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History of Alcohol Prohibition*

*This section is based in large part on a paper prepared for the Commission by Jane Lang McGrew, an attorney from Washington, D.C.

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It sought, by law, to make the whole Nation into enforced teetotalers and to put an end to all evils associated with drinking. It sought to eradicate a taste deeply rooted in the habits and customs of a large part of the population through outlawing the business that ministered to its satisfaction (Hu, 1950: 48).

1650-1750: THE FIRST HUNDRED YEARS

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Massachusetts ordered that no person shall remain in any tavern "longer than necessary occasions" in 1637, while Plymouth Colony in 1633 prohibited the sale of spirits "more than 2 pence worth to anyone but strangers just arrived" (Cherrington, 1920: 18).

This sampling of the earliest colonial laws is representative of the attempt, continued since those times, to control excessive consumption. Excessive drinking, it was considered, produced behavior unseemly in some, such as ministers, and dangerous in others, such as Indians.

But drinking per se was not frowned upon. Indeed, when the Puritans set sail to Massachusetts, they had taken care to carry with them 42 tons of beer (in contrast with 14 tons of water) and 10,000 gallons of wine (Lee, 1963: 15).

The regulation of liquor consumption was a matter of considerable concern in certain colonies. Thus, for a time, Massachusetts went so far as to prohibit the drinking of healths in 1638 (Lee, 1963: 19). The law was soon abandoned for reasons obvious, albeit unrecorded. It rapidly became clear, however, that liquor laws could do more and perhaps better, than control consumption: they could provide a source of revenue. By the turn of the 18th century, the regulatory impulse was concentrated on fines, excise taxes and license

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fees.

Fines were imposed for drunken behavior, unlawful sales to a drunken tippler or to Indians, and for selling without a license. Court records indicate that these laws were enforced with reasonable regularity (Krout 1967: 29-30). Licenses often carried their own fees, and excise taxes were levied upon distilled spirits as well as beer and fermented drink in many cases.

Until the 18th century, however, there was no attempt to prohibit the manufacture, importation, sale, or consumption of alcoholic beverages. Quite the contrary, at least one individual-in some cases a reluctant individual-was required in many towns to run the local inn or public house for visitors and travelers.

Although colonial statutes made it clear that tipplers and idlers were unwelcome, the diary of a colonial traveler, Sarah Kemble Knight, suggests that such laws were unsuccessful in containing the ribaldry which took place in many such houses. Madam Knight complained:

I could get no sleep, because of the Clamor of some of the Town Tope-ers in the next room.... I heartily retted & wish't 'am tongue tyed.... They kept calling for Tother Gill, Wch while they were swallowing, was some Intermission, But presently, like Oyle to fire, encreased the flame (Miller, Johnson, eds., 1963: 430-431).

Persons other than Madam Knight were to become more outspoken about their concern for the use of spirits. The most significant premonition was the Colony of Georgia's action in 1735 when the first prohibitory statute against the importation of "ardent spirits" was enacted. At the same time, however, the consumption of beer was encouraged (Grant, 1932: 1). The time for temperance had not yet arrived.

1750-1825: TEMPERANCE STIRRINGS

As the evils of intemperance began to attract the attention of the ministry, John Wesley denounced the sin of distilling -and declared for its Prohibition in 1773 (Cherrington, 1920: 37-38).

On his heels came the publication of a pamphlet entitled "The Mighty Destroyer Displayed and Some Account of the Dreadful Havoc Made by the Mistaken Use, As Well As the Abuse, of Distilled Spiritous Liquors," by Anthony Benezet, a member of the Society of Friends, advising against the use of any drink "which is liable to steal away a man's senses and render him foolish, irascible, uncontrollable, and dangerous" (Cherrington, 1920: 38).

Nevertheless, typical of the century's ambivalence, the first master at Harvard was fired when it was found that Harvard students had been left "wanting beer betwixt brewings a week and a week and a half together" (Lee, 1963: 16).

Concern for the effect of liquor upon the public weal was expressed by John Adams who noted in his diary on February 29, 1760, that the taverns were "becoming the eternal haunt of loose, disorderly people . . ." (Cherrington, 1920: 37). Worst of all he continued:

... These houses are become the nurseries of our legislators. An artful man, who has neither sense nor sentiments, may, by gaining a little sway among the rabble of the town, multiply taverns and dram shops and thereby secure the votes of taverner and retailer and

of all; and the multiplication of taverns will make many, who may be induced to flip and rum, to vote for any man whatever (Dobyns, 1940: 215).

The health argument in behalf of temperance was first made by Nathaniel Ames, in the 1752 edition of his Almanack, who wrote that

Strong Waters were formerly used only by the Direction of Physicians; but now Mechanicks and low-li'd Labourers drink Rum like Fountain-Water, and they can infinitely better endure it than the idle, unactive and sedentary Part of Mankind, but DEATH is in the bottom of the cup of every one (Lee, 1963: 22).

Dr. Benjamin Rush shared his concern, publishing in 1785 his now famous "Inquiry into the Effects of Ardent Spirits Upon the Human Body and Mind." Enumerating the diseases of the body and mind which plague the drinker of distilled liquors, Dr. Rush outlined the symptoms, including "unusual garrulity, unusual silence, captiousness ... an insipid simpering ... profane swearing ... certain inmodest actions" and "certain extravagant acts which indicate a temporary fit of madness" (Rush, 1943: 323, 325-326).

Although the rumblings of the temperance movement were thus perceptible in the late 18th century, there is no evidence that its effects were felt. In 1766, it is recorded that the repeal of the Stamp Act was greeted in Providence, Rhode Island with "32 of the most loyal, patriotic and constitutional toasts" (Lee, 1963: 18). Notwithstanding this evidence of devotion to His Majesty, it was often thereafter the tavern which provided the meeting places for the most defiant revolutionaries.

Subsequently, when the colonial period disappeared into the post-Revolutionary era, Alexander Hamilton adopted the idea earlier effected by the individual colonies, to tax distilled liquors for revenue purposes. In 1791, the tax was enacted as part of the Revenue Act. The following year, the Second Congress of the United States added license fees for distilleries and taxes on liquors distilled from imported materials.

Incensed by this federal action, farmers in Western Pennsylvania mobbed revenue collectors and armed to resist this intrusion by the new Federal Government. It required 15,000 militia to bring the so-called Whiskey Rebellion to an end (Peterson, 1969: 119-120). Such was the first indication that the liquor industry in the United States would be a force with which the government would have to reckon.

Toward the end of the 18th century, a temperance movement, as such, became discernible. The Methodist Church took a staunch position against the sale or imbibing of ardent spirits "unless in cases of extreme necessity." Five years later, in 1789, even the exception was excised (Cherrington, 1920: 50). A similar platform was adopted by the Presbyterian Synod of Pennsylvania and by the Yearly Meeting of Friends of New England (Cherrington, 1920: 51, 58).

On a non-clerical level, the movement began to organize. Although there is some dispute as to the identity of the original temperance society, it appears that as early as 1778, there was an organization calling itself the Free African Society which excluded men of drinking habits, followed soon thereafter by the Organization of Brethren, and the Litchfield, Connecticut Association of "the most respectable farmers" in Connecticut determined to discourage the use of spirits (Cherrington, 1920: 49, 58).

The turn of the century saw the vitalization of the temperance spirit. Religious leaders, including Cotton Mather, Dr. Lyman Beecher, John Wesley and Reverend Andrew Elliott

inveighed against the consumption of liquors. Temperance activity figured prominently in the concerns of the Presbyterian, Methodist, Universalist, Baptist, and Friends churches.

"Had. the temperance reform in America awaited for a non-church or a non-Christian leadership," theorizes one historian.

... the temperance revolution of the past century would yet remain to be accomplished.... Every successful temperance movement of the last century has been merely the instrument- the machinery and equipment through which the fundamental principles of the Christian religion have expressed themselves in terms of life and action (Cherrington, 1920:92).

Whatever the Christian input, however, it is also apparent that a desire to reform was aroused in the country, very much like that which was to be experienced a century later during the Progressive Movement. Thus, Massachusetts Society for the Suppression of Intemperance of 1813, damned not only rum, but all of the "kindred vices, profaneness and gambling" and beseeched members to "discourage... by ... example and influence, every kind of..... immorality" (Lee, 1963: 23). Mingling with the potential temperance leaders during this period were the future spokesmen of abolitionism, feminism, and utopianism.

In the meantime, the industry was able to report triumphantly that the federal taxes on distilling and importing spirits were repealed in 1802. From 1813 until 1817, the retailers' and distillers' licenses bore a federal tax, but beginning in 1818 the industry enjoyed a tax-free era which was to last until 1862. Thomas Jefferson rejoiced-"as a moralist"-explaining that:

It is an error to view a tax on that liquor as merely a tax on the rich. It is a prohibition of its use in the middling class of our citizens, and a condemnation of them to the poison of whisky, which is desolating their houses. No nation is drunken where wine is cheap; and none sober, where the only antidote is the bane of whisky (Peterson, 1969: 122-123).

Future prohibitionists would likewise castigate the government for drawing its revenues from the liquor industry and participating in the profits of evil thereby.

1825-1870: THE PLEDGE

Temperance was not always equated with teetotalism. Beer and usually wine were initially exempt from denunciation in both sermons and treatises. There developed in the mid-19th century, however, the conviction that all brews, be they "ardent spirits," beer, ale, or wine, were anathema.

The new temper of the movement was epitomized by the travels of Father Theobald Matthew of Ireland who toured the United States from 1849 to 1851, administering the pledge of total abstinence to some 600,000 persons in 25 states. A White House dinner and a Senate reception stamped official approval upon his sojourns (Furnas, 1968: 80). Thus did temperance drift into a new phase, with its ardent spokesman, Congressman Gerrit Smith, crying that:

I would that no person were able to drink intoxicating liquors without immediately

becoming a drunkard. For, who, then would . . . drink the poison that always kills, or jump into the fire that always burns? (Furnas, 1968: 15).

It was in this atmosphere that the first prohibition experiments were undertaken on a statewide basis. "Until the liquor traffic is abolished . . . all efforts at moral reform must languish," judged one of the earliest prohibitionists.

In "Grappling with the Monster," T. S. Arthur stated, "The CURSE is upon us, and there is but one CURE: Total Abstinence, by the help of God, for the Individual, and Prohibition for the State" (Furnas, 1968: 15).

In 1847, the first such cure was enacted for the state of Maine (Cherrington, 1920: 134). (Actually, the first Prohibition law went into effect in 1843 in the territory of Oregon. This was repealed five years later.)

A wave of prohibition statutes followed. Delaware, on the heels of Maine, passed its first prohibition law only to have it declared unconstitutional the following year. Similar laws were enacted in Ohio, Illinois, Rhode Island, Minnesota, Massachusetts, Connecticut, Pennsylvania and New York during the next few years. They met with varying fates, including veto by the governors, repeal by the legislatures and invalidation by the state supreme courts.

The evaluations by several historians of these early trials were to be heard again in the 20th century: the enactments lacked support from a large portion of the population, making enforcement exceedingly difficult. Ultimately, all but one of the states repealed the prohibition statutes of the 19th century (Grant, 1932: 5; Peterson, 1969: 123).

Notwithstanding this record, prohibitionists took heart. "This thing is of God," cried Lyman Beecher from the pulpit. "That glorious Maine law was a square and grand blow right between the horns of the Devil" (Furnas, 1968: 167). Temperance societies, established in all but three states by 1832 and destined to proliferate, began to consolidate as well.

The American Temperance Society, later to become the American Temperance Union, was organized in 1826. It quickly begat auxiliaries, so that by 1835, 8,000 locals existed (Cherrington, 1920: 92-93).

As the years passed, they witnessed the founding of more temperance organizations of a general and national character than during any other period in the United States' history. The Washingtonian movement, organized in the City of Baltimore in 1840, was followed by the Martha Washington movement in 1841.

The Sons of Temperance came into existence in 1842, at the same time the Order of Rechabites was organized, and the Congressional Temperance Society of 1833 was revived on the basis of total abstinence. They took heart at their early state successes and fought against the defeats of repeal.

In the meantime, however, the United States government, which had heaped honors upon Father Matthew, concluded a treaty with King Kamehameha III of Hawaii in 1850 permitting the introduction and sale of liquor on his island.

As further evidence of the national dichotomy, Chicagoans in the 1850's fought virulently against the enforcement of Sunday closing laws. To protest, an armed mob burst into the business district of the city, to be met by police. Fortunately, the mob was dispersed before

the mayor found it necessary to use the cannon he had hurriedly planted around City Hall (Peterson, 1969: 120).

It was the time when patent medicines, 40 proof and more, began to develop their clientele. And although the Demon Rum might threaten their health and life, Lydia Pinkham's Compound offered a cure for any and all ails and aches.

By the time of the Civil War, both the assimilative and coercive traditions of the temperance movement had crystallized: that is, temperance proponents were determined to save the weak and to destroy the recalcitrant (Gusfield, 1963: 69-70). The hardening of positions was accompanied by the development of political consciousness in the movement and recognition of political objectives. These processes were only temporarily blunted by the Civil War in the 1860's and the diversion of interest to the abolitionist cause.

Part of the heritage of the Civil War was the tax on liquor and beer imposed in 1862. Rates were increased several times between 1863 and 1868, so that the tax imposed at the rate of 20 cents per gallon rose to \$2 per gallon.

An interesting phenomenon was noted by the Federal Government: as the rates increased, the revenue did not. In fact, the number of gallons reported actually declined. As the decade went on, attempts were made to enforce the tax laws and in 1868, \$25,000 was actually appropriated to detect violators. Fraud continued almost unabated. Stockpiling of liquor was popular to hedge against future, increases, for they were not applicable to liquor on hand.

The infamous Whiskey Ring was active in these days and was not finally broken up until 1875, when, in a peak of nerve, members established a corruption fund in the District of Columbia to halt the prosecution of 321 persons charged with violations of the revenue laws. Before then, however, Congress apparently had second thoughts about the implications of the revenue collections and reduced the tax from the high of \$2 per gallon to 50 cents in 1869. The happy result was to see a rise in collections from \$13.5 million in 1868, to \$45 million in 1869, and \$55 million the following year. Taking further precautions, the government stipulated that new stamps be developed to preclude counterfeiting and tampering (History of the Alcohol 14-20; Cherrington, 1920: 156162).

Congress did not escape unscathed by criticism and reaction. It came from both sides of the temperance issue. Temperance advocates such as Senator Wilson of Massachusetts and Senator Pomeroy of Kansas decried the fact that federal revenues would be drawn from the liquor industry.

At the same time, however, the industry revolted, leading to mass tax evasion schemes and devices and the organization of their first industry lobby, the United States Brewers Association. The Association rapidly launched a legislative campaign and succeeded in 1863 in reducing the tax rate of beer from \$1 to 60 cents (Cherrington, 1920:157).

By 1870, the Civil War dust had cleared and the temperance battle lines were drawn, already tested by the skirmishes of the 1840's and 1850's. The most interesting feature of their war strategy was soon to become apparent: women and children were welcomed at the battlements.

1870-1913: TOWARD A NATIONAL CONSCIENCE

A series of "isms" was aroused in this era: feminism, unionism, socialism, and

progressivism. Prohibition absorbed elements of them all, and vice versa.

The feminist movement originated early in the 1800's. Until the 1870's, however, feminine involvement in the temperance effort was largely peripheral. The Women's Crusade of 1873 and the organization of the Women's Christian Temperance Union in 1874 marked the formal entrance of women into the temperance movement.

The WCTU was devotedly headed by Frances E. Willard, a lady equally committed to the principle of equality of the sexes. Temperance was to bridge the gap, she believed:

Drink and tobacco are the great separatists [sic] between men and women. Once they used these things together, but woman's evolution has carried her beyond them; man will climb to the same level . . . but meanwhile . . . the fact that he permits himself fleshly indulgence that he would deprecate in her, makes their planes different, giving her an instinct of revulsion (Furnas, 1968: 281).

Although the WCTU was organized initially around the temperance issue, it was not long before Miss Willard's leadership expanded its conscience.

A statement of principles was adopted in its early years:

We believe in a living wage; in an 8-hour day; in courts of conciliation and arbitration, in justice as opposed to greed in gain; in "Peace on Earth and Good Will to Men" (Gusfield, 1963: 76).

Within three years of its inception, the WCTU reported that its concerns included "a better Indian policy" and "wiser civil service reform" (Gusfield, 1963: 77). There were those in the Union who felt that their interests should be limited to temperance. But, forecasting the mood of Progressivism, Miss Willard steered the organization along the broader lines to social reform.

The WCTU was responsible for part of the early campaign to educate the public about temperance. Children were recruited to sing praises of "the true and the brave" who signed the abstinence pledge. They were assisted in this effort by McGuffey's Readers which denounced the licensing of liquor stores and saloons:

Licensed-to do thy neighbor harm,

Licensed-to kindle hire and strife,

Licensed-to nerve the robber's arm,

Licensed-to whet the murderer's knife,

Licensed-like spider for a fly,

To spread thy nets for man, thy prey,

To mock his struggles, crush his soul,

Then cast his worthless form away (Lee, 1963: 34-35).

Whiskey makes "the happy miserable" and impoverishes the rich, the McGuffey books concluded. And the word spread. By 1902, the temperance campaign had permeated the public school systems: every state but Arizona had introduced compulsory temperance education. Their texts teemed with both facts and misinformation such as "Alcohol sometimes causes the coats of the blood vessels to grow thin. They are then liable at any time to cause death by bursting." (Sinclair, 1962: 43).

The WCTU was not carrying the burden of reform alone, however. In 1869, the National Prohibition Party was born. Three years later, the first party ticket was put forth in the presidential campaign of 1872, headed by John Black, who received 5,607 votes for President. Success at the polls ultimately peaked in 1892 when John Dedwell, the Prohibition presidential candidate, received a total of 270,710 votes. Thereafter, its partisans declined in number, having failed to break voters away from their traditional affiliations (Cherrington, 1920: 165-169).

As a rule, the WCTU eschewed partisanship. Their objectives were far broader and more practical than those contemplated by the Prohibition Party. Only once it supported the Prohibition Party in the notorious election of 1884.

The election of 1884 carried a variety of implications for future candidates on the temperance issue. In New York City alone, 1,007 primaries and conventions reportedly were held by the various parties. Of these, over 60% took place in saloons (Peterson, 1969: 123), recalling to mind the complaint of John Adams a century before (Cherrington, 1920: 37; Dobyms, 1940: 215). The meeting places were indicative of the fact that at this time neither party could afford to adopt a dry plank in its platform, for New York would be a pivotal state in the race between Republican James G. Blaine and Democrat Grover Cleveland.

Blaine campaigned hard, trying to overcome the defection of several thousand dry Republicans to the Prohibition Party. Speaking in behalf of Blaine at a New York City rally, Presbyterian minister Samuel Burchard denounced the Democrats as the party of "Rum, Romanism, and Rebellion." Needless to say, the Catholic vote, as well as the wet vote, quickly swelled the Democratic totals. Blaine, having thus alienated both wets and dries, lost the state--and the election--by a tiny margin (Furnas, 1968: 273; Lee, 1963: 29-30).

In case the lesson that temperance was an issue to be reckoned with in national politics was lost on the parties after 1884, the events of the decade culminating in the birth of the Anti-Saloon League in 1895, dramatized the point. A second wave of state prohibition laws was experienced between 1880 and 1890. The results of much of the legislation during those years were less than satisfying to temperance advocates, however; only six states emerged with state-wide prohibition by statute or constitutional amendment. Numerous other states had enacted local option, which permitted towns to go dry if they so chose by referendum. Without state or federal insulation from wet communities, however, the so-called dry towns were scarcely temperance models.

In the wake of these state legislative actions, South Carolina introduced a state dispensary system in order to eliminate the motive of private gain from the liquor business. Political

scandals which quickly developed tended to discredit it, however, if indeed it had enjoyed much support from any corner (Cherrington, 1920: 250-251).

With this discomfiting history behind it, the Anti-Saloon League arose to the challenge, while Carrie Nation independently thrust her way into the public eye. The League was to develop the art of lobbying or "pressure political" to its most dramatic heights. Scarcely more than 10 years after organization, it was described as "the most dangerous political movement that this country has ever known" by the National Model License League, a wet (and harassed) association. A more rational viewpoint was expressed by the president of the New York State Brewers Association in 1913:

We are not dealing with a theory which is the delusion of the fanatic alone, but with a real condition which is in the hands of a well organized force, led by aggressive, experienced, and untiring leaders (Odegard, 1928: 23).

The focus of the League's indictments included not simply alcohol, but the saloon itself, as the purveyor of spirits. The myriad League publications denounced the saloon for "*annually sending thousands of our youths to destruction, for corrupting politics, dissipating workmen's wages, leading astray 60,000 girls each year into lives of immorality and banishing children from school*" (Odegard, 1928: 40-59).

"Liquor is responsible for 19% of the divorces, 25% of the poverty, 25% of the insanity, 37% of the pauperism, 45% of child desertion, and 50% of the crime in this country," the League determined. "*And this,*" it concluded, "*is a very conservative estimate*" (Odegard, 1928: 60).

League posters appeared everywhere depicting the saloon-keeper as a profiteer who feasted on death and enslavement. Others screamed out the dire consequences of alcohol. "Alcohol inflames the passions, thus making the temptation to sex-sin unusually strong," advertised one (Sinclair, 1962: 51).

It was the League which geared up the campaign, but it was not alone. As the Progressive spirit caught the national interest in the early 19th century, the movement for reform embraced the cause of temperance. The temperance movement assumed an aura of evangelism, combining the concept of America's mission with the vision of Messianism. Through the combination of temperance and progressivism, it was believed that the Kingdom of God could actually come to the United States.

In an article in Appleton's Magazine in 1908, the Reverend Charles F. Aked articulated the aspirations of the reformers:

We are spending our lives, many of us, in the effort to make the world a little better and brighter for those that shall come after us.... we want to open out life and liberty to all the sons of men. We want to make possible for all of life in the whole, the good and the beautiful ... and the common sale of intoxicating liquor renders our work a thousand times more difficult ... (Timberlake, 1063: 34-38).

Others were more mundane. Scientists began accumulating evidence of the effect of quantities of alcohol on the nervous system and general physical condition. The myth that alcohol consumption improved muscular power was exploded. The relationship between mental psychoses and alcohol was documented, and thus did the condemnation of alcohol

as a poison assume scientific support. Finally, in 1915, whiskey and brandy were discreetly removed from the list of authoritative medicinal drugs contained in the United States Pharmacopoeia (Timberlake, 1963: 47).

Who were the people fueling the movement? Largely middle class, rural, Anglo-Saxon and Protestant comprised the temperance movement and they confronted the urban and industrial communities head-on. "The Anglo-Saxon stock is the best improved, hardiest and fittest.... [I]f we are to preserve this nation and the Anglo-Saxon type we must abolish [saloons]," proclaimed one temperance publication (Gusfield, 1963: 100). Calling itself "The Protestant church in action" (Sinclair, 1962: 108), the Anti-Saloon League concentrated single-mindedly and evangelically on the cause of temperance and refrained from dabbling in other reforms (Gusfield, 1963: 108).

Nevertheless, the Episcopal and Lutheran churches never aligned themselves with the Anti-Saloon League, while Jewish and Catholic groups generally opposed their objective. The conviction shared by Anti-Saloon Leaguers expressed by Reverend Francis Ascott McBride was: "The League was born of God" (Lee, 1963: 35). Thus one had to be for or against the movement; there was no half-way commitment.

When the sides were lined up initially, industrialists and union leaders alike preferred to keep God on their side. From the company's point of view, the saloon was often responsible for industrial injuries and absenteeism. Some believed that the drinking man demanded higher wages than his sober counterparts. Furthermore, union locals tended to congregate in saloon meeting halls maintained for that purpose and, it was sometimes suspected, for the plotings of anarchistic conspirators (Furnas, 1968: 310).

Accordingly, it was not long before industry moved from an acquiescent position to an active role in the temperance movement. Various methods were adopted to encourage sobriety, including lectures, literature and job preferences for teetotalers. Businessmen opined that sobriety expanded productivity, increased bank deposits, improved collections and stimulated the retail trade (Timberlake, 1963: 67-79).

At the same time, the prospect of diverting patronage of the liquor industry to other products tantalized some industries. Thus the Welch Grape Juice Company advertised:

Get the Welch Habit-It's one that won't get you! (Timberlake, 1963: 77).

Opinion was not unanimous, of course. Businessmen, including bankers, whose interests were tied to the liquor industry could ill afford to be beneficent toward temperance. Others, including the DuPonts, Rockefellers, Kresges, and Wanamakers spent freely to cover the League's annual campaign costs of \$2.5 million (Odegard, 1928: 126).

As surely as liquor was the enemy of the home, it was also proclaimed the enemy of the working man. "The great sinkhole for the workers' wages is the saloon," wrote the editors of one League publication, *The California Liberator*. "When that abomination is destroyed, labor is freed from its greatest curse" (Odegard, 1928: 53). The logic appealed to the union leadership. According to one official of the American Federation of Labor:

No force in our country has been as effective in the promotion of temperance among working people as the organized labor movement. The labor movement has achieved more for the cause of temperance than all the temperance societies combined ... (Timberlake, 1963: 83).

Since similar credit has been claimed for the League, the Protestant church, and business interests, it is difficult to apportion the plaudits. Subsequent events suggest that the labor interests failed to live up to this claim however.

Notwithstanding Terrence V. Powderly's early speech against "the strong right hand of labor itself . . . that carries with it the rum which drowns reason," his own Knights of Labor repealed their constitutional provision which denied membership to anyone connected with the liquor trade (Timberlake, 1963: 85-86).

As the reports of the National Commission on Enforcement of the Prohibition Laws (known as the "Wickersham Commission") were later to record, it was particularly the workers who resented the paternal legislation which they believed was directed at them and their habits (National Commission on Law Observance, 1931: 345).

In addition, there were those whose livelihoods would be directly affected--indeed, effaced--by the success of the campaign: brewery workers, bartenders, glass workers, waiters, and musicians among others.

Thus, even though the Socialist Party resolved in 1908 that "*any excessive indulgence in intoxicating liquors by members of the working class is a serious obstacle to the triumph of our cause since it impairs the vigor of the fighters in political and economic struggle*" (Timberlake, 1963: 98), the industrial urban centers of the country continued to harbor and stimulate antagonism towards the temperance movement.

The identification of the saloon and its offerings with the urban, immigrant working class further enraged Prohibitionists. As one sociologist observed, "The saloon appeared as the symbol of a culture which was alien to the ascetic character of American values . . ." (Gusfield, 1963: 100). Thus, Americanism became a central issue in the temperance movement.

One temperance spokesman, cited in Barker's "The Saloon Problem," vented these sentiments:

The influx of foreigners into our urban centers, many of whom have liquor habits [sic], is a menace to good government. . . . [T]he foreign born population is largely under the social and political control of the saloon. If the cities keep up their rapid growth they will soon have the balance of political power in the nation and become storm centers of political life (Timberlake, 1963: 118).

1913-1933: NATIONAL PROHIBITION -- PROLOGUE AND FINISH

The distrust of the immigrant population became more pronounced as the economic, political, and social power of the cities developed. It was given a strong impetus by the anti-German tremors which shook the country in a mood of anticipation before World War I.

The United States Brewers Association misread the prevailing temper and associated itself with the German-American Alliance to oppose the temperance advocates and defend German kultur in the United States.

As the United States came closer to war, the antipathy which developed against the Central

Powers was directed with equal force against brewers and tipplers (Furnas, 1968: 334-35) :

Pro-Germanism is the only froth from the German's beer saloon. Our German Socialist Party and the German American Alliance are the spawn of the saloon. . . . Prohibition is the infallible submarine chaser (Sinclair, 1962:122).

The war gave the prohibition cause new ammunition. Literature depicted brewers and licensed retailers as treacherously stabbing American soldiers in the back. Raw materials and labor were being diverted from the war effort to an industry which debilitated the nation's capacity to defend itself. It was urged that wartime prohibition would stop the waste of grain and molasses and would remove a handicap on workers' efficiency.

"Liquor is a menace to patriotism because it puts beer before country," preached Prohibitionist Wayne Wheeler (Odegard, 1928: 72). The fact that names Pabst, Schlitz, and Blatz broadcast their national origin only did further injury to their interests.

In this atmosphere the Wartime Prohibition Act was passed in 1918. It followed a series of federal laws such as the Wilson Original Packages Act and the Webb-Kenyon Act, attempts to protect dry states from their wet neighbors.

The Wilson Original Packages Act was passed on August 8, 1890, and provided that all intoxicating beverages shipped interstate would be subject to the laws of the destination state upon arrival. No mechanism for federal enforcement was provided.

The Webb-Kenyon Act, enacted March 1, 1913, was intended to reinforce the 1890 Act by providing that it was a violation of federal law to ship an intoxicating beverage interstate with the intent that it be used or sold in any manner in violation of the laws of the destination state. The lack of federal enforcement rendered the statute virtually meaningless.

The Reed Amendment, enacted four years later, provided a fine of \$1,000 for transporting liquor into a dry state with no greater effect.

None of the earlier acts met with substantial success in curbing the flow of liquor into purportedly dry regions, but they did mark a change in federal policy. Formerly liquor laws were designed solely to produce federal revenue; Congress now took cognizance of the role it could play in the regulation of consumption.

The role was actually forced upon a reluctant Congress at first. Indeed, the government had passed up numerous prior opportunities to involve itself in the temperance movement as such. The particular part it was to play was forecast by the Sons of Temperance who, in 1856, declared themselves for national constitutional prohibition.

Twenty years later, Congressman Henry Blair of New Hampshire introduced a prohibition amendment to the Constitution for the first time in Congress. As a senator, he introduced another such resolution in 1885, along with Senator Preston Plum of Kansas. After consideration by the Senate Committee on Education, the bill was reported out favorably and placed on the Senate Calendar in 1886. Nevertheless, no action resulted (Cherrington, 1920: 317).

In the meantime, states continued the struggle between the wets and the dries, with great success for the temperance advocates. By 1913, nine states were under stateside prohibition. In 31 other states, local option laws were in effect. By reason of these and other variants of regulatory schemes, more than 50% of the United States population was then under

prohibition.

The national constitutional campaign was resumed as such in 1913 when the Anti-Saloon League went on record at its 15th National Convention in favor of immediate prosecution of the objective of constitutional amendment.

The National Temperance Council, founded at the same time, coordinated the activities of numerous temperance organizations with the same object. In 1913, the demands of the League were formally presented to Congress by the Committee of 1,000.

The measure was then introduced in the House by Congressman Thompson and in the Senate by Senator Sheppard. The following year, the first joint resolution failed to secure the necessary two thirds majority for submitting a constitutional amendment to the states. A second resolution was submitted in 1915 and favorably considered by the Judiciary Committees of both houses, but neither ever came to a vote.

Ultimately, in 1917, the resolution to prohibit the manufacture, sale, transportation or importation of alcoholic beverages in the United States was approved by Congress and sent to the states for ratification (Cherrington, 1920: 317-330).

It took only one year and eight days for the 18th Amendment to secure the necessary ratification. On January 8, 1918, Mississippi proudly became the first state to ratify, and on January 16, 1919, Nebraska completed the job as the 36th state (Lee, 1963: 42). By the end of February 1919, there remained only three hold-outs: New Jersey, Connecticut, and Rhode Island (Cherrington, 1920: 330).

October 28, 1919, was the day that Congress enacted the National Prohibition Act—more often known as the Volstead Act—with the intent to give effect to the new constitutional amendment. Officially, the liquor drought was to begin on January 17, 1920. The celebrants of the occasion were concentrated in the membership of the Anti-Saloon League, which could rightly claim that its consummate skill in pressure politics had maneuvered the country into its dry state.

The early experience of the Prohibition era gave the government a taste of what was to come. In the three months before the 18th Amendment became effective, liquor worth half a million dollars was stolen from Government warehouses. By midsummer of 1920, federal courts in Chicago were overwhelmed with some 600 pending liquor violation trials (Sinclair, 1962: 176-177). Within three years, 30 prohibition agents were killed in service.

Other statistics demonstrated the increasing volume of the bootleg trade. In 1921, 95,933 illicit distilleries, stills, still works and fermentors were seized. In 1925, the total jumped to 172,537 and up to 282,122 in 1930. In connection with these seizures, 34,175 persons were arrested in 1921; by 1925, the number had risen to 62,747 and to a high in 1928 of 75,307 (Internal Revenue, Service, 1921, 1966, 1970: 95, 6, 73). Concurrently, convictions for liquor offenses in federal courts rose from 35,000 in 1923 to 61,383 in 1932.

The law could not quell the continuing demand for alcoholic products. Thus, where legal enterprises could no longer supply the demand, an illicit traffic developed, from the point of manufacture to consumption. The institution of the speakeasy replaced the institution of the saloon. Estimates of the number of speakeasies throughout the United States ranged from 200,000 to 500,000 (Lee, 1963: 68).

Writers of this period point out that the law was circumvented by various means. Although there may have been legitimate, medicinal purposes for whiskey, the practice of obtaining a

1912
17,570
1,567
8.9

...

1913
17,525
1,633
9.3
9.3

1914
19,134
1,573
8.2
7.4

1915
18,875
1,331
7.1
5.7

1916
17,929
1,370
7.6
6.1

1917
20,041
1,576
7.9
8.2

1918
19,741
1,021
5.2
5.2

1919
19,737
841
4.3
4.1

1920
19,579
485
2.5
2.0

1921
20,368
567
2.8
2.8

1922
20,741
798
3.8
3.2

1923
20,316
861
4.2
4.0

1924
19,818
896
4.9
5.4

1925
20,857
1,017
4.9
5.8

1926
20,911
997
4.8
5.9

1927
21,982
1,268
5.8
7.0

1928
23,293
1,257
5.4
6.0

1929
23,242
1,380
5.9
6.2

1930
24,100
1,251
5.2
6.0

Deaths from Alcoholism. In New York City, from 1900 through 1909, there was an average of 526 deaths annually attributable to alcoholism. From 1910 through 1917, the average number was 619. It plummeted to 183 for the years 1918 through 1922. Thereafter, the figure rose, averaging a new high of 639 for the years 1923 through 1927 (Rice, ed., 1930: 122).

Total deaths from alcoholism in the United States show a comparable trend, with the gradual increase resuming somewhat earlier, about 1922 (Brown, 1932: 61, 77; Feldman, 1927: 397; U.S. Department of Commerce, 1924: 55).

Year
Deaths from all causes rate per 100,000
Deaths from alcoholism rate per 100,000

1910
1,496.1
5.4

1911
1,418.1
4.9

1912
1,388.8
5.3

1913
1,409.6
5.9

1914
1,364.6
4.9

1915
1,355.0
4.4

1916
1,404.3
5.8

1917
1,425.5
5.2

1918

1,809.1
2.7

1919
1,287.4
1.6

1920
1,306.0
1.0

1921
1,163.9
1.8

1922
1,181.7
2.6

1923
1,230.1
3.2

1924
1,183.5
3.2

1925
1,182.3
3.6

1926
1,222.7
3.9

1927
1,141.9
4.0

1928
1,204.1
4.0

1929
1,192.3
3.7

The highest death rates from alcoholism occurred during the decade prior to Prohibition as did the highest death rates from cirrhosis of the liver. These statistics should be qualified by the observations of Dr. Charles Morris, Chief Medical Examiner for New York City: "*In making out death certificates (which are basic to Census Reports) private or family physicians commonly avoid entry of alcoholism as a cause of death whenever possible. This practice was more prevalent under the National Dry Law than it was in preprohibition time*" (Tillitt, 1932: 114-115).

Even if reliable, per se, such statistics may be unrelated to the consumption of alcoholic beverages in any given year. Another writer of this period noted: "The relation of fatal alcoholic diseases to consumption of alcohol must be one extending over a long period of years and the actual duration of the critical period can hardly be estimated" (Jellinek, 1942: 48-1). According to one sociologist, rates of alcoholism and related mental and physical diseases reflect past drinking habits, developed ten to 15 years earlier (Gusfield, 1963: 119).

A shorter "lead time" is suggested by a mental hygiene statistician who attributes the temporary reduction in alcoholic psychoses "to the legal restriction of the sale and use of alcoholic beverages, made effective by the support of public opinion which during the war period had discountenanced self-indulgence, of all sorts" (Brown, 1932: 88). He adds, however, that the notable increase in alcoholic psychoses and deaths from alcoholism towards the end of the prohibition era (1927-1932) indicated that:

... since 1920, prohibition has become increasingly impotent as a means of preventing excessive use of alcohol to an extent productive of serious mental disorders and untimely deaths (Brown, 1932: 88).

The highly limited statistical label of death from alcoholism has been noted elsewhere:

The trend of death from alcoholism reflects hardly anything else than progress in the treatment of the so-called diseases of chronic alcoholism. Nevertheless, statistics of death from alcoholism have been used by both Drys and Wets to prove that Prohibition or repeal has greatly improved the rate of death from alcoholism. . . . Death from alcoholism is simply not an index of the prevalence of inebriety. Death from alcoholism could fall to zero in response to medical progress, while at the same time the rate of inebriety might rise many fold (Jellinek, 1947: 39).

Arrests Arrests for drunkenness also provide a source of information about the extent of drinking in the United States. It must be noted, however, that statistics of this sort vary with local police policies. For example, during a six-year period in the 1930's, the arrests for drunkenness were from 14 to 31 times higher in Philadelphia than in New York (Kolb, 1941: 608).

Nevertheless, gross statistics drawn from 383 cities indicate that arrests for drunkenness per 10,000 population reached a high of 192 in 1916 and fell to 71 in 1920. From this level, they rose steadily again to reach 157 in 1928 (Warburton, 1932: 102). Of course, arrests prior to Prohibition may not bear the same relation to the use of alcohol as they did subsequently, Warburton theorizes:

. . . [U]nder Prohibition, especially during the early years, police were more strict in making arrests, and . . . a larger proportion than formerly of persons appearing on the streets under the influence of liquor are arrested. Also, since the sale of liquor is illegal and cannot be obtained in public saloons, and when the police are more strict in arresting intoxicated persons, it is reasonable to suppose that drinking is less public and that fewer drunken persons appear on the streets relative to the quantity of liquor consumed (Warburton, 1932: 103).

Nevertheless, the cyclical trend suggested by these figures coincides with statistics on

alcoholism (Brown, 1932: 61, 71, 77). Whatever their independent validity, however, they correlate with the theory of one author that:

[T]he 18th Amendment could not have been passed without the support of the psychologically tolerant, made temporarily intolerant by the stress of war. But when the moderates deserted the dries in the time of peace, the hard core of the movement was revealed (Sinclair, 1962: 23--24).

Without the support of the moderates, the author theorizes, Prohibition was to become itself a symbol of excess, unsupported by the vast majority of the population.

Outcome. What, then, did Prohibition accomplish? To a great extent it eliminated the saloon from American life. While bars and taverns reopened joyfully following repeal, they ceased to be the centers of systematic political corruption and debauchery which they had once been. Part of this may be attributable to the greater sophistication of the electorate and politics generally. Part, no doubt, is owing to the fact that women were welcome as customers in the new cocktail lounges, having shown themselves to be eager patrons of the speakeasies.

And finally, the change in the character of the saloon was effected by public determination that it should be changed. This attitude was expressed in the post-repeal statutes concerned with the physical appearance of the saloon and the character of persons authorized to operate them.

Prohibition did make the nation conscious that corruption of the law and of the populace may be the consequence of a law which is not reflective of the morals and mores of the time. It played out some of the deepest social class resentments, culminating in the realization that the behavioral standards of some could not be impressed upon others. It demonstrated that the fervor of war and the cult of patriotism may be abused and abuse the country in return.

Repeal reimposed the burden of regulation upon the states. They were required to develop a system of control directed at the particular objectives they wished to achieve. The post-repeal era was to prove an exercise not only in states' rights but in states' responsibilities.

1933-1971: AFTER THE DELUGE

On December 4, 1933, the day before final ratification of the repeal amendment, the President established the Federal Alcohol Control Administration, pursuant to Executive Order No. 6474. FACA was to have the power to grant or revoke permits to engage in the alcoholic beverage industry—not the brewing industry—as well as the power to control plant capacity and production; it was also to engage in consumer protection through regulations designed to prevent misbranding and false advertising of alcoholic beverages. In addition, FACA prohibited the ownership of retail outlets by manufacturers and wholesalers (Harrison & Laine, 1936: 24-29).

This scheme fell under the Schechter Poultry decision by the Supreme Court. The Treasury, Federal Trade Commission and Food and Drug Administration then moved in. A new alcohol control agency was proposed, leading to a dispute as to whether it should be independent or part of the Treasury.

Joseph H. Choate, Jr., first head of the FACA, testified that:

The Treasury has not been an organization whose duty it was to study and understand the liquor business, the interest of the public in that business, or the method by which that business ought to be carried on in order to subserve the interests of both the public and state governments. It has been a creature of one idea, that one idea being, quite properly, to get revenue and get it as fast and as copiously as it could (Harrison & Laine, 1936: 33).

The Department of the Treasury agreed with Choate's analysis.

Nevertheless, this testimony was disregarded and the Federal Alcohol Administration was created as a division of Treasury in 1935. This arrangement was superseded in 1936 when the Liquor Tax Administration Act established FACA as an independent agency of the government. Soon thereafter it was reorganized, once again as an arm of the Department of Treasury, and even its separate identity was abolished as of June 30, 1940. Today, the Treasury retains full authority to administer all federal liquor laws.

The current federal laws regulating trade in intoxicating beverages may be classified in the following categories:

(1) Revenue: Taxes are imposed on rectifiers, brewers, manufacturers of stills, dealers; wholesale and retail stamps are required on distilled spirits (26 USC, 1971a).

(2) Criminal Penalties: Criminal penalties are provided for unauthorized production, sale or possession, transportation into states prohibiting sale, C.O.D. shipments and unlabeled shipments (26 USC, 1971b; 18 USC, 1971).

(3) Interstate Transportation: Interstate shipments of alcoholic beverages are subject to the laws of the receiving state (27 USC, 1971a).

(4) Permits: Importers, manufacturers and sellers of intoxicating beverages must have permits (27 USC, 1971b).

(5) Unfair Practices: Exclusive sales arrangements, tying, bribery and false advertising or labeling are prohibited (27 USC, 1971b).

The intent of the Federal Government to reserve all decisions regarding regulation of consumption is quite clear from federal statutes presently in force. The states have reacted with a variety of regulatory schemes controlling to varying degrees the seller, the buyer, the place, time and opportunity for sale and, through revenue measures, the cost.

In 18 states, the state store or state monopoly system has entirely displaced the private wholesale or retail sale of intoxicating beverages. Other states permit the sale of liquor, wine and beer through private, licensed outlets.

The license system may be implemented by different means. Administration may be solely by the state, or control may be shared by the counties or municipalities.

Local control may be exercised to a greater or lesser degree. For example, in the 1930's, immediately after repeal, Massachusetts and New Mexico permitted local boards to grant retail licenses only after investigation and approval of applicants by the state board. During the same period, other states, predominantly in the South, gave local authorities supplemental powers to issue licenses while requiring concurrent state licenses as well.

In some jurisdictions, the local license had to be obtained first, and the state license could be granted thereafter. In Illinois, however, the state commission's power was curtailed by requiring that a state license be granted once the local license was secured. And although the state was given the power to revoke its license, it was given no power to inspect places of sale to determine grounds for revocation (Harrison & Laine, 1936: 50-53).

The license system has been suspect by many wets as well as dries because of the opportunities it may afford for political abuse. On the other hand, there is substantial opinion which holds direct participation in the sale of liquor in contempt. As to the relative efficacy of each, there are no reliable means of making a judgment. Each apparently depends on the integrity and capacity of the individuals charged with the job of enforcement and oversight.

Superimposed on the basic system of regulating the sale of liquor are other sumptuary laws which are directed at the purchaser. Sales are not permitted to minors or intoxicated persons. Credit is often prohibited on liquor sales as well. Criminal penalties may be imposed for driving under the influence of alcohol as well as for drunken behavior.

The sale of liquor by the drink is permitted in most states, but some still require that it be sold in packaged form only, reflecting the continuing fear of the resurrection of the saloon. In many states Sunday closing laws are enforced, and mandatory closing times are imposed upon bars and package stores alike. Sales are prohibited almost uniformly on Election Day, at least during polling hours, and, in many places, on Thanksgiving, Memorial Day, Christmas and other holidays.

Local option is still granted in most states, in voting units ranging from the plantation to the city or county. Of the monopoly or control states, only Utah and Wyoming fail to make provision for local option at all. Wyoming maintains a state monopoly at the wholesale level only. Private retailer sellers are licensed.

In the remaining monopoly states, it is often possible for towns within a wet county to go dry, and sometimes vice versa. Of the 33 license states, only 10 (including the District of Columbia) do not permit local option at any level.

Notwithstanding the various patterns of regulation, Senator Arthur Capper's words of the 1930's still seem to be correct:

We can repeal prohibition, but we cannot repeal the liquor problem (Peterson, 1969: 126).

Neither the states nor the population have yet come to grips with the problems of alcoholism and alcohol abuse. Both the monopoly system and the license system are directed at other concerns. They, no more than Prohibition, have been able to control or even alleviate the very real and dire consequences of alcohol use by society.

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26 U SC § § 5081-5416 (1971a).

26 USC §§ 5061-5691 (1971b).

18 U SC § § 1261-1265 (1971).

27 USC §§ 121, 122 (1971a).

27 USC § 205 (1971b).

History of Tobacco Regulation*

*This section is based in part on a paper prepared for the Commission by Jane Lang McGrew, an attorney from Washington, D.C.

Since 1613, when John Rolfe introduced a successful experiment in tobacco cultivation in Virginia (Morison, 1965 : 52) the leaf has assumed major social, industrial, economic and medical implications. Consequently, persons concerned with tobacco on a commercial or personal basis have been subject to a variety of different regulations over the past 360 years.

Tobacco has been attacked by social observers and medical authorities for the damage it has allegedly done, to the social and physical condition of man. Yet it has also provided a substantial source of revenue to the state and Federal governments of the United States.

As is now the case with alcohol, tobacco has long been subject to regulatory controls over the quantity and quality of production. On the other hand, sumptuary laws affecting tobacco have been far fewer-and weaker-than those aimed at alcohol. In fact, there has never been a time when tobacco was prohibited throughout the United States although consumption under certain circumstances has been forbidden at various times in different jurisdictions.

Tobacco-associated today with smoking of cigarettes, and to a lesser extent, of pipes and cigars-has been popular at times for both snuffing and chewing. Indeed, until about 1870 cigarettes were relatively rare in the United States, and almost all tobacco consumed domestically was chewed during the mid-19th century (Gottsegen, 1940: 9-10).

What ever the preferred mode of consumption, however, the commodity has always been the subject of debate respecting the appropriate governmental attitude. On the one hand, proponents of the leaf stress its social benefits and its economic and industrial significance. Some enthusiasts even endorse its alleged medical and psychological benefits. Opposed are those who cite the health hazards of smoking and others who are convinced of its immorality.

The motivation for regulation has come from both sides of the controversy. Most sumptuary restrictions were fostered by the latter group in an effort to suppress the habit. Those who seek to institutionalize and foster use of the drug focus on the regulation of the quantity and quality of production.

This section does not attempt to weigh the merits of the various regulatory schemes. Rather, it will trace from John Rolfe's day the three threads of regulation which have circumscribed both the producer and consumer of tobacco in the United States.

REGULATION OF PRODUCTION

In the opinion of King James I of England, tobacco was "loathsome to the eye, hateful to the nose, harmful to the brain" and "dangerous to the lungs" (Middleton, 1953: 93). Whether the King was prescient, or simply sensitive, was irrelevant in the 17th and 18th centuries, however, for tobacco rapidly became the mainstay of the Maryland and Virginia economies. Within seven years of John Rolfe's first imaginative experiment, Virginia exported nothing but tobacco and a little sassafras to England (Middleton, 1953: 93-94). Almost as quickly, the leaf became the staple of the colony of Maryland and competition developed in Carolina as well.

In Massachusetts Bay, the product fared less well. The first general letter (April 17, 1629) from an official of the New England Company to the Massachusetts Bay settlers prohibited the planting of tobacco except in small quantities for medicinal purposes (Werner, 1922: 100). Next door in Connecticut, however, the colonists attempted to rival the southern planters with a local leaf. Indeed, the infant industry was coddled by the protectionist General Court at New Haven, which promulgated a rule in 1641 that:

No persons within this jurisdiction shall [smoke] any other Tobacco but such as is or shall be planted within these [districts], except they have license from the Courte (Tobacco Institute, Connecticut, undated: 20).

Notwithstanding the royal attitude and the fear of certain patent holders of the London Company that Virginia had become a "colony founded on smoke" (Tobacco Institute, Virginia, 1971 : 19; Middleton, 1953: 94), England encouraged the growth of the tobacco industry. Monopolies to import tobacco from the colonies were granted by the Crown to court favorites who soon prospered as a result of this trade.

In 1621, a bill was introduced which, according to one contemporary commentator, was "extremely remarkable": No tobacco was to be imported after the 1st of October, 1621, except from Virginia and Bermuda; and, after that day, none was to be planted in England. Although the act was initially defeated by the House of Lords, James I in 1622 himself granted the import monopoly to the Virginia and Bermuda, companies and prohibited the domestic cultivation of tobacco (Brooks, 1952: 88).

The system worked well for the British importers, but the methods of financing they employed became onerous to the colonial planters. The tobacco was marketed by consignment to an English merchant who deposited the proceeds of the sale to the planters' accounts. Often, however, the high commissions charged and the cost, of goods ordered by the Virginians in payment for their crop contributed to the growth of colonial indebtedness. The extension of credit to cover the deficiencies caused the debts to grow constantly, but the only alternative to the consignment system was to sell the product in the colony at a lower price (Middleton, 1953: 104-107).

Industrial competition in this market provided the impulse for certain regulatory relief. Importation of the Carolinian product into Virginia was forbidden by an act of 1679, amended in 1726 to prohibit importation by land as well as by sea. Nor was North Carolina permitted to export its tobacco from Virginia ports. In Great Britain, the Privy Council looked with disfavor upon such colonial legislation which threatened the financial well-being of the merchants and so disallowed the Virginia Act in 1731 (Middleton, 1953: 114-115).

Competition similarly induced both Virginia and Maryland to enact laws prescribing the dimensions of the hogshead in which tobacco was packaged in 1658. Vying for purchasers, the two colonies gradually enlarged the statutory size of the hogshead until, under edict from the Privy Council in Britain, Maryland was ordered to pass a gauge act establishing the size of the hogshead in the same dimensions as those fixed in Virginia.

Notwithstanding such legislation, however, the manufacture of hogsheads was still characterized by carelessness and irregularity until the warehouse inspection system went into effect in the 18th century (Middleton, 1953: 116-117).

It was not long before the colonial planters were faced with a more serious problem—overproduction—which was causing a decline in prices as well as quality of the leaf. In 1619, the first tobacco inspection law was passed by the Virginia House of Burgesses, ordering the lowest grade of tobacco to be destroyed and prohibiting "second growth" tobacco and the marketing of trash leaves.

This act was followed in 1621 by a more direct attempt to restrict production. Each cultivator was required to limit his growth to 1000 plants of nine leaves each. Although this order was soon rescinded as a patent failure, an act of 1629 permitted each planter to tend only 3000 plants with an additional allowance of 1000 for non-laboring 'women and each child (Brooks, 1952: 96).

Notwithstanding the statutory effort, the problem intensified. Virginia attempted to encourage the other tobacco colonies to reach agreements restricting plantings, but in Maryland, Lord Baltimore resisted. If planters were poor, he asserted:

It is not from the low price of Tobacco, but from their owne sloth, ill husbandry and profusely spending their croppe in Brandewine, and other liquors (Robert, 1949: 11).

Carolina, Maryland and Virginia actually reached a decision to prohibit the planting of the staple from February 1667 to February 1668. This "stint" proved a less effective means of control than the winds of 1667, which almost destroyed the crop ready for harvest that year (Tobacco Institute, Virginia, 1971: 19).

Acts of God failed to provide an ultimate solution, however, and severe economic dislocation in Maryland and Virginia intensified. By 1681, the Virginia governor, Lord Culpeper, complained:

... [T]hat which is more to us than all other things put together, and will be the speedy and certain ruin of the colony, is the low price of tobacco. The thing is so fatal and desperate that there is no remedy; the market is overstocked and every crop overstocks it more. It is commonly said that there is tobacco enough now in London to last all England for five years.... Our thriving is our undoing, and our purchase of negroes, by increasing the supply of tobacco, has greatly contributed thereto (Brooks, 1952: 112-113).

The failure of the Virginia Assembly to pass another act requiring a "stint" led the so-called "cutters and pluckers" to take the matter into their own hands in 1682 by burning both their own crops and the plants of their neighbors (Roberts, 1949: 11). The riot stimulated legislative action in 1684 of a less helpful sort: the destruction of tobacco was made a criminal offense, subject to the death penalty (Brooks, 1952: 12).

Seventeenth century quality control laws proved no more successful in the effort to relieve the depression of the industry. Renewed efforts were made in early years of the next century, however.

In 1713, the Virginia House of Burgesses established a warehouse system to enforce tobacco inspection. Forty public warehouses were created. Strong opposition to the system led the Privy Council to disallow the act in 1717, but the ensuing depression of the 1720's was convincing evidence of the need for relief. Accordingly, the system was reinstated with British approval in 1730, complete with public warehouses and official inspectors (Middleton, 1953: 120-121).

The apparent success of the system appealed to Maryland, suffering also from a surfeit of tobacco. "Tobacco, our money, is worth nothing wrote one Marylander in 1724, "and [there is] not a Shirt to be had for Tobacco this year in all our country" (Tobacco Institute, Maryland, 1971: 21).

Tobacco riots ensued when the Maryland Assembly initially refused to follow Virginia's example. One individual was moved to inform Lord Baltimore that no improvement in the economic state of the colony was possible until inspection laws were passed that "will prevent the sending to Market Such trash as is unfit for any other use but Manure" (Tobacco Institute, Maryland, 1971: 23). Accordingly, Maryland followed Virginia in the creation of an inspection system in 1747, and Carolina did likewise in 1754 (Brooks, 1952: 165).

Tobacco entirely dominated the economic and social structure of Virginia and Maryland. "Tobacco requires us to abhor communities or townships," wrote a 17th century governor of Maryland, "since a planter cannot carry on his affairs without considerable elbow room within his plantation" (Brooks, 1952: 98).

In Virginia, tobacco had gained such ascendancy that it was used as money. For example, when, in 1621, a cargo of twelve young women made its way to the colony, each one was valued at 120 pounds of the best leaf (Brooks, 1952: 93). By law, Virginia's ministers were paid in tobacco at 16,000 pounds annually in 1696. The law provided that:

A competent and sufficient provision for the clergy will be the only means to supply this dominion with able and faithful Ministers whereby the glory of God may be advanced, the church propagated, and the people edified (Werner, 1922: 102).

Not until the Option Act was passed by the Virginia Assembly in 1755 could the clergy's fees be paid in either money or tobacco (Brooks, 1952: 167).

The regulation of tobacco in the colonies was devised in response to the industry with the intent to further the prosperity of the planters who dominated the economy. This theme continued to pervade all related regulatory efforts in the tobacco-producing states thereafter, as new practices developed in the marketing of the leaf.

The initial hogshead inspection system gradually gave way to the sale of loose-leaf tobacco by auction. In 1849 the Virginia Code recognized these methods in lieu of the sale of hogsheads of the leaf as provided in the 1730 Act. By 1865, the tobacco auction had completely replaced the earlier marketing techniques in Virginia (Tobacco Institute, Virginia, 1971: 28-29).

More than a half century later Maryland followed suit. In 1939, the loose-leaf auction warehouse system was introduced to replace the hogshead system, and the conversion occurred almost overnight. The practices engaged in are regulated by the Maryland State Tobacco Authority, established in 1947 by law. The Authority itself is supervised by eight representatives selected by the Governor from the producing counties, the University of Maryland, the buyers and the sellers (Tobacco Institute, Maryland, 1971: 9-10).

The Federal Government came to recognize the significance of the tobacco industry in response to state pressures. Accordingly, since 1930, several bills have been enacted to aid the growers.

Enacted in 1935, the Tobacco Inspection Act directs the Secretary of Agriculture to establish quality standards and to designate auction markets (7 U.S.C. 511 (b) and (d)). The following year, the Tobacco Control Act was passed, bestowing Congressional approval upon state compacts which regulate the production of tobacco, and subsidizing the expenses of the state commissions involved (7 U.S.C. 515). Thus, the two elements of initial colonial regulation were preserved: the encouragement of quality and the discouragement of quantity.

The latter objective was further implemented by the Agricultural Adjustment Act of 1938. Since that time, parity payments have been made to tobacco producers:

In amounts which, together with the proceeds thereof, will provide a return to such producers which is as nearly equal to parity price as the funds so made available will permit (7 U.S.C. 1303).

In addition, the Secretary of Agriculture is authorized to set national marketing quotas respecting each kind of tobacco (7 U.S.C. 1312), to apportion the quotas among the states, and to allot the portions among the farms (7 U.S.C. 1314). Penalties are imposed for overproduction (7 U.S.C. 1314).

There is nothing subtle about these measures, of course. Their intent is obvious: to assure the economic stability of an industry which, as of 1960, provided the United States population with more than 150,000,000 pounds of manufactured tobacco for consumption annually (Heimann, 1960: 93), and which provided more than \$4.8 billion in taxes in 1971 (USDA, Tobacco Situation, 1971b: 44).

During the same year, growers' gross receipts reached about \$900 million (Tobacco Tax Council, 1970: 2), while cigarette sales alone grossed for the manufacturer and seller approximately \$5 billion (Tobacco Tax Council, 1970: 53). The commercial motivation is sound enough if considered abstractly. When combined with the revenue incentive, however, it has largely obscured sumptuary controls.

REGULATION FOR REVENUE

Alexander Hamilton's tax package of 1794 proposed the first federal excise taxes upon tobacco products. To the distress of Philadelphia snuff manufacturers (Brooks, 1952: 146), however, the tax was restricted after serious Congressional debate to their product only.

James Madison led the opposition to a general tobacco tax; his views were summarized in the Annals of Congress on May 2, 1794:

As to the subject before the House, it was proper to choose taxes the least unequal. Tobacco excise was a burden the most unequal. It fell upon the poor, upon the sailors, day-laborers, and other people of these classes, while the rich will often escape it (Robert, 1949: 100).

The legislative decision was probably tempered as well by considerations of the enforceability of the measure: snuff had to be manufactured, while quid and pipe tobacco were often homegrown leaf at the time (Heimann, 1960: 155). In any case, the snuff bill was ultimately enacted, modified, suspended and repealed, with small, if any, effect upon federal revenues.

The opportunity to distill tax money from tobacco was seized upon more vigorously at the time of the Civil War. On July 1, 1862, an ad valorem tax was imposed upon cigars for the first time. This tax was raised two years later when a separate tax upon cigarettes was also imposed (Werner, 1922: 358). (Even the Confederacy sought to levy a tax-in-kind upon tobacco crops, but was precluded from doing so by the inspection system which required the inspector to deliver the full amount of tobacco specified in the warehouse receipt (Robert, 1949: 117).)

Thereafter, the taxes were raised in 1865, 1866 and 1875. A temporary reduction followed, until the Spanish-American War necessitated further increases. Concurrently, taxes were levied upon smoking and manufactured tobacco and snuff, lest the burden fall unequally upon smokers (Werner, 1922: 559).

By 1880, the tobacco taxes had largely stabilized. At that time, they accounted for 31% of total federal tax receipts, or \$38.9 million. Of this, 50% of the collections was derived from smoking and chewing tobacco, 40% from cigars and cheroots, and less than 2% from cigarettes (Heimann, 1960: 156).

Since that time, federal tax collections on tobacco products have risen almost annually. Between 1910 and 1920, they increased more than 500%, the greatest increase in any single decade. By 1970, they accounted for almost \$2.1 billion, down slightly from the two preceding years (Tobacco Tax Council, 1970: 5).

Indicative of changing patterns of consumption, the taxes on cigarettes, as a percentage of the total federal tobacco revenue jumped from 13.6% in 1910 to 51.1% in 1920. By 1970, the percentage at 97.2% far outdistanced those revenues derived from other forms of the product (Tobacco Tax Council, 1970: 5).

Excise taxes have proved profitable and easy to collect. The revenue schemes are simple on both the federal (26 U.S.C. 5701 et seq.) and state levels. In the past, no justification for them has been deemed necessary since Madison's protest. No elaborate licensing or state monopoly system, such as those designed to control commerce in alcohol, has ever been imposed.

In 1921, Iowa became the first state to cash in on the crop directly by taxing cigarettes. By 1930, 11 other states had adopted the revenue measure (Robert, 1949: 256).

In 1950, 40 states and the District of Columbia taxed cigarettes. The rates ranged from one cent to five cents for a pack of 20 except in Louisiana which levied an eight cent tax on cigarettes. In 1958, Montana imposed an equivalent rate.

Between 1950 and 1962, 43 of the 47 taxing states raised their rates at least once. The frequent increase in cigarette taxes narrowed the gap between the rates in low tax states and higher tax states. In the 12-year period, the median tax rate rose from three cents to six cents per pack (Federal Trade Commission, 1970: 3); the maximum rate remained at eight cents in Texas, Louisiana, Montana and New Mexico, in contrast to the two cent rate in the District of Columbia and Kentucky.

The four leading states in terms of both production and relative dependence on the crop have been North Carolina, South Carolina, Kentucky and Virginia, the latter two being the only states in the history of cigarette taxation to decrease their taxes; the reduction was only .5 cent (from three cents to two and a half cents) in 1960 and 1961, respectively.

By 1966, Oregon became the 49th state to impose a tax on cigarettes; the rate was four cents per pack. Finally, in 1969 North Carolina imposed a cigarette tax-two cents.

The cigarette excise taxes continued to increase during the sixties. By 1970, the taxes ranged from North Carolina's two cents to Pennsylvania's 18 cents for a weighted average of 10.7 cents. Twenty nine states levied taxes of 10 cents or more per pack (USDA, Tobacco Situation, 1971b: 40). Local governments superimposed further excise taxes on the state taxes, ranging from one cent to 10 cents per package (Tobacco Tax Council, 1970: iv).

By mid-1971, the range had widened further Connecticut at 21 cents and North Carolina at two cents, the weighted average state tax being 11.1 cents (USDA, Tobacco Situation, 1971a: 7).

TOBACCO REVENUES

A peculiar relationship exists between production and revenue. In 1970, cash receipts from tobacco brought in \$11 million for Pennsylvania; tobacco farmers and cigarette taxes amassed \$194.6 million for the state. By comparison growers in North Carolina collected \$576 million while the state collected only \$13.4 million in cigarette revenues (USDA, Tobacco Situation, 1971b: 43).

The federal excise tax on a package of cigarettes is currently eight cents and has remained so since 1951. The combined state and federal tax was highest in Pennsylvania; 26 cents for 20 cigarettes, which was 58.2% of the retail price. Connecticut's 24 cents and Texas's 23.5 cents were close behind; the average for the United States was 46.8%.

To the Federal and state governments today, tobacco is a financial asset. The total federal and state revenue collected from all tobacco products in 1971 amounted to over \$4.7 billion. Local governments excised the product further bringing the sum total to \$4.8 billion (USDA, Tobacco Situation, 1971b: 44).

From the years 1890 to 1930 cigarette tax collections from tobacco soared from approximately \$1 million to over \$339 million. By 1950, they exceeded \$1.2 billion.

Totals for the years 1890 to 1970 are recorded in the following chart (Tobacco Tax Council, 1970: 5)

Cigarette tax

Years Collections

1890
\$1,100,000

1900
4,000,000

1910
7,900,000

1920
151,300,000

1930
359,800,000

1940
533,000,000

1950
1,242,800,000

1960
1,863,600,000

1970
2,036,100,000

REGULATION OF CONSUMPTION

Even as far back as the 16th century, smoking was considered to have medicinal value. Juan de Cardenas, a Spanish physician who lived in Mexico in the late 1500's, wrote that "Soldiers subject to privations, kept off cold, hunger, thirst by smoking and all the inhabitants of the hot countries of the Indies alleviate their discomforts by the smoke of this blessed and medicinal weed" (Wagner, 1971: 63-64).

During the recurrent epidemics of plague in the 17th century, it was widely believed that smokers were spared; it has been reported that men who attended the sick and accompanied the dead kept their pipes lit (Wagner, 1971: 63-64).

In 1614, one Scottish doctor praised the tobacco plant which:

Prepareth the stomach for meat; it maketh a clear voice; it maketh a sweet breath . . . in a few words it is the princess of physical plants (Gottsegen, 1940: 87).

King James disagreed strenuously, and in 1604 ordered a substantial increase in the import

duty on the leaf. Smoking, he wrote in "A Counterblaste to Tobacco", is:

A custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs, and in the black stinking fume thereof, nearest resembling the horrible Stygian smoke of the pit that is bottomless (Brooks, 1952:56, 71).

Another more passionate moralist wrote:

. . . imagine thou beheldest here a firme-sucker's wife most fearfully fuming forth very fountains of blood, howling for anguish of heart, weeping, wailing, and wringing her hands together . . . while she pitifully pleads with her husband thus: Oh husband, my husband . . . ! Why dost thou so vainly prefer a vanishing filthy fume before my permanent virtues? (Brooks, 1952: 72).

Notwithstanding such alliterative literature, the habit of smoking increased in popularity, particularly in the colonies. A French visitor observed in 1686 that:

Large quantities of it [tobacco] are used in this country, besides what they sell. Everyone smokes while working and idling. I sometimes went to hear the sermon; their churches are in the woods, and when everyone has arrived the minister and all the others smoke before going in. The preaching over, they do the same thing before parting. They have seats for that purpose. It was here I saw that everybody smokes, men, women, girls and boys from the age of seven years (Robert, 1949: 99).

It was said that even in New England, women of the colony "smoke in bed, smoke as they knead their bread, smoke whilst they're cooking" (Cottsegen, 1940: 147).

In the tobacco colonies, of course, there was no attempt to restrict Consumption of tobacco. It was, after all, their economic mainstay.

Officials in the northern colonies were less enthusiastic about the habit, however. In 1632, the General Court of Massachusetts Bay took the initiative and foisted smoking in public tinder penalty of a fine (Tobacco Institute, Massachusetts, 1971 : 17). In 1638, the proscription was expanded to prohibit anyone from smoking in any inn or public house except in his own room "so as neither the master of the house nor any of the guests there shall take offense thereat which if they do, then such person is forthwith to forebear upon paying of two shillings sixpence fine for every offense" (Werner, 1922: 100).

This law was followed by another in 1646 which prohibited smoking except on a journey of five miles or more from any town. Nor could a citizen of the colony bring a pipe or tobacco into the precincts of the court (Werner, 1922: 100), although he might smoke at "the ordinary tyme of repast comonly called dynner" (Heimann, 1960: 83).

Plymouth colony was similarly strict. In 1638, a law was passed forbidding anyone from smoking on the streets. The following year, it was decreed that jurymen might not smoke, on pain of a five shilling penalty.

In 1641, even the importation of tobacco was forbidden, although the law was repealed a year later. A law passed in 1646 prohibited all from smoking, but exempted "soldiers in time of their training." And, finally, in 1669, it was ordered that anyone found smoking on the Sabbath within two miles of a meeting house, would be fined 12 pence (Werner, 1922:

101).

The colony at New Haven, Connecticut, essayed a like series of statutes to regulate tobacco consumption. In 1646 the General Court decreed that:

No person under the age of twenty years nor any other that hath not already accustomed himself to the use thereof, shall take any tobacco, until he hath brough a certificate under the hands of [a physician] that it is usefull for him, and also, that he hath received a license from the court for the same.... None shall take any tobacco, publickly in the street or any open places unless on a journey of at least ten miles. (Tobacco Institute, Connecticut: 20-21).

Within three years those laws were repealed (Werner, 1922: 102). However, it was further ordered in 1655 that:

No tobacco shall be taken in the streets, yards or aboute the howses in any plantation or farme in this jurisdiction without dores, neere or aboute the towne, or in the meeting howse, or body of the trayne Souldiors, or any other place where they may doe mischief thereby, under the penalty of 84 pence a pipe for a time, wch is to goe to him that informs and prosecuts (Heimann, 1960: 83).

As a result of the regulation, snooping became a profitable undertaking. In the end, however, the laws were of no avail in suppressing tobacco.

By 1680, the governor of Connecticut recognized the significance of the leaf and reported that, "We have no need of Virginia's trade, most people planting so much Tobacco as they spend," (Heimann, 1960: 84). Indeed, by the early 18th century, New England-grown tobacco was being produced in great enough quantity for both domestic consumption and export (Tobacco Institute, Connecticut: 22-23).

Tobacco was not one of the major concerns of the 18th century either before or after the Revolution. Social reform was generally secondary to political issues. By the end of the century, however, Dr. Benjamin Rush had published his "Observations upon the influence of the Habitual use of Tobacco upon Health, Morals, and Property" in his collection of Essays, Literary, Moral and Philosophical. It appeared in 1798, and stressed the Doctor's thesis that smoking and chewing provoked drunkenness:

One of the usual effects of smoking and chewing is thirst. This thirst cannot be allayed by water, for no sedative or even insipid liquor will be relished after the mouth and throat have been exposed to the stimulus of the smoke, or juice of Tobacco. A desire of course is excited for strong drinks, and these when taken between meals soon lead to intemperance and drunkenness. One of the greatest sots I ever knew, acquired a love for ardent spirits by swallowing ends of Tobacco, which he, (lid, to escape detection in the use of it. . . (Robert, 1949: 106).

There was little immediate response to Rush's dire warnings, although in the year his tract was published, Boston enacted a statute to prohibit the carrying of a lighted pipe or cigar in public streets—apparently with the intent to reduce the hazard of fire (Brooks, 1952: 245).

An anti-tobacco crusade was launched in the 19th century, although with considerably less fervor than its sister movement against alcohol. Among the leaders were Rev. George Trask who said tobacco and alcohol were Satan's twins; and the Rev. Orin Fowler, who declared in 1833: "Rum-drinking will not cease, till tobacco-chewing and tobacco smoking and snuff-taking shall cease" (Robert, 1949: 107). Another, Dr. Joel Shew, attributed delirium tremens, perverted sexuality, impotency, insanity and cancer to the effects of smoking and chewing (Brooks, 1952: 219).

The crusade waned as the pipe continued to attract adherents. From the 18th century on, the cigar too began to grow in favor, particularly after 1840. It is estimated that by 1850, the average number of cigars smoked was approximately 19 per capita. Within 10 years, the number had increased to about 26 (Gottsegen, 1940: 8-10).

Women smoked and chewed as well as the men. Indeed, Mrs. Andrew Jackson and Mrs. Zachary Taylor both smoked their pipes in the White House (Heimann, 1960: 90). And, of course, the other residents of the Capital engaged heavily in the practices of both chewing and spitting, to the extent that Charles Dickens, during his tour of the States, felt called upon to report that:

Washington may be called the headquarters of tobaccotinctured saliva.... In all the public places of America, this filthy custom is recognized. In the courts of law, the judge has his spittoon, the crier his, the witness his, and the prisoner his; while the jurymen and spectators are provided for. . . . The stranger will find [the custom] in its full bloom of glory, luxuriant in all its alarming recklessness, at Washington (Brooks, 1952: 215-216).

Chewing and snuffing remained popular until the time of the Civil War. Thereafter, cigarette smoking was gradually adopted in North America, a habit indirectly acquired through the British from their Turkish and French allies during the Crimean War (Werner, 1922: 105).

By 1870, approximately 13.9 million cigarettes were smoked annually in the United States, or .36 per capita. Over the next 60 years, the number was to reach 976.91 per capita (Gottsegen, 1940: 28).

As more persons took to cigarettes, the zeal of reformers, which had ebbed during the Civil War, was renewed. Pamphlets, like those of the Temperance Movement, were published, urging abstinence from smoking:

"I'll never use tobacco, no;

It is a filthy weed;

I'll never put it in my mouth."

Said Little Robert Reed.

"It hurts the health ; it makes bad breath;

'Til very bad indeed.

I'll never, never use it, no!"

Said Little Robert Reed (Brooks, 1952: 242-243).

During the period following the Civil War and prior to the formation of the American Tobacco Company in 1890, the anti-liquor forces continued to snipe at tobacco in all forms. A reformed drinker and temperance lecturer, John B. Gough, would pull from his pocket a square of tobacco, smell it as if it were a rose, cry out "Ali you black devil, I love-you" and throw it away.

The anti-tobacconists were led by Lucy Gaston, the greatest warrior in the anti-cigarette campaign who was trained in the office of the Women's Christian Temperance Union and then moved over into the anti-tobacco Movement in the 1890's. Miss Gaston encouraged children to wear anti-tobacco pins or buttons and organized armies of children to sing and preach to and against their smoking elders (Wagner, 1971: 40).

"All hostility to tobacco seems nowadays to be concentrated on cigarettes," noted Harper's Weekly, observing the scene in 1905 (Robert, 1949: 169). It was scarcely a startling revelation. Twenty years earlier, the New York Times editorialized that:

A grown man has no possible excuse for thus imitating the small boy.... The decadence of Spain began when the Spaniards adopted cigarettes and if this pernicious habit obtains among adult Americans the ruin of the Republic is close at hand . . . (Brooks, 1952: 253).

Miss Gaston witnessed some legislation victories. Between 1895 and 1921, 14 states banned the sale of cigarettes (Neuberger, 1963: 52). Even in the city of New York it was declared unlawful for women to smoke in public (Brooks, 1952: 271). Curiously, However, the city of Boston repealed its law which prohibited smoking in public in 1880 (Gottsegen, 1940: 153).

The apparent success of the prohibitionists revived the anti-tobacconists' enthusiasm. "Prohibition is won; now for tobacco!" pledged Billy Sunday. Miss Gaston also renewed her dedication and actually announced her candidacy for the presidency of the United States in 1920 on an antitobacco platform.

For many anti-tobacconists, when it became apparent that the elder generation may be lost, the war against tobacco was focused on the youth of the country. The National Education Association pledged its membership to cooperate in efforts made in the city, state and nation to safeguard the health and morals of youth from cigarette smoking to the end that high ideals for American manhood may be preserved for the coming generation (Hamilton, 1927: 168).

The National Congress of PTA, in Atlanta, Georgia, in 1926 resolved "to lend its force to the cause of eliminating throughout the United State-, the use of cigarettes by minors and make this a special work for the ensuing year for the good of our youth" (Hamilton, 1927: 168).

It is for these reasons that the WCTU declared an educational war against tobacco, but declined to seek prohibitory legislation (Robert, 1949: 247).

The disenchanting experience of Prohibition, the omnipresence of the tobacco industry, the need for new sources of state revenues and the prevalence and popularity of cigarette smoking combined to frustrate the anti-tobacco campaign. Cigarettes did provide a new source of revenue. Federal income from tobacco taxes soared to new heights because of

increased cigarette consumption and advanced rates.

In any event, by 1927, each of the 14 states which had enacted prohibitory laws against cigarettes had repealed them (Neuberger, 1963: 52). Immediately thereafter these, states imposed taxes upon the once forbidden product (Robert, 1949: 256; Federal Trade Commission, 1970: 3).

STATE REGULATION

Only those laws which forbade the sale of tobacco products to minors remain on the books, a trend set by New Jersey and Washington in 1883 (Gottsegen, 1940: 155).

All but a few statutes restricting tobacco products to minors were enacted between 1916-1920, simultaneous to the development and popularity of the domestic-blend cigarette.

All 50 states had laws banning sales to minors by 1950. Since then, Georgia, Louisiana, and Wisconsin have repealed theirs leaving 47 states plus the District of Columbia, with laws prohibiting sales to minors.

The most common age of restriction for cigarettes and tobacco products today applies to persons under the age of 18. In an effort to ensure stricter enforcement 11 states have lowered the age of restriction from 21 to 15 (Tobacco Merchants Association, 1971: 1-2). In contrast to this trend, however, the California Legislature, 1971 defeated a bill to allow school smoking areas and lowering the sale to minor restrictions to 15 years old (NIC Smoking and Health, 1971: 1).

According to a Special Report released by the Tobacco Merchants Association of the United States, the liability for infractions in all states is on the vendor and donor of cigarettes. In a few states, manufacturer and persons advising or compelling the minors to smoke, or owning the premise where such behavior occurs are also liable. However, in some states the infraction does not extend to the parent or guardian. Some states penalize the minor himself and others require that he divulge his source.

Most of the statutes that prohibit the furnishing of cigarettes to minors extend the ban also to one or more other tobacco products. Only 11 states restrict the sale "only" to cigarettes. The efficacy of such statutes, in the day of the cigarette machine, is subject to substantial skepticism.

A complete listing of existing state statutes concerning possession by and sales to minors follows (Tobacco Merchants Association, 1971: 3-4):

State

Alabama

Alaska

Arizona

Arkansas

California

Colorado

Connecticut

Delaware

District of Columbia

Florida

Georgia

,see footnotes at end of table.

Sale to minors

Prohibited Age

Yes Minor

Yes Under 18

Yes Minor

Yes Under 18

Yes Under 18

Yes Under 16

Yes Under 16

Yes Under 17

.. Yes Under 16

Yes Minor

No provision

Use or possession

Prohibited Age

No provision

No provision

Yes I Minor.

No provision

Yes (4).

No provision

No provision

No provision

No provision

No provision

No provision

Sale to minors Use or possession

State

Prohibited Age Prohibited Age

Hawaii Yes Under 15 No provision

Idaho Yes Under 18 Yes Under 18.

Illinois Yes 5 Under 18 Yes Under 18.

Indiana Yes Under 16 Yes Under 21.

Iowa Yes Under 18 (57) Under 18.

Kansas Yes Under 18 Yes Under 18.

Kentucky Yes Under 18 Yes Under 18.

Louisiana No provision No provision

Maine Yes Under 16 No provision

Maryland Yes Under 15 No provision

Massachusetts Yes' Under 18 No provision

Michigan Yes Under 21 Yes Under 21.

Minnesota Yes Under 18 Yes Under 18.

Mississippi Yes⁵ Under 18 No provision

Missouri Yes Under 18 Yes Under 18.

Montana Yes Under 18 No provision

Nebraska Yes Under 18 Yes Under 18.

Nevada Yes 5 Under 18 No provision

New Hampshire Yes Minor No provision

New Jersey Yes Under 16 No provision

New Mexico Yes⁵ Under 18 8 No provision

New York Yes Under 18 No provision

North Carolina Yes Under 17 No provision

North Dakota Yes Under 21 Yes Under 18.9

Ohio Yes Under 18 No provision

Oklahoma Yes Minor (6) Minor.

Oregon Yes Under 18 Yes Under 18.

Pennsylvania Yes Minor (6) Minor.

Rhode Island Yes Under 16 Yes Under 16.

South Carolina Yes Under 18 (6) Under 18.

South Dakota Yes Under 18 Yes Under 18.

Tennessee Yes Under 18 No provision

Texas Yes,' Under 16 No provision

Utah Yes Under 19 Yes' Under 19.

Vermont Yes⁵ Under 17 No provision

Virginia Yes Under 18 No provision

Washington Yes Under 21 Yes Between 18 and 21.1

West Virginia Yes Under 21 Yes Under 21.

Wisconsin No provision No provision

Wyoming Yes Under 18 No provision

1 Includes a prohibition against the purchase of cigarettes by minors (in Illinois without written order of parent or guardian), as well as use or possession by

2 if other than parent or guardian.

3 However, inmates in State correction institutions 16 or over, with consent of parent or guardian, may be furnished tobacco and tobacco products.

Eighteen and over, in junior college if not permitted by governing board.

Without consent of parent or guardian.

Minors smoking or in possession of cigarettes are required to give source of cigarettes; use or possession not otherwise regulated.

in addition, high school students may not smoke.

And any pupil of any school in State.

Or a minor pupil in any school.

Purchase or possession by misrepresentation of age a misdemeanor.

THE IMPETUS FOR FEDERAL SUMPTUARY REGULATION

The effect of smoking on health has been the subject of discussion for hundreds of years. Early participants in the tobacco controversy, beginning in the late 16th century, did not associate the use of tobacco with the production of cancers although they credited it with causing or curing nearly every other known disease.

Dr. John Hill, of London, a physician, botanist and prolific writer, first suggested the relation in 1761. In *Cautions Against the Immoderate Use of Snuff*, he reported six cases of "polypusses" related to excessive indulgence in tobacco in the form of snuff. One such "polypus" was described as a swelling in one nostril that was hard, black and adherent on a broad base. Painless at first, it later developed "all the frightful symptoms of an open cancer." Dr. Hill believed that this lesion could be fatal and placed the blame for its origin

on tobacco. Dr. Hill has been noted as the first to report an association of tobacco with cancer (Redmond, 1970: 21).

In 1939, the first scientific study linking lung cancer with smoking was published. Between 1950 and 1954, 14 studies associating cigarettes and serious diseases were completed (Fritschler, 1969: 145).

At the present time, there is no government agency with clear jurisdiction over the health aspects of cigarettes. The Federal Trade Commission can act on matters of advertising and package information. The Food and Drug Administration concerns itself only with foods, drugs, solids, or liquids that are eaten or drunk. Tobacco is neither a food nor a drug under current legal definitions. Nor are cigarettes eaten or drunk; they are inhaled.

The 1890 edition of the U.S. Pharmacopoeia, an official listing of drugs published by the government, included tobacco. In later editions, tobacco was dropped. Former Senator Maurine Neuberger has claimed that the removal of tobacco from the Pharmacopoeia was the price paid to get support of tobacco-state legislators for the Food and Drug Act of 1906. The leaf was thereby removed from the jurisdiction of the FDA (Wagner, 1971: 74).

The first statement from the Public Health Service on the subject was made by its Surgeon General, Leroy F. Burney, M.D., in the Journal of the American Medical Association in November, 1959. The heart of this statement was that "the weight of evidence at present implicates smoking as the principal etiological factor in the increased incidence of lung cancer" (Diehl, 1969: 154).

In June, 1961 the American Cancer Society, the American Heart Association and the National Tuberculosis and Respiratory Disease Association jointly requested that a commission be appointed "to consider the responsibilities of government, of business and of voluntary agencies relative to the health hazards of cigarette smoking and to recommend a solution of this health problem that would protect the public and would interfere least with the freedom of industry and the happiness of individuals" (Diehl, 1969: 155).

On June 7, 1962, the then Surgeon General, Dr. Luther Terry, announced, with the approval of the President, that he was establishing an "expert committee to undertake a comprehensive review of all data on smoking and health."

The members of this committee were respected scientists who had previously expressed no opinion about the relationship of tobacco to health. All members were approved for appointment by the tobacco industry as well as by the American Medical Association and several national health agencies. Half of the committee members were cigarette smokers.

On January 11, 1964, after some 15 months of intensive study, this Advisory Committee to the Surgeon General issued its monumental unanimous report stating that "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."

The committee stated unequivocally that "cigarette smoking is causally related to lung cancer in men; the magnitude of the effect of cigarette smoking far outweighs other factors. The data for women, though less extensive, point in the same direction." Air pollution was found to be a very minor factor in the cause of the disease, far outweighed by cigarette smoking.

The death rate from heart disease, the report noted, was 70 percent higher in cigarette smokers than in nonsmokers, and although there was not enough evidence to say positively that smoking causes heart disease, there was enough to assume that it is a cause and to take action against it.

Another conclusion of great importance was that "cigarette smoking is the most important of the causes of chronic bronchitis in the United States and increases the risk of dying from chronic bronchitis and emphysema."

The report analyzed the statistical, pathological, clinical, and experimental evidence in relation to smoking and other diseases. A total of more than 4,000 published reports were studied and more than 150 investigators were personally interviewed. "The result was the most comprehensive and authoritative report on this subject ever made" (Diehl, 1969: 156).

THE HEALTH WARNING REQUIREMENT

At the time the Surgeon General's Report was published, no statute, administrative ruling or court decision required that cigarette packaging or advertising contain any statement about the dangers to health attributable to cigarette smoking.

After Trade Regulation Rule Proceedings in March and June 1964, the Federal Trade Commission concluded that cigarette advertising was deceptive (misleading) and that advertisers had a responsibility to warn the public of the health hazards of cigarette smoking.

To accomplish this, the Commission proposed that cigarette packages state the amount of tar and nicotine in the smoke of the cigarette which the package contains and that cigarette packages and cigarette advertising carry a statement such as: "Caution: Cigarette Smoking is Dangerous to Health. It May Cause Death from Cancer and Other Diseases."

This warning was to be required on cigarette packages beginning January 1, 1965, and in cigarette advertising beginning July 1, 1965. The tobacco industry first obtained a postponement of the effective dates of this ruling and then prevailed upon Congress to vitiate the ruling by passing the Cigarette Labeling and Advertising Act, requiring all packages of cigarettes sold in this country to carry the label "Cigarette Smoking May be Hazardous to Your Health," but prohibiting the Federal Trade Commission and state and local governments from requiring any other label on cigarette packages and any warnings in cigarette advertising at least until 1969.

A New York Times editorial called the Cigarette Labeling and Advertising Act of 1965 "a shocking piece of special-interest legislation—a bill to protect the economic health of the tobacco industry by freeing it of proper regulation" (Cigarette Labeling and Advertising, 1965). An article in the Atlantic Monthly described the political maneuvering behind this legislation under the title "The Quiet Victory of the Cigarette Lobby: How It Found the Best Filter Yet—Congress" (Diehl, 1969:162).

Public concern attending publication of the Surgeon General's report, Smoking and Health, and the pending FTC regulations for warnings on cigarette packages and in cigarette advertising apparently convinced the tobacco industry that some action by Congress was inevitable.

Reportedly the industry decided to accept a weak label on cigarette packages provided that the legislation would prevent any regulation of cigarette advertising. This was accomplished by inserting into the proposed law the provision precluding the FTC and all state or local governments from requiring any warning on cigarette packages other than the one approved by Congress and also preventing any warnings in cigarette advertising.

At House and Senate committee hearings, committee members friendly to the industry attempted to discredit both the Surgeon General's Report and the testimony given by the Surgeon General, the Chairman of the Federal Trade Commission, and the representatives of various medical and health organizations. The tobacco industry then presented a number of physicians who testified that they disagreed with the conclusions of the Surgeon General's Advisory Committee and that in their opinion there was no real evidence that cigarette smoking is harmful (Diehl, 1969: 162).

Although this act temporarily prevented any requirement that tar and nicotine content be indicated on cigarette packages, the Federal Trade Commission did establish a laboratory to determine the tar and nicotine content of the smoke of cigarettes on the American market, making the results of these tests available periodically to the public.

The Cigarette Labeling and Advertising Act also required that about July 1, 1967, and annually thereafter the Federal Trade Commission report to Congress concerning the effectiveness of the warning label, and upon current practices of cigarette advertising and promotion, with "recommendations for legislation that are deemed appropriate."

After an intensive study the Federal Trade Commission made a detailed report to Congress with the following summary and recommendations: "There is virtually no evidence that the warning statement on cigarette packages has had any significant effect."

Sales remained constant and the industry continued to invest hundreds of millions of dollars in advertising; \$200 million a year was being spent on radio and television alone in 1967; cigarette advertisers had become the single largest product advertisers on television accounting for about eight per cent of television advertising time (Wagner, 1971: 166).

THE FAIRNESS DOCTRINE

Another government agency had become concerned with cigarette advertising. The Federal Communications Commission is mandated to assure that the airways, which belong to the public, are used in the public interest.

John P. Banzhaf, III, who has been called the "Ralph Nader of the tobacco industry" was responsible for the FCC's involvement in the cigarette advertising controversy. After viewing several cigarette commercials on television, Banzhaf concluded that "what he was seeing might be considered legally 'controversial'" (Wagner, 1971: 168). He then wrote to WCBS-TV in New York on December 1, 1966, requesting that he or some other responsible spokesman be given an opportunity to present contrasting views on the issue of the benefits and advisability of smoking.

Banzhaf's letter cited three commercials that presented the view that smoking is "socially acceptable and desirable, manly, and a necessary part of a rich full life. "He asked-free time roughly approximate to that spent on the promotion of the "virtues and values of smoking." CBS routinely turned down the request. He sent a second letter to CBS and submitted a formal complaint against WCBS-TV to the FCC in Washington.

The FCC, in a letter to the television station dated June 2, 1967, said programs it had broadcast dealing with the effect of smoking on health were insufficient to offset the effects of paid advertisements broadcast for a total of five to 10 minutes each broadcast day. "We hold that the fairness doctrine is applicable to such advertisements" the Commission said. They rejected Banzhaf's claim for equal time, however.

The FCC called on the station to provide free each week "a significant amount of time for the other viewpoint," thereby implementing the smoking education campaigns launched by the government under the cigarette labeling law. "This requirement will not preclude or curtail presentation by stations of cigarette advertising which they choose to carry." The FCC basically decided that it was not in the public interest for the airways to be used by radio and television to advertise cigarettes without some warning of the health hazards involved with smoking (Wagner, 1971: 169).

The FCC was deluged with requests to reconsider its action. The agency stood firm in its unanimous decision. As a result of the ruling many of the voluntary health agencies and the Public Health Service made available to the television and radio industries spot announcements and other program materials on the serious consequences to health caused by cigarette smoking.

The FCC's decision was upheld by the U.S. Court of Appeals on November 21, 1968; the court said the agency could indeed use its fairness doctrine to require free time for anti-smoking commercials. "The danger cigarettes may pose to health is, among others, a danger to life itself," the Court said.

As the Commission emphasized, it is a danger inherent in the normal use of the product, not one merely associated with its abuse or dependent on intervening fortuitous events. It threatens a substantial body of the population, not merely a peculiarly susceptible fringe group. Moreover, the danger, though not established beyond all doubt, is documented by a compelling cumulation of statistical evidence (Wagner, 1971: 166-173).

(The cigarette manufacturers then asked the Supreme Court to review their case, but the high court turned down the request, leaving the appeals court decision standing.)

"Most observers agree that the dramatic entrance of the FCC into the smoking controversy was probably the most important single event during the three-year moratorium on requiring health warnings in cigarette advertisements imposed by Congress on the FTC" (Wagner, 1971 : 175).

THE BAN ON ADVERTISING

Both the U.S. Public Health Service and Federal Trade Commission have annually reported findings to Congress since passage of the cigarette labeling law. The FTC recommended that the Act should be amended to: "Warning: Cigarette Smoking Is Dangerous to Health and May Cause Death From Cancer and Other Diseases."

Additionally, the FTC recommended legislation to require the same warning to appear in all cigarette advertisements and to require statements of tar and nicotine content on all cigarette packages and in all advertising.

Legislation to accomplish these objectives as well as the following were recommended by

the FTC:

Cigarette advertising on television and radio should be barred entirely. Alternately, cigarette advertising on television and radio should be limited as to hours in which it may appear; the extent to which it may appear; and the types of programs on which it may appear;

Increased appropriations, should be made to the Department of Health, Education, and Welfare for education of the public (especially young people) as to the health hazards of smoking;

Appropriations should be made for research under the direction of the National Institutes of Health on the development of less hazardous cigarettes.

"By 1969, the stage had been set for a showdown over cigarette advertising and promotion" (Wagner, 1971: 190). The U.S. Government was increasing its efforts to discourage the sale of cigarettes. Post office trucks carried posters: "100,000 Doctors Have Quit Smoking."

The Surgeon General continued to release reports about the adverse health effects of smoking.

Dr. Daniel Horn, director of the National Clearinghouse for Smoking and Health, was urging doctors to deliver antismoking appeals to patients in their offices.

Movie personalities had become involved in the American Cancer Society's campaign called I.Q. (for "I Quit") that passed out lapel buttons and dispatched public speakers around the country to discourage the habit. Doris Day, Debbie Reynolds and Lawrence Welk refused to allow tobacco companies to sponsor their TV shows.

Two ad agencies--Ogilvy and Mather and Doyle Dane Bernbach--and a few radio and television stations would not accept cigarette business. Several magazines did not accept cigarette advertising as a matter of principle: Reader's Digest, the New Yorker, and the Saturday Review. The Christian Science Monitor had never carried cigarette ads; the Boston Globe announced in May, 1969 that it would no longer accept such advertising "because accumulated medical evidence has indicated that cigarette smoking is hazardous to health" (Wagner, 1971: 220).

In April 1969, a few weeks before the House Interstate and Foreign Commerce Committee was scheduled to open hearings on the FTC proposals, a series of bills were introduced in the House by representatives of tobacco producing states. One such bill, H.R. 7177, co-sponsored by all eleven of North Carolina's House Delegation, proposed "to establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health."

Identical measures were introduced under the sponsorship of congressmen from Virginia, Maryland, Kentucky, and Florida. Some accounts of the activity on Capitol Hill during this period attribute these bills to the tobacco interests' intention "to prevent strengthening of the warning label and make permanent the ban on state and Federal regulation of cigarette advertising, which was due to expire on June 30. Passage of this legislation was the best tobacco interests could have hoped for under the circumstances" (Wagner, 1971: 205).

After testimony from both sides, the House Committee approved a stiffer health warning but prohibited regulatory action on cigarette advertising for six years and in other ways generally upheld the status quo.

The Senate, Commerce Committee, on December 5, 1970, voted out a bill banning cigarette commercials from the air as of January 1, 1971. The FTC was prohibited from acting on cigarette ads in newspapers and magazines until the middle of 1972. The labeling provision in the Senate bill was weaker than that established in the House-voted measure, and the bill also precluded cigarette regulatory action by the fifty states and local governments.

In a session on December 12, a floor amendment was introduced which loosened the Committee's proposed restriction on the FTC by allowing the agency to require health warnings in advertising as of July 1, 1971. The bill also authorized the FTC to move sooner if it found that tobacco companies were switching from broadcast to print advertising so massively that it could be considered a "gross abuse." This bill also approved a new required health warning for cigarette packages "Warning: Cigarette Smoking Is Dangerous to Your Health."

After Senate passage, the measure still had to pass a joint Senate-House Conference Committee where important differences between the two bills had to be reconciled.

The bill that emerged from conference differed only slightly from the Senate measure. The cautionary label to which the conferees agreed provides: "Warning: The Surgeon General Has Determined That Cigarette Smoking is Dangerous to Your Health." "In a final concession to the broadcasters, the conferees agreed to delay for one day the blackout of cigarette commercials from December 31, 1970, to midnight January 1, 1971. That would give them a last shower of cash from the New Year's Day football bowl games" (Wagner, 1971: 216). It was estimated that the loss to television and radio stations would amount to about \$220 million a year, or about 7.5% of their total advertising revenues.

President Nixon signed the Act on April 1, 1970.

Some observers marvel that the bill was passed "in spite of massive pressure that had been brought to bear against it and against the regulation of cigarette advertising generally, by the tobacco industry, the broadcasting industry, and the lobbyists and their political allies. This was a combination that for years had proved invincible against a counterforce of scientists and public health and public interest advocates who, armed with formidable statistics on the damage to health and life caused by cigarette smoking, had sought to protect consumers by requiring all cigarette advertising to provide adequate warnings of these dangers" (Whiteside, 1970: 58).

There are those observers, on the other hand, who do not view the ban of cigarette advertising on television and radio as such a success for the consumer. Rather, they cite the statistics on consumption in other countries to point up the fact that bans on advertising do not reduce sales.

In Czechoslovakia, for example, no direct advertising of tobacco is permitted; yet consumption increased 14% between 1953 and 1958. Advertising of foreign cigarettes was banned in 1962 in Italy; the following year sales increased 39.4% and in 1964, 11.7%. Sales increased in England after television cigarette advertisements were banned in 1965. Consumption figures for the following three years in Britain reveal increases: 112 billion cigarettes in 1965, 118 billion in 1966; and 119.1 billion in 1967 (Cigarette Advertising, 1970: 113-114).

Robert Miller, an agricultural economist in the Department of Agriculture's Economic Research Service, reports that cigarette consumption is up in every part of the world although advertising was banned in several European countries some years ago. He predicts an eventual decrease in sales during the next five years and perhaps a 12-13% decrease in tobacco consumption (Tobacco Advertising Could End, 1970: 7).

Other observers can see a gradual reduction in cigarette consumption as a result of a prohibition on advertising; some feel a ban on advertising merely makes it difficult to launch a new brand. Others predict that the ban will eliminate the social acceptability of the habit although consumption will not go down.

The "live dangerously novelty" has also been identified as a possible cause for gains in consumption; "such a philosophy might well be prevalent among the young, the very ones that antismoking advocates are most anxious to protect" (Cigarette Advertising, 1970: 112-113).

Another consequence of the ban on cigarette commercials was the FCC ruling that the broadcasters' obligation to air antismoking messages had ended. The stations continue to run them as public service spots; however, the volume was decreased considerably from the former 1 to 3 ratio established by the FCC. The antismoking forces are fearful that a decrease in these spots is harmful to their cause and may retard their efforts to reduce cigarette consumption.

On October 20, 1971, a U.S. District Court ruled that the Congressional ban on cigarette advertising is constitutional. The ruling stated that such advertising does not qualify under the First Amendment's guarantee of freedom of speech; a sharp distinction was drawn between guarantees of freedom of speech for individuals and the "limited extent" to which broadcast advertising qualifies for such protection.

The court also ruled that Congress had more than one "rational basis" for excluding cigarette ads from television and not the printed media one being that broadcasts are the "most persuasive" types of advertising (Cigarette Ad Ban, 1971). Ultimately, the constitutional question will have to be decided by the United States Supreme Court.

CONSUMPTION TRENDS

Cigarette smoking is widespread in America today; 45.9% of the male population 17 years of age and over and 30.5% of females 17 and over are smokers. In 1970, about \$10.6 billion of individuals' expenditures was for cigarettes.

Data on cigarette sales and advertising has been obtained by the FTC from domestic cigarette manufacturers; the table below provides cigarette sales for the years 1963 to the present (Federal Trade Commission, 1970: 3):

TOTAL CIGARETTES SOLD

Year Billions

1963 516.5

1964 505.0

1965 521.1

1966 529.9

1967 535.0

1968 540.3

1969 527.9

1970 534.2

The reduction in sales in 1964 coincides with the public attention given the Report of the Surgeon General issued on January 11, 1964. Public awareness of the dangers cited in the Report was high. It was soon forgotten, for in 1965 the total number of cigarettes sold was almost 5 billion higher than the year prior to the Surgeon General's Report.

In 1969 there was another significant decline; it has been suggested that this decline is attributable to several high-visibility events and also by sales tax increases. For example, the FCC ruling was upheld in November 1968 giving impetus to the antismoking TV campaign; the federal government's anti-smoking campaign was in full swing during 1968-69; the public outcry was being felt by economic interests-magazines, newspapers, personalities and advertising agencies which refused sponsorship for business from tobacco companies.

There were significant state tax increases immediately prior to 1969 which probably contributed to the reduction in sales during that year. During fiscal year 1967, 15 states increased their cigarette tax rates; the average increase was 3.5 cents. The rate increase ranged from New York's, Ohio's, and Illinois' two cents to California's and Florida's seven cents. The next year, seven more states increased their cigarette taxes. The rates ranged from Massachusetts' and Vermont's two cents to Minnesota's, Rhode Island's, and Tennessee's five cents the average increase approximately four cents (Council of State Governments, 1968: 196-197).

The ban on cigarette advertising on television and radio began on January 2, 1971, yet several calculations reflect a rise in cigarette sales during the past year. Business Week projections of industry sales and brand rankings show that a record 529 billion cigarettes were consumed in 1971, 1.5% more than 1970's sales (Where Cigarette Makers Spend, 1971: 56). Tobacco industry sources estimate that consumption has risen in 1971 by 1.5% to 535 billion cigarettes (Cigarette Sales Up, 1972: 3).

John C. Maxwell, tobacco analyst for Oppenheimer & Company, a brokerage firm, also reported a rise-2.3% in domestic unit sales in 1971. He relates part of the growth in cigarette consumption to the population mix the increase hit the 20-40 year age group, where smoking is heaviest. The Maxwell report suggests that the rest of this growth must be related to "government overkill, wherein many voices in Washington suggest that everything we eat or drink is harmful" (Maxwell, 1971: 1).

An industry specialist with Manufacturers Hanover Trust Company, on the other hand, attributes both the lag in sales in 1969 and the new increase to the "very effective antismoking ads on television. Since the ban, these commercials rarely appear" (Cigarette

Sales Up, 1972: 3).

Another industry executive notes, "For years we have believed that the role of cigarette advertising is to attract smokers from competitive brands rather than induce nonsmokers to start smoking. We failed to convince the Federal Communications Commission of this, but it is borne out by our industry's experience since the TV ban. Within a relatively stable market, some companies have continued to gain while others lost. Some brands have increased their share of market while others have declined" (Where Cigarette Makers Spend, 1971: 56). Skeptics continue to argue that tobacco companies have also been trying to recruit new young smokers.

TOBACCO: ECONOMICS AND POLITICS

It is generally accepted that tobacco has been an extremely powerful force in American politics. Approximately 50 million smokers smoked 535 billion cigarettes in the past year. More than 100,000 employees receive \$500 million in wages annually from tobacco manufacturing companies; over 4,500 wholesalers handle the distribution of tobacco products and hundreds of thousands of merchants depend on the sale of cigarettes as a source of their income.

Cigarette companies had been spending over \$200 million per year on radio and television advertising, and since the ban, almost all of this money has been diverted to other media advertising providing many thousands of jobs in ad agencies and in the various media. Three million people from about 750,000 families receive \$1.4 billion annually for the cultivation of tobacco used in cigarettes.

Peripherally affected are those involved in producing the 40 million pounds of moisture-proof cellophane, the 70 million pounds of aluminum foil, the 27 billion printed packs, and the 2.7 billion cartons (Cigarette Advertising, 1970: 110-111; Wagner, 1971: 120; USDA, Tobacco Situation, 1971a: 29-31).

One writer, reporting on the present public policy trend, notes that "attempts to discourage smoking would affect the lives of millions of people and would have profound economic and political consequences" (Wagner, 1971: 121).

Advocates of cigarette smoking today are organized into extremely powerful groups, each having its own specific function and plentiful resources.

The Tobacco Tax Council, established in 1949, compiles data on the taxation of tobacco products by the Federal, state and local governments. The Council's annual booklet, "Cigarette Taxes in the United States" has been superseded by "The Tax Burden on Tobacco" since 1966. This pamphlet "undertakes to trace the history of tobacco taxes from the years of the Civil War down through [the present year]" (Tobacco Tax Council, 1970: iii).

The trade association promoting the welfare of the tobacco industry is the Tobacco Merchants Association of the U.S. It is composed of manufacturers, wholesalers, retailers, importers, exporters, leaf dealers, suppliers, and firms interested in the industry. Its Bulletins cover legislation, trends, special reports; its numerous other publications and activities seek to improve industry operations and expand outlets (e.g., international) for potential sales (Tobacco Merchants Association, 1971: 1-4).

The tobacco industry's point of view is nurtured and protected by the Tobacco Institute, a nonprofit corporation founded in 1958. Its membership includes major U.S. manufacturers of cigarettes, smoking and chewing tobacco, and snuff: The Bloch Brothers Tobacco Company, Brown & Williamson Tobacco Corporation, Conwood Corporation, G. A. Georgopulo & Company, Helme Products, Larus & Brother Company, Liggett & Myers, Lorillard, Philip Morris Incorporated, R. J. Reynolds Industries, Scotten-Dillion Company, and United States Tobacco Company.

The Institute is financed by contributions from the large corporations according to their share of the market. The institute reports on the pro-tobacco side of the medical story, attempting to discredit antismoking publicity, and publishes information on the historical role of tobacco, its place in the national economy, the industry itself, and the public's use of tobacco products.

The Council for Tobacco Research, created in 1953 in response to medical bulletins reporting on the hazards of smoking, processes and administers millions of research grants. "Although research money was to be awarded with no strings attached [The Council] nicely serve[s] the purpose of identifying the industry with the welfare of humanity and spreading good will through the scientific community" (Wagner, 1971: 80).

The scientific data continue to be attacked from both sides. Since 1954 a great quantity of research has been published and, in turn, disputed. For example, "the press played up the Hammond and Auerbach study and the claim that twelve beagles had developed lung cancer" from cigarettes. "The findings have subsequently been downgraded by 'v the author to two microscopic tumors with the further revelation that two dogs in the control group also developed tumors" (Maxwell, 1971: 1).

Another area of contention has developed around the relationship between cigarette smoke itself and lung cancer. A recent paper by Dr. Geoffrey Myddelton given at the Second World Conference on Smoking and Health in London, September 20-24, 1971, compares the incidence of smoking and lung cancer in various countries. He indicates, "Japan smokes 86% as much as Britain but has only . % of its lung cancer. Canada smokes twice as many cigarettes as the Netherlands but has only 69% as much lung cancer." He goes on to correlate the use of diesel fuel in England to lung cancer (Maxwell, 1971: 2).

From the other side, the United States Public Health Service 1972 report *The Health Consequences of Smoking* maintains that "nonsmokers as well as smokers may be harmed by cigarettes. . . tobacco smoke in closed cars and poorly ventilated rooms can contaminate the atmosphere for everyone. . . The chief danger is exposure to low levels of the deadly gas, carbon monoxide. Experiments, with animals have shown that various concentrations of the colorless, odorless, and tasteless gas 'adversely affect' the structure and function of the heart and lungs. The implication is that this may also be true in man" (*Study Says Cigarette Smoke Also May Harm Nonusers*, 1972: 1).

It is estimated that at the present time one and a half to two million adults give up smoking every year. Sensing the hazards of the future, some cigarette companies sought fiscal security in diversification and substitution; tobacco manufacturers are now marketing, for example, safety razors, fertilizers, dog food, ballpoint pens, peanut butter and other non-nicotine products. By 1967, sales on non-tobacco products accounted for approximately one-third of the total sales of cigarette manufacturers.

It remains to be seen whether tobacco power will be whittled away any further in the next few years. Some feel that "the tobacco subsystem has succeeded in keeping the health

question a low priority item on the government's agenda by playing one government agency off against another.... This subsystem cuts across institutional lines and includes the paid representatives of tobacco growers, marketing organizations and manufacturers.. Congressmen representing tobacco growing states [are] leading members of four subcommittees, including two appropriations subcommittees and two committees in each house of Congress handling tobacco legislation. . . . Tobacco power [is] thus firmly entrenched and well supported" (Wagner, 1971: 121).

On the other hand, a strongly worded commentary by an industry spokesman cites Justice John Marshall's statement to illustrate industry's precarious position: "The power to tax involves the power to destroy." He continues with a description of the tobacco industry's present situation:

The onslaught of state and local taxes on tobacco products ... represents a most serious threat to all segments of our industry.... We are now facing a calculated attempt to destroy, or at least drastically curtail, the sale of smoking products. The political and economic climate is most favorable for this attack. Smoking and health is a prime political issue in the same context as air pollution, crime in the streets, and consumerism. At the same time, local governments are verging on bankruptcy. Revenue of any sort is therefore a must. It is a tough battle, and cigarette industry is currently bearing the largest part of the attack (Regensburg, 1971: 146).

The revenues gained from tobacco tax collections are significant. Over \$2.1 billion in Federal taxes and over \$2.5 billion in state cigarette taxes were collected in Fiscal Year 1971 (Tobacco Tax Council, 1970: 4-6, 8; USDA, Tobacco Situation, 1971b: 44). Total tobacco taxes were \$4.8 billion in 1971 compared with \$1.7 billion in 1950.

In 1970 tobacco taxes accounted for 1.1% of total federal tax receipts and represented 13.8 percent of all excise taxes (USDA, Tobacco Situation, 1971b: 40). This places the tobacco tax as the seventh largest source of collection by the Federal government behind the major giants, e.g., income and profit taxes (both corporate and individual), employment taxes, manufacturers excise taxes, alcohol taxes, and estate and gift taxes. In terms of individual commodities it ranks behind only alcohol. Thus, federal revenue would be importantly affected if tobacco consumption were to decline.

CONCLUSION

The big question is how the Federal government plans to proceed. Six tobacco bills are now pending in Congress. One of these bills would give the Federal Trade Commission authority to set maximum permissible limits on tar and nicotine. Another would establish a graduated cigarette tax based on tar content.

The FTC is presently carrying on negotiations with the industry to come up with a "clear and conspicuous" health warning for its print advertising. It is expected that the industry, "which has been working closely with the FTC 'will' take some 'voluntary' labeling action" (Where Cigarette Makers Spend, 1971: 57).

The industry feels the pressure; one member explains: "We are resigned to it. Over-all... the industry mood is much more relaxed-now that we have this first big year behind us" (Where Cigarette Makers Spend, 1971: 57).

The public is clamoring for government action; a 1970 College Poll' surveying-youths 18 and older on more than 100 campuses reveals that 96% believe that smoking is dangerous to one's health (College Poll, 1971).

Further, a 1969 study on teenage (13- to 18-year-olds) smoking attitudes, motivation and habits indicates "deep teenage dissatisfaction with cigarette smoking, considerable knowledge of its ill effects, but a very exaggerated estimate of the acceptance of smoking by the adult world" (Lieberman Research, 1969: 1-20). And, a 1970 nationwide survey of teenagers revealed: "72% of non-smokers identified physicians as the one group that could persuade them not to start smoking and 42% of those who smoked said their physician's advice would influence them to stop" (Doctors, 1970: 24).

Critics of the industry claim: "The controversy about smoking and health continues largely because of the energy, time and money spent by the tobacco industry in keeping this controversy alive" (College Poll, 1971).

In September, 1935, Fortune Magazine published a discussion of the medical implications of smoking. It concluded that:

This much can be said: That the possible benefit to be derived from tobacco is always less than the possible harm (Robert, 1949: 256).

Official policy has never accepted this judgment. In recent years, steps have been taken to discourage smoking, although there is little conclusive evidence that consumption patterns are changing. It can be expected that official policy and alterations in individual behavior will both evolve slowly during the coming years. The socioeconomic impact of a sudden change in official policy would be great, a circumstance reflecting the momentum of several centuries of intense commercial activity.

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Assessing the Science Base

Marijuana and Medicine

Assessing the Science Base

Janet E. Joy, Stanley J. Watson, Jr., and
John A. Benson, Jr., *Editors*

Division of Neuroscience and Behavioral Health

INSTITUTE OF MEDICINE

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NOTICE: The project that is the subject of this report was approved by the Governing Board of the National Research Council, whose members are drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The principal investigators responsible for the report were chosen for their special competences and with regard for appropriate balance.

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The serpent has been a symbol of long life, healing, and knowledge among almost all cultures and religions since the beginning of recorded history. The image adopted as a logotype by the Institute of Medicine is based on a relief carving from ancient Greece, now held by the Staatliche Museen in Berlin.

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Reviewers

This report has been reviewed in draft form by individuals chosen for their diverse perspectives and technical expertise, in accordance with procedures approved by the National Research Council's Report Review Committee. The purpose of this independent review is to provide candid and critical comments that will assist the Institute of Medicine in making the published report as sound as possible and to ensure that the report meets institutional standards for objectivity, evidence, and responsiveness to the study charge. The review comments and draft manuscript remain confidential to protect the integrity of the deliberative process. The committee wishes to thank the following individuals for their participation in the review of this report:



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While the individuals listed above provided constructive comments and suggestions, it must be emphasized that responsibility for the final content of this report rests entirely with the authoring committee and the Institute of Medicine.




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Preface



Public opinion on the medical value of marijuana has been sharply divided. Some dismiss medical marijuana as a hoax that exploits our natural compassion for the sick; others claim it is a uniquely soothing medicine that has been withheld from patients through regulations based on false claims. Proponents of both views cite "scientific evidence" to support their views and have expressed those views at the ballot box in recent state elections. In January 1997, the White House Office of National Drug Control Policy (ONDCP) asked the Institute of Medicine to conduct a review of the scientific evidence to assess the potential health benefits and risks of marijuana and its constituent cannabinoids. That review began in August 1997 and culminates with this report.

The ONDCP request came in the wake of state "medical marijuana" initiatives. In November 1996, voters in California and Arizona passed referenda designed to permit the use of marijuana as medicine. Although Arizona's referendum was invalidated five months later, the referenda galvanized a national response. In November 1998, voters in six states (Alaska, Arizona, Colorado, Nevada, Oregon, and Washington) passed ballot initiatives in support of medical marijuana. (The Colorado vote will not count, however, because after the vote was taken a court ruling determined there had not been enough valid signatures to place the initiative on the ballot.)

Information for this study was gathered through scientific workshops, site visits to cannabis buyers' clubs and HIV/AIDS clinics, analysis of the relevant scientific literature, and extensive consultation with biomedical and social scientists. The three 2-day workshops--in Irvine, California; New Orleans, Louisiana; and Washington, D.C.--were open to the public and included scientific presentations and individual reports, mostly from patients and their families, about experiences with and perspectives on the medical use of marijuana. Scientific experts in various fields were selected to talk about the latest research on marijuana, cannabinoids, and related topics. (Cannabinoids are drugs with actions similar to THC, the primary psychoactive ingredient in marijuana.) In addition, advocates for and



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against the medical use of marijuana were invited to present scientific evidence in support of their positions. Finally, the Institute of Medicine appointed a panel of nine experts to advise the study team on technical issues.

Public outreach included setting up a Web site that provided information about the study and asked for input from the public. The Web site was open for comment from November 1997 until November 1998. Some 130 organizations were invited to participate in the public workshops. Many people in the organizations--particularly those opposed to the medical use of marijuana--felt that a public forum was not conducive to expressing their views; they were invited to communicate their opinions (and reasons for holding them) by mail or telephone. As a result, roughly equal numbers of persons and organizations opposed to and in favor of the medical use of marijuana were heard from.

Advances in cannabinoid science over the past 16 years have given rise to a wealth of new opportunities for the development of medically useful cannabinoid-based drugs. The accumulated data suggest a variety of indications, particularly for pain relief, antiemesis, and appetite stimulation. For patients who suffer simultaneously from severe pain, nausea, and appetite loss, such as those with AIDS or who are undergoing chemotherapy, cannabinoid drugs might offer broad-spectrum relief not found in any other single medication.

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Marijuana is not a completely benign substance. It is a powerful drug with a variety of effects. However, the harmful effects to individuals from the perspective of possible medical use of marijuana are not necessarily the same as the harmful physical effects of drug abuse.

Although marijuana smoke delivers THC and other cannabinoids to the body, it also delivers harmful substances, including most of those found in tobacco smoke. In addition, plants contain a variable mixture of biologically active compounds and cannot be expected to provide a precisely defined drug effect. For those reasons, the report concludes that the future of cannabinoid drugs lies not in smoked marijuana but in chemically defined drugs that act on the cannabinoid systems that are a natural component of human physiology. Until such drugs can be developed and made available for medical use, the report recommends interim solutions.



John A. Benson, Jr.
Stanley J. Watson, Jr.
Co-Principal Investigators

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Acknowledgments



This report covers such a broad range of disciplines-- neuroscience, pharmacology, immunology, drug abuse, drug laws, and a variety of medical specialties, including neurology, oncology, infectious diseases, and ophthalmology--that it would not have been complete without the generous support of many people. Our goal in preparing this report was to identify the solid ground of scientific consensus and to steer clear of the muddy distractions of opinions that are inconsistent with careful scientific analysis. To this end we consulted extensively with experts in each of the disciplines covered in this report. We are deeply indebted to each of them.

Members of the Advisory Panel, selected because each is recognized as among the most accomplished in their respective disciplines (see page iii), provided guidance to the study team throughout the study--from helping to lay the intellectual framework to reviewing early drafts of the report.

The following people wrote invaluable background papers for the report: Steven R. Childers, Paul Consroe, Howard Fields, Richard J. Gralla, Norbert Kaminski, Paul Kaufman, Thomas Klein, Donald Kotler, Richard Musty, Clara Sanudo-Pellecual frameworkster, Stephen Sidney, Donald P. Tashkin, and J. Michael Walker. Others provided expert technical commentary on draft sections of the report: Richard Bonnie, Keith Green, Frederick Fraunfelder, Andrea Hohmann, John McNulty, Craig Nichols, John Nutt, and Robert Pandina. Still others responded to many inquiries, provided expert counsel, or shared their unpublished data: Paul Consroe, Geoffrey Levitt, Raphael Mechoulam, Richard Musty, David Pate, Roger Pertwee, Clara Sanudo-Pe Craig Nichols, John Nutt, and RWalker, and Scott Yarnell. Miriam Davis, consultant to the study team, provided excellent written material for the chapter on cannabinoid drug development.

The reviewers for the report (see page iv) provided extensive, constructive suggestions for improving the report. It was greatly enhanced by their thoughtful attention. Many of these people assisted us through



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many iterations of the report. All of them made contributions that were essential to the strength of the report. At the same time, it must be emphasized that responsibility for the final content of report rests entirely with the authors and the Institute of Medicine.

We would also like to thank the people who hosted our visits to their organizations. They were unfailingly helpful and generous with their time. Jeffrey Jones and members of the Oakland Cannabis Buyers' Cooperative, Denis Peron of the San Francisco Cannabis Cultivators Club, Scott Imler and staff at the Los Angeles Cannabis Resource Center, Victor Hernandez and members of Californians Helping Alleviate Medical Problems (CHAMPS), Michael Weinstein of the AIDS Health Care Foundation, and Marsha Bennett of the Louisiana State University Medical Center. We also appreciate the many people who spoke at the public workshops or wrote to share their views on the medical use of marijuana (see Appendix A).

Jane Sanville, project officer for the study sponsor, was consistently helpful during the many negotiations and discussion held throughout the study process. Many Institute of Medicine staff members provided greatly appreciated administrative, research, and intellectual support during the study. Robert Cook-Deegan, Marilyn Field, Constance Pechura, Daniel Quinn, and Michael Stoto provided thoughtful and insightful comments on draft sections of the report. Others provided advice and consultation on many other aspects of the study process: Clyde Behney, Susan Fourt, Carolyn Fulco, Carlos Gabriel, Linda Kilroy, Catharyn Liverman, Dev Mani, and Kathleen Stratton. As project assistant throughout the study, Amelia Mathis was tireless, gracious, and reliable.

Deborah Yarnell's contribution as research associate for this study was outstanding. She organized site visits, researched and drafted technical material for the report, and consulted extensively with relevant experts to ensure the technical accuracy of the text. The quality of her contributions throughout this study was exemplary.

Finally, the principal investigators on this study wish to personally thank Janet Joy for her deep commitment to the science and shape of this report. In addition, her help in integrating the entire data gathering and information organization of this report was nothing short of essential. Her knowledge of neurobiology, her sense of quality control, and her unflagging spirit over the 18 months illuminated the subjects and were indispensable to the study's successful completion.

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Executive Summary



Public opinion on the medical value of marijuana has been sharply divided. Some dismiss medical marijuana as a hoax that exploits our natural compassion for the sick; others claim it is a uniquely soothing medicine that has been withheld from patients through regulations based on false claims. Proponents of both views cite "scientific evidence" to support their views and have expressed those views at the ballot box in recent state elections. In January 1997, the White House Office of National Drug Control Policy (ONDCP) asked the Institute of Medicine (IOM) to conduct a review of the scientific evidence to assess the potential health benefits and risks of marijuana and its constituent cannabinoids (see the Statement of Task on page 9). That review began in August 1997 and culminates with this report.

The ONDCP request came in the wake of state "medical marijuana" initiatives. In November 1996, voters in California and Arizona passed referenda designed to permit the use of marijuana as medicine. Although Arizona's referendum was invalidated five months later, the referenda galvanized a national response. In November 1998, voters in six states (Alaska, Arizona, Colorado, Nevada, Oregon, and Washington) passed ballot initiatives in support of medical marijuana. (The Colorado vote will not count, however, because after the vote was taken a court ruling determined there had not been enough valid signatures to place the initiative on the ballot.)

Can marijuana relieve health problems? Is it safe for medical use? Those straightforward questions are embedded in a web of social concerns, most of which lie outside the scope of this report. Controversies concerning the nonmedical use of marijuana spill over into the medical marijuana debate and obscure the real state of scientific knowledge. In contrast with the many disagreements bearing on social issues, the study team found substantial consensus among experts in the relevant disciplines on the scientific evidence about potential medical uses of marijuana.

This report summarizes and analyzes what is known about the medical

use of marijuana; it emphasizes evidence-based medicine (derived from knowledge and experience informed by rigorous scientific analysis), as opposed to belief-based medicine (derived from judgment, intuition, and beliefs untested by rigorous science).

Throughout this report, *marijuana* refers to unpurified plant substances, including leaves or flower tops whether consumed by ingestion or smoking. References to the "effects of marijuana" should be understood to include the composite effects of its various components; that is, the effects of tetrahydrocannabinol (THC), which is the primary psychoactive ingredient in marijuana, are included among its effects, but not all the effects of marijuana are necessarily due to THC. *Cannabinoids* are the group of compounds related to THC, whether found in the marijuana plant, in animals, or synthesized in chemistry laboratories.

Three focal concerns in evaluating the medical use of marijuana are:

1. Evaluation of the effects of isolated cannabinoids;
2. Evaluation of the risks associated with the medical use of marijuana; and
3. Evaluation of the use of smoked marijuana.

EFFECTS OF ISOLATED CANNABINOIDS

Cannabinoid Biology

Much has been learned since the 1982 IOM report *Marijuana and Health*. Although it was clear then that most of the effects of marijuana were due to its actions on the brain, there was little information about how THC acted on brain cells (neurons), which cells were affected by THC, or even what general areas of the brain were most affected by THC. In addition, too little was known about cannabinoid physiology to offer any scientific insights into the harmful or therapeutic effects of marijuana. That all changed with the identification and characterization of cannabinoid receptors in the 1980s and 1990s. During the past 16 years, science has advanced greatly and can tell us much more about the potential medical benefits of cannabinoids.

Conclusion: At this point, our knowledge about the biology of marijuana and cannabinoids allows us to make some general conclusions:

Cannabinoids likely have a natural role in pain modulation, control of movement, and memory.

The natural role of cannabinoids in immune systems is likely multi-faceted and remains unclear.

The brain develops tolerance to cannabinoids.





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Animal research demonstrates the potential for dependence, but this potential is observed under a narrower range of conditions than with benzodiazepines, opiates, cocaine, or nicotine.

Withdrawal symptoms can be observed in animals but appear to be mild compared to opiates or benzodiazepines, such as diazepam (Valium).

Conclusion: The different cannabinoid receptor types found in the body appear to play different roles in normal human physiology. In addition, some effects of cannabinoids appear to be independent of those receptors. The variety of mechanisms through which cannabinoids can influence human physiology underlies the variety of potential therapeutic uses for drugs that might act selectively on different cannabinoid systems.

Recommendation 1: Research should continue into the physiological effects of synthetic and plant-derived cannabinoids and the natural function of cannabinoids found in the body. Because different cannabinoids appear to have different effects, cannabinoid research should include, but not be restricted to, effects attributable to THC alone.

Efficacy of Cannabinoid Drugs

The accumulated data indicate a potential therapeutic value for cannabinoid drugs, particularly for symptoms such as pain relief, control of nausea and vomiting, and appetite stimulation. The therapeutic effects of cannabinoids are best established for THC, which is generally one of the two most abundant of the cannabinoids in marijuana. (Cannabidiol is generally the other most abundant cannabinoid.)

The effects of cannabinoids on the symptoms studied are generally modest, and in most cases there are more effective medications. However, people vary in their responses to medications, and there will likely always be a subpopulation of patients who do not respond well to other medications. The combination of cannabinoid drug effects (anxiety reduction, appetite stimulation, nausea reduction, and pain relief) suggests that cannabinoids would be moderately well suited for particular conditions, such as chemotherapy-induced nausea and vomiting and AIDS wasting.

Defined substances, such as purified cannabinoid compounds, are preferable to plant products, which are of variable and uncertain composition. Use of defined cannabinoids permits a more precise evaluation of their effects, whether in combination or alone. Medications that can maximize the desired effects of cannabinoids and minimize the undesired effects can very likely be identified.

Although most scientists who study cannabinoids agree that the

pathways to cannabinoid drug development are clearly marked, there is no guarantee that the fruits of scientific research will be made available to the public for medical use. Cannabinoid-based drugs will only become available if public investment in cannabinoid drug research is sustained and if there is enough incentive for private enterprise to develop and market such drugs.

Conclusion: Scientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC, for pain relief, control of nausea and vomiting, and appetite stimulation; smoked marijuana, however, is a crude THC delivery system that also delivers harmful substances.

Recommendation 2: Clinical trials of cannabinoid drugs for symptom management should be conducted with the goal of developing rapid-onset, reliable, and safe delivery systems.

Influence of Psychological Effects on Therapeutic Effects

The psychological effects of THC and similar cannabinoids pose three issues for the therapeutic use of cannabinoid drugs. First, for some patients--particularly older patients with no previous marijuana experience--the psychological effects are disturbing. Those patients report experiencing unpleasant feelings and disorientation after being treated with THC, generally more severe for oral THC than for smoked marijuana. Second, for conditions such as movement disorders or nausea, in which anxiety exacerbates the symptoms, the anti-anxiety effects of cannabinoid drugs can influence symptoms indirectly. This can be beneficial or can create false impressions of the drug effect. Third, for cases in which symptoms are multifaceted, the combination of THC effects might provide a form of adjunctive therapy; for example, AIDS wasting patients would likely benefit from a medication that simultaneously reduces anxiety, pain, and nausea while stimulating appetite.

Conclusion: The psychological effects of cannabinoids, such as anxiety reduction, sedation, and euphoria can influence their potential therapeutic value. Those effects are potentially undesirable for certain patients and situations and beneficial for others. In addition, psychological effects can complicate the interpretation of other aspects of the drug's effect.

Recommendation 3: Psychological effects of cannabinoids such as anxiety reduction and sedation, which can influence medical benefits, should be evaluated in clinical trials.

RISKS ASSOCIATED WITH MEDICAL USE OF MARIJUANA

Physiological Risks

Marijuana is not a completely benign substance. It is a powerful drug with a variety of effects. However, except for the harms associated with smoking, the adverse effects of marijuana use are within the range of effects tolerated for other medications. The harmful effects to individuals from the perspective of possible medical use of marijuana are not necessarily the same as the harmful physical effects of drug abuse. When interpreting studies purporting to show the harmful effects of marijuana, it is important to keep in mind that the majority of those studies are based on *smoked* marijuana, and cannabinoid effects cannot be separated from the effects of inhaling smoke from burning plant material and contaminants.

For most people the primary adverse effect of *acute* marijuana use is diminished psychomotor performance. It is, therefore, inadvisable to operate any vehicle or potentially dangerous equipment while under the influence of marijuana, THC, or any cannabinoid drug with comparable effects. In addition, a minority of marijuana users experience dysphoria, or unpleasant feelings. Finally, the short-term immunosuppressive effects are not well established but, if they exist, are not likely great enough to preclude a legitimate medical use.

The *chronic* effects of marijuana are of greater concern for medical use and fall into two categories: the effects of chronic smoking and the effects of THC. Marijuana smoking is associated with abnormalities of cells lining the human respiratory tract. Marijuana smoke, like tobacco smoke, is associated with increased risk of cancer, lung damage, and poor pregnancy outcomes. Although cellular, genetic, and human studies all suggest that marijuana smoke is an important risk factor for the development of respiratory cancer, proof that habitual marijuana smoking does or does not cause cancer awaits the results of well-designed studies.

Conclusion: Numerous studies suggest that marijuana smoke is an important risk factor in the development of respiratory disease.

Recommendation 4: Studies to define the individual health risks of smoking marijuana should be conducted, particularly among populations in which marijuana use is prevalent.

Marijuana Dependence and Withdrawal

A second concern associated with chronic marijuana use is dependence on the psychoactive effects of THC. Although few marijuana users develop dependence, some do. Risk factors for marijuana dependence are similar to those for other forms of substance abuse. In particular, anti-social personality and conduct disorders are closely associated with substance abuse.

Conclusion: A distinctive marijuana withdrawal syndrome has been identified, but it is mild and short lived. The syndrome includes restlessness, irritability, mild agitation, insomnia, sleep disturbance, nausea, and cramping.

Marijuana as a "Gateway" Drug

Patterns in progression of drug use from adolescence to adulthood are strikingly regular. Because it is the most widely used illicit drug, marijuana is predictably the first illicit drug most people encounter. Not surprisingly, most users of other illicit drugs have used marijuana first. In fact, most drug users begin with alcohol and nicotine before marijuana--usually before they are of legal age.

In the sense that marijuana use typically precedes rather than follows initiation of other illicit drug use, it is indeed a "gateway" drug. But because underage smoking and alcohol use typically precede marijuana use, marijuana is not the most common, and is rarely the first, "gateway" to illicit drug use. There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs. An important caution is that data on drug use progression cannot be assumed to apply to the use of drugs for medical purposes. It does not follow from those data that if marijuana were available by prescription for medical use, the pattern of drug use would remain the same as seen in illicit use.

Finally, there is a broad social concern that sanctioning the medical use of marijuana might increase its use among the general population. At this point there are no convincing data to support this concern. The existing data are consistent with the idea that this would not be a problem if the medical use of marijuana were as closely regulated as other medications with abuse potential.

Conclusion: Present data on drug use progression neither support nor refute the suggestion that medical availability would increase drug abuse. However, this question is beyond the issues normally considered for medical uses of drugs and should not be a factor in evaluating the therapeutic potential of marijuana or cannabinoids.

USE OF SMOKED MARIJUANA

Because of the health risks associated with smoking, smoked marijuana should generally not be recommended for long-term medical use. Nonetheless, for certain patients, such as the terminally ill or those with debilitating symptoms, the long-term risks are not of great concern. Further, despite the legal, social, and health problems associated with smoking marijuana, it is widely used by certain patient groups.

Recommendation 5: Clinical trials of marijuana use for medical purposes should be conducted under the following limited circumstances: trials should involve only short-term marijuana use (less than six months), should be conducted in patients with conditions for which there is reasonable expectation of efficacy should be approved by institutional review boards, and should collect data about efficacy.

The goal of clinical trials of smoked marijuana would not be to develop marijuana as a licensed drug but rather to serve as a first step toward the possible development of nonsmoked rapid-onset cannabinoid delivery systems. However, it will likely be many years before a safe and effective cannabinoid delivery system, such as an inhaler, is available for patients. In the meantime there are patients with debilitating symptoms for whom smoked marijuana might provide relief. The use of smoked marijuana for those patients should weigh both the expected efficacy of marijuana and ethical issues in patient care, including providing information about the known and suspected risks of smoked marijuana use.

Recommendation 6: Short-term use of smoked marijuana (less than six months) for patients with debilitating symptoms (such as intractable pain or vomiting) must meet the following conditions:

failure of all approved medications to provide relief has been documented,

the symptoms can reasonably be expected to be relieved by rapid-onset cannabinoid drugs,

such treatment is administered under medical supervision in a manner that allows for assessment of treatment effectiveness, and

involves an oversight strategy comparable to an institutional review board process that could provide guidance within 24 hours of a submission by a physician to provide marijuana to a patient for a specified use.

Until a nonsmoked rapid-onset cannabinoid drug delivery system becomes available, we acknowledge that there is no clear alternative for people suffering from *chronic* conditions that might be relieved by smoking marijuana, such as pain or AIDS wasting. One possible approach is to treat patients as *n-of-1* clinical trials (single-patient trials), in which patients are fully informed of their status as experimental subjects using a harmful drug delivery system and in which their condition is closely monitored and documented under medical supervision, thereby increasing the knowledge base of the risks and benefits of marijuana use under such conditions.

STATEMENT OF TASK

The study will assess what is currently known and not known about the medical use of marijuana. It will include a review of the science base regarding the mechanism of action of marijuana, an examination of the peer-reviewed scientific literature on the efficacy of therapeutic

uses of marijuana, and the costs of using various forms of marijuana versus approved drugs for specific medical conditions (e.g., glaucoma, multiple sclerosis, wasting diseases, nausea, and pain).

The study will also include an evaluation of the acute and chronic effects of marijuana on health and behavior; a consideration of the adverse effects of marijuana use compared with approved drugs; an evaluation of the efficacy of different delivery systems for marijuana (e.g., inhalation vs. oral); an analysis of the data concerning marijuana as a gateway drug; and an examination of the possible differences in the effects of marijuana due to age and type of medical condition.

Specific Issues

Specific issues to be addressed fall under three broad categories: science base, therapeutic use, and economics.

Science Base

- Review of the neuroscience related to marijuana, particularly the relevance of new studies on addiction and craving
- Review of the behavioral and social science base of marijuana use, particularly an assessment of the relative risk of progression to other drugs following marijuana use
- Review of the literature determining which chemical components of crude marijuana are responsible for possible therapeutic effects and for side effects

Therapeutic Use

- Evaluation of any conclusions on the medical use of marijuana drawn by other groups
- Efficacy and side effects of various delivery systems for marijuana compared to existing medications for glaucoma, wasting syndrome, pain, nausea, or other symptoms
- Differential effects of various forms of

marijuana that relate to age or type of disease

Economics

- Costs of various forms of marijuana compared with costs of existing medications for glaucoma, wasting syndrome, pain, nausea, or other symptoms
- Assessment of differences between marijuana and existing medications in terms of access and availability

RECOMMENDATIONS

Recommendation 1: Research should continue into the physiological effects of synthetic and plant-derived cannabinoids and the natural function of cannabinoids found in the body. Because different cannabinoids appear to have different effects, cannabinoid research should include, but not be restricted to, effects attributable to THC alone.

Scientific data indicate the potential therapeutic value of cannabinoid drugs for pain relief, control of nausea and vomiting, and appetite stimulation. This value would be enhanced by a rapid onset of drug effect.

Recommendation 2: Clinical trials of cannabinoid drugs for symptom management should be conducted with the goal of developing rapid-onset, reliable, and safe delivery systems.

The psychological effects of cannabinoids are probably important determinants of their potential therapeutic value. They can influence symptoms indirectly which could create false impressions of the drug effect or be beneficial as a form of adjunctive therapy.

Recommendation 3: Psychological effects of cannabinoids such as anxiety reduction and sedation, which can influence medical benefits, should be evaluated in clinical trials.

Numerous studies suggest that marijuana smoke is an important risk factor in the development of respiratory diseases, but the data that could conclusively establish or refute this suspected link have not been collected.

Recommendation 4: Studies to define the individual health risks of smoking marijuana should be conducted, particularly among populations in which marijuana use is prevalent.



Because marijuana is a crude THC delivery system that also delivers harmful substances, smoked marijuana should generally not be recommended for medical use. Nonetheless, marijuana is widely used by certain patient groups, which raises both safety and efficacy issues.

Recommendation 5: Clinical trials of marijuana use for medical purposes should be conducted under the following limited circumstances: trials should involve only short-term marijuana use (less than six months), should be conducted in patients with conditions for which there is reasonable expectation of efficacy, should be approved by institutional review boards, and should collect data about efficacy.

If there is any future for marijuana as a medicine, it lies in its isolated components, the cannabinoids and their synthetic derivatives. Isolated cannabinoids will provide more reliable effects than crude plant mixtures. Therefore, the purpose of clinical trials of smoked marijuana would not be to develop marijuana as a licensed drug but rather to serve as a first step toward the development of nonsmoked rapid-onset cannabinoid delivery systems.

Recommendation 6: Short-term use of smoked marijuana (less than six months) for patients with debilitating symptoms (such as intractable pain or vomiting) must meet the following conditions:

- failure of all approved medications to provide relief has been documented,
- the symptoms can reasonably be expected

to be relieved by rapid-onset cannabinoid drugs,

- such treatment is administered under medical supervision in a manner that allows for assessment of treatment effectiveness, and
- involves an oversight strategy comparable to an institutional review board process that could provide guidance within 24 hours of a submission by a physician to provide marijuana to a patient for a specified use.

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