

# **Drug Use Criminalization v. Decriminalization: An Analysis in the Light of the Italian Experience**

Report on mandate of the Federal Office of Public Health

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The views expressed in this report are those of the author and do not necessarily reflect the views of the Swiss Federal Office of Public Health.

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## Summary

The present paper focuses on the pros & cons of the main dichotomy in the field of drug control policy: that between criminalization and decriminalization. In the extensive opening chapter dedicated to the “Premises”, the various points of view about the advisability of having recourse to criminal sanctions are examined. In particular, the following premises are examined: first, the strictly retributive approach, based on the alleged need to impose punishment as the consequence of the violation of moral rules; second, the utilitarian perspective, which according to Bentham makes punishment depend on whether it fulfils the criteria of *soundness, efficacy, profitability* and *necessity*; and third, the “denunciation of crime” perspective which in turn makes punishment depend on the need to restore social cohesion around the values violated by the deviant behaviour. These perspectives are examined both in general terms and more specifically with regard to drug policy. It is also shown how many of the above points of view were used both by prohibitionists and anti-prohibitionists to reach opposite conclusions about whether it is advisable, or possible, to repress drug use.

In the following chapters, the paper examines the Italian experience in the field of drug control. This experience is of interest to experts in this field in other countries too, since Italy’s position on the international drug policy scene is in some respects unique. Italy was in fact the first country to decriminalize the personal use of drugs, while maintaining a tough policy against drug trafficking. Later Italy introduced a series of new, alternative measures to control drug diffusion; and at the same time developed a large network of therapeutic centers for the care and the resocialization of the addict.

In the extensive concluding chapter, the paper discusses all the issues and data dealt with in the previous pages. It is emphasized that the increasing repressive measures to tackle drug offences, and the introduction of new alternative sanctions, did not bring about any visible impact on the phenomenon of drug diffusion. However, it is also shown how, from the prohibitionists’ point of view, the rapid increase in drug use registered in Italy could have been even worse had the existing sanctions been abolished. The social harm caused by drug diffusion is also taken in consideration, as well as the cost of criminal sanctions, and in particular the impact in terms of misery inflicted on the addicts and the huge amount of energies spent by the judiciary and the penitentiary system in the fight against drugs. As regards the issue of drug abuse treatment, the paper emphasizes the undoubtedly important role that can be played by an efficient system of therapy and assistance; it warns however that such a system cannot be a definitive solution to the problem of addiction. Lastly, as regards the possible consequences of the decriminalization of drugs, and in the first instance that of “soft” drugs like cannabis, the paper argues, on the basis of what has happened in Italy and elsewhere, that such a policy would probably cause a certain increase in the number of drug users; and that, due to the undeniable statistical link between cannabis and opiates use, a certain number of cannabis users would later shift to “hard” drugs. However, this increase in drug diffusion should be evaluated against the costs associated with the current crusade against drugs: the criminalization of a substantial share of the young generations, the prisons filled with drug users, the justice system clogged up with drug offences. In any case, an important priority should be to test whether drug diffusion can be controlled by means of a strong “denunciation policy”, based not on criminal sanctions but on the promotion of the social values opposed to the drug culture.

## Riassunto

Questo saggio si propone di analizzare i pro e i contro della principale dicotomia nel campo del controllo della droga: quella tra criminalizzazione e decriminalizzazione. Nell'ampio Capitolo iniziale dedicato alle Premesse, si esaminano i vari punti di vista sulla opportunità di ricorrere a sanzioni penali. In particolare, si prende in esame: primo, la prospettiva rigidamente retributiva fondata sulla asserita necessità di imporre una punizione come conseguenza della violazione di norme morali; secondo, la prospettiva utilitarista, che, secondo la lezione di Bentham, fa dipendere la punizione dall'accertamento dei criteri di *fondatezza*, *efficacia*, *vantaggio* e *necessità*; e terzo, la prospettiva della "denuncia del crimine" che a sua volta fa dipendere la punizione dalla necessità di rinsaldare la coesione sociale intorno ai valori sociali violati dal comportamento deviante. Queste prospettive sono esaminate sia in termini generali sia più specificamente per quanto riguarda le politiche sulla droga. Si rileva anche come molti dei punti di vista precedenti sono stati utilizzati dai proibizionisti come pure dagli anti-proibizionisti per arrivare a conclusioni opposte per quanto riguarda la possibilità e l'opportunità di reprimere l'uso di droga.

Nei Capitoli successivi questo saggio esamina le esperienze dell'Italia nel campo del controllo della droga. Queste esperienze sono rilevanti per gli specialisti di questo settore degli altri paesi, dal momento che la posizione dell'Italia nel panorama internazionale delle politiche sulla droga è particolare. L'Italia è stato il primo paese a decriminalizzare l'uso personale di droga, mantenendo tuttavia una politica di severa repressione dei reati di traffico; successivamente, l'Italia ha introdotto una serie di nuove misure alternative per il controllo della diffusione della droga; e ha al tempo stesso realizzato un vasto sistema di centri di trattamento per la cura e il reinserimento sociale dei tossicodipendenti.

Nell'ampio Capitolo conclusivo, questo saggio presenta una discussione degli argomenti e dei dati trattati nelle pagine precedenti. Si sottolinea come le crescenti misure punitive nei confronti dei reati di droga, come pure le sanzioni alternative adottate, non hanno comportato alcun visibile impatto sul fenomeno della diffusione della droga. Tuttavia, si mostra anche come, dal punto di vista dei proibizionisti, il rapido incremento nell'uso di droga registrato in Italia avrebbe potuto essere anche più grave, se si fossero abolite le sanzioni esistenti. Sono poi discussi sia i danni sociali provocati dalla diffusione della droga, sia i costi sociali delle sanzioni penali adottate: e in particolare sono sottolineati le sofferenze imposte ai tossicodipendenti nonché l'enorme dispendio di energie del sistema giudiziario-penitenziario nella lotta alla droga. Per quanto riguarda il trattamento dell'abuso di droga, questo saggio sottolinea il ruolo indubbiamente rilevante che può essere svolto da un efficace sistema di terapia ed assistenza: suggerisce tuttavia che quest'ultimo non può rappresentare la soluzione definitiva per il problema della tossicodipendenza. Infine, per quanto riguarda le possibili conseguenze della decriminalizzazione delle droghe, e prima di tutto di quelle "leggere" come la cannabis, si ritiene, sulla base di quanto avvenuto in Italia e altrove, che tale politica produrrebbe probabilmente un certo incremento nel numero dei consumatori di droga; e che, per via dell'incontestabile legame statistico tra consumo di cannabis e consumo di oppiacei, un certo numero di consumatori di cannabis passerebbe successivamente alle droghe "pesanti". Tuttavia, questo incremento nella diffusione della droga dovrebbe essere valutato a fronte dei costi connessi con l'attuale crociata contro la droga: la criminalizzazione di una parte consistente dei

giovani; le carceri piene di tossicodipendenti; il sistema della giustizia inceppato dai reati di droga. In ogni caso, si dovrebbe mettere alla prova la possibilità di controllare la diffusione della droga per mezzo di una forte “politica di denuncia”, basata però non su sanzioni penali bensì su una promozione dei valori sociali opposti a quelli della cultura della droga.

## Zusammenfassung

Der vorliegende Bericht konzentriert sich auf das Pro und Kontra der Hauptgegensätze in der Politik der Drogenkontrolle: jene zwischen Kriminalisierung und Entkriminalisierung. In einem ausführlichen, den „Prämissen“ gewidmeten Einleitungskapitel werden die verschiedenen Standpunkte über die Angemessenheit des Einsatzes strafrechtlicher Sanktionen untersucht. Es werden insbesondere folgende Prämissen erörtert: 1) der strikte Vergeltungsansatz, welcher von der Notwendigkeit ausgeht, Strafen zu verhängen, wenn moralische Regeln verletzt werden; 2) die utilitaristische Perspektive nach Bentham, welche die Strafe davon abhängig macht, ob sie die Kriterien der Rechtmäßigkeit, Wirksamkeit, Nützlichkeit und Notwendigkeit erfüllt und 3) die Perspektive der informellen Kontrolle von Verbrechen, welche die Bestrafung abhängig macht von der Notwendigkeit, den sozialen Zusammenhalt zu festigen im Zusammenhang mit jenen Werten, welche durch das abweichende Verhalten verletzt werden. Diese Perspektiven werden sowohl grundsätzlich als auch im Hinblick auf die Drogenpolitik untersucht. Es wird auch gezeigt, wie viele der oben erwähnten Standpunkte sowohl von Prohibitionsbefürwortern als auch von Prohibitionsgegnern verwendet werden, um zu gegenteiligen Schlussfolgerungen darüber zu gelangen, ob es ratsam oder möglich sei, Drogengebrauch zu unterdrücken.

In den folgenden Kapiteln untersucht der Bericht die italienische Erfahrung im Bereich der Drogenkontrolle. Diese Erfahrung ist auch für Experten in andern Ländern von Interesse, denn die italienische Position ist im Umfeld der internationalen Drogenpolitik einzigartig. Italien war in der Tat das erste Land, welches den persönlichen Gebrauch von Drogen entkriminalisierte, indessen aber eine harte Linie gegenüber dem Drogenhandel aufrechterhielt. Später führte Italien eine Reihe neuer alternativer Maßnahmen ein, um die Verbreitung von Drogen zu kontrollieren. Gleichzeitig wurde ein großes Netzwerk therapeutischer Institutionen zur Behandlung und Resozialisierung Drogenabhängiger geschaffen.

In einem ausführlichen Schlusskapitel diskutiert der Bericht alle Themen und Daten der vorangehenden Seiten. Es wird betont, dass der zunehmende Einsatz repressiver Maßnahmen gegenüber Drogendelikten und die Einführung alternativer Sanktionen keinen sichtbaren Einfluss auf das Phänomen der Verbreitung der Drogen hatte. Es wird jedoch auch gezeigt, dass die schnelle Zunahme des Drogengebrauchs, welche in Italien registriert wurde, aus der Sicht der Prohibitionsbefürworter noch hätte größer sein können, wenn die bestehenden Sanktionen abgeschafft worden wären. Der soziale Schaden, welcher die Drogenverbreitung verursacht, wird ebenso berücksichtigt wie die Kosten strafrechtlicher Sanktionen, insbesondere der Einfluss, welcher die Verelendung den Abhängigen auferlegt und die beträchtlichen Energien, welche ins Justiz- und Gefängnisssystem fließen im Kampf gegen Drogen. Was die Behandlung Drogenabhängiger anbelangt, betont der Bericht die zweifellos wichtige Rolle, welche von einem effizienten System der Behandlung und Betreuung übernommen werden kann; es wird jedoch davor gewarnt, ein solches System als definitive Lösung des Drogenproblems zu betrachten. Was schließlich die möglichen Konsequenzen einer Entkriminalisierung von Drogen und insbesondere weicher Drogen wie Cannabis angeht, wird im Bericht – auf der Basis der Erfahrungen in Italien und anderswo – argumentiert, dass eine solche Politik wahrscheinlich eine gewisse Zunahme der Zahl der Drogenkonsumenten bewirken würde. Zudem würde infolge des unbestreitbaren Zusammenhangs zwischen Cannabis- und Opiatgebrauch ein Teil der Cannabiskonsumenten später zu harten Drogen übergehen. Diese Zunahme der Verbreitung von Drogen sollte jedoch aufgerechnet werden gegen die Kosten, welche der gegenwärtige Kreuzzug

gegen Drogen nach sich zieht: Die Kriminalisierung eines beträchtlichen Anteils der jungen Generationen, der mit Drogenkonsumenten gefüllten Gefängnisse, des mit Drogendelikten überlasteten Justizsystems. In jedem Fall sollte es vorrangig sein zu erproben, ob die Verbreitung des Drogenkonsums nicht durch eine ausgeprägte Politik der informellen Kontrolle eingegrenzt werden sollte, welche nicht auf strafrechtlichen Sanktionen basiert, sondern auf der Förderung von sozialen Werten, welcher der Drogenkultur entgegenstehen.

## Résumé

Le présent article présente les avantages et les inconvénients de la principale opposition en matière de politique de la drogue, à savoir entre la répression et la dépénalisation. Dans un long chapitre d'introduction consacré aux prémisses, l'auteur analyse les différents points de vue sur l'opportunité du recours aux sanctions pénales, et en particulier : 1) l'approche strictement vindicative basée sur le prétendu besoin d'infliger une punition en cas de violation d'une règle morale ; 2) la perspective utilitaire selon Bentham, dans laquelle une sanction est infligée selon qu'elle remplit ou non les critères de *justesse, d'efficacité, de utilité et de nécessité* et 3) la perspective de « dénonciation des infractions », qui fait dépendre la peine du besoin de restaurer la cohésion sociale autour des valeurs violées par le comportement déviant. Ces perspectives sont analysées globalement, mais aussi plus spécifiquement, par rapport à la politique menée en matière de drogue. Ce travail montre aussi comment certains des points de vue précités ont été utilisés par les défenseurs et par les adversaires de la prohibition pour aboutir à des conclusions inverses sur l'opportunité ou la possibilité de réprimer la consommation de drogue.

Les chapitres suivants sont consacrés à l'expérience italienne de contrôle des stupéfiants, une expérience intéressante pour les experts d'autres pays, l'Italie menant une politique unique à bien des égards en matière de drogue. Ce pays était en effet le premier à dépénaliser l'usage personnel des drogues tout en maintenant une ligne sévère contre le trafic de stupéfiants. Il a ensuite introduit une série de mesures alternatives visant à contrôler la diffusion de la drogue tout en mettant en place un vaste réseau de centres thérapeutiques destinés à la prise en charge et à la réinsertion des consommateurs de drogue.

Dans son long chapitre de conclusion, l'auteur revient sur toutes les questions et données présentées dans les pages précédentes. Il insiste sur le fait que le durcissement des mesures répressives à l'encontre des infractions liées aux stupéfiants ainsi que l'introduction de nouvelles sanctions alternatives n'ont pas eu d'impact sensible sur la diffusion des stupéfiants. Cependant, l'analyse expose aussi comment, du point de vue des prohibitionnistes, l'augmentation de la consommation de drogue mesurée en Italie aurait pu être plus rapide encore si les sanctions existantes avaient été totalement levées. Le préjudice social causé par la diffusion des drogues a également été pris en considération, de même que le coût des sanctions pénales, en particulier sur le plan de la détresse des toxicomanes et des ressources considérables consacrées par les autorités judiciaires et pénitentiaires à la lutte contre la drogue. En ce qui concerne le traitement de la toxicomanie, l'étude souligne qu'il est capital de pouvoir s'appuyer sur un système efficace d'aide et de prise en charge thérapeutique, mais que ce système ne peut cependant en aucun cas constituer une solution définitive au problème de la toxicomanie. Enfin, lorsqu'il aborde les conséquences possibles de la dépénalisation des drogues, et en premier lieu de celle des drogues douces telles que le cannabis, l'auteur reconnaît que les observations faites en Italie et ailleurs font apparaître qu'une telle politique pourrait entraîner une augmentation du nombre des utilisateurs de drogue. De plus, en raison de la corrélation statistique indéniable entre la consommation de cannabis et d'opiacés, un certain nombre de consommateurs de cannabis pourront un jour se tourner vers les drogues dures. Il n'en reste pas moins que cette diffusion croissante de la drogue doit être évaluée à l'aune des coûts de l'actuelle croisade anti-drogues : la criminalisation d'une proportion importante des jeunes, des prisons remplies de toxicomanes et un système judiciaire qui croule sous les dossiers d'infraction à la loi sur les stupéfiants. En fait, il faut prioritairement vérifier si l'augmentation de la consommation de drogues ne pourrait

être limitée par une « politique de dénonciation » marquée, basée non pas sur les sanctions pénales, mais sur la promotion des valeurs sociales à l'opposé de la culture de la drogue.

## Premises to the problem of criminalization v. decriminalization in the field of drug use

The problem of criminalization and decriminalization of specific forms of behaviour can be tackled from various points of view, more numerous than is usually thought. In most cases, the debate turns around the issue of the impact of criminalization/decriminalization. However, further upstream is the ethical point of view which is largely independent from other points of view. If a behaviour is considered as something morally unacceptable, then its punishment can be regarded as necessary in itself. So, Immanuel Kant, who represents very well the hard-line retributive front, says that “The only time a criminal cannot complain that he is treated unjustly is when he draws the evil deed back onto himself [as a punishment]” (Kant 1965: 363). This also because “A categorical imperative would be one which represented an action as objectively necessary in itself, without reference to any other purpose” (Kant 1990: 414). From this point of view, the actual impact of legal sanctions on the individuals’ behaviour or on society should not be of any importance: “Punishment can never be administered merely as a means to promote some other good, for the criminal himself or for civil society” (Kant 1965: 332). In other words, the breaking of moral rules implies in itself punishment, also because man’s will (that is “a law to itself”) makes him responsible for his deeds; morality and law are the same thing; any utilitarian consideration about the advantages or disadvantages of imposing a sanction jeopardizes the close link between punishment and morality.

The retributive point of view is not something belonging to the 18th century; it is well present in the context of the 20th century by all those who say, as Bradley, that “we pay the penalty because we deserve it and for no other reason” (Bradley 1927). It is also present in the culture of the Catholic Church, which, in the specific field of drug use legislation, regards sanctions as the necessary consequences of the immorality implied in using drugs. The Catholic Church’s main tenet as regards this issue is that drug use is evil; and since it is evil it should be punished (“*Liberalizzazione della droga?*” 1997).

However, contemporary society has emphasized two weak points in the structure of the retributive approach: (i) the difficulty in considering the behaviour of the subject as the mere result of his own free will; (ii) the fact that the link between punishment and morality seems arguable when there are specific laws whose moral content is scarce, not clear enough, or

arguable. As regards the field of drugs, the first point has been emphasized by all those who think that drug abuse is the consequence of individual or social malaise. The second point has been frequently recalled especially by those who affirm that drug use is a matter of private choices more than of public morality (see below).

Also on the basis of these considerations, in most cases, as we have already said, the debate about criminalization/decriminalization has turned more around the issue of the impact of legislation and, in particular, criminal sanctions, than around the issue of morality. This impact of criminal sanctions is the forte of the so called utilitarian approach. In his classical analysis of the problem of the end of law and punishment, Jeremy Bentham stated that the law should tend to augment happiness and prevent mischief. However, since punishment in itself is mischief, it ought only to be used in as far as it excludes some greater evil. Therefore, punishment ought not to be inflicted:

- “1. Where it is *groundless*: where there is no mischief for it to prevent.
2. Where it must be *inefficacious*: where it cannot act so as to prevent the mischief.
3. Where it is *unprofitable*, or too *expensive*: where the mischief it would produce would be greater than what it prevented.
4. Where it is *needless*: where the mischief may be prevented, or cease of itself, without it: that is, at a cheaper rate” (Bentham 1987: XIII, I).

This does not mean, of course, that punishment is never necessary, according to Bentham. He believed that there are also cases where punishment is worthwhile. In these specific cases, punishment is aimed at achieving four objects.

1st Object: to prevent all offences, i.e. to manage that no offence may be committed.

2nd Object: to prevent the worst, i.e. to induce the offender to commit a less mischievous offence.

3rd Object: to restrain the mischief, i.e. to induce the offender to do no more mischief than is necessary to his purpose.

4th Object: to act at the least expense, i.e. to prevent the mischief at as cheap a rate as possible.

Now, all the four points against punishment have been used, over the last decades, to challenge the need of law intervention and punishment in the specific field of drug use. As regards the first point (the *groundlessness* of punishment where there is no mischief for it to

prevent), it has been argued that drug use belongs to the individual's private sphere and it is not a mischief in itself for the law to prevent. Reference is often made, in relation to this aspect, to the considerations presented by J.S. Mill in the 19th century. According to Mill, "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He can not rightfully be compelled to do or forbear because it will better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right. [...] The only part of the conduct of any other, for which he is amenable to society, is that which concerns others. [...] Over himself, over his own body and mind, the individual is sovereign".

This however applies only to the adult person in the maturity of his faculties. Mill says that "We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury".

Mill advanced more or less the same considerations as regards the availability of dangerous substances. He was against the interference with their trade: "the prohibition of the importation of opium into China; the restriction on the sale of poisons; all cases, in short, where the object of the interference is to make it impossible or difficult to obtain a particular commodity. These interferences are objectionable, not as infringements on the liberty of the producer or seller, but on that of the buyer [...] in this case, therefore (unless he is a child, or delirious, or in some state of excitement or absorption incompatible with the full use of the reflection faculty) he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it" (Mill 1859).

The concepts expressed by Mill have been echoed in our days by several authors. For instance, by Hayek, who said "when private practice cannot affect anybody but the voluntary adult actors, the mere dislike of what is being done by others, or even the knowledge that others harm themselves by what they do, provides no legitimate ground for coercion" (Hayek 1960: 145). More recently, Rawls offered what can be regarded as a further contribution to the strengthening of these propositions. In line with his premise, i.e. that justice is what could, or would, be agreed to among free persons from a position of equality, Rawls advanced his *first*

*principle of justice*: “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all”. He argued that this principle does not support for instance the possibility that a degrading behaviour should be prohibited and punished on this basis, if only for the sake of the individuals in question, irrespective of their wishes (Rawls 1999: par. 39, 50).

As regards in particular contemporary drug policy, these arguments have been recalled especially in respect of the issue of drug personal consumption; something that many have regarded as a behaviour whose harmful consequences fall only on its author ; in other words, as a behaviour that represents a “crime without victim” (Schur 1965), a matter that should be left to the individual’s sphere of personal decisions. So, according to the authors of a comprehensive research on the legal and medical aspects of cannabis use, “contemporary western man increasingly regards as blameworthy only that which directly or indirectly harms others; the presumption ought therefore to be that conduct harmful only to the actor should be deterred through means other than the criminal law” (Bonnie and Whitebread 1970).

In regard to Bentham’s second point (the *inefficiency* of punishment), the need of law intervention and punishment in the field of drug use has been challenged by arguing that criminal law intervention throughout the 20th century did not prevent the diffusion of drug use. Here, references can be made to a very long series of research works, both by official and unofficial experts, both in relation to “hard” and “soft” drugs. These works show that tough criminal sanctions did not prevent the increasing diffusion of illegal drugs consumption both in Europe and North America, nor did the introduction of more severe sanctions curb such consumption (e.g. UK Advisory Committee on Marihuana and Drug Dependence 1968; Weismann 1975; Winick 1975; US Joint Committee 1977; Solivetti 1994).

As regards the third point (the *unprofitability*, or the excessive *expensiveness* of punishment), in general it has been argued by many an author that criminal law intervention often causes more mischief than it prevented. So, already Spinoza spoke in favour of limiting law intervention on the ground that “he who seeks to regulate everything by law is more likely to arouse vices than to reform them. It is best to grant what cannot be abolished, even though it be in itself harmful” (1951: Chap. XX). And Hayek added that “It is indeed probable that more harm and misery have been caused by men determined to use coercion to stamp out a moral evil

than by men intent on doing evil” (1960: 146). These concepts have been extensively used in the field of drug, in relation to both “hard” and “soft” drugs. In particular this “more harm and misery” might be caused by the fact that (i) the criminalization of drug use transforms into criminals a sizeable percentage of Western countries’ citizens, and especially a vast number of youths, alienating them from civil society; (ii) the criminalization of drug use forces the drug consumer to recur to the illegal drugs market; and therefore puts this consumer in touch with, and makes him dependent on, the criminal world, to which drugs marketing has been handed over by criminalization itself; (iii) the criminalization of drug use drives addicts to engage in crime, prostitution and other deviant forms of behaviour, in order to be able to afford the very high cost of drugs on the illegal market; (iv) the criminalization of drug use gives organized crime, both national and international, a huge power (valued at over 300 billion dollars), that is translated into further criminal actions; the sum of crime committed by traffickers to defend and expand their business (in particular, violent crime), plus crime committed by addicts to afford their doses (in particular, theft, purse-snatching, robbery and murder), has been estimated at up to three-quarters of the total amount of the corresponding types of crime in many of the Western countries; (v) the criminalization of drug use leads the police and the judiciary to spend an enormous amount of energies in the field of drug control & repression; whereas these energies would be more profitably spent in maintaining public order and curbing much more antisocial behaviour (see, for instance, Kaplan 1970; Geis 1972; Radical Anti-Prohibitionist Forum 1988; Manconi 1991; Segre 2000).

As regards the fourth point (the *needlessness* of punishment, where the mischief may be prevented, or cease of itself, without it, at a cheaper rate), it has been argued that drug use might be kept under control by different and better means, in particular, by treatment and social rehabilitation. The introduction of treatment as a substitute for punishment in the field of drug abuse started in the US in the 1920s, with compulsory treatment in prison and hospitals; in 1935, the first federal narcotics hospital was opened in Lexington, Kentucky, for the compulsory treatment of addicts. From 1966, with the Narcotic Addict Rehabilitation Act (NARA), the US introduced drug rehabilitation programs in their federal prisons. In the meantime, from the 1950s, community-based voluntary treatment, originally meant for alcoholics, was used to treat also drug addicts; later, these programs were further developed also in Europe. From the 1960s,

California and New York introduced the policy of “civil commitment”, i.e. the policy of offering the addict, as an alternative to imprisonment, a period of treatment in a hospital. Later, this commitment to hospitals was substituted with community-based drug treatment programs and residential therapeutic communities. By the 1970s, many European countries legislated in favour of drug treatment programs in lieu of imprisonment for addicts guilty of drug offences and often also for addicts guilty of common offences. Italy’s decriminalization of drug possession in 1975, for instance, was coupled with the provision of drug treatment programs. In 1964, Dole and Nyswander introduced the practice of methadone maintenance programs; these were meant to be a stable and cheap alternative to the use of opiates, and all in all a more humane and rational way of dealing with addicts, instead of punishing them with criminal sanctions. Within a few years, methadone maintenance became a common feature of the drug treatment programs in the European countries too. Something substantially similar, in terms of goals, on the other hand, had been applied in Great Britain since the 1920s. Great Britain considered addiction a medical problem and therefore handed it over to the medical profession. As a consequence, addicts could receive their doses of opiates through the national health system without incurring any illegal behaviour. Last, the so called *harm reduction* policies have been adopted by most European countries from the 1980s. As regards education and prevention, both *primary* and *secondary*, they have been around for decades.

The debate about the rate of success of these alternatives to imprisonment is still going on. However, all in all, these ways of dealing with addicts have been regarded by many experts as viable options (for the entire issue, see e.g. Schur 1965; Lindesmith 1967; Solivetti 1980; Andreoli, Maffei and Tamburino 1982; Akers 1992; Segre 2000).

It should be pointed out, however, that those in favour of a repressive policy against drug use offer a series of considerations that are meant to counter the points above-mentioned in favour of decriminalization.

First of all, they argue that the fact that a certain behaviour harms its author directly does not mean that it cannot harm society as well. On the contrary, family, local community, society, all can be seriously affected by actions whose negative consequences fall first of all on their author. It is on the basis of this reasoning, we may add, that for instance the compulsory use of safety belts for car drivers was introduced, without protests. Now, as regards drug

criminalization, those in favour of a repressive policy affirm that drug use implies serious consequences not only for the user himself but also for society. In other words, punishment is not groundless because the mischief to prevent is substantial. In this regard, it has been repeatedly affirmed, since the 19th century, that: (i) drug use, and first of all opiates addiction, is a “vice”, i.e. an antisocial behaviour associated with other aspects of antisociality; (ii) “hard” drugs chronic intoxication, accompanied by dependence and withdrawal symptoms, affects school and job performances, damages relationships with relatives and friends, makes addicts less able to delay gratification, and as a consequence of all this, makes also violent and criminal behaviour more likely; (iii) abuse of some particular drugs, like cocaine and amphetamines, can lead to aggressive behaviour; and also heroin abuse, under certain conditions, can favour aggression; (iv) “hard” drugs addiction is associated with crime not only because the addict is exposed to the influence of the criminal milieu by which his doses are supplied, or because he needs to obtain money, by fair means or foul, to get his daily amount of drug, but also because drug addiction can be part and parcel of a criminal attitude that predates the onset of addiction itself (for all these points, see e.g. Wood 1856; Morgan 1965; Chein 1966; Agar 1973; Grinspoon and Bakalar 1985; Boyum and Kleiman 1995; Inciardi, McBride and Rivers 1996). Besides, over the last few years, drug use has been considered by “zero tolerance” supporters as a violation of the law that should be vigorously prosecuted, since it can pave the way for the deterioration of the neighbourhood, for the decline of community values, and ultimately for more and more serious criminal behaviour (Wilson 1997). On the other hand, the amount of human losses, serious health problems and misery that accompany “hard” drugs use is very well known. In the countries where opiates use is more widely diffused, deaths from drug abuse have become the second major cause of death for the youth after road accidents, part of which is blamed on drug use. The total cost for society, in terms of indirect economic losses, direct economic damages, therapy costs, is evidently huge.

As regards “soft” drugs and in particular cannabis, it has been pointed out that cannabis users tend to present a “non-conformist” behaviour, and often they seem to share what has been called a “hang-loose” ethic: in other words, they seem to shun conventional values, such as those associated with religion, marriage, pre-marital chastity, accumulation of wealth (Suchman 1968). Cannabis use has been also connected with an “demotivational syndrome” implying diminished

willingness to endure frustration or to carry out complex, long-term plans (McGlothin and West 1968). However, such aspects might be the effect of a social behaviour associated with cannabis use more than the effect of cannabis use itself; furthermore, such behaviour is not typical of cannabis use (WHO 1997).

Other personal and social damage that has been regarded as associated with cannabis use includes impairment of driving skills (see also below) and poor school and job performances (e.g. US National Academy of Sciences 1982, Gallagher 1989; Akers 1992).

A second point emphasized by those in favour of maintaining a repressive policy against drug is that such a policy is not inefficacious. The supporters of the repressive policy do not contend that in the Western world there has been in general a substantial increase in drug consumption over the last decades. They argue, however, that tough measures have not been inefficacious. Drug production has been curtailed in various countries; illegal laboratories have been closed; seizures of drugs by the police have recorded a remarkable increase, both in number and quantity; traffickers have been arrested and sent to prison by the thousand; drugs barons have had to keep a low profile; the momentum of the consumption of opiates seems to have been reduced during the 1990s. Besides, where the repressive policy has been more a fiasco than a success, its supporters blame more the feeble will and the hesitancy in some governments, the lack of co-ordination at the international level, the corruption of officials, than the policy itself. In any case, the supporters of the repressive policy argue that the threat of punishment has not been ineffectual: it has on the contrary restrained many people from entering into the drugs world (for all these aspects, Inciardi 1991; Arlacchi 1993; Wilson 2000b).

A further point in favour of punishment in relation to drug use might be that of a different approach to the problem of its profitability & expensiveness. People supporting the repressive policy argued that, as criminalization restrained many people from entering the drugs world, so decriminalization would increase the general use of both “soft” and “hard” drugs. When tobacco and alcohol were decriminalized, their consumption soared. The same is likely to happen with drugs that have been till now illegal. Prohibitionists point out also that where drugs are easily available (e.g. among physicians), drug use is higher. And that, as regards at least alcohol and tobacco, any decrease of their price causes an increase in their sale. In other words, both drug criminalization and drug cost (which is a variable correlated with criminalization) work like

controls on drug use. If all this is true, the social costs (deaths, health problems, treatment costs, educational & vocational losses) associated with drug consumption will rise under a policy of decriminalization. Current high law enforcement costs would be reduced, especially in the case of full liberalization of drugs (which would in any case still punish the selling of drugs to those under age). However, substantial costs would be paid to construct and run a regulatory system for legalized drugs. The substantial amount of crime being committed at the present time by drug traffickers would decrease, provided that the legalized system of distribution works in a satisfactory way (something that should not be taken for granted). Economically motivated crime, committed to pay for drug doses, would go down too, since drugs would cost much less. But since crime can be more structurally associated with drug abuse (especially “hard” drugs), this second type of crime would go up. And it would nullify the advantages connected with decreasing economically motivated crime. When alcohol was decriminalized, the direct correlation between alcohol consumption and crime (violent crime, as assaults and rapes, manslaughter through road accidents etc.) obviously was not swept away; nor was the effect of alcohol on health (e.g. cirrhosis of the liver) removed. On the contrary, all these negative social consequences increased and the same happened with their social costs. As regards cannabis, legalization would not significantly raise its social costs; on the other hand, the legalization of this substance would not significantly reduce the total amount of crime, violence, gang power associated with drugs (for the entire issue, Reuter 1988; Inciardi 1990; Goldstein and Kalant 1990; Akers 1992; “Panacea or Chaos” 1994; Boyum and Kleiman 1995; Goode 1997).

Those claiming that a repressive policy is opportune and necessary for drug use also challenge the idea that punishment is needless since the mischief caused by drug use may be prevented at a cheaper rate. In particular, they deny that drug use can be controlled by means of the various therapeutic measures we mentioned above. They emphasize that addicts are not really interested in treatment; and that this is shown by the fact that, even when addicts submit themselves to some sort of treatment, they incur frequent relapses. Ultimately, their main reason to submit to treatment is the fact that they are obliged to do so if they want to avoid some serious criminal sanction. If this is true, then decriminalization of drug use would remove this main reason to submit to treatment and would further expand drug diffusion and its negative social consequences (Morgan 1965; Wilson 1975, 2000a).

What we described over the last few pages are considerations in favour of and against a repressive policy in the field of drug, from the point of view of an utilitarian approach. However, there are other considerations that can be regarded as belonging by and large to an utilitarian approach, though they are quite different from the previous propositions. It should be pointed out that the classic utilitarian approach presented above has, clearly enough, dealt with punishment efficacy, profitability or need in terms mainly of its impact on the lawbreaker. Now, over a century ago, Durkheim showed that the same issue of criminal law and punishment can be analyzed in terms of its impact on the law-abider. Durkheim argued that the primary aim of criminal sanctions might be not indeed the control over the lawbreaker: “Punishment does not serve – or it only secondarily serves – to correct the culprit or to deter his possible imitators: from this double point of view it is quite dubious and in any case mediocre” (Durkheim 1893: 1, II, IV). However, he did not conclude his analysis – as one might expect – by regarding punishment as a matter of retribution for the wrong-doing. He thought instead that the primary aim of criminal sanctions might be the support of the law-abider and the strengthening of the set of moral values that was violated by the behaviour of the lawbreaker. Though concerned with moral values, Durkheim’s point of view can be regarded as intrinsically utilitarian, since he justified punishment in so far as it contributes to the functioning of the social system. Society cannot survive without internal cohesion; and punishment is aimed precisely at maintaining and restoring such internal cohesion founded on the sharing of moral values (for a reappraisal of Durkheim’s ideas, Lidz and Walker 1980).

Durkheim’s argument is, clearly enough, part and parcel of the present-day justification of punishment (and of course of criminalization) in terms of the so called “denunciation of crime” (see Bean 1981). On this basis, Devlin supported punishment and contested for instance the conclusion reached by the Wolfenden Committee on the issue of homosexuality: an issue often associated with drug abuse, since both have been regarded as “crimes without victim”. Whereas the Wolfenden Committee was in favour of the decriminalization of homosexuality between consenting adults, stating that “there must be a realm of morality which is not the law’s business” (UK Committee on Homosexual Offences and Prostitution 1957), Devlin argued that “Societies disintegrate from within more frequently than they are broken from external pressures. There is disintegration when no common morality is observed [...] so that society is

justified in taking the same steps to preserve its moral code as it does to preserve its government and other essential institutions” (Devlin 1965: 13). And Lord Justice Denning, moving along the same line, argued that “The ultimate justification of any punishment is not that it is deterrent, but that it is the emphatic denunciation by the community of a crime” (UK Royal Commission on Capital Punishment 1953: par. 53).

This position is not far away from that voiced by the Catholic Church when – defending the need to punish drug use – it affirms that the real problem with drug use decriminalization is not that it liberalizes a substance, but that it validates the motives leading to the consumption of that substance (“Liberalizzazione della droga?” 1997).

All these points of view can be profitably analyzed in the light of what happened in Italy. Drug diffusion in Italy showed a rather slow beginning. However, this did not prevent Italy from becoming a country in which drug diffusion reached a very high level, in comparative terms (see below). The speed presented by drug diffusion is certainly a major point of interest in the study of this phenomenon in Italy. There are, however, other points that make Italy's position peculiar on the international drug scene. One is the increasingly tough policy pursued in trying to tackle the drug problem and more particularly drug trafficking. Another is the lenient policy adopted towards addiction *per se*. This led to Italy being the first country to officially decriminalize the holding of drugs for personal use, while maintaining the aforementioned tough policy against drug trafficking. Subsequently, Italy partly corrected this liberal attitude towards personal use and reintroduced a series of new sanctions for the control of addicts. Italy appeared rather active in seeking alternative approaches in drug policy also in other aspects, such as addicts' treatment, developing for instance an extensive network of therapeutic centres for the care and resocialization of addicts. All the changes introduced in Italy in the system of drug control (i.e. the increasingly tough policy, the decriminalization of personal use, the development of a network of therapeutic centres, the recurring to new sanctions against drug personal use) were accompanied by a fierce political debate, whose history can help clarify the major issues associated with drug control policy.

## Early attempts in Italy to control drugs

The delayed onset of the diffusion of drugs in Italy was reflected in the provisions of the past criminal laws. The 1889 Criminal Code did not mention at all the word "drugs". It is true that it was a liberal Criminal Code, that punished the adulteration of food, drinks (wine in particular!) and other substances, but let people free to buy any sort of unadulterated drugs, poisons included (Andreoli, Maffei and Tamburino 1982: 201). However, a reason for the lack of provisions against drug was certainly the fact that drug use was a quite limited phenomenon, mainly represented by some use of opium in the major harbour towns and some addiction to morphine among medical practitioners and chronic patients.

Only a little more than thirty years later the term "drugs" entered into the criminal law. As a consequence of the international obligations assumed by the country. Italy signed the 1912 Convention of The Hague, aimed at introducing the international control on the illegal trafficking of opium and opiates. And in 1923 Italy passed an Act punishing for the first time drug trafficking and specifying in particular substances such as opium, heroin, morphine and cocaine. The new Act, however, did not sanction either the use of drugs or the holding of them for personal use. Nor, by the way, did it sanction the production, importation and wholesale trade of drugs in themselves. Also the sale of drugs by the chemists was perfectly legal, provided there was a practitioner's prescription. The new Act was limited to punishing with mild sanctions (imprisonment for up to six months) drug trafficking by unauthorized persons; and it prescribed a fine for organizing meetings aimed at drug use and for participating in them. The Act's scarce interest in repressing drug use is shown also by the lack of any provision regarding the treatment of the addicts (Delogu 1973: 153). Drug use was regarded as something not very dangerous to society, since characteristic of a tiny social minority: profligate members of the upper class, decadent artists, unprincipled medical practitioners (Italy 1923).

The following provisions regarding drug use, embodied in the 1930 Criminal Code that still remains in force – the so called Rocco Code, i.e. the most well known legislative achievement of the Fascist period – showed a substantially similar approach. Drug use does not seem to have been regarded as a great danger to society. Certainly, drug use was not good for the "healthiness of the race" – an idea dear to the new nationalistic regime (Manzini 1950, vol. VI:

415). And unauthorized drug trafficking was punished with imprisonment for up to three years. However, drug use in itself was not punished at all. On the other hand, anyone caught "in a state of serious psychic disorder" due to drug use, was subject to imprisonment for up to six months. From all this it is possible to infer that the rationale of the Criminal Code as to drug use was allowing people to use drugs, provided that they showed discretion and the right self-control (Rossi 1991: 21), *avoiding scandal* that could induce the diffusion of drug use among the masses.

It is important to notice that the very concept of "state of serious psychic disorder" was derived from that elaborated for alcohol abuse; and the sanction provided was the same provided for the alcoholic caught in that state. Moreover, the new Criminal Code introduced the same indirect means of control on both alcohol and drug abuse, excluding the possibility of allowing for extenuating circumstances when an offence was committed under the influence of drugs or alcohol, willingly or culpably taken. This seems to show that the provisions regarding drug use were uncritically derived from those regarding alcohol abuse. It should be noticed, in this regard, that Italy is traditionally, together with France, the biggest wine producer in the world, and at the same time boasts with France and Portugal the highest levels of consumption of alcohol per capita. Though wine consumption is an integrated element of Italian culture, the diffusion of its negative consequences represented a real, dramatic issue, very well known by legislators and experts of social problems. Unsurprisingly, having to deal with the "new" issue of the use of drugs such as opiates and cocaine, the legislators recurred to concepts and measures already elaborated to tackle the abuse of the most well known legal drug, alcohol.

#### The 1950s: tough new sanctions against an almost non-existent drug problem

The legislative framework regarding drug use did not change until the 1950s, nor is there any evidence of substantial change in the picture of the phenomenon of drug use itself. Criminal statistics tell us that there were a few dozen cases of drug trafficking in Italy at that time. The need for tougher penal sanctions to control the phenomenon was therefore hardly conceivable. However, Italy agreed to the new drug policy internationally supported by the United States. The

latter were quite worried about the marked increase they were recording at home in the number of addicts; these, from a figure of a few thousands in the 1940s had increased to figures of hundreds of thousands, peaking precisely in the early 1950s (Ball and Cottrell 1965: 471-472). The United States were therefore urging allied nations to join them in a stricter control of drug use and drug trafficking. Italy's co-operation, on the other hand, seemed important, since Sicilian Mafia families were already suspected of playing a role in international drug trafficking through their connection with Italo-American criminal gangs.

For these reasons, a drastic change in legislation was introduced by the 1954 Drug Act. The new Act covered the entire field of drug-related behaviours by a blanket provision punishing with imprisonment, for three to eight years, both drug use and drug trafficking. In terms of repressive measures, therefore, the Act indiscriminately lumped together the actions of the drug boss, of the petty trader, of the occasional marihuana user and of the heroin addict. Moreover, the Act did not take into consideration the difference between "hard" and "soft" drugs, providing the same sanctions for the use and trafficking of quite different drugs such as opiates, marihuana, hashish etc.

For many years after the 1954 Drug Act, the use of drug in Italy remained quite limited, showing a definitely slight tendency to increase: people charged with drug trafficking, for instance, were less than a hundred per year. The same trend, on the other hand, characterized the other European countries. Drug abuse remained mostly an American problem: in particular, heroin addiction remained an American tragedy (Murphy and Steele 1971: 36).

### The changed atmosphere of the 1960s: diffusion of drug use and criticism of the criminalization policy

A turning point occurred at the end of the 1960s. There was a clear increase in Italy in the consumption of drugs, both opiates and cannabis derivatives (Italy, Ministero dell'Interno 1992). It is worth noticing that the strongly repressive provisions in force at that time did not seem capable of preventing the sudden diffusion of the phenomenon. The change was witnessed by the drastic increase in the number of people charged with drug trafficking, as shown by figure 1.

Due to the rigidity of the existing legislation, and in particular to the severe minimum sanction provided by the Act, people charged with drug trafficking (even if they were often only drug users) were regularly treated with imprisonment. At the beginning of the 1970s, there were the first deaths due to drug abuse (see figure 2). Something similar happened in the same years in most of the other European countries, also because of the increasing involvement of criminal gangs in drug trafficking (Arlacchi 1993: 272). In France, in 1969, there was the first death for drug abuse; and in the Netherlands there were several deaths in the first half of the 1970s.

This diffusion of drug use caused deep concern in Italy. At the same time, people started to raise objections to the existing Drug Act, especially due to its failure to cope with the new drug diffusion. In the more liberal and innovative climate of the time, the fact that citizens guilty only of occasional use of light drug could be sent to prison and kept there for longish periods seemed now quite distressing to many people. Various groups, mainly belonging to the left wing, mounted an attack against the severity of the legislation and in particular its failure to discriminate between various drugs and different personal behaviours (simple holding drug for personal use, small trade, smuggling and wholesale trade).

Figure 1

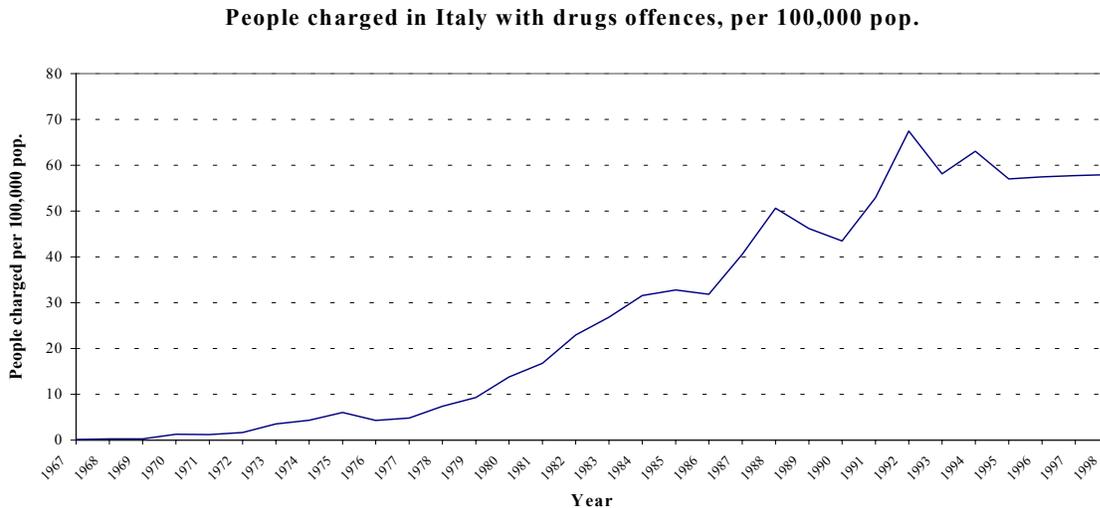
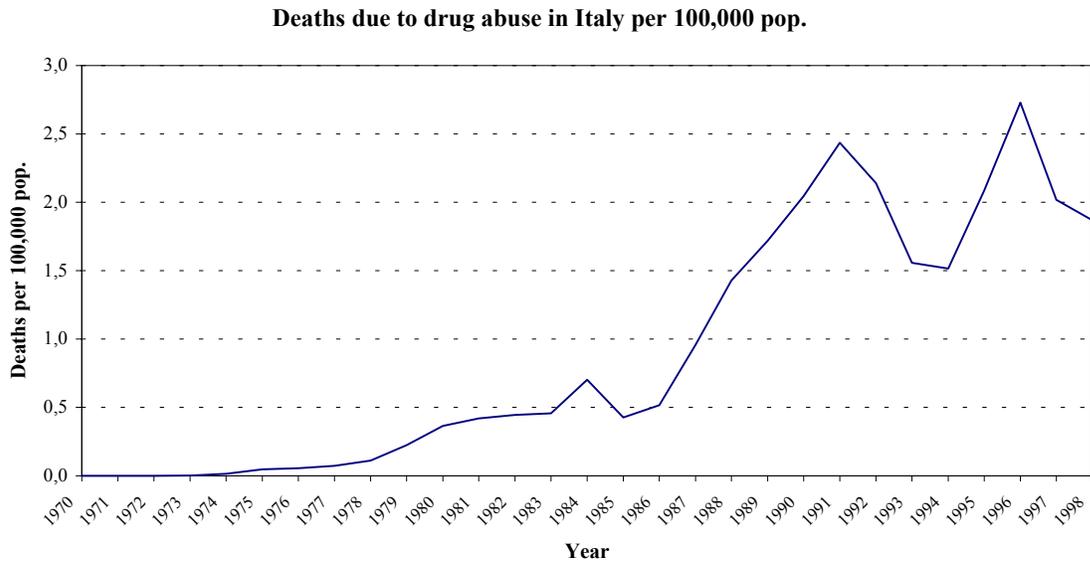


Figure 2



This movement showed similarity with other legalization movements active in the US and Britain at that time (Goode 1970; Akers 1992). As elsewhere (Zinberg and Robertson 1972), in Italy too the efficiency of the repressive policy originated in the US was questioned; and comparisons were drawn with the policy followed by Britain, where a milder approach to drug use, and especially the policy of the legal administration of opiates to addicts, had been accompanied by a relatively limited diffusion of drugs.

However, the debate mainly hinged on the issue of the decriminalization of “soft” drugs, in particular cannabis. In this field, the opinion of experts in Italy all in all coincided with the suggestions expressed in various other Western countries. It should be recalled that the debate on cannabis decriminalization led to various official or semi-official Reports in most of the Western countries between the end of the 1960s and the beginning of the 1970s, and reached its peak in 1972, with the publication of several Reports. Since these Reports had significant impact, and also in Italy were used to endorse the proposals of change, it is useful to recall their main propositions.

In the late 1960s, a governmental Committee was appointed in the UK to study the problem of cannabis use. Britain had already produced an interesting Report on cannabis as early as the end of the 19th century, as regarded the situation in India. This Report concluded that: (i)

“moderate use of hemp is practically attended by no evil results at all” in terms of effects on the mind or on the morality; (ii) excessive use weakens the constitution and renders the consumer more susceptible to diseases such as dysentery and bronchitis; it intensifies “moral weakness and depravity”; however, the injury done is “confined almost exclusively to the consumer himself; the effect on society is rarely appreciable”; (iii) in particular, there is little or no connection between hemp use and crime (Indian Hemp Drugs Commission 1894).

In the 1960s, however, the danger regarded the British home territory, not a colonial one. From 1950, a new use of cannabis began to spread through the wave of immigrants coming from the West Indies and it increasingly affected the local youth (Inglis 1975: XII). In 1968, the UK Committee on Marihuana and Drug Dependence published a Report. This Report emphasized the following points:

- The use of cannabis is increasing both in Britain and in the other Western countries, in spite of severe sanctions against it.
- The consumption of cannabis does not lead to serious mental disorders; and it cannot be regarded as a direct cause of serious crime. In particular, “the evidence of a link with violent crime is far stronger with alcohol than with the smoking of cannabis”.
- Even the long-term consumption of cannabis in moderate doses does not lead to harmful effects.
- Heavy, long-term consumption of cannabis might lead to some harmful effects, for instance the impairing of driving skills.
- All in all, the Committee suggests controlling the consumption of cannabis by less severe sanctions: such as short-term detention or the imposing of a fine up to 100 Pounds (UK Advisory Committee on Marihuana and Drug Dependence 1968).

On the other side of the ocean, in the USA, the problem of cannabis diffusion was even more acutely felt. Cannabis had been well known in the US, since it was an important crop cultivated in the South for the production of fibres from the 19th century. There had been a certain use of it among the black population of the Southern States that did not cause particular worry (Inglis 1975: XII). However, in the 1920s, the use of marihuana (as cannabis used for pleasure was called) began to spread in the Northern States. And progressively the criminalized

conception of the opiates was extended to the new drug (Lindesmith 1968). In 1937, a federal law banned possession of marihuana over all the national territory. Two years later, a commission was appointed by the New York Mayor La Guardia to assess the real threat represented by marihuana. The Commission Report (New York Mayor's Committee on Marihuana 1944) affirmed that "the publicity concerning the catastrophic effects of marihuana smoking [...] is unfounded". In particular, the Commission thought that marihuana did not lead to aggression; that it was not a determining factor in the commission of major crimes; that there was no evidence of mental or physical deterioration as a result of its use; that "marihuana is not a drug of addiction, comparable to morphine, and that if tolerance is acquired, this is of a very limited degree [...] The habit depends on the pleasurable effects that the drug produces".

This notwithstanding, when in the 1950s the US government launched the crusade against opiates use, marihuana possession was punished with severe criminal sanctions, similar to those provided for opiates.

These sanctions did not prevent the impressive, rapid increase in marihuana use in the mid-1960s, when clearly a second phase started, fuelled by the "hang-loose", counter-establishment, anti-Western-values culture of the time. Marihuana consumption was regarded as an expression of rebellion and "expanding consciousness" and as something of a *rite de passage* for the American students (Harrison 1997). The number of arrests for marihuana use, from 169 in 1960 soared to *c.* 7,000 in 1965 and to *c.* 15,000 in 1966 (Inglis 1975: XII).

To study such an impressive and puzzling phenomenon, a national commission was appointed. A Report was published in 1972 (National Commission on Marihuana and Drug Abuse 1972). It began by suggesting, as its very title implies (*Marihuana: A Signal of Misunderstanding*), the presence of a malaise as the cause of the rapid diffusion of marihuana among the American youth. It regarded the use of marihuana as the consequence of the dramatic changes that had affected American society over the 1960s. As to the core of the matter (punishment or decriminalization), the report affirmed that: (i) the inclusion by the US of marihuana among illegal drugs, in 1937, had not been based on any critical study on its effects, but only on unproved assumptions; (ii) the physical and psychological effects of a moderate consumption of this drug are minimum; there is some risk of an impairment of driving skills; (iii) marihuana does not induce physical dependence; but a psychological dependence is induced by

heavy consumption; (iv) there is no evidence of genetic harm; (v) there is no link between marijuana and violent crime; on the contrary the drug seems to curb aggression; (vi) the escalation from this drug to “hard” drugs is limited to a small percentage of users (4%).

On these bases, the US Commission recommended the decriminalization of personal cannabis use. But this recommendation was utterly rejected by the American government and in particular by its President, Richard Nixon.

Very interesting are also the Reports published on behalf of the Canadian Government in the same years (Canadian Government Commission of Enquiry 1970; Canadian Government Commission of Enquiry 1972). The Canadian Commission presented a comprehensive study of all the various drugs (alcohol included) as well of cannabis in particular. As regards cannabis, the Commission emphasized the following points:

- There is no evidence that cannabis use causes genetic harm.
- Heavy, long-term cannabis consumption can cause minor respiratory and gastro-intestinal ailments; however, physical effects of cannabis are usually slight.
- It is reasonable to expect that high doses of cannabis would impair driving skills; but there is no evidence that cannabis use has been a significant factor of road accidents.
- There is no evidence of psychiatric disorders caused by cannabis.
- Psychological effects of cannabis use vary with doses, administration of the drug, type of personality etc.; but all in all these effects are not severe.
- Cannabis does not seem responsible for criminal behaviour.
- Physical dependence on cannabis has not been demonstrated; some psychological dependence is present and is mainly due to the pleasure associated with the drug use.
- As regards the escalation from cannabis to more powerful drugs, such as opiates, the Commission point of view is that there is evidence of a multiple drug use by cannabis consumers, but not of a causal link between cannabis use and subsequent opiates use. The escalation to more powerful drugs might occur by pressure from other addicts, sub-cultural influences, tendencies to self-destruction etc.

In conclusion, the Commission affirmed that it was “not prepared to recommend the total repeal of the prohibition against simple possession without an opportunity to give further study

and consideration to: (a) the possible effects of permitted use on the nature and development of trafficking; and (b) the possible effects of the lack of an offence of simple possession on the effectiveness of law enforcement against trafficking”. However, the Commission recommended that only a fine, not imprisonment, be imposed for offences of simple possession of drug; and, in particular, it recommended that the impact of the criminal law be minimized for cannabis possession. At the same time, the Commission stated that it was not prepared to recommend the *legalization* of cannabis, first of all because there had not been yet enough informed public debate.

At much the same time (1974), the Council of Europe also published an official Report on the matter. This Report had a direct effect on the national legislation of the various States belonging to the European Union. This in spite of the fact that the Council of Europe Report did not try at all to reach any definitive assessment of the characteristics and consequences of the use of the various illegal drugs and limited itself to evaluate the general picture of drug abuse in Europe and to suggest a series of legislative changes. As regards these legislative changes, the Report advanced the following suggestions:

- “En ce qui concerne la politique général, l’objectif général devrait consister à diminuer la souffrance humaine en mobilisant l’opinion publique, en protégeant les personnes en danger, en venant en aide aux pharmacodépendants et en réprimant le trafic de drogues.
- En ce qui concerne la législation [...] devrait essentiellement viser à réglementer la fabrication, la production et la distribution de drogues et tendre [...] à réprimer les agissements de nature à favoriser leur abus.
- En ce qui concerne l’action judiciaire [...] il conviendrait d’envisager [...] de permettre au Ministère public et aux tribunaux d’abandonner les poursuites en faveur des pharmacodépendants qui acceptent de subir un traitement. [...] À moins que les mesures de substitution ne s’avèrent inappropriées, les utilisateurs de drogues, notamment lorsqu’il s’agit de mineurs, de délinquants primaires, ou de délinquants qui ne sont pas engagés dans la voie du crime, ne devraient pas être incarcérés” (Comité Européen pour les problèmes criminels, 1974).

All these official statements and suggestions about drug use and in particular cannabis consumption, as already mentioned, brought to bear both on public opinion and Governments, and ultimately favoured the changes introduced by the various Western countries in the field of drug policy. For instance, as regards the US, by the mid-1970s a majority of adults under 35 was in favour of decriminalization of possession of small amounts of cannabis and thought that if necessary such a possession could be controlled by means of a civil fine (Akers 1992: 141). In spite of the initial stout resistance to decriminalization put up by the American Government, legislation was changed State by State; and by the end of the 1970s, possession of small amounts of marihuana was substantially decriminalized throughout the US.

In Italy, the debate about cannabis decriminalization was particularly heated. This was also because it was so politicized: that is, it felt the impact of the political contrast between the Right & the Centre, on the one hand, and the Left, including the most powerful Communist Party of the Western countries plus various radical forces, on the other. The Communist Party, in substance, perceived the diffusion of drug as part and parcel of the contradictions of the Capitalist model, and at the same time was against any repressive intervention aiming at buttressing traditional values of “moral behaviour”. The most radical groups of the Left regarded the "war on drugs" as a smoke screen: as a war on the poor, designed to divert attention away from society's more serious problems. The spearhead of the decriminalization front was however the small but active Radical Party. This Party launched a campaign for decriminalizing light drugs and in particular cannabis (Blumir 1973). Its national leader provocatively smoked cannabis during a press-conference and succeeded in being arrested by the police. The Radical Party presented a Bill proposing the decriminalization of personal use of drug (Arnao 1976: 219-222). In particular, this Bill proposed the decriminalization of (i) possession of small amounts of any drug for personal consumption; (ii) possession and non-profit oriented distribution of small amounts of cannabis.

All these forces opposing the existing legislation ultimately came together in the request for a new legislation that would regard the addict not as a dangerous criminal but as a victim of drug, needing therapy and rehabilitation, not repression.

## Italy's decriminalization of drug use and the 1975 Drug Act

The eagerly awaited new Drug Act was promulgated in 1975. Its timing was meaningful. The same year was marked by the peaking of the Italian Communist Party and in general by the influence of the Left culture, that favoured, as already mentioned, a treatment-oriented approach to the problem of drug use; and more in general a somewhat libertarian policy in the field of law & order. The new Drug Act can certainly be regarded as emblematic of the climate of the time; sharing this role with the new Penitentiary Regulations, also promulgated in 1975, and the well known, radical 1978 Psychiatric Hospitals Reform.

The 1975 Drug Act definitely did not disappoint those expecting a radical change in the policy of drug use. The Act first of all decriminalized the holding for personal use of a "limited amount" of any illegal drug. It was the first case of a formal decriminalization of personal use of drug in the Western world in contemporary times. Other countries tended at that time to change the previous policy of strict repression by adopting the decriminalization of only the use of "soft" drugs, or by the reduction of the sanctions for personal use of any drug, or by tacitly allowing the police to turn a blind eye to the use of drug and the holding of small amount of it for personal use. Moreover, the Italian 1975 Drug Act introduced a differentiation between "soft" and "hard" drugs, providing much milder sanctions for the trafficking in the former.

The new Italian Act, however, tried to balance the above mentioned liberal policy, introducing harsher penal sanctions for trafficking and in particular for the big traders in "hard" drugs: for them the Act provided imprisonment for up to 18 years, plus additional years for aggravating circumstances. These provisions were meant to please the more conservative social sectors, worried about the law & order issue, and to crush the supply of drug and the international criminal gangs organizing it.

Another important innovation introduced by the new Italian Act was represented by the completely new provisions regarding the treatment of addicts. The Act provided for the establishing of a welfare network for the treatment of the addicts, run by the local public health structures over the national territory. The aim of the Act in establishing this network was twofold. First, any addict needing therapy and assistance could obtain it, contacting of his own free will the structures of this network and having also the right to remain anonymous. Secondly,

any person identified as an addict (e.g. anyone identified as a holder of a small amount of drugs for personal use) and regarded in need of therapy and rehabilitation ought to undertake treatment at one of these structures, compulsorily if necessary. However, the authorities rapidly discovered how difficult it was to fulfil this provision without the addict's good will – also because the Act excluded the use of "closed" institutions for the addicts' treatment and because no sanction was provided for failure to undergo treatment. At the same time, the treatment structures rejected the idea of compulsory treatment as inapplicable and in any case unfruitful. So, the provision of compulsory treatment in practice was not implemented.

Apart from the establishment of this network, the 1975 Drug Act authorized the running of private institutions for the treatment of addicts. The Act also gave local authorities the chance to use the services provided by non-profit private institutions and to grant them funds for their activities. The institutions are therefore financed through some combination of public and private support.

The 1975 Drug Act provided also for the treatment and the resocialization of addicts detained in prison. To this end, the Act provided the establishment of prison wards organized in order to supply the appropriate medical, psychological and social treatment for the addicts. To favour in particular the contacts between addicts in prison and the public institutions for the treatment working on the territory, the Ministry of Justice has also signed agreements with the latter. As a result of these agreements, some of the staff of the public institutions carry on activities within the prisons. Later Acts (in particular the 1990 Drug Act) extended these provisions: so that specialized sections dedicated to the treatment of addicts have been opened in substantially all prisons both for men and women; and a few prisons have been completely dedicated to the addicts' treatment. Some of the sections have been organized in order to ensure the so called "attenuated detention", i.e. a "soft" regime thought to be particularly suitable for the treatment purpose.

Moreover, special benefits are provided for the addicts charged or sentenced for any crime, who are under treatment or want to undertake it at any public or private structure. In particular, they are not liable to detention pending trial, except for serious security reasons; if already sentenced, they enjoy special prerogatives in obtaining the alternative measure of assignment to the social service or a stay of the sentence execution.

As to addicts charged or sentenced for any crime, who are under age, they benefit from the special conditions already provided for all minors: treatment at a public or private structure is as a rule used in lieu of custody.

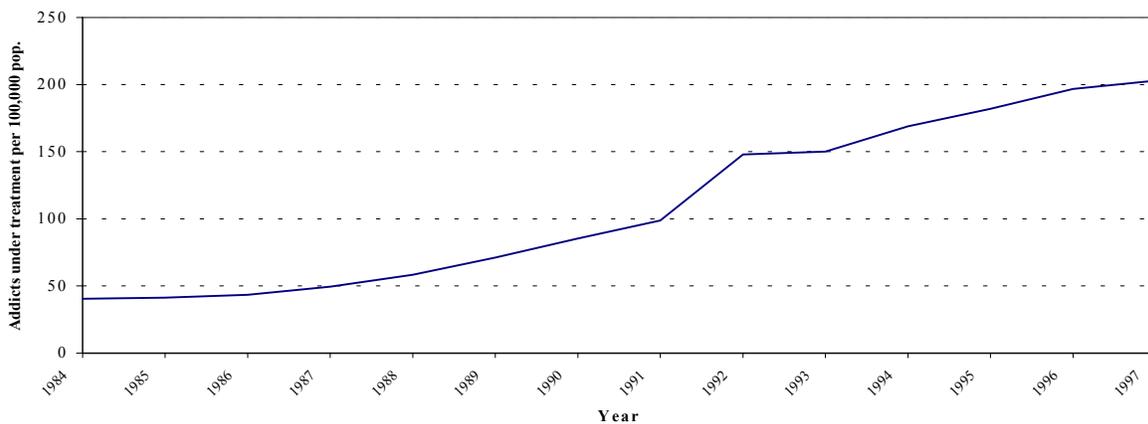
### Further developments of the situation and the reintroduction of sanctions for drug use

The 1975 Drug Act was greeted with remarkable interest in Italy as well as abroad. However, the great expectations it raised were at least partly frustrated.

In the following years, the diffusion of drug use reached a high level in Italy, by comparison with other European countries. Of particular interest is of course the figure of addicts under treatment at public and private institutions. From 1984 (when official records started) onward, the increase has been constant. Already by the end of the 1980s it had reached an index of over 80 addicts under treatment, on June the 30th, per 100,000 population; i.e. of approximately 50,000 addicts being under treatment at that date (figure 3).

Figure 3

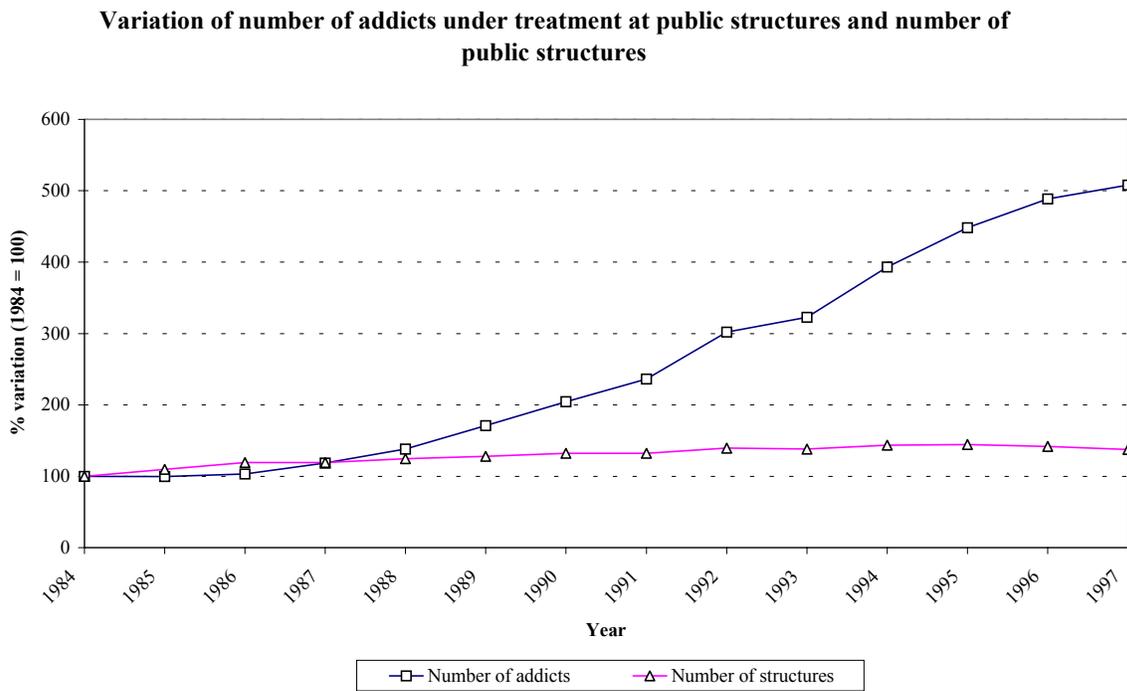
Addicts under treatment in Italy, on June the 30th, per 100,000 pop.



It may be noticed that the growth of the figure of addicts under treatment did not match the variation in the number of structures. In fact, the situation as to the two types of structure is not homogeneous. Standard public structures of treatment – by far the frontline institutions in the war against drug abuse, which handle around 4/5 of all the addicts under treatment – are

obliged to accept everybody in need of treatment but are at the same time slow to respond to change, due to their bureaucratic organization. They showed a limited growth in their number, but a much higher growth in the number of subjects treated (figure 4). Private structures showed a different evolution; since they are much readier to respond to change, but, being as a rule residential, rather inelastic as to the number of clients per unit, they presented a much more marked increase in their number but a very limited increase in the number of clients per unit. All this seems to suggest that behind the rapid increase in the global figure of subjects treated there has been an increasing demand, not just an increasing offer of treatment.

Figure 4



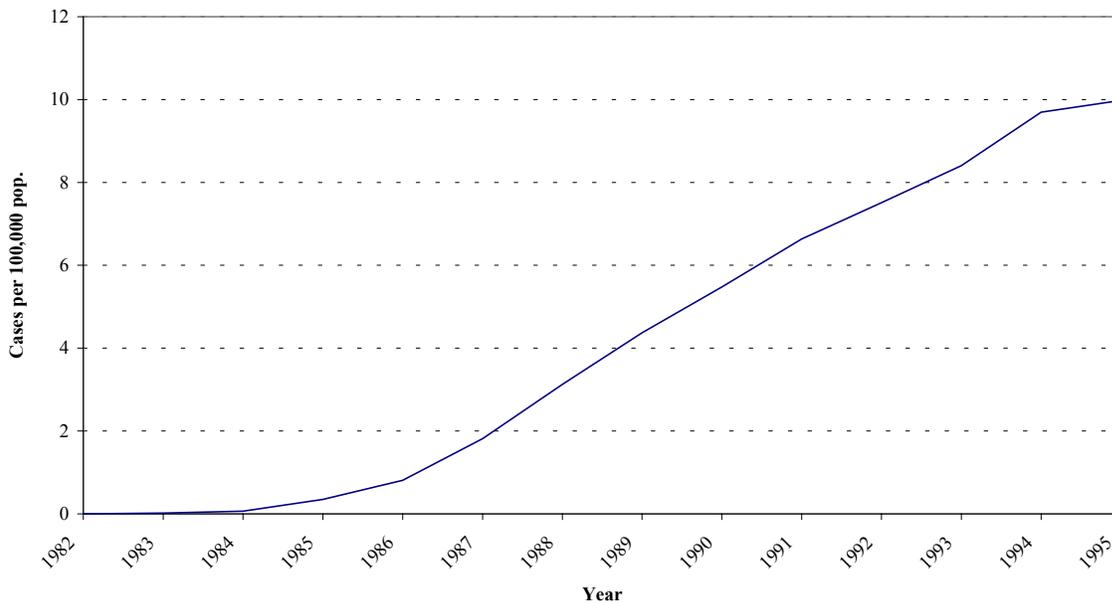
Conspicuous was also the increase in deaths due to drug abuse (see figure 2), a reliable indicator, in particular, of the diffusion of "hard" drugs. Deaths topped the figure of 1,000 per year (over 2 per 100,000 pop.) at the end of the 1980s. Over the last few years, Italy's index of deaths tended to be, with Germany's and Great Britain's, the highest among those of the most populated countries of the European Community; though lower than that registered in some less

populated country, like Denmark and Switzerland (Italy, Presidenza del Consiglio dei Ministri 1990: 63-64).

Another indicator, though indirect, of the massive drug diffusion in Italy is the number of AIDS cases. AIDS cases in Italy are strictly linked with heroin use, since two-thirds of the cases are due to exchange of syringes between heroin addicts (Italy, Istituto Superiore di Sanità 2000). Now, from 1982 to the end of the 1980s, AIDS cases showed a drastic and constant increase (see figure 5).

Figure 5

**Cases of AIDS reported in Italy per 100,000 pop.**



Also the increase in the number of people charged with drug trafficking has been marked from 1975 to the early 1990s. These people are not necessarily drug users. However, it is well known that most of people charged with drug trafficking are drug users who feed their personal use by means of a petty trade in drugs. An indirect picture of the real situation as to this point may be derived from the official recording of the criminal charges: more than 80% of those charged with drug trafficking committed offences of "slight weight" (*lieve entità*); while less

than 10% were charged with participating in the activities of organized criminal gangs (Mafia or other) (Italy, Ministero dell'Interno 1992: 213 ff.).

Now, the index per 100,000 pop. of people charged with drug trafficking increased by more than 10 times between 1974 and the end of the 1980s (figure 1). It is worth remembering that, from the introduction of the 1975 Drug Act, the figure of people charged with drug offences no longer includes holders of small amounts of drug for personal use. On the other hand, the further increase in sanctions provided by the 1975 Drug Act clearly did not prevent people from committing drug offences. These severe sanctions, however, were responsible for these people being sent to prison.

The evolution of drug diffusion in Italy after the 1975 Act can also be evaluated through another indirect indicator, that of the amounts of drugs yearly seized by the police. This indicator too, as that of people charged with drug offences, is conditioned by the general policy in social control. This notwithstanding, the amounts of drugs seized by the police may be regarded as an auxiliary indicator of the level of drug supply in the country, and consequently also of drug demand. Now, this indicator shows a remarkable increase from the time of the first official recording (1982) to the end of the 1980s, as regards heroin, cocaine and cannabis seized (figure 6 and 7)

Figure 6

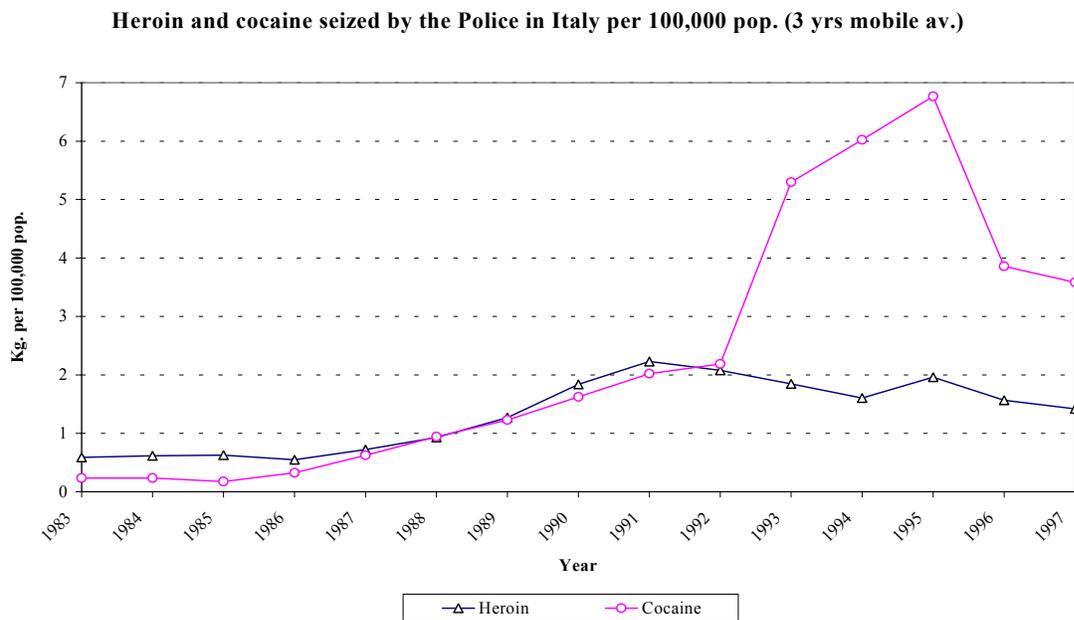
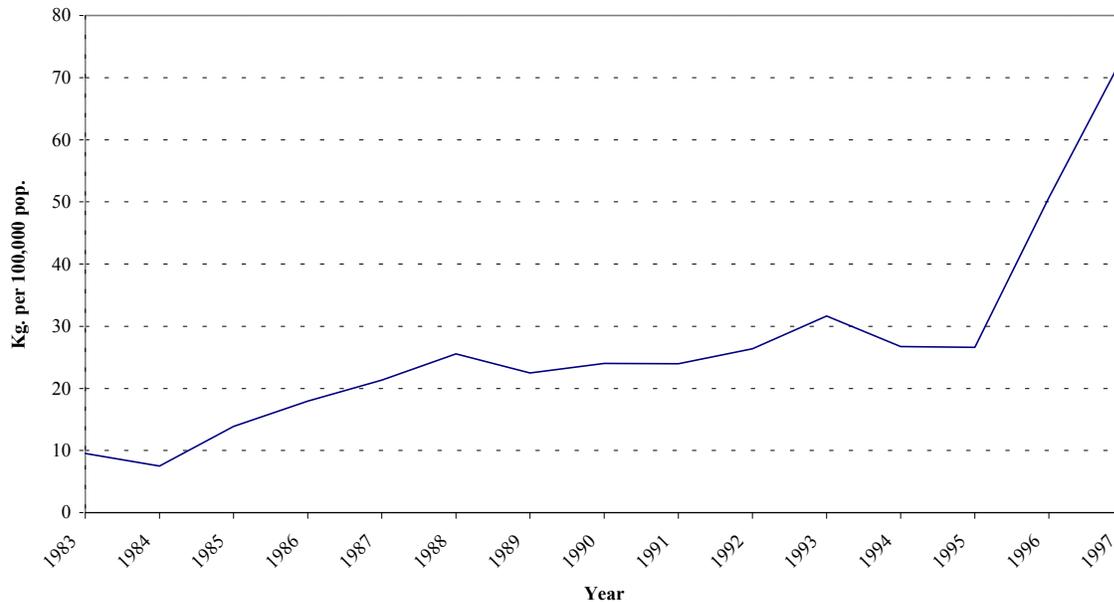


Figure 7

**Cannabis seized by the Police in Italy per 100,000 pop. (3 yrs mobile av.)**



It should be noticed that whatever the impact of the sanctions, such indisputable, rapid and impressive increase in drug diffusion in Italy over the last few decades, could hardly be explained without referring to some cause outside the domain of law. At the same time such a diffusion of drug use could hardly be regarded as the mere effect of just an evolution in drug trafficking by national and international criminal gangs. The hypothesis may be suggested that the particular diffusion of drug use in Italy has been the consequence of first of all structural changes which occurred in the country over the last decades. These macro-economic and social changes have regarded, in short, the shift from a mainly agricultural-rural-traditional framework to that of an advanced industrial and then services-centred society; the huge increase in income and consumption; the desertion of the countryside and migration towards the urban centres; the decline of the role of the traditional family and the latter's crisis in demographic and social terms; the abandonment of the usual channels of socialization and integration for the young; the postponement, for the latter, of their integration into the job market. These structural changes were peculiar in terms of speed, scale and recentness; they differentiated Italy from most of the other European countries; as ultimately the indices of drug diffusion are doing.

Several surveys show the influence of these changes on the background of the addicts: for instance, addicts seem to be characterized by their belonging to high income and consumption areas (Arlacchi 1993; Solivetti 1992); by their coming from broken or inadequate families (Cancrini 1973; D'Arcangelo 1977; Barbero Avanzini 1978; Italy, Ministero di Grazia e Giustizia 1983; Gius and Nazor 1982); by their marked school maladjustment – fundamentally preceding the onset of addiction (Gius and Nazor 1982; Calvanese and Rossi 1989); by their vocational maladjustment (Italy, Ministero di Grazia e Giustizia 1983; Italy, Ministero dell'Interno 1984).

At the end of the 1980s, the further diffusion of drug use in Italy was so serious as to call for new measures. The failure of the existing heavy penalties to restrain the increasing use of drug prompted new requests for legalizing the drug market, as the best solution for cutting the Gordian knot of the intertwined aspects of drug use, drug trafficking, drug-related economically motivated crime and the interests of the organized criminal cartels. The Radical Party was on the forefront of this movement for drug legalization. In favour of legalization were also the most liberal groups of the Right and the most anti-authoritarian groups of the Left. Against legalization stood the Catholic Church and the powerful private associations for the addicts' treatment; both also opposed, as a rule, any policy of "harm reduction" such as free distribution of syringes etc.; just as they opposed similar policies in closely related fields (free distribution of condoms to check the spread of AIDS etc.). Public agencies for the addicts' treatment presented a much more mixed attitude towards drug legalization; they were rather favourable to harm reduction policies. The latter, not surprisingly, ultimately had a rather limited diffusion.

Together with legalization, the issue of treatment was the core of the debate. Hardliners perceived as negative the lack of appropriate measures to enforce the treatment of identified addicts. The recourse to physical force to make addicts undertake treatment, on the other hand, was regarded by most people as unfruitful.

In 1990 a new Drug Act was promulgated. It saw the victory of the hardliners. The Act further increased penalties for trafficking (e.g. up to 20 years of imprisonment for the basic offence; not less than 20 years for the leaders of drug trafficking gangs). At the same time, it again regarded addicts as socially dangerous people, and not only as victims of drug. Consequently, in order to deter drug use, keep the addict away from the illegal drug market and

induce him to undertake treatment, the Act introduced a long series of *administrative sanctions* for those holding drug for personal use (e.g. warning, withdrawal of passport, or of driving license, or, in the case of the foreigner, suspension of the tourist residence permit). The addict who failed to undertake treatment at a public or private structure was subject to heavier though non-custodial sanctions, this time applied by the judiciary (terms of probation, community service, prohibition of leaving the commune of residence without authorization; obligation to visit the local police station at least twice a week; seizure of the drug user's vehicle if used to carry drug; etc.). The same sanctions were provided for the addict repeatedly caught holding drug for personal use. Ultimately, the repeatedly recalcitrant addict was subject to a heavy fine or arrest for up to three months.

#### The aftermath of the reintroduction of sanctions for drug use

The new and harsher rules did not seem to affect the level of drug diffusion. This kept its momentum; and in the 1990s the mean estimates of the rate for Italy of “problem drug users” were the highest among the European Union countries (Reuband 1995; European Monitoring Centre for Drugs and Drug Addiction 2000).

The index of deaths due to drug abuse reached new peaks, around 1,400-1,500 per year, meaning over 2.4 per 100,000 pop., and remained very high in the following years (see figure 2).

The figure of addicts under treatment showed a further increase and more than doubled the levels of the 1980s. It reached a level of approximately 120,000 addicts under treatment (at a fixed date); i.e. over 200 per 100,000 pop. (figure 3).

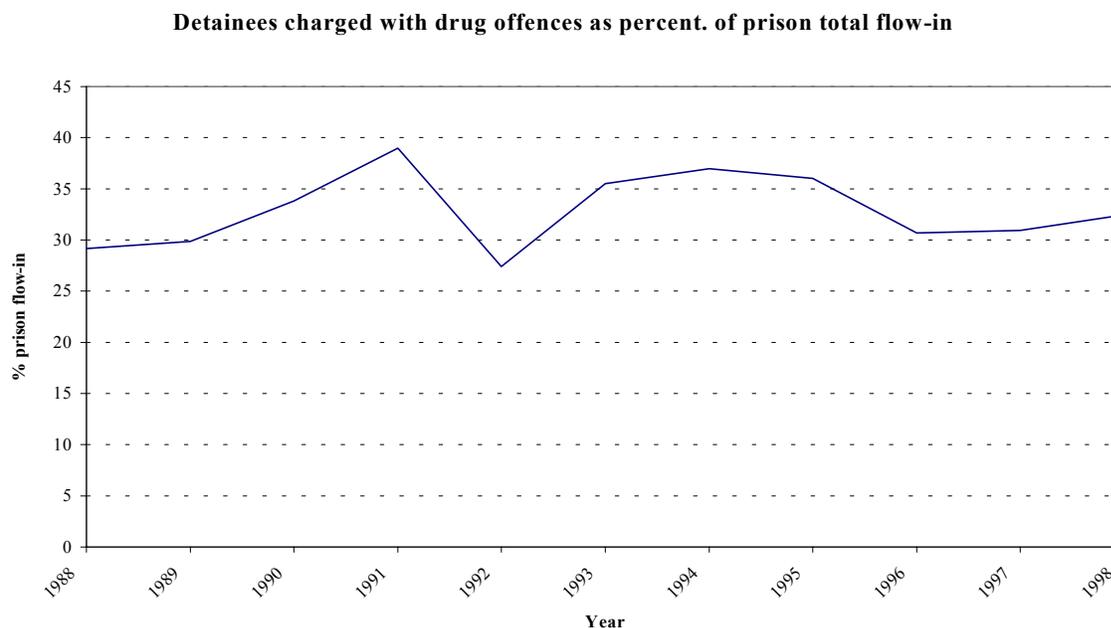
The evolution of the figure of cases of AIDS reported was likewise worrying: in the 1990s, the figure doubled and reached a level of 10 cases per 100,000 pop. (see figure 5).

Also the figure of people charged with drug offences registered a clear increase and reached levels well over 30,000 per year, i.e. 50 per 100,000 pop. (see figure 1).

As a consequence, the judiciary-penitentiary system in Italy has become crowded with people involved in drug offences: people sent to prison for drug trafficking have been on average around 33% of all the prison admissions in the period 1988-1998 (see figure 8), i.e. more than

those jailed for theft! (figure 9). In this respect, Italy is therefore increasingly becoming similar to the US, where almost a half of the federal prisons population has been convicted of drug law violations (Beckett 1994). The rate of prison admissions for drug offences in Italy appears to be higher than that on average recorded in other European countries, though similar to that recorded in Norway, Portugal, Spain (Council of Europe 2000). It should also be noticed that among people sent to prison for drug offences in Italy, the percentage of addicts is definitely high, around two-thirds of the total.

Figure 8



In general, detainees identified as addicts have increased to 1/3 of the total number of detainees (Solivetti 1993). Of these detainees, around 40% were charged with only common-law offences – especially theft, robbery and other economically motivated offences committed in order to purchase drug on the illegal market – around 30% with common-law offences plus drug law violations, while the remaining 30% only with drug law violations (Zappa 1993). Of course, such a high rate of addicts in prison posed special problems as to the possibility of their treatment.

The 1990s have also witnessed some change of a different type in the field of drug use. In particular, there has been an impressive increase in ecstasy use. Heroin use, by contrast, lost some of its momentum. Cocaine use has seemed to remain high and, according to some experts, is even rising, as on the whole happened all over Europe (Italy, Ministero dell'Interno 1992: 104 ff.). Cannabis use, in turn, seems to be rising (see also the situation regarding drugs seizures, figures 6, 7 and 10).

This new preference for stimulant drugs, however, has not substantially altered the picture of opiates use: as we have already seen, the number of deaths, mainly due to heroin abuse, all in all remained very high, and after some relative decline in 1992-94, reached new peaks. In any case, the change seemed to be first of all the result of a shift in drug culture, and not of a positive impact of the control policy.

Figure 9

**Detainees according to offence charged, as percent. of prison total flow-in (1988-1998)**

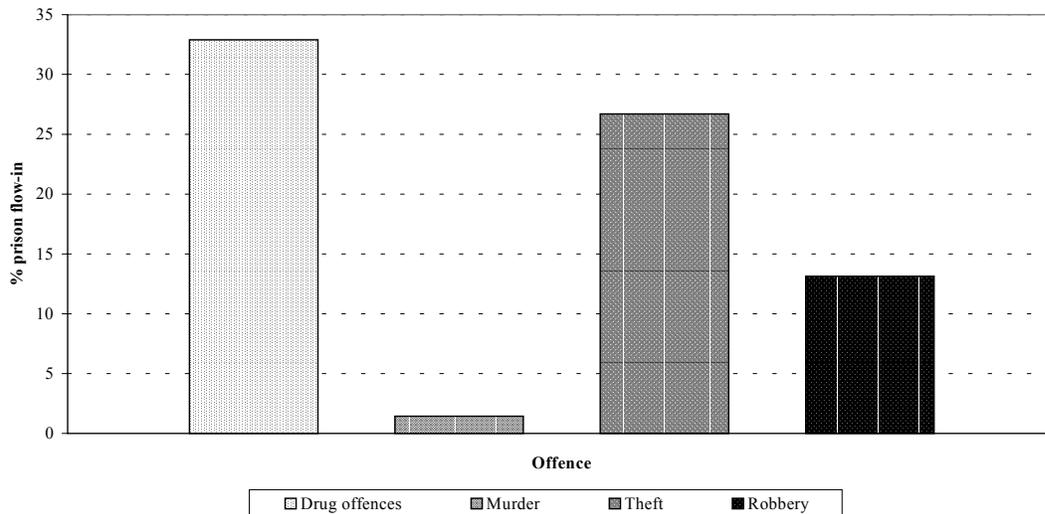
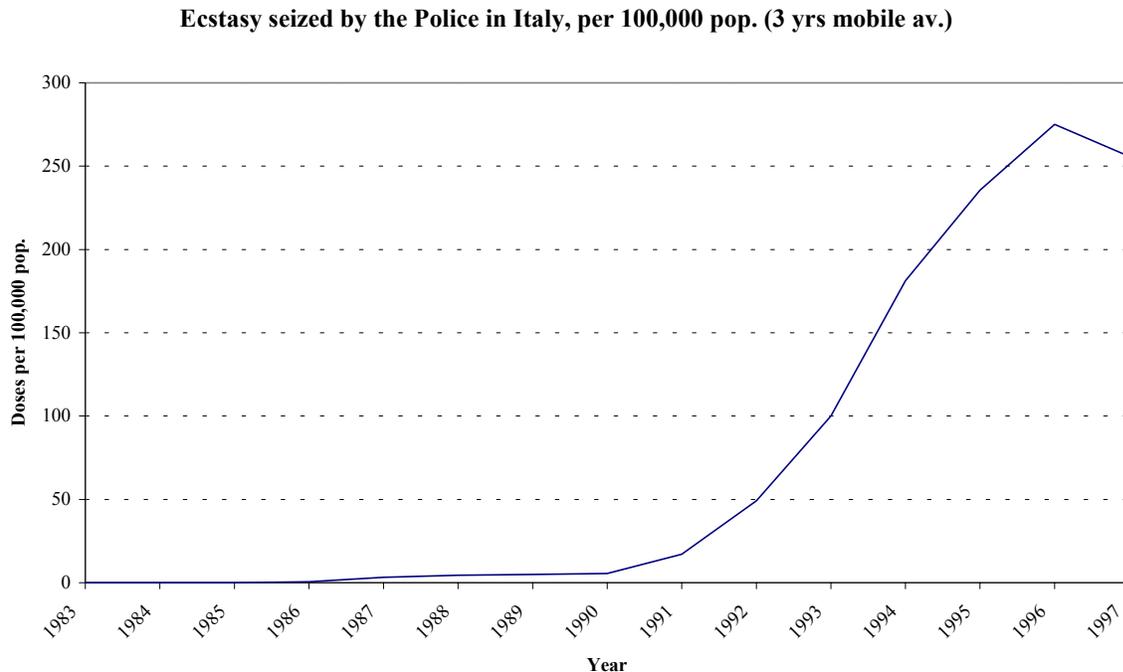


Figure 10



The decriminalization-legalization debate understandably remained an open issue. The anti-prohibitionists fiercely attacked the new law. They argued first of all that the 1990 Act re-labelled as illegal and criminal the behaviour of a substantial share of the youths, and in particular criminalized the vast group of “soft” drugs consumers (first of all cannabis users), estimated at over two millions; that it widened the gap between them and the conformists; and that it increased the power of the criminal gangs. Second, they argued that the new law’s rationale clearly had been to induce the addicts (in particular, those addicted to “hard” drugs like opiates) to undertake treatment. At the same time, however, the 1990 Act did not take into consideration the situation of all those using “soft” drugs like cannabis, who represent by far the greater part of all the drug users. Now, to these “soft” drug users cannot be applied the concept of “addiction”, since they do not show the usual addiction symptoms (compulsory drug use, need to increase the doses, physical dependence, withdrawal symptoms). These people usually conduct a “normal” life; and their need to undergo any treatment is dubious. So, due to the law’s lack of distinction, “soft” drug users, who are not particularly in need of treatment, became the

broader target of a law meant to push addicts towards treatment. For them, the new law may be regarded as merely and aimlessly repressive (e.g. Arnao 1991).

However, the decriminalization and legalization groups scored an important victory in 1993, when a national referendum requested by the Radical Party led to the abrogation of any provision of custodial measures or fine for the addict that failed to undertake treatment or was repeatedly caught holding drugs for personal use, as provided by the 1990 Drug Act. This means that, for these behaviours, the addict is only liable to the aforementioned administrative and non-custodial sanctions.

At the same time, the referendum led to the abrogation of the concept of *limited amount*, and therefore decriminalized the holding, for personal use, of a quantity of illegal drug even in excess of the previous strict limitation. In practice, this means that the judge has to evaluate, case by case, if the drug seized – whatever its amounts – was held for personal use or not.

The debate between hardliners and "softliners" seems however far from over.

#### The treatment of addicts: public institutions and the "out-patients department" model

Of course, the evolution of this debate is at least partly dependent on the chance of realizing an efficient form of treatment for the addicts. Let us therefore look more closely at the characteristics of the Italian drug treatment network. This network, introduced by the 1975 Act, steadily developed over the following years (figure 3).

The public institutions of this network, that, as mentioned above, bear most of the burden, supply free treatment to anybody in need. They are organized according mainly to the "out-patients department" model, with a few institutions supplying also residential treatment. This means that they as a rule provide treatment for only a few hours per day. The staff of these public institutions is made up mainly of permanent workers (on average, 72%), plus a certain number of consultants (21%) and a few voluntary workers (7%). The staff is highly skilled (though often not equally motivated): medical practitioners represent on average 27% of it, nurses 19%, psychologists 17%, social workers 16% and educators 10% (Italy, Labos and Ministero dell'Interno 1993).

The subjects treated by these public structures are prevalently men (84%), their average age is 30, and they are distributed, according to the main drug used, in the way shown by table 1 (Italy, Ministero della Sanità 1999).

As the table shows, heroin is the substance of primary use for 9/10 of the addicts; and cannabis that of secondary use for over 4/10 of them. Other interesting information can be drawn from an official survey of addicts who have been under treatment. This survey shows that these addicts were regular users also of legal drugs, in particular of tobacco and alcohol (table 2). It shows also that use of legal substances preceded that of illegal substances (table 3); and that cannabis use (experienced by over 9/10 of all the addicts), clearly preceded (again table 3) any other illegal substance use (Italy, Ministero dell'Interno, Osservatorio permanente sul fenomeno droga 1993).

Table 1

<b>Addicts under treatment in Italy, distributed by drug abused 1991-1997 (av. %)</b>		
<b>Substance of abuse</b>	<b>Primary use</b>	<b>Secondary use</b>
Allucinogens	0.1	0.9
Amphetamines	0.2	2.5
Ecstasy and similia	0.1	0.3
Barbiturates	0.1	1.0
Benzodiazepines	0.5	19.7
Cannabinoids	5.5	41.0
Cocaine	1.7	13.4
Crack	0.3	0.1
Heroin	89.4	2.1
Methadone	0.4	1.0
Morphine	0.1	0.2
Other opiates	0.0	0.1
Others (including alcohol)	1.7	17.6

Table 2

<b>Percent. of addicts in Italy being also regular users of legal drugs, by substance used</b>	
<b>Legal substance</b>	<b>Percent.</b>
Tobacco	83.4
Wine	22.9
Beer	24.0
Spirits	9.1

Table 3

<b>Mean age of first use of both legal &amp; illegal substances by addicts in Italy, by substance</b>		
<b>Substance of abuse</b>	<b>Mean age (years)</b>	<b>Standard deviation</b>
<i>Legal substances</i>		
Tobacco	13.0	2.5
Wine	13.3	3.4
Beer	13.6	2.9
Spirits	15.2	2.9
<i>Illegal substances</i>		
Allucinogens	18.2	2.5
Amphetamines	18.4	2.8
Ecstasy and similia	25.7	2.6
Barbiturates	18.8	3.7
Cannabinoids	15.8	2.2
Cocaine	19.4	2.8
Crack	23.8	1.5
Heroin	18.3	2.6
Methadone	20.7	3.3
Morphine	19.7	3.2
Other opiates	18.4	3.2

The treatment provided by the public institutions is made up of medical, pharmacological, psychological, psychotherapeutic, social and bureaucratic assistance. The use of methadone (and similar substances) is a standard feature. However, the recourse to it varied over the last few years, from 57% of the cases in 1984, to 47% in 1997. Roughly, half of the patients treated with methadone receive it as a prolonged treatment. Methadone use is mainly meant to facilitate the overcoming of the withdrawal syndrome and the rehabilitation of the addict. "Methadone maintenance" programs usually are not favoured; however, the interest of the institutions in keeping their patients away from the health and criminal risks of a relapse into drug addiction often makes it difficult to avoid some sort of substantial "methadone maintenance" program. All the subjects under methadone treatment are also under some sort of psychological, psychotherapeutic and rehabilitational treatment. All in all, it should be noticed that the impressive number of addicts treated by the Italian public structures is not tantamount to an equivalent number of cases of successful treatment. Though reliable data are lacking, in the Italian treatment structures there is certainly a substantial number of subjects who are tired of their life style as addicts or are otherwise "burned out", and who are therefore genuinely seeking to change their life. However, many addicts, while they are under treatment, clearly keep using heroin "outside", in their drug milieu. Others carry on with the treatment for a certain time, as long as they feel particularly unable to deal with their habit, and then relapse into their addiction. Methadone treatment, in particular, seems attractive to many addicts not so much as a way of overcoming their addiction as rather a way of obtaining an additional drug to heroin, or an alternative one, when times are hard. Many addicts, in other words, seem to use the public structures for treatment as a revolving door.

#### The treatment of addicts: private institutions and the residential model

As to the private institutions, it should be noticed that they rapidly developed over the last few years; in 1999 they had on their charge about 20,000 addicts. Their expansion seems to be linked with the good image of their treatment philosophy. The latter has a wide-angled, community-oriented approach, capable of offering a steady, global and round-the-clock support to the addict. The addict is expected to make a contribution to the institution either in money or

in terms of work. The addict's parents are usually encouraged to collaborate with the institutions. However, as above mentioned, these institutions are run by means of both private and public funds. In any case, it should be remembered that these institutions enjoy a basic advantage in comparison with public institutions. Private institutions are not obliged to accept any addict in need of treatment, in spite of the fact that they often receive substantial public funds. Actually, they can choose their subjects according to selective criteria favouring those with better hopes of overcoming addiction. Those that are rejected will inevitably head for the unselective public institutions. As one would expect, private institutions boast a high rate of success. However, this rate of success is usually calculated on the figure of addicts accomplishing the period of treatment, out of all those that were actually accepted after the preliminary phase. Now, most of the failures occur precisely during this preliminary phase. Moreover, follow-up surveys taking into consideration the period after the end of the treatment are lacking.

By comparison with public institutions, private ones are first of all characterized by their being mainly residential. Only around 20% of the private institutions are indeed non-residential; consequently, on average they have in their charge a significantly smaller number of addicts than the public institutions. Moreover, these institutions, being the outcome of private initiatives, reflect the different economic, social and cultural characteristics of the national territory, and are not therefore evenly distributed over it, as are the public institutions. In practice, most of them are located in the Northern regions; 20% are in the Central regions; and approximately the same figure in the Southern regions. The staff of these institutions is mainly made up of voluntary workers (61%); while a minority are permanent workers (25%); and a few consultants (11%). Two-thirds of the institutions (67%) employ former addicts; they amount on average to 50% of the entire staff. Not surprisingly, the staff is also low skilled and leaning much more towards social than health-care specializations: with medical practitioners representing on average 7% of it, nurses 2%, psychologists 7%, social workers 2%, educators 28%, social animators 8% and workers without any specialized skill 20% (Italy, Labos and Ministero dell'Interno 1993).

As to the subjects treated by these structures, an official survey (Italy, Logos Ricerche and Ministero dell'Interno 1993) gives us some information about their characteristics: they are prevalently men (85%); their average age is 31; they are usually taking more than one illegal drug; but their primary use drug is almost always heroin.

To better understand the picture of the private institutions for the treatment of addicts in Italy, it should be remembered that they came forth between the end of the 1960s and the beginning of the 1970s, often on the Catholic Church's initiative. Their establishment was prompted by the spreading of drug abuse and its relative newness for Italian society. These institutions showed, from the beginning, some common traits, relating first of all to their being community structures: and therefore the marked interaction between the participants; the relevance given to community values; the attention to the problem of newcomers' involvement in groups; another characteristic is the banning of pharmacological treatment (methadone or similar substances). A very substantial section of them make reference to the American experience of Synanon, in the later revised model of Daytop Lodge and Phoenix House. The reference to the American experience, however, did not necessarily bring about its uncritical reproduction within the Italian institutions. On the contrary, a noteworthy development of initiatives took place quite soon, with the aim of improving the methods and adjusting them to the local needs. CeIS, for instance, promoted an international centre for the development of treatment strategies and its models are now applied by many institutions in Europe and Latin America. Among its initiatives there are, for instance, those regarding "short programs", limited to six months, and non-residential programs for subjects that enjoy an adequate vocational adjustment.

Other institutions, such as "Gruppo Abele", tried other ways, and developed a role not so much as residential community as rather as day and semi-residential centres for therapy and vocational rehabilitation, also in close contact with public territorial agencies.

The "Villa Maraini" Foundation, in turn, mainly focussed on the problem of harm reduction, through a variety of initiatives including first aid and "on the road" interventions.

Other structures, such as "San Patrignano", tried from the beginning the way represented by a treatment model essentially centred on vocational rehabilitation.

## The treatment of addicts: the pressure exerted by the justice system and its impact on the treatmental perspective

The variety of strategies applied within Italian drug treatment institutions is also connected with the variety of subjects treated. It is not so much a matter of different types of addiction (since, as we have seen above, people under treatment are multiple drugs users but first of all opiates users) as of different types of addicts. In particular, a major problem is represented by addicts whose seeking treatment is more forced than voluntary. To this category belong first of all those who have been identified by the police as holders of small amounts of drug for personal use. Due to the new provisions of the 1990 Drug Act, they are spurred to have recourse to drug treatment institutions in order to avoid the administrative and non-custodial sanctions provided for them. Their number is not insignificant. They amounted on average to around 20,000 per year (35 per 100,000 pop.), over the past few years. Now, these addicts are definitely "difficult" clients. Since their motivation in getting rid of their addiction is often feeble, the institutions dealing with them have to adjust to their particular traits; and frequently the treatment provided substantially, though not formally, hinges on some pharmacological therapy and the cure of the addict's health problems.

The situation is even more problematic with addicts charged or sentenced for any crime or already in prison. For these addicts, the alternative to treatment is usually prison. Therefore, their interest in having recourse to drug treatment institutions is heavily affected by the threat of detention. Private institutions of the usual community type have particular difficulties in dealing with these subjects, due to the emphasis placed by these institutions on the subject's actual will to get rid of his addiction. This notwithstanding, private institutions are becoming increasingly involved with this type of subjects and they are elaborating special strategies to meet their needs. In particular, they try to use the period of (usually) residential treatment in order to progressively shift the addict's interest from avoiding detention to overcoming his state of addiction (Chialant and Mormina 1995). The rate of failure (measured by abandonment of the institution) remains however definitely high, in particular during the first stage of the treatment.

## Discussion

The first and most impressive fact that emerges from the Italian history of drug policy is the lack of visible impact of the various legislative actions in this field. What is particularly impressive is the lack of visible impact as regards the – in most cases increasingly – repressive actions. The harsh and undifferentiating repressive sanctions of the 1950s did not prevent the drug diffusion boom of the 1960s. The increased criminal sanctions against drug traffickers, provided by the 1975 Act, did not result in curbing drug diffusion; on the contrary, the latter grew more and more. The reintroduction of sanctions against drug use in 1990 had no visible impact on the phenomenon. In a nutshell, the policy based on the concept of “Lock ’em up and throw away the key” led, at least, to poor results.

Of course, in the field of social phenomena, it is almost always impossible to repeat an experiment – such as that of trying to control drug diffusion – after having changed some of the factors that may affect the phenomenon in question. In our case, it is impossible to know what would have happened if sanctions had been abolished. So, prohibitionists might say that without such criminal sanctions we would have had an even worse situation. However, it is hard to imagine a scenario with a worse increase in terms of deaths due to drug abuse, cases of AIDS due to toxicomania, people needing therapy for their addiction etc. It is possible but not easy, for instance, to imagine an increase in terms of deaths due to drug abuse worse than that happened in Italy between the late 1970s and the late 1990s, when the index of deaths per 100,000 pop. increased by 10 times.

Prohibitionists might add that to understand the increase in all the indices of drug diffusion in Italy over the last decades we should focus not so much on the scarce impact of the repressive provisions against trafficking, as on the consumption decriminalization introduced by the 1975 Act. Consumption decriminalization might have expanded the use of drugs, making it more morally and socially palatable. Prohibitionists would argue that, just as the end of Prohibition in the US marked an increase in alcohol consumption, so any decriminalization of drug consumption would usher in an increase in drug use; and, of course, any further liberalization, a further increase. It is difficult to dismiss this line of reasoning, since it is only natural that, for instance, there were in Italy, before the 1975 consumption decriminalization, a

certain amount of people who did not use drug only because this use implied some risk of punishment as well as negative social consequences connected with the fact that the behaviour in question was regarded as criminal. It follows that these people should have turned to drug use after decriminalization, increasing the total number of drug users. However, the changes of direction of the Italian drug policy (definitely more marked than elsewhere) offer us the opportunity of analyzing the impact of a more restrictive policy (that of the 1990 Act) as precisely regards drug consumption. Now, as we have already emphasized, this impact is hardly detectable. If this is true, we can argue that, as the reintroduction of repressive measures did not change much, so in turn the abolition of the previous repressive measures should not have had a significant impact on the growth of drug diffusion. In other words, if the drug use curve was shown to be rather inelastic in respect of increasing sanctions, it should have been rather inelastic in respect of decreasing sanctions too. We also know that the decriminalization of possession of small quantities of cannabis in several states of the US did *not* result in a significant increase in the use of this drug (Cuskey, Berger and Richardson 1978). And also the *de facto* decriminalization of cannabis in the Netherlands failed to produce any epidemic in drug consumption (Boyd and Lowman 1991; Downes 1993; UK The Independent Inquiry into the Misuse of Drugs 1999).

In any case, it should be pointed out that the decriminalization of drug consumption (i.e. the decriminalization of holding drugs for personal consumption), without the legalization of the drug market, is bound to be regarded as unsatisfactory by both prohibitionists and anti-prohibitionists. To prohibitionists, the decriminalization of drug consumption is fractionally less disastrous than legalization; it is tantamount to surrendering the moral tenets that ought to protect society. To anti-prohibitionists, consumption decriminalization is insufficient and does not work. It still forces the addict to recur to the illegal market to obtain his doses. It pushes him to commit economically motivated crime (and other criminal or deviant acts) to pay for the high cost of drug on the illegal market. It gives the criminal gangs an enormous power.

The Italian history of drug policy also tells us something about whether drug diffusion can be restrained by means of cheaper and more appropriate measures than punishment. Now, in Italy an impressive network of centres of treatment and therapeutic communities has been set up to fight drug diffusion. It has attracted and treated a large number of addicts, as mentioned

above. To anti-prohibitionists, all this shows that addiction can be effectively tackled without recurring to penal (or administrative) sanctions. They might emphasize, according to our point of view, that addicts sought treatment at these institutions even before the 1990 Act (that forced addicts to undergo treatment in order to avoid sanctions). And that the increase after the 1990 Act is not explained by the entries of addicts trying to avoid sanctions, since these addicts are only a part of such increase.

In turn, prohibitionists might argue that the massive increase in the number of addicts treated by these institutions after 1990 is substantially due to the new legislation. This legislation not only forced detected addicts, by tens of thousands, to undergo treatment; it also made personal consumption a risky business, and therefore increased addicts' interest in seeking treatment. Prohibitionists would also argue that the high rate of failure met even by addicts forced to undergo treatment reflects the general difficulty in convincing addicts to abandon their vice.

Both prohibitionists and anti-prohibitionists would agree, on the basis of the figures shown above, that the network of treatment centres does not suit the cannabis user.

In our opinion, the treatment problems that have emerged in Italy over the last few years underline a basic dilemma about the role of legal sanctions in the fight against drug abuse. Simple suggestions, or even a command to attend treatment institutions, are largely ineffective without some sanctions attached to them. There are certainly addicts who voluntarily seek to put an end to their addiction: for instance, the great majority of those under treatment in the therapeutic communities and a part of those in the other structures. However, most of the addicts do not seem to want voluntarily to remain under treatment, or even seek it, except in order to receive drugs, like heroin or methadone. Therefore, a treatment system based on the addict's free will to undergo treatment while it is certainly not useless, cannot be a definitive solution to the problem of addiction.

On the other hand, sanctions – such as those introduced by the Italian 1990 Drug Act – provided in order to ensure the addicts' treatment, may be effective in making them have recourse to treatment institutions, but are much less effective in ensuring a positive outcome of the treatment. The Italian drug treatment experience, therefore, seems to confirm the low levels of success in compulsory or threat-induced drug treatment recorded in other countries (Leukefeld

and Tims 1988). Indirectly, it also confirms that deviant behaviour is connected first of all with problems in adjusting to a conventional model of socialization and to its values (Solivetti 1982); something that is scarcely affected by therapy or also by the threat of imprisonment.

As regards the problem of whether the punishment of addiction causes greater harm than what it prevented, the Italian experience seems to offer a good opportunity to those favouring decriminalization. They would argue that the harm caused by the repressive policy is so obvious in a country where drug offences have become the leading cause of imprisonment. This basic fact, in turn, in the anti-prohibitionists' eyes implies two sorts of harm. The first and most evident is that represented by the misery inflicted upon hundreds of thousands of people, in the space of a few years; misery increased by the labelling following the judiciary and penitentiary experience, and compounded with that already experienced by the addict in his dealings with the criminal milieu in charge of the illegal market. The misery of imprisonment is unnecessary in general and becomes particularly so with regard to "soft" drugs consumers. In fact, the misery of imprisonment is not reserved for real traffickers, since the Italian case shows that in the field of drug it is often difficult to separate the trafficker from the user, and that a substantial part of those entering prison are petty traders who feed their personal use by selling drugs. The second and less evident harm is that caused by a judiciary and penitentiary system whose energies are wasted on a crusade against drugs, whereas these energies should have been spent on fighting the real criminal behaviour of murders, robbers, rapers etc.

However, the above-mentioned harm caused by the repressive drug policy in Italy can be regarded as something necessary or at least unavoidable. Prohibitionists would argue that the very involvement of Mafia criminal gangs in drug trafficking shows the impossibility of distinguishing between drug trafficking and more traditional forms of crime. So, in their view, by pursuing and punishing drug traffickers, the Italian enforcement agencies are in fact fighting also against organized & common crime, murder, robbery, violent crime in general. Also the punishing of petty traders-users, or even the sanctions against cannabis users, are part and parcel of this necessary fight against crime in its more traditional forms. Therefore, the energies spent by the law & order agencies in trying to control drug diffusion might be not wasted at all.

The Italian case also helps clarify what is probably the most significant issue among all those relating to drug policy: the problem of whether drug use represents a harm to prevent. We

consider it a primary issue since the Evaluation of most of the other issues depends on the Evaluation of this issue: for instance, the Evaluation of a possible increase in the number of drug users after decriminalization becomes hardly meaningful if we reach the conclusion that drug use is not *per se* a harm to prevent. Unfortunately, the assessment of whether drug use is a harm to prevent can hardly be made in absolute terms, since it in turn depends on where we place the threshold beyond which we regard the harm caused as intolerable. Such assessment, therefore, must be made mostly in comparative terms.

Now, one may wonder why a country like Italy, afflicted from time immemorial by such a high consumption of alcohol per capita, where alcohol dependence is affecting more than one million people and causing an endless series of cases of domestic violence, traffic accidents, vocational predicaments, should be so fussy about other drugs. If the answer to this question is that such drugs, by contrast with alcohol, are part of a markedly deviant model of life, challenging standard ways of social integration (something which is probably true only for a part of drug users), then one may ask why the hypothesis of criminal sanctions is not even taken into consideration when similar attitudes, such as laziness, lack of interest in family, work, accumulation of wealth, which are quite widespread, are attested without any connection with drug use. If the fight against drug is based on social morality, then the presence of double standards makes this morality dubious. And, what is more important, if society can bear the deviant and anti-social attitudes mentioned above, why is it saying that it cannot tolerate drug use precisely because the latter is linked with such attitudes?

The concept that (i) drugs presently illegal do not represent an evil greater than drugs traditionally legal, such as alcohol; and that (ii) the deviant and anti-social attitudes often regarded as associated with drug use are not different from and more serious than other attitudes usually tolerated by Western society, seems particularly true as regards “soft” drugs like cannabis. However, the acceptance of the idea that “soft” drugs are not dangerous in themselves and that they could be tolerated and made legal, also because they are quite different from “hard” drugs, is hindered by a sizeable obstacle. This obstacle consists in the so called “escalation” or “graduation” from cannabis to “hard” drugs.

Now, in our opinion, the issue of escalation has been superficially dealt with in the debate on drug policy. As can be noticed from what has been mentioned earlier in the present

work, many individual authors and official bodies challenged the possibility of a link between cannabis and “hard” drugs. However, such a link cannot be excluded without a deeper analysis. The data shown above about substances used by addicts under treatment in Italy point out that cannabis is by far the most common side-drug for addicts under treatment, who are almost exclusively addicted to heroin. What is more important, substantially all these addicts started their career of illegal drug users by consuming cannabis. A statistical link between cannabis and opiates use is therefore undeniable. And it is a very strong link. Does this statistical link imply also a causal link between cannabis and opiates? This second link is in our opinion more arguable. If a previous experience is necessarily the cause of a later one, then it would follow that for instance tobacco consumption (an experience common to over 4/5 of addicts in Italy) would be the cause of opiates use: which is clearly unrealistic.

The tenuousness of the causal link between cannabis and opiates is more clearly perceived if, instead of moving from the present state of opiates addicts to look at their past experiences, we move from the present state of cannabis users to look at their possible future experiences in the field of drug. Now, in Italy, as well as in the other Western countries, the ratio between regular cannabis users and opiates addicts is in the order of over 10 to 1; whereas the ratio between the general population and opiates addicts is in the order of 200 to 1. This means that, on the one hand, the probability of becoming an opiates addict is much higher for regular cannabis users; but on the other hand this means that only a small share of even the regular cannabis users graduate to heroin (and other opiates). Regular cannabis consumption can be regarded as a precondition of addiction to “hard” drugs; but it is not a sufficient condition. Other factors are required to determine this shift to “hard” drugs. It seems realistic to suppose that cannabis use, together with tobacco, wine, beer, spirits use, is part and parcel of the search for psychoactive substances that characterizes the career of opiates addicts. In his quest for mind-altering substances, the future addict would try first what is more at hand. Cannabis use will become just an obvious step in his career. It is probably not even a really inevitable step, since it could be replaced by the use of other substances. If we want to say that cannabis use favours the process leading to opiates use, we could do so only in very generic terms. By saying, for instance, that if the experience with cannabis is a positive one for the young person, it can encourage his/her interest in other experiences with more harmful drugs. However, the

positiveness of such an experience, and ultimately this encouragement to use more harmful drugs, seem to depend much more on *social learning* mechanisms, on the attachment to the group of drug users, than on the intrinsic quality of cannabis.

Summing up this entire issue, we may expect that a liberalization of cannabis will increase the number of regular cannabis consumers; and that a small share of these consumers will in due time shift to more harmful drugs. The actual size of this share will depend on various co-determinants. If for instance the legalization of cannabis will leave the provisions relating to “hard” drugs unchanged, then the new boundary between legal and illegal drugs will place cannabis on the right side of the fence and “hard” drugs on the wrong one. The distance between the two types of substances will increase, in comparison with what happens today. And probably this will have a restraining effect on the size of the share of cannabis users shifting to opiates.

From all that has been said till now, something can be deduced as regards also the issue of “denunciation of crime”. Now, the Italian policy in the field of drug has been, by and large, influenced by this concept. We can trace this influence by analysing the teaching of the Catholic Church, the attitudes of the therapeutic communities, the increasing seriousness of criminal sanctions against trafficking, the return to sanctions against drug consumers, the prevailing hostility shown towards “harm reduction” policies, to limit us to a few examples. In some other country, in particular the US, this influence has been by comparison more evident, but it is clearly present also in the Italian policy. We may ask ourselves what is the result of this “denunciation of crime” on the Italian drug scenario. Of course, since denunciation of crime is mainly interested in the law-abider, we should look at the law-abider’s behaviour and attitudes. The first thing to notice is that the denunciation policy did not restrain increasing shares of the law-abiding population from shifting to illegal drugs use, and therefore becoming part of the lawbreaking population. Second, the denunciation policy had probably some effect on the bulk of the law-abiding citizens, in terms of strengthening the values opposed to drug use, increasing the pleasure in their personal identification with positive social values, etc. However, there is hardly evidence of a particular impact of this denunciation policy. For instance, by comparison with all the other EU populations, Italians give lower importance to the issue of fighting against crime & drugs (European Commission 1998). Most likely, the positive effects of the denunciation policy on the law-abider cannot survive whenever a persistent repressive action

based on such a policy is accompanied by a progressive increase and worsening of the anti-social behaviour that it should prevent.

So, the Evaluation of the impact of the denunciation policy on the law-abider cannot be favourable in the light of what happened in Italy. Besides, it is important to notice that any possible positive impact of this policy should be weighed against its costs. Now, these costs are not negligible. As some critics of Durkheim emphasized since the early 20th century (Mead 1918; Garland 1994), a denunciation policy based on criminal sanctions against the deviant produces at least three important negative effects: (i) it hinders the reinsertion of the culprit into society, creating a deeper chasm between him and the community; (ii) it strengthens the norms and the institutions affected by the culprit's behaviour, making difficult not only any analysis of their actual positive function but also their evolution; (iii) it creates obstacles to the differentiation in terms of activities and individual attitudes that seems to be part and parcel of the modern Western society.

What we are speaking about is a denunciation policy revolving round criminal sanctions. However, to give up criminal sanctions against drug use does not necessarily imply that the denunciation policy should be given up. If a society believes that drug use represents a deviant, anti-social behaviour that should be fought, then it could well increase the momentum of the denunciation policy based more on cultural programmes than on criminal sanctions. This could be achieved by a coherent programme of action by both institutions and associations, by a painstaking and continuous cultural policy in schools, work-places, in the mass media. Such a cultural policy of denunciation ought to avoid the weakness implied in double standards of morality. In other words, it ought to fight the deviant, anti-social attitudes associated with drug use as well as similar attitudes though separated from drug use. The impact of such a cultural policy of denunciation on the law-abider would probably be stronger than the very modest impact achieved by a denunciation policy substantially limited to the enforcement of criminal sanctions. At the same time, this cultural denunciation policy would avoid much of the cost associated with the enforcement of criminal sanctions. In particular, it would avoid those costs made evident by the Italian experience in this field: the criminalization of a substantial share of the youth, the gaol filled with drug users, the justice system clogged up with drug offences.

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