

## THE CONSUMPTION OF MARIJUANA FROM A LEGAL AND PHILOSOPHICAL VIEWPOINT

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*ABSTRACT: In this note I argue that the decriminalization (or authorization) of marijuana use should be considered with an eye to the evil it avoids instead of to the good it seeks. The debate about the decriminalization/permission of the consumption of marijuana in Mexico is set within the context of the individual freedom and the damage to health produced by its consumption. Other related issues result from this approach, such as individual responsibility and the duty of the State to seek the social good. How can one justify the decriminalization of marijuana considering the duty of the state? How can the harmful craving for it be understood given the alleged natural inclination towards personal well-being (axiom of Western culture)? The response has to do with the exercise of power by the State, in the definition of what is healthy and harmful, normal and pathological, because the concepts “healthy” and “harmful” have ideological uses (in the sense of the 18th Brumaire of Louis Napoleon). Secondly, we cannot ignore the discomfort caused by social life, due to the demands on public duty at the expense of private interests. This results in a tension between the individual and society that is only mitigated by tolerance for drug abuse, alcohol or permission of “red zones,” because only in this way are social conflicts dissipated.*

**KEY WORDS:** *Liberty, responsibility, human dignity, health, disease, responsibility of the State, social tensions, Marijuana, decriminalization.*

**RESUMEN:** *La discusión sobre la despenalización/venia del consumo de marihuana en México se establece dentro del contexto de la libertad individual y el daño que produce su consumo a la salud. Derivado de este enfoque se encuentran otros temas relacionados, como el de la responsabilidad individual y el deber del Estado de procurar el bien social. ¿Cómo justificar la despenalización de la marihuana frente al deber del Estado? ¿Cómo entender el deseo de su consumo nocivo frente a la supuesta inclinación natural al bienestar personal (axioma de la cultura Occidental)? La respuesta transita a través del ejercicio del poder*

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*por parte del Estado, en la definición de lo sano y dañino, normal y patológico, porque los conceptos “sano” y “dañino” tienen usos ideológicos (en el sentido del 18 Brumario de Luis Napoleón).<sup>1</sup> En segundo término, no puede soslayarse el malestar que provoca la vida social, debido a las exigencias para con el deber público en detrimento de los intereses particulares. Esto tiene como resultado una tensión entre individuo y sociedad que solamente se mitiga con la tolerancia al uso de drogas, alcohol o concurrencia a “zonas rojas,” porque sólo así se distienden los conflictos sociales. De esta forma, se concluye que la despenalización (o autorización) del consumo de marihuana debe verse por el lado del mal que evita y no por el bien que procura (para la salud física).*

PALABRAS CLAVE: *Libertad, responsabilidad, dignidad humana, salud, enfermedad, responsabilidad del Estado, tensiones sociales, marihuana, despenalización.*

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#### I. INTRODUCTION

This note will analyze the problem of marijuana use in Mexico taking into account the following points: first, the freedom of the individual as conceived by the Supreme Court of Justice of the Nation in the resolution of Minister Alfredo Gutierrez Ortiz Mena. In this first point we must consider two issues: the justification of the decriminalization of marijuana together with the responsibility of the State towards the common good, and its consumption by the individual aware of the harm and committed to his own well being. Second, the exercise of power from the concepts of health and disease, normal and pathological, which will aim to determine the ideological elements (in the

<sup>1</sup> KARL MARX, 18 BRUMAIRE DES LOUIS NAPOLEON BONAPARTE. (Digitale Bibliothek. Berlin 2002) (1883).

sense of Karl Marx)<sup>2</sup> that underlie the medical opinion.<sup>3</sup> Third, if the duty of the State is to procure the social good and assume a natural propensity for the good, then how might decriminalization and the choice of its consumption be justified? The answer to this question will be linked to the “unrest in culture” and individual happiness.

Regarding the subject of freedom, I will use both the ideas of John Stuart Mill, because he is the most conspicuous philosopher on that matter as shown in his conceptualization in the Declaration of the Rights of Man and of the Citizen, and those of Mexican Supreme Court Justice Alfredo Gutiérrez Ortiz Mena. With regard to health and marijuana, the ideas of Michel Foucault<sup>4</sup> and Georges Canguilhem,<sup>5</sup> will be used to clarify the ideological elements that underlie the concept of health (and medical practice) and its relevance to establishing a medical opinion. I will base my study of the responsibility of both the State and the individual with respect to the collective well-being, the natural inclination to good and discontent in culture, on authors such as John Locke, Jean Jacques Rousseau, Augustine of Hippo and Sigmund Freud. All of these are *classic* authors, and therefore relevant up to our time. It is necessary for the sharp reader to distinguish between *valid* and *new* thinking: the first is represented by Mill, Locke, Rousseau, Freud, etc.; the second, by Joseph Raz, John Rawls, John Finnis, etc. So, *new* means “was published yesterday,” while *valid* means “has validity today and always.” The author of this text considers valid thinking only.

## II. ON FREEDOM

The National Supreme Court of Justice resolved on November 2015 the unconstitutionality of the normative set integrated by articles 235 (last paragraph), 237, 245 (section I), 247 (last paragraph), and 248, of the General Act of Health,<sup>6</sup> which constituted a system of administrative prohibitions against the consumption of marijuana (*i. e.* sowing, cultivation, harvesting, preparation, conditioning, possession, transport, etc.).

The Supreme Court’s main concern was not to decide whether or not marijuana is harmful to health, whether it has proven therapeutic uses, or whether it constitutes an acceptable recreational form, but whether the State

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<sup>2</sup> *Id.*

<sup>3</sup> NORBERT W. PAUL, *GESCHICHTE, THEORIE UND ETHIK DER MEDIZIN*. (Suhrkamp Verlag. Frankfurt am Main 2006).

<sup>4</sup> MICHEL FOUCAULT, *DIE ANORMALLEN*. (Suhrkamp Verlag. Frankfurt am Main 2002).

<sup>5</sup> GEORGES CANGUILHEM, *DAS NORMALEN UND DAS PATHOLOGISCHEN*. (Suhrkamp Verlag. Frankfurt am Main 2005)

<sup>6</sup> Ordinary Public Session, National Supreme Court of Justice’s First Chamber, November 4th 2015. See <http://www2.juridicas.unam.mx/marihuana-caso-mexico/wp-content/uploads/2016/02/Sesion-publica-04-11-2015.pdf>.

has the right to interfere in the private life of every Mexican. This issue is relevant from the very moment freedom is a human right, recognized in the first article of our constitution,<sup>7</sup> and, understood, as defined in the 1789 Declaration of the Rights of Man and of the Citizen, as the right to do anything that does not affect third parties.<sup>8</sup>

This resolution does not simply include the four persons covered by the specific clause which protects drug addicts detained by the authority for the possession of narcotics (as long as the amount does not exceed the provisions in the table provided by the federal legislature). With this resolution, in addition to declaring unconstitutional the contested articles, the responsible authority is ordered to issue authorizations to consume marijuana for recreational purposes and for all related activities: sowing, cultivating, harvesting, preparing, conditioning, transporting, etc. This is justified by the very concept of effective justice, in other words that the effect of a sentence must be guaranteed in the most effective manner possible by the authority in order for people to enjoy their rights.

Neither the constitution nor the Supreme Court of Justice of the Nation, nor any other institution of the State recommend the consumption of marijuana through this resolution. The constitutional mandate is to comply with human rights, and the Supreme Court cannot tolerate the suspension any of them (such as the right to individual freedom).<sup>9</sup> However, considering that no human right is absolute (with the exception of prohibitions, such as torture, slavery or discrimination), and that it is appropriate to place limits on their exercise, it is necessary to analyze the feasibility of the exercise of individual freedom in the case of marijuana use.

### 1. *Mill and the Problem of Freedom*

The most conspicuous essay to date on freedom, in terms of the 1789 declaration, is the one written by the English philosopher John Stuart Mill (1806-

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<sup>7</sup> Article 1. In the United Mexican States, all persons shall enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which shall not be restricted nor suspended, except in the cases and under the conditions established by this constitution. (*Reformed by the decree published in THE OFFICIAL JOURNAL OF THE FEDERATION on June 10, 2011*). See <http://info4.juridicas.unam.mx/ijure/fed/9/2.htm?s=>.

<sup>8</sup> Article 4. Freedom consists in being able to do everything that does not harm others. Thus, the exercise of the natural rights of each man has no more limits than those that assure the other members of society the enjoyment of these same rights. These limits can only be determined by law. See <http://www.juridicas.unam.mx/publica/librev/rev/derhum/cont/22/pr/pr19.pdf>.

<sup>9</sup> The rights cannot be suspended practically under any circumstance, as indicated in Article 29 of the MEXICAN CONSTITUTION.

1873).<sup>10</sup> There the English philosopher analyzes two important aspects: the individual-state relationship, and private life as the place where freedom is exercised. For Mill, the exercise of freedom is closely linked to the existence of a private life and to a null or minimal intervention of the State. In modern Western culture, “private life” means mainly the right to private property, and our constitution protects “personal privacy”<sup>11</sup> in articles 14 and 16 (as enjoyment of goods and possessions, and the inviolability of the home, respectively).

Mill, of course, analyzes the problem of freedom in the context of English liberal thought, that is, as his fellow countryman John Locke<sup>12</sup> put it, the relation between the interests of the individual and those of the State. Hence the following question: how to protect the individual against the power of the State? Mill’s answer lies in the definition of freedom of 1789: allowing the individual to do everything he pleases, as long as it does not affect third parties, because that way the intervention of the State is not necessary.

First, to illustrate the relevance of this definition of freedom, Mill stresses the importance of freedom through his idea of man. For him, man is a compound of reason and passion: reason helps man to make use of the capacity for judgment and rational development, and passions allow to experience the immediate environment and distinguish each (principle of social individuality). To cultivate them means to increase individuality and creativity. Mill’s corollary is that all obstacles to freedom hinder the development of man, his capacity for judgment and his ability to experience the world and to develop individually (the more rational and passionate the development, the better the men will be). Among the many social obstacles (church, education, state), State power is the greatest and most formidable for the exercise of freedom and human development.

Mill then goes on to analyze the use (and abuse) of freedom to clarify when and how it affects third parties. There are three types of freedom for Mill: opinion, action and association.<sup>13</sup> The first is the maximum freedom possible, because there is practically no danger of harming anyone. In the exercise of the second (and third) third parties are always affected. Hence, it is necessary to distinguish between the different types of actions in order to know the type of affectation it will provoke. Mill draws a distinction between two types of action: positive action (intentional action) and negative action (intentional omission). In the second type of action —according to Mill— third parties

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<sup>10</sup> JOHN STUART MILL, *ON LIBERTY*. (Clarendon Press, Oxford, 1980) (1859). Modern scholarship on the subject, such as the studies carried out by Ronald Dworkin, do not add an iota to those spoken by the English philosopher more than a century ago. See RONALD DWORING, *JUSTICE FOR HEDGEHOGS*. (Harvard University Press 2013).

<sup>11</sup> JOHN LOCKE, *TWO TREATISES OF GOVERNMENT*. (The Online Library of Liberty <http://oll.libertyfund.org/titles/locke-the-two-treatises-of-civil-government-hollis-ed>) (1689).

<sup>12</sup> *Id.*

<sup>13</sup> See JOHN STUART MILL, *ON LIBERTY*. (Clarendon Press, Oxford, 1980) (1859).

are less affected than in the first type. Therefore, the State has the right to intervene in the life of the individual regulating their positive actions. But the only appropriate way to intervene is to punish, that is through corrective and non-preventive measures, in order to affect as little as possible the freedom of the individual (another he will say in his *Principles of Political Economy*).<sup>14</sup>

In freedom of association, the individual always leaves his private sphere and enters the common space, public or social, affecting third parties. On the other hand, in the private space, action affects only the individual. This is why Mill enjoys greater (positive) freedom of action. The resulting paradox does not escape the reading of Mill's book: where the individual exercises his freedom more fully, because it affects third parties less (life and private space), is where he can best develop to become a better citizen. Faced with this paradox, it is necessary to ask how the freedom to use drugs allows for individual development and for a better social entity.

## 2. *Paradoxes of Liberty*

With some clarity, Minister Alfredo Gutierrez Ortiz Mena saw this problem and pointed out that in the "decriminalization of marijuana" (based on the exercise of freedom), one should consider the "dignified development" of the person and not simply the development of the individual. Adding this concept of "dignified development," the following questions arise: Is the harmful consumption of drugs admissible as a right to freedom and individual development? Does the individual have the right to harm himself? Is suicide and self-mutilation a legitimate form of the exercise of freedom? Can anyone in the legitimate exercise of his freedom become evil?

Surely evil is the price of freedom.<sup>15</sup> And while some think that man can orient himself in freedom and achieve good, based on his reason (like ancient Greeks), others affirm the opposite (St. Augustine), because they consider reason insufficient and they require the assistance of an external aid, such as divine grace or social institutions (or both). Although evil thrives in many ways, it causes the most bewilderment when it is directed against the perpetrator itself. Therefore, the most suggestive reflections have been proposed on how to protect man from disloyalty to himself.

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<sup>14</sup> JOHN STUART MILL, *PRINCIPLES OF POLITICAL ECONOMY*. (Library Economics Liberty <http://www.econlib.org/library/Mill/mlP.html>) (1848).

<sup>15</sup> The theologian Hans Urs von Balthasar puts it this way: "At least in his own historical realm man can perceive the connection between freedom, power and evil. Evil in the world proceeds, as you know from your own experience, to freedom, which for evil uses power, of one's own or of another's, a power that is always there, and which in itself is not bad, but which possesses in its interior a tendency to evil in the sense that it represents a means of domination". See HANS URS VON BALTHASAR, *THEODRAMATIC*. (Johannes, Einsiedeln) (1971).

This question was formulated by St. Augustine in another way: how can man remain faithful to his demand for transcendence?<sup>16</sup> The father of the church replied that before trusting the individual reason of man, trust in divine grace must be placed in ecclesiastical institutions. Consequently, in addition to imploring the grace of God, the function of the Church must be that of a vigilant of the good behavior of his flock.<sup>17</sup>

From this, a new solution to the problem of evil and human freedom is developed: if the natural goodness of the rational man (due to original sin) or even the direct guidance of God is not accepted, one can trust social or religious institutions). It is evident that this idea of St. Augustine, especially exposed in his maturity work *The City of God*, reflects the crisis that the father of the church lived by the fall of Rome in the hands of Alarico I in 410. The church represented for Augustine a kind of ark of Noah that preserves the pure ones from perdition, almost in the way in the Republic of Plato the individual destiny depended on the strength of the social whole. In our days, the issue is about the responsibility of the State to authorize or decriminalize the consumption of a harmful substance.

In modern times, Jean Jacques Rousseau's<sup>18</sup> enlightened thought warned that the problem lies precisely in institutions and not in the nature of man. The reason why men are inclined to evil is not their own human nature, but the way they gather together in society, fostered by the social structure and its institutions, in such a way that the institutional organization is more important for the welfare than the individual exercise of freedom.

Obviously within this trend, there are differences: some insist on the social structure of the market and the forms of production as the main factor; others stress the excessive concentration of power by a few and the null or incipient division of powers (control of power by power). Some more point at impunity that does not punish the overlapping of individual benefit and the common good. Be it economic, political or judicial reasons, the fact is that in the exercise of individual freedom, the environment plays a decisive role. For this reason, the problem of freedom appears in our day as the disagreement between "I" and "we," between individual freedom and public obligations.

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<sup>16</sup> Augustine refers to sins against the Holy Spirit, that is those committed by pure malice (without the attenuation of ignorance or the subjugation of a passion). Of the 6 mentioned by the father of the church, the fifth (obstinacy in sin) is now the most relevant. See AURELIUS AUGUSTINUS, PREDIGT 71, §13. ([Http://www.augustinus.it/spagnolo/discorsi/discorso\\_092\\_testo.htm](http://www.augustinus.it/spagnolo/discorsi/discorso_092_testo.htm)).

<sup>17</sup> The modern version of St. Augustine's ideas can be read in Catechism of the Catholic Church. See KATECHISMUS DER KATHOLISCHEN KIRCHE (chap. III, "THE KNOWLEDGE OF GOD ACCORDING TO THE CHURCH", § 36, 37 and 38) (1992) (<http://www.apologeticacatolica.org/Catecis/PISI.htm>).

<sup>18</sup> JEAN JACQUES ROUSSEAU, DER URSPRUNG DER UNGLEICHHEIT UNTER DEN MENSCHEN. ([http://philosophie.hfg-karlsruhe.de/sites/default/files/rousseau\\_ungleichheit\\_i.pdf](http://philosophie.hfg-karlsruhe.de/sites/default/files/rousseau_ungleichheit_i.pdf)) (1755).

What is the relevance of these for the consumption of marijuana? What is the responsibility of the State for the exercise of individual freedom?

### III. META-CONSTITUTIONAL DILEMMAS

In Mexico the intervention of the State to impose age limits on the consumption of tobacco, alcohol, even the consumption of sugary drinks and foods with high caloric content, is considered justified, but to affect the right to freedom and to prevent the individual from doing something with his life (and private space) is not considered justified, to the extreme of not prohibiting the use of marijuana.

Given that no one questions the harm of marijuana to the health, then the paradox between private and public interests (consuming marijuana as a right to exercise freedom, and being healthy as an obligation to perform tasks of social interest) is insoluble by Supreme Court of Justice of the Nation. Obviously this is because the problem goes beyond the legal sphere and is internalized in the philosophical, and the judges of the Supreme Court of Justice are not philosophers and don't have any philosophical training. However, most of the issues dealt with by the Supreme Court of Justice go beyond the legal sphere and are internalized in the meta-legal or meta-constitutional levels.<sup>19</sup>

At the meta-constitutional level it is necessary to seek justification for the recreational use of marijuana. To do this, I will first analyze the concept of "healthy life" to show the dependence of this concept on political or socio-logical criteria. And second, I will analyze the current life circumstances that induce a person to "recreate" with marijuana, to choose (despite the evil that it causes) the consumption of marijuana. I will thus try to justify the recreational use of marijuana.

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<sup>19</sup> Jorge Carpizo used this term to refer to presidential powers that exceeded what was allowed by the constitution, such as the appointment and dismissal of governors. Carpizo cited the testimony of the former governor of Baja California, Braulio Maldonado, who boasted that he had come to governorship because of his friendship with President Adolfo Ruiz Cortines and not because of the popular vote. This is not the best meaning of the term, because "meta-constitutional" refers rather to a higher theoretical level (in the sense of the philosophy of language), from which dilemmas and constitutional conflicts are analyzed, such as the logical or philosophical levels. Carpizo should have called these faculties "anti-constitutional" or "para-constitutional" rather than "meta-constitutional." See CARPIZO, JORGE, *EL PRESIDENCIALISMO MEXICANO*. (Editorial Siglo XXI. México, 190-199) (2006).



## IV. MARIJUANA: HEALTH AND ILLNESS

For the French thinker Michel Foucault (1926-1984)<sup>20</sup> the key problem worthy of consideration is to investigate the bowels of power. What is power? If power is authentic and complete, then it has power over life and death.

To unravel the essence of power, Foucault proposes to analyze three typical institutions of modernity: the clinic, the jail and the madhouse. The reason is that this is where power is best manifested, because that is where life and death are decided. It is striking that neither the scaffold nor the torture chamber are so relevant. The life and death in the hands of the powerful represent the power of inclusion or exclusion of society. And the clinic, the jail and the asylum are the zones of exclusion par excellence, bordering on the space where, according to the dispositions of the power, a human “dignified life” is possible.

In the case of the clinic and the asylum, but also of the prison, the power plays with the concepts healthy and pathological to decide who is inside and who outside, who deserves death and who still lives, because death is also understood in sociology as social exclusion, and the sick (corporal or mental) lives excluded from society.<sup>21</sup>

In our case regarding the consumption of marijuana, we discuss its harmful or beneficial effects as an argument for or against its decriminalization. What is striking in this case of ours (and despite the constant presence of power organizing debates) is the absence of analysis on the terms health and disease, subsidiaries of the normal and the pathological.

Obviously, the problem about the structure and behavior of the healthy and diseased (normal or pathological) is very vast. Each case of disease raises problems of anatomy, embryology, physiology, psychology, etc. However, it does not seem to pose any problem of sociology or philosophy of power, when concepts such as “healthy” or “sick” (normal and pathological) have a social relevance.<sup>22</sup>

It has been pointed out that distinguishing between the normal and the pathological involves including a “normativity” within biology, thus projecting the idea of human progress in nature.<sup>23</sup> This is known as the evolutionist seduction (product of social Darwinism) that has sought (and intends) to dictate how to overcome the natural-savage through his domestication or civilization. No one can deny that talking about health and illness means talking about successful and failed ways of life. And to distinguish between the

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<sup>20</sup> MICHEL FOUCAULT, *DIE ANORMALEN*. (Suhrkamp Verlag. Frankfurt am Main 2002).

<sup>21</sup> PETER BERGER, *THE SACRED CANOPY: ELEMENTS OF A SOCIOLOGICAL THEORY OF RELIGION*. ([http://www.meditina502.com/classes/faithandculture\\_la/lecturas/Berger\\_Religion\\_World.pdf](http://www.meditina502.com/classes/faithandculture_la/lecturas/Berger_Religion_World.pdf)) (1967).

<sup>22</sup> GEORGES CANGUILHEM, *DAS NORMALEN UND DAS PATHOLOGISCHEN*. (Suhrkamp Verlag. Frankfurt am Main 2005).

<sup>23</sup> *Id.*

two it is necessary to know the obligations imposed on man in the modern world. These are not the same as in the past. On the one hand, modern man lives stressed under the multiple obligations of the present life. On the other hand, throughout history there have been different notions of normal and pathological, such as those imposed by the dynamic school or the ontological school.

The ontological conception of disease conceived it as something that happens to man and is localized or manifested in his symptoms.<sup>24</sup> The dynamic conception of the disease did not locate the “evil” in any part of the body, but considered its integral, totalizing failure as a kind of dis-harmony of the diseased body with respect to its social environment.<sup>25</sup> According to this, the normal nature of man is in equilibrium or harmony with his environment, and disease represents precisely the decomposition of that balance or harmony. In the first school, the patient had to be cured “in family,” while for the second, he had to be excluded from society and confined to the clinic or asylum.<sup>26</sup>

In the case of users who are addicted to marijuana, the dilemma between healthy and sick is analyzed from a functional concept of disease (which corresponds to that of the dynamic school). Because the addict (if all consumption is addictive, for many “every consumer is an addict”) is in dis-harmony with his environment, he breaks with imposed obligations and with the social program to become a better citizen. Incarceration is necessary and inevitable, because the addict’s illness operates as an internal struggle between him and something that is foreign and keeps him out of control. Only the medical technique can save him and restore his health, since nothing good can be expected of the one who abandons his social obligations and becomes an uncontrolled. This, by the way, undoubtedly refers to an old confrontation between technique and nature (between civilization and barbarism) and also to an old discussion between those who admit and/or reject the possibility of submitting the human condition to “normative intentions” (healing) of society.

If pernicious alcohol (or intoxicating drinks) is viewed differently, and does not re-enter into the discussion about its authorization or prohibition, it is because it is analyzed from a different point of view. Let me explain: healthy and ill is understood in the context of the discussion on marijuana with the prefix “ab” (from ab-normal) or with “dis” (dis-function), and in the case of alcohol with hypo (less) or hyper (more). These last two prefixes (less/more) indicate a qualitative variation of the normal and not to an absence of the normal, as in the case of the first prefixes (ab/dis). That is why alcohol is

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> MICHEL FOUCAULT, *DIE GEBURT DER KLINIK: EINE ARCHÄOLOGIE DES ÄRZTLICHEN BLICKS*. (Fischer Verlag, 1999) (1963).

tolerated and marijuana is not. Alcohol only “exacerbates” normal states in certain circumstances, while marijuana destroys them.

How to solve the problem regarding marijuana use? First, it must be admitted that medicine is a technique rather than a science,<sup>27</sup> located at the crossroads of many sciences. Second, it can not be denied that the study of disease is a strategy to control the body within the limits of power. Therefore, a decisive point in the discussion must be the criterion chosen (by the power) on the normal and the pathological: how good or bad is marijuana? How abnormal does marijuana turn its consumers?

#### V. THE DUTY OF THE STATE IN THE FACE OF PERSONAL INTEREST AND THE DISCOMFORT OF MODERN LIFE

In 1932 Aldous Huxley wrote his dystopia *Brave New World*, where he proposed the use of the drug Soma as a solution for the social problem in order to achieve happiness in the world. Huxley, as a good Englishman, was a lucid heir of the philosophical thought of Hobbes, Locke, Mandville, Hume, Malthus, etc., that is, the contractualist tradition that saw society as the achievement of a voluntary contract in order to settle the individual conflicts, typical of the natural state.

In spite of the express intention of each signer to submit to the sovereign and strive for the collective good, a certain residue of irritation was inevitable, since it always had to yield to the majority. That irritation or discomfort was diluted with the use of the Soma drug. Huxley recommended, in the voice of his character Mustafa Mond, its use in the following doses: “If, unfortunately, some slit of time were opened in the solid substance of his distractions, there is always the soma: half a gram for a holiday, a gram for the weekend, two grams for a trip to the beautiful East, three for a dark eternity on the moon.”

Social unrest, as a result of feeling obliged to give up private interests every day, is also described in psychology. During the same year of the publication of *Brave New World*, in 1930, the Austrian doctor Sigmund Freud published *Civilization and Its Discontents*, where he examines the origin of the discomfort that man feels to inhabit the modern world. Its starting point was the question about the end of life, more typical of theology than of medicine or psychology. However, as some Western authors considered the meaning of life by the end of it (teleology), Freud nevertheless approached the problem, although only indirectly.

With reference to animal species no one asks for their end, unless they have utility for man. But to seek an end of animal life in itself seems trivial. Only man’s life has an end in itself, and this is precisely why the statement is

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<sup>27</sup> NORBET W. PAUL, *GESCHICHTE, THEORIE UND ETHIK DER MEDIZIN*. (Suhrkam Verlag, Frankfurt am Main 2006).

so disturbing: why only the life of man has or pursues an end? Human life, like any biological life, has no end. The question: why did evolution converge in man and led to the extinction of other species? has no answer. For this reason, the approach to the end of life should come, at best, from a supposition transcendent to human life, namely: God. Men of all ages have endeavored to please their gods in order to reach the “end” and to give meaning to their lives. And this explains why God and the end of life represent happiness for man: man desires not only to live (like any other species), but to live happy. Freud then goes on to analyze happiness and discovers, like so many others,<sup>28</sup> that it consists in procuring pleasure and avoiding pain.<sup>29</sup>

The principle of pleasure is that which prescribes the end of human life, a principle that governs the complete psychic apparatus and ultimately explains the behavior of man. Granting this first point, it is necessary to analyze the following paradox: why does it cost man so much effort to be happy if that is the meaning of his life? It seems that the vital principle of pleasure always conflicts with the world (with the macro- and microcosm), to the extent that the pleasure principle is absolutely unfeasible. Freud sarcastically claims that man’s purpose of being blissful is not in the “plan of creation.”

If this constitution of man limits his possibility of happiness, it does not prevent him from experiencing misery. According to Freud, suffering or pain threatens man from three fronts: the external world (with its natural cataclysms), the body (doomed to ruin and dissolution), and the bond with other human beings (*i. e.* socialization; more intense pain). From the catastrophes of the outside world only an “escape” can protect man, and to a lesser extent the technological development applied to the transformation of the environment. From the deformities and diseases of the body, medical science, sports and cosmetology protect him. From social violence, maybe just loneliness.

Is this all that the man has left in his life? If the pleasure principle longs for a permanent situation, and this longing gives meaning to life, the paradox of wanting the unattainable can not be ignored. Freud, again in accordance with JS Mill,<sup>30</sup> says that what is called happiness is the sudden and fleeting sat-

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<sup>28</sup> This would be the hedonistic tradition initiated by Epicurus of Samos (341-270 BC). In modern times, John Locke, Immanuel Kant, John Stuart Mill, etc., all proposed pleasure as synonymous of happiness.

<sup>29</sup> Nothing very different from the one proposed by John Stuart Mill (but not equivalent). The principle of action, within utilitarian ethics, is to seek the greatest amount of pleasure and avoid the greatest amount of pain (for the greatest number of people). See JOHN STUART MILL THE UTILITARIANISM. (<https://www.utilitarianism.com/mill1.htm>) (1863).

<sup>30</sup> JOHN STUART MILL THE UTILITARIANISM. (<https://www.utilitarianism.com/mill1.htm>) (1863).

isfaction of retained needs (sic), with a high degree of stasis (*i. e.* stagnation),<sup>31</sup> and which, by its very nature, is only possible as an episodic phenomenon.<sup>32</sup>

Under the influence of the outside world, the pleasure principle is confronted with the reality principle. And under the influence of the latter, the well-versed man accepts to avoid pain and to give up looking for pleasure.<sup>33</sup> From this perspective, the end of life is better defined as the desire to avoid the greatest amount of pain or displeasure, and the culture (or cultures of humanity) must be understood as strategies to achieve this end. Culture has also been developed to alleviate the discomfort caused by the obligation to watch over the common good and to postpone one's own good. Among the strategies of survival to society are drugs.<sup>34</sup>

The consumption of marijuana, like that of the mythical Soma, has the function of diluting the malaise of culture. Therefore, permissibility of marijuana should not be decided for the good it does, but for the evil it avoids. This seems to be a point that escapes the analysis of doctors and legislators.

## VI. CONCLUSIONS

The paradox of freedom consists in being able to do everything that pleases the individual, including what hurts him, but without affecting third parties. However, it is worth asking how this exercise of freedom is possible taking into account that this should contribute to the development of the person who exercises it. In addition, the individuals only conquer their welfare in society with the help of State institutions. For this reason, the State establishes the parameters that define the healthy man fit for the culture, in function of the responsibilities useful for the common good. However, personal happiness never matches social needs and interests, hence the discrepancy between personal obligations and desires. Consequently, there will always be tension between the individual and society, and the resulting malaise will be mitigated by the announcement or decriminalization of the use of drugs, alcohol or other substances, as well as activities that do not contribute to the individual's "health," but to mitigate pain or social unrest. The consumption of marijuana, although

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<sup>31</sup> In addition to reasons such as adverse world, vulnerable body and stumbling sociability, the problem is —according to Freud— that we are conceived to enjoy the contrast and not the permanent state of a sensation.

<sup>32</sup> SIGMUND FREUD, *DAS UNBEHAGEN IN DER KULTUR*. (Fischer Verlag. Frankfurt am Main 2003) (1930).

<sup>33</sup> *Id.*, p. 97.

<sup>34</sup> In the constructivist sociology of Peter Berger and Thomas Luckmann the problem of socialization is approached in much the same way as Freud's. See PETER BERGER, *THE SACRED CANOPY: ELEMENTS OF A SOCIOLOGICAL THEORY OF RELIGION*. ([http://www.medina502.com/classes/faithandculture\\_la/lecturas/Berger\\_Religion\\_World.pdf](http://www.medina502.com/classes/faithandculture_la/lecturas/Berger_Religion_World.pdf)) (1967).

it does not seek medical welfare, reduces social tensions and conflicts, and this justifies its decriminalization by the State.