



NORTHWESTERN UNIVERSITY SCHOOL OF LAW

BEYOND THE TRADITIONAL DRUG WAR DEBATE: A PRACTICAL APPROACH
TO THE IMPLEMENTATION OF MARIJUANA DECRIMINALIZATION IN AN
AMERICAN CITY

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I. INTRODUCTION: DECRIMINALIZATION IN AMERICA?

The people of Verstandig¹ have made a major political decision. After years of informed, deliberate debate, they have decided, through their elected officials and representatives, that it's time to change the way they deal with marijuana. There are as many reasons for this decision as there are citizens of Verstandig, but without question, the most prominent is a desire to reduce the use of more dangerous "hard drugs." By becoming more tolerant of marijuana, Verstandig hopes to reduce the use of other drugs.

A necessary postulate to this approach is that marijuana is far less harmful than hard drugs, both to individuals and to society. That this is true is not widely disputed; that it justifies a change in marijuana policy, however, is controversial to say the least. The most common defense of current marijuana policy depends on the "gateway theory"—the notion that with increased marijuana use will come increased hard drug use. Mounting evidence, however, calls into question the gateway theory, or at least the

¹ "Verstandig" is Dutch for "prudent, sensible, wise." ONLINE ENGLISH TO DUTCH TO ENGLISH DICTIONARY, at <http://www.freedict.com/onldict/dut.html> (last visited May 5, 2005). This fictional city could be any city, county, or other political subdivision, in any state within the United States. The premise of our paper depends not on analyzing specific laws and policies of any one particular jurisdiction, but on discussing the general framework of American government, and the respective powers of government at the federal, state, and local levels.

principles underlying it. The people of Verstandig believe that it's time to try something new. They do not question that a gateway effect exists. But they disagree about *why* it exists. They believe that the gateway effect could be greatly reduced by separating marijuana from hard drugs, both figuratively and literally.

Adopting a more tolerant marijuana policy will have this effect in two important ways. First, it will increase the artificially-imposed market costs of hard drug use and sale in relation to marijuana, thus creating a preference for marijuana over other drugs, both for users and for sellers. Separating the drug markets in this way will reduce marijuana buyers' exposure to hard drugs. Second, it will save endless law enforcement resources currently spent on enforcing and prosecuting marijuana laws. This money can, in turn, be dedicated to eradicating more dangerous drugs, treating drug addiction, funding drug prevention programs (including marijuana prevention), or other effective means of drug control. These considerations, among others, have led the people of Verstandig to conclude that there are better ways to deal with marijuana. The question remains, though, how they can best effectuate this change. They cannot simply change the law. There is but one community, within a state and federal government, each of which has the size, resources, and political power to impose its laws on Verstandig. Marijuana is illegal, and this one city cannot unilaterally abolish or change that fact.

However, this may not be a reason to abandon these goals. It may come as a shock to most people, but the Dutch approach to marijuana, or at least a very close interpretation thereof, could presently be implemented in the United States. Just as in any state in this country, marijuana is illegal in the Netherlands. Just as in the United States, marijuana is illegal in all the member nations of the European Union. And just as in any

city in this country, specific decisions about marijuana enforcement fall into the hands of local prosecutors and police departments.

This paper will explore the laws and practices of the European Union, the Netherlands, and particular Dutch cities, regarding marijuana use, possession, and sale. It will use as a guide the efforts of a hypothetical American city—Verstandig—which hopes to achieve many of the same policy objectives as the Dutch. It will demonstrate that marijuana laws in the United States are not markedly different from those in the Netherlands. Just as the Dutch are governed generally at three levels—local, Dutch, and European Union—so are Americans—local, state, and federal. By viewing the frameworks of our respective governments as such, it becomes clear that we are closer to the Dutch on marijuana than most people realize. And that just like the Dutch, we need not change our laws to effect substantial policy change.

In addition to typical doctrinal legal analysis, the authors spent two weeks in the Netherlands, studying the practical effects of Dutch policies and conducting interviews with legislators, law enforcement officials at the national and local levels, judges, diplomats, university professors, marijuana growers and sellers, and countless others.² Part II adds a prefatory note on the current state of the “war on drugs” debate and details how this paper adds a new layer to a slightly stale, though still controversial, pro-decriminalization argument. Part III of this paper explores internal Dutch law and policy. Being that the goals of Verstandig parallel those of the Netherlands, Part III will explore how Verstandig can mimic Dutch law and policy and thus achieve these goals. Part IV

² Travel was part of a four-credit course entitled International Team Project: Netherlands. In addition to two weeks in the Netherlands, the authors studied the Dutch culture and legal system for one semester in Chicago. See Northwestern University School of Law, International Team Projects, at <http://www.law.northwestern.edu/itp/> (last visited Apr. 30, 2005).



analyzes the external constraints facing the Netherlands from its neighbors and the European Union and illustrates the Netherlands' ability to work around these constraints by focusing on hard drug trafficking and cooperating in other areas of shared interest. Part IV then notes the constraints that would face Verstandig from both the federal government and neighboring states and finds that Verstandig could navigate through these constraints through lessons learned from the Dutch experience.