course, the opposition draft did not become law, but it did advance the political interests of the conservatives. For even though the legislature adopted the government proposal, the public did not seem particularly impressed by what it correctly perceived as an imitative law-and-order campaign. Asked in 1972 which party they trusted most to solve the drug problem, a sizable majority of Germans voiced their conviction that only the opposition would be able to do so (Noelle-Neumann, 1972).

### III. A POLITICAL HISTORY OF THE DUTCH REFORM OF 1976: DIGRESSIVE PROGRESSION

Dutch groups favoring decriminalization were more fortunate than their German counterparts for they found a political sponsor in the Socialist Party (PvdA), or at least in its shadow Minister of Health, Mrs. Vorrink.<sup>8</sup> This was not due to their

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7. *Ibid*.

8. Both the Communist and the Pacifist parties wanted even greater decriminalization, but their status as small opposition parties made their influence negligible.

numerical strength or organization, since they, too, belonged to communes, unorganized networks, and intellectual groups,<sup>9</sup> but to a political situation that allowed the progressives to take the offensive and not get caught trying to outdo the moral conservatives. As early as 1968, a conservative State Secretary of Health (the highest ranking civil servant in the department) appointed a committee to investigate better ways of detecting and approaching users and dealers of illegal drugs and instructed it to publicize the dangers of drug use (Baan, 1972:vii). In 1970, the elderly head of the working group was succeeded by Mr. H.P.A. Baan, a brilliant and energetic neurologist who favored legal reform. He enlarged the working group to include several sociologists knowledgeable about the Dutch drug scene.

When the working group delivered its report to the government in 1972, its recommendations diverged considerably from the original intentions of the conservative State Secretary. Although he still believed that cannabis was even more dangerous than other drugs because of its stepping-stone effect, the report concluded that to

make the overall policy pursued by the government credible, one would have to make a distinction between drugs which carry an unacceptable risk in the social sense and those whose risks are doubtful or perhaps acceptable.<sup>10</sup>

The policies advocated by the report—classification of cannabis as a misdemeanor, imposition of sanctions upon addicts only to induce them to undergo treatment, construction of a network of services—ultimately became law, but its chances of success at the time of publication were minimal.

With the Socialist victory in late 1972, prospects for implementation improved. The new Minister of Health, Mrs. Vorrink, had chosen abortion and drug law reforms as her top priorities. But the new government was based on a coalition that included the (puritan) Antirevolutionary Party (AR) and the Catholic People's Party (KVP) of Mr. A.A.M. van Agt, later Prime Minister. Both coalition partners, and even the Calvinist wing of the Socialist Party (PvdA) were initially opposed to decriminalization, and nobody knew if they could be persuaded to change their minds. Nevertheless, the moral conservatives did not seek to blame the government (or the Socialists) for causing the drug problem by following too lenient a policy, and there was no attempt by any major political force to mobilize

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9. Some communities did speak before the legislative special committee on drug policy, notably the communities "We smoke hashish, why not" and "I Ting" of Amsterdam.

10. Baan, 1972:64. Also interview with Dr. Samson, Aug. 11, 1977, The Hague.

public opinion. In general politicization of the issue was lower in the Netherlands than in Germany. As the Socialists were not politically threatened with a conservative backlash, they could afford to take a progressive stand on the issue without risking too much voter support. This low level of politicization also prevented the “moral center” of Dutch society from using the issue as a self-serving sociopolitical symbol.

Nevertheless, until the new law was passed in 1976, the moral conservatives never lost their veto power, and some prominent political figures tried to exercise it. For instance, Ms. E. Veder-Smit, chairperson of the special legislative committee on drug policy and member of the antireform Liberal Party (VVD), sought to stiffen conservative opposition to the bill by means of a journey to Sweden in 1973. The committee was presented with the case against liberalizing the law on amphetamines and cannabis endorsed by the Swedish government, which had adopted a strict prohibitionist policy on drugs. The committee chair, an experienced legislator and moral conservative, knew perfectly well that arguments carry less weight than party interests, but stated:

I was opposed to the greater part of the draft law, and I hoped that colleagues in Parliament who were hesitating by intuition against that law could get arguments for their feelings.<sup>11</sup>

But in the end this tactic failed. Members of Mr. van Agt’s KVP, its principal target, were moved by the argument but ultimately voted for the reform bill, thereby saving it from failure. Expressing her disappointment with the lenient position eventually taken by the KVP, Ms. Veder-Smit commented:

The Christian Democrats [KVP] showed what they always show in Dutch politics . . . they say they are impressed, and that they will think it over. And then they decide on the basis of other arguments.<sup>12</sup>

The committee was quite conscientious, gathering information from police and scientific sources. Experts from the World Health Organization were invited, and two professors of pharmacology testified on the dangerousness of drugs. The Amsterdam police stated their case, as did an American official, Mr. Robert L. Dupont, head of the Narcotics Special Action Office for Drug Abuse Policy, then located at the White House. Later, the committee held a public hearing and many individuals and groups spoke, including the communities “I Ting” and “We smoke hashish, why not” from Amsterdam, who pleaded the case for radical decriminalization.

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11. Interview with Ms. E. Veder-Smit, Chairperson of the Special Commission on Drug Policy (Bisondere Commissie voor het Drugbeleid), Sept. 29, 1977, The Hague.

12. *Ibid.*

Compared with the German approach, this legislative process allowed a high level of scientific involvement. The repeated arguments by scientists for differentiating between drugs entailing risks that were acceptable or uncertain and others whose risks were definitely unacceptable made it more difficult for opponents of the bill to argue their case. But scientific arguments clearly were not the decisive factor in converting the conservatives. More important was the fact that the moral conservatives were members of a coalition that favored change and, it would be argued, were simply interested in preserving their position in government. Yet though this may have been a consideration, it also was not determinative: shortly before, van Agt's KVP and other elements of the moral center had killed the abortion reform bill, another "pet" project of the socialist Minister of Health, and had no regrets about it.

The real reasons, it seems, were changes in the drug scene. It was well known to the conservatives that only one out of every 140 marijuana users was apprehended by the police in 1970, that law enforcement had become completely incapable of administering the drug laws even before organized crime invaded the Netherlands with large-scale heroin transports after the killing of the French Connection in 1972. To cope with hard drugs the police had to concentrate all their resources on this problem. As Minister of Justice in the coalition government with the Socialists, Mr. van Agt had learned for himself the impossibility of prosecuting both kinds of drug trade with any chance of success.

But face saving is more important in politics than instrumental action, and to translate this insight into the politics of decriminalization is sometimes difficult for moral conservatives because of their constituents. In Nebraska, a conservative sponsor of the misdemeanor bill introduced "tough" bills immediately before sneaking in a decriminalization bill, in order that his conservative image might be left unscarred by the stigma of liberalism (Galliher *et al.*, 1977:78). The same diversionary tactics were necessary in Dutch politics, where decriminalization was linked with a trebling of penalties for hard drug trafficking, and the promise of stricter prosecution of dealers. The bill's chances were further improved when Mrs. H. van Leeuwen of the staunchly conservative Antirevolutionary Party (AR) publicly declared that it was the Christian tradition to help addicts rather than punish them. As a health expert of the Socialist Party remarked, this statement legiti-

mated the change of opinion within the ranks of the Catholic People's Party (KVP) of Mr. van Agt:

It was a brand new idea of the Christians. The attitude of Hannie van Leeuwen opened a very frank debate of the problems. The Christian Historical Union had propagated very reactionary views. And then the Antirevolutionaries came with very progressive ones. . . . The Catholic People's Party [KVP] couldn't do much else, after the newspapers had written about the very Christian and moral attitude of Hannie van Leeuwen. The KVP really didn't have much of a choice.<sup>13</sup>

To support a piece of progressive legislation and still appear to remain conservative, the KVP endorsed a few clauses that possessed great symbolic value. It supported an amendment proposed by the Liberal party (VVD) aimed at curbing the activities of the son of the Socialist Minister of Health, who read the whole list of black market cannabis prices on the nationwide radio station, Hilversum 1, every Saturday at noon. This broadcast so enraged the anticannabis factions that they introduced article 3b into the draft bill imposing a four-year prison sentence for public advertisement of and propaganda for drugs.<sup>14</sup> Having demonstrated its impeccable conservative credentials, the Catholic People's party could afford to vote for the bill in the Second Chamber of Parliament, and even save it from defeat in the First.<sup>15</sup>

#### IV. SOME DETERMINANTS OF THE MAKING OF A SYMBOLIC ISSUE

The preceding case histories have demonstrated that conservatives hold the key to decriminalization when the public itself is generally conservative, since it lies in their hands to mobilize public opinion and trigger a legislative or electoral defeat of the moral liberals. Moral conservatives are free to decriminalize when the existing laws are ineffective, and diversionary strategies allow them to fulfill symbolically the conservative expectations of the public. But conservative support for decriminalization depends even more strongly on a quiescent state bureaucracy and on the willingness of organized social interest groups to refrain from demanding more punitive measures.

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13. Interview with the Scientific Assistant of the Socialist Party, Nov. 11, 1977, The Hague.
  14. This article did not have any instrumental effect. Neither the Minister of Justice nor the prosecutors found any element of drug propaganda in the radio broadcasts. One can still hear him every Saturday on Hilversum Radio.
  15. It was said that van Agt had to apply all sorts of political pressure on antireform minded legislators of his own party since the fate of the bill was insecure until the very last moment.

In Germany, the political voice of the moral center was forced to crusade for punitive measures by the pressure of a powerful medical association and a conservative bureaucratic staff. Soon after the drug wave began, the medical profession came to dominate public debate, issuing most of the expert statements, publications, and comments on the drug situation. Most of those active in the debate belonged to a moral crusade led by Dr. Dietrich Kleiner, a neurologist who became convinced that cannabis was an evil that had to be erased from the face of the earth when his son left home for Nepal to join the hippie movement during the mid-sixties. Dr. Kleiner dedicated himself to organizing symposia, distributing anticannabis pamphlets, and other activities, through all of which he succeeded in creating a consensus within his profession. He founded an information center, sponsored by the government, that sent leaflets to opinion leaders. Under his influence the Federal Medical Association issued a statement proclaiming the dangers of cannabis and denouncing those who engaged in decriminalization initiatives as dangerous individuals who wanted to belittle the dangers (Bundesärztekammer 1970:1767).

The views of doctors and other organized social groups met with strong support among law enforcement staff and organizations, who favored a punitive response to drug use. Law enforcement officers spontaneously retold the old myths about marijuana murders (Becker, 1963:140-43), to the public (Bauer, 1971), to the medical profession, and to government officials responsible for drafting the new narcotics law. Indeed, the staff of the Ministry of Health relied on no other source of information as heavily as it did on telephone conversations with the criminal police headquarters at Wiesbaden.<sup>16</sup> Differences in the size and structure of police organizations in Germany and Holland may well be responsible for the magnitude of the policy deficit articulated by each police organization. Whereas the Dutch police only numbered 25,000 officials, divided into many local police forces and one national force, which belong to different ministries, all German state police forces have a large, common headquarters at their disposal, located at Wiesbaden, which belongs to and significantly affects the federal Ministry of the Interior. Today, the Ministry of the Interior acts more as an advocate for, than a political restraint upon, the vested interests of the police. A measure of the influence of law enforcement in the German legislative process is that the legislature

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16. Interview with the official responsible for the draft law in the Ministry of Health, Bonn, April 4, 1977.



heard no scientific testimony but did listen to police experts. When the latter met with legislators in closed session the only outsider admitted was the producer of a television show.<sup>17</sup>

With powerful police and medical associations rallying moral support for their punitive views it would have been nearly impossible for the political conservatives to fail to dramatize the drug issue as they did. Even the Social Democrats were forced to make some response. As the ruling party, they influenced the mass media in an unprecedented way, spending millions of Deutsche Mark on a partly open, partly covert operation to “destabilize” liberal positions on the drug issue.<sup>18</sup> Scientists were awarded research funds if they seemed likely to come to the desired conclusions, and more than one criminologist sang the tune composed by the interest groups and the agents of social control.<sup>19</sup> Given monolithic response of organized social groups, administrative organizations, moral conservatives, and hard-pressed liberals, including the mass media and scientists, public emotion was bound to be excited. It therefore came as no surprise when a public opinion survey conducted in June 1972 revealed a dramatic intensification of hostility toward drugs and their consumers (see Table 1).

As a result of the popular outrage thus mobilized letters poured into the Ministry of Health at an unprecedented rate, most of them advocating the free distribution of heroin to addicts—not, as might be presumed, to enable them to live an integrated social life, but to get rid of them quickly and save the taxpayers’ money. Others advocated the revival of concentration camps, leading an Under-Secretary of Health to reconsider

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17. This series entertains by offering dramatic reconstructions of unsolved crimes, inviting the public to help in the search. Over the last ten years this monthly special has helped solve several hundred difficult cases and has provoked emotional controversies about its counterproductive side-effects. Its producer, Eduard Zimmerman, has not only grown wealthy as a result but has gained the confidence of law enforcement agencies by denouncing what he considered excessive leniency in certain clauses in the proposed drug bill.
  18. The extensive government campaign cannot be described in full here. Among other things, the government spread rumors that in 1970 there were 60,000 drug addicts in Germany, who would never be able to work for a living (in fact, there were probably about 1,000, most of whom could have lived an integrated life had social reaction been different). Sensational articles were prepared by the ministries, offered to and subsequently printed by several regional and local newspapers with a combined circulation of more than two million; for greater “authenticity” authors’ names were left out or invented. Other tricks were used to destabilize pro-cannabis journalists and newspapers. To get an impression of the magnitude of this intervention, see Scheerer (1979).
  19. For analyses of press coverage, see Zimmermann (1972); Gaedt *et al.* (1976); Wormser (1976). The president of a national conference of criminologists asserted that “the search for paradise leads to the destruction of all relationships, to social chaos, and thus to hell” (Petersohn, 1972:541).

TABLE 1

## RESPONSES TO PUBLIC OPINION SURVEY, JUNE 1972

*As we know, one cannot always choose one's neighbors. But if someone new moves into a neighborhood, one has different feelings toward the newcomer. How would you feel toward each of the following people if they were to become your neighbors?*

<i>Potential Neighbor</i>	<i>Responses</i>		
	I would definitely be opposed	I would be moderately opposed	I would not be opposed at all
Drug Addict	65%	23%	12%
Black Family	13	26	61
Foreign Worker	11	36	53
Family with Feeble-minded Child	9	31	60
Family with Crippled Child	3	14	83
Old Helpless Woman	3%	12%	85%

Source: Noelle-Neumann (1972)

the government's campaign and denounce these attitudes as unacceptable in a humane society and obstructive of any attempt to understand the causes that had led to such massive deviant behavior. (Heinz Westphal, *Verhandlungen des Deutschen Bundestages, 7. Wahlperiode 1972, Stenographische Berichte. 40. Sitzung: 2211*).

In the Netherlands, events took a very different course. Because the organizations that sought to form policy toward drugs were preoccupied with the heroin wave, the potential for any moral crusades was left with the doctors and the churches, which play a critical part in Dutch politics. Some members of each group spoke both for and against liberalization, but the churches were largely neutralized by a militantly progressive wing within the lower strata of the clerical hierarchy.<sup>20</sup> The doctors' association in the Netherlands is less coherently organized than it is in Germany, and therefore less likely to be led into moral crusades by dedicated individuals. Furthermore, the government cleverly involved potential leaders of the medical opposition in the legitimation of official policies by commissioning them to conduct important research—a transparent strategy of neutralization through participation, but no less ef-

20. Interview with the Health Expert of the Socialist Party, Nov. 11, 1977, The Hague.

fective for that.<sup>21</sup> Social control agencies were not forced to launch crusades and seek to manipulate opinion, as they were in Germany. Since even the most articulate groups abstained from identifying any policy deficit, the conservatives could afford not to politicize the issue, and even to favor decriminalization. Devoid of sponsors, initial public hostility toward drug users gradually declined at the same time that it was being whipped up in neighboring Germany.<sup>22</sup>

## V. DISCUSSION

We return to the question whether underlying macrosocial variables explain the avoidance of moral panic in one country and the creation of public hostility towards deviance in the other. The German people are no more and no less likely to engage in moral hysteria than the Dutch, if left to themselves, as public opinion polls showed. But German social structure—with its high degree of cultural, ethnic, and religious homogeneity, and its large, well-organized interest groups possessing institutionalized access to policy-making bodies—is more conducive to mass movements and public rituals of exclusion than is the more complex structure of Dutch society. One can find many successful moral “purges” of incipient deviance in German history and social life. German society is relatively high on formal control and low in its capacity to adapt to emerging social change; in relation to Holland it would certainly have to be classified as a rather “passive” society in Etzioni’s (1968) sense of the term. Unable to produce a new social consensus, social reaction instead excludes dissenting groups from social life.

The Dutch political and cultural scene contains much greater diversity in areas ranging from theory all the way to the differences in hairdos and lifestyles. A prominent Dutch bureaucrat, reflecting on the variables underlying legislative reform, stated:

Looking at the German scene, as we see it, I have personally felt that perhaps there is a difference between a large country and a small one . . . maintaining discipline in large countries is much more difficult than with a small population. Now, in looking at German attitudes, both in the Ministries of Health and that of the Interior, I felt that devi-

21. Interview with Dr. Samson, Ministry of Public Health, August 11, 1977, The Hague.

22. In the fall of 1969, the statement “In my opinion all drugs should be forbidden in the Netherlands” was endorsed by 69 percent and rejected by 20 percent; the following spring the corresponding percentages were 68 and 22. In the fall of 1970, 60 percent favored punishment for drug use and 23 percent rejected it. The percentage of respondents who expressed a desire to try a joint rose from 7 to 11 between the fall of 1969 and the fall of 1970 (see Gadourek and Jessen, 1972).

ant behavior as such, behavior that differs from average behavior, is criticized much more heavily than it is in this country. *If you do not belong to the group as such, that is a criminal offense in itself—almost.* [In Holland] you may have your problem. People tend to look at you and say—ah well, you have a problem, why don't you belong to the group? Without becoming aggressive about it and without saying that if you don't want to belong to the group, we'll throw you out.<sup>23</sup>

In fact, the “famous” Dutch tolerance is founded on a unique social phenomenon—“*verzuiling*”—the composition of the whole social system out of political, religious, and ethnic groups, each possessing its own mass media of communications (including television), schools, soccer clubs, and banks. For hundreds of years, Holland has absorbed refugees and minorities from France, Portugal, Germany, later from Hungary and China, and most recently from Uganda. Instead of assimilating them, Dutch society has largely ignored them, allowing each its own “column” or “subculture” within the whole. This diversity of groups holding views that were often dogmatic and irreconcilable contributed to the development of Dutch tolerance and pragmatism. It is often argued that in a heterogeneous society like that of the Netherlands, government is possible only through compromise, adaptability, and pragmatism—or, if these are universal requirements, that they are especially vital to such a political system.<sup>24</sup> To seek to induce a moral panic about a new kind of deviant behavior is not a viable political strategy in a society where each idiosyncrasy has its own “column” and where the roof of the state rests upon the sum of all. “You almost never find someone trying to mobilize people in the streets by appealing to emotions” in Holland one official of the Ministry of Justice stated.<sup>25</sup> In more general terms, a comparison of deviance and control in Holland and Germany would show a significantly greater emphasis on formal legal control in Germany than in Holland, which possesses one of the most lenient or “consensual” control systems in Europe.<sup>26</sup>

## VI. CONCLUSION

The enactment of decriminalizing legislation tends to follow a different pattern from that of laws criminalizing behavior. The literature about the latter stresses the elements of “con-

23. Interview with the Director of the Mental Health Unit, Ministry of Health, Aug. 11, 1977, The Hague (emphasis added).

24. See Goudsblom (1967); for a solid journalistic account, see *Der Spiegel*, XXXI, 26:111 (1977).

25. Interview with an official in the Ministry of Justice, who was a member of the Working Party on Narcotics, Aug. 12, 1977, The Hague.

26. Compare Bianchi (1975) with Schumann and Voss (1976); these compilations certainly indicate the more “active” quality of Dutch, and the more “passive” quality of German, social life.

sensus,” and “collective behavior,” thus introducing a “democratic bias” into the explanation of criminal lawmaking. My research suggests that it would be equally misleading to attribute decriminalization to an increase in popular tolerance toward deviant behavior.<sup>27</sup> More often, decriminalization is imposed on an adamantly punitive public through cooperation between moral liberals and moral conservatives. In the Dutch case, decriminalization was a response to a small, aggressive, expanding minority that not only belonged to the “respectable” classes but self-confidently asserted the legitimacy and even the superiority of its behavior to conventional lifestyles. The efforts of this deviant collective to throw off the criminal label succeeded after they had found political sponsors among “moral liberals” who were in a position to prevent the creation of an adverse “policy deficit” by influential organized groups both within and outside the state bureaucracy (law enforcement officials, doctors, and scientists). Given the essentially conservative views of the public, the cooperation of moral conservatives was indispensable. Their veto power was based not so much on their formal political position as on their ability to sponsor organized social groups who could articulate policy deficits or trigger a moral crusade, thereby producing a legitimation crisis for the minority within the apparatus of social control which favored decriminalization. A low degree of politicization of the issue was therefore the most important prerequisite for successful decriminalization (Blankenburg and Treiber, 1975). By avoiding moral panic and preventing the issue from acquiring symbolic value, the instrumental advantages of decriminalization remained visible and dominant.

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27. Such a “democratic bias” is even found in the excellent study by Gadourek and Jessen (1972:38), who offer an overly simplistic explanation for the change in Dutch policy:

[A] community protects itself against invasion by noxious and illicit habits by taking a hard line with severe legal measures; after the habit begins to affect all circles of the population (and it becomes obvious that they cannot be stopped by legal measures alone) a more lenient policy ensues.

In this view legal change occurs as a result of rational insight into a successful sociocultural innovation. Sadly, change is not that smooth. Under much the same conditions, Germany experienced a hysterical moral crusade resulting in the defense of conventional norms through criminalization, whereas Holland avoided any crusade and undramatically accommodated its legal norms. Gadourek and Jessen overlooked the former alternative and thus failed to ask the central question: under what conditions does each solution to such a normative conflict occur. Furthermore, they were forced to *corriger la fortune (ou bien les faits)* even to preserve the plausibility of their explanation for the Dutch case, by pretending that drug use had affected all segments of the population (which it had not) and that insight into the instrumental inefficacy of a penal law would, almost automatically, result in its abolition (which is obviously not so).

Comparison of the Dutch and German cases revealed the impact of underlying social structural variables upon the degree to which a moral issue is politicized and given symbolic significance by powerful groups. A very heterogeneous society like the Netherlands possesses a great ability to accommodate conventional norms to emerging behavioral and subcultural challenges, whereas a structurally more homogeneous society like Germany will tend to exclude and repress emerging groups who refuse to assimilate to the conventional normative order.

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