In 1762 Jean-Jacques Rousseau confronted his contemporaries with the question:

"Trouver une forme d'association qui défends e et protège de toute la force commune la personne et les biens de chaque associe, et par laquelle chacun s'unissant à tous n'obeisse pourtant qu'à lui-même et reste aussi libre qu'auparavant."1

He answered this question by describing the "social contract" between citizens and sovereign, a contract based on the right of freedom for the individual:

"aucun homme n'a une autorité naturelle sur son semblable"2.

His ideas were put into practice when on July 4, 1776 Thomas Jefferson read the Declaration of Independence in which the United States justified their rejection of the British rule based on the perception of some self-evident truths:

"that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."

This perception was again formulated, when on 26 August 1789 in Paris the Constituante met to decide upon the "Déclaration des droits de l'homme et du citoyen", which was written under
the redaction of the Marquis de Lafayette (known from the U.S. liberation war). In the preamble "les droits naturels, inaliénables et sacrés" were defined: in its article IV was stated:

"La liberté, consiste … pouvoir tout ce qui nuit pas … autrui. Ainsi l'exercice des droits naturels de chaque homme n’a de bornes que celles qui assurent aux autres membres de la société, la jouissance de ces mêmes droits; ces bornes ne peuvent "être d,termin,es que par la loi."3

This still is one of the most basic principles of the civil (and as such human) rights in our society. A corollary of this basic right is that the state does not have the right to limit the exercise of the liberty of the citizen, unless the exercise of this liberty harms other people.

Although the introduction of said principle marked the end of absolute monarchy and replaced the monarch's government by the people's government, the course of events during the French Revolution and its aftermath showed that the people's sovereignty could involve a tyranny by the people's so-called "majority" that eventually might pale the tyranny of an absolute monarch.

"Like other tyrannies, the tyranny of the majority was at first, and is still vulgarly, held in dread, chiefly as operating through the acts of the public authorities. But reflecting persons perceived that when society is itself the tyrant - society collectively over the separate individuals who compose it - its means of tyrannizing are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. Protection therefore, against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling, against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development and, if possible, prevent the formation of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs as protection against political despotism."4

wrote John Stuart Mill less than a century later.
This is not to say that society has to morally justify all individual behaviour of its members, it means only that the state does not have the right to prohibit those behaviours unless they directly harm other citizens.

"The acts of an individual may be hurtful to others or wanting in due consideration for their welfare, without going to the length of violating any of their constituted rights. The offender may then be justly punished by opinion, though not by law."5

These principles found their final application in the Universal Declaration of Human Rights of 1948:

"Everyone has the right to life, liberty and the security of person6" and "In the exercise of is rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."7

**How do these principles relate to the present "War on Drugs"?**

When the United States at the end of the nineteenth century began to campaign for control of the trade in opium, partly based on it's strong abolitionist tendency, partly for economic reasons 8, the international drug treaties that were concluded as a result did initially not limit the rights of citizens to use these drugs, as they were in principle legally available9. The treaties served to limit trafficking, not by themselves limiting legal availability for users, as governments like the Dutch and the English held trade monopolies. This kind of regulation had nothing to do with the general public in Europe and the U.S.A., as it only regarded colonies. As far as drug use occurred in the western countries, it was not a public, but a medical concern. The increasing regulation of the medical and pharmaceutical profession did not regard drugs in another sense than as medicines. To execute the 1914 International Opium Treaty national laws were enacted to prohibit the production and trade of raw opium and processed opium except with government approval, for medical reasons and they left the distribution to the pharmacists and physicians competence. These national laws did not prohibit possession for personal use: the user was not criminalised.
This was logical: in the nineteenth century many European and American patent medicines contained opium, cocaine or cannabis, mostly as an alcoholic extract: the opium-derived potions as laudanum and paregoric, the cocaine containing Vin Mariani and the original Coca-Cola and cannabis-tincture. Although their use was labelled as medical, these potions were freely available: no legal controls existed. Pharmacists in the western world produced many potions containing psycho-active drugs, although of low potency as painkillers, stimulants, spasmolytics, etc. The “medical” use of Vin Mariani and Pemberton's Coca-Cola as “tonics” are well known examples. Even at the end of the nineteen-twenties only 20% of all medically prescribed cocaine, would presently be considered medically proper, under consideration that cocaine at that time was the only available local anaesthetic.

The use of this kind of potions diminished slowly as stricter controls were imposed on medicines, not primarily to reduce their use, but as protection for the medical and pharmaceutical professions. This made the use of these types of drugs not as much as disappear, but brought their use more and more under medical control, without becoming a matter of public concern.

After the first World War, nobody in war-torn and -tired Europe objected against the United States pressure to extend the prohibition of the use of opium, coca and cannabis, so nobody objected against a paragraph 10 in the Versailles Treaty that ended W.W.I. Again, this did not criminalise the use of drugs. It is important to note that the Narcotic Laws which in this way were introduced in Europe are not the result of a European perception of a European domestic problem, but the result of clear pressure of the U.S.A., “the barbarians of the West” with their "extraordinary savage idea of stamping out all people who happen to disagree .... with their social theories" against narcotics, alcohol 11.

In the twenties the pressure from the U.S.A. increased to extend the existing international treaties that until that moment only regarded the drug crops: opium-poppies and coca-leaves, to their chemical derivatives: morfine, heroin and cocaine and to limit their production. Although both the Germans and the Dutch objected, refined opiates and pure cocaine being important income generating drugs for their respective pharmaceutical industries 12, they complied which resulted in the ratification of the 1925 Geneva Treaty. This Treaty started the criminalisation of drug use, bringing all then known "drugs", now including hemp, and their derivatives under the penal code, except when used in the realm of the medical/scientific profession and disregarded what decades later became known as recreational druguse.

Thus, the crux of the matter is whether limiting the legal availability to use under firm medical and pharmaceutical control and criminalising individual use outside the medical situation, is a
serious infraction on the "droits naturels, inali,nables et sacr,s"?

As "everyone has the right to life, liberty and the security of person" the prohibition is without question an infraction on the freedom of the individual. Whether this is however an illegal infraction remains to be seen. The State has the right to limit the exercise of an individuals rights and freedoms. But the individual shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Does drug use threaten recognition and respect for rights and freedoms of others? No! Or would you request me to recognise moral opinions as "Just say no" that are imposed on me without recognising my opinions. Does "Thou shalt not use drugs" by the way respect my rights and freedoms?

Sure, some drug users do infringe on the rights and freedoms of others! Some drug users do threaten morality, public order and general welfare!

The question is whether this is the necessary consequence of their drug use? And, moreover, whether prohibition is a necessary condition to limit their freedom, which can be legally done to protect other citizens?

It will be clear that the answer to these questions is no. Alcohol has not to be prohibited to prosecute the drunken driver! Tobacco use has not to be outlawed to protect non-smokers against smokers' toxic fumes!

Sure, "there is a degree of folly, and a degree of what may be called (though the phrase is not unobjectionable) lowness or depravation of taste, which, though it cannot justify doing harm to the person who manifests it, renders him necessarily and properly subject of distaste, or, in extreme cases even of contempt.13" Again: "The acts of an individual may (even) be hurtful to others or wanting in due cosideration of their welfare, without going to the length of violating any of their constituted rights"14
The question can better be reversed. Does prohibition meet the requirements of morality, public order and the general welfare in a democratic society? We may conclude: no! Prohibition infringes on the individual's liberty and his pursuit of happiness, which his inalienable rights, although other citizens have the right to reject it morally.

The consequences of the structural illegality of drug use go however much further than only the criminalisation of the drug user. As the prohibition is contrary to the principles upon which our whole penal code is based, the normal functioning of the penal code and even the whole fabric of society is being eroded by a number of unavoidable developments that violate other articles of the Universal Declaration. Don't the U.S. mandatory minima and the way the indigenous indians of the Andes are treated not violate article 5 on inhumane treatment?

**Is equality for law as guaranteed in article 7 applied to drug users?**

How does the equation between non-condemning drug information and punishable drug propaganda as in by example France relate to their highly advertised freedom of opinion (art 19). How does the pressure, even blackmail of the U.S.A. on developing countries with regard to their indigenous drugs respect the universal right on your own cultural life as guaranteed in art. 27?

Moreover we see how:

- criminal investigation techniques have been developed (like undercover-agents etc.) which are stimulating criminal behaviour by law enforcement agencies, which corrupt the penal system;
- governments easily criminalise political opponents by accusing them of possession and use of drugs;
- government agencies like the CIA become involved in the illegal drug trade as happened in the heroin trade in the Golden Triangle and the Golden Half Moon15, and the cocain trade in Central America16;
- large scale corruption being enabled by the enormous amount of black money generated by trafficking.

Thus, prohibition infringes on morality, public order and the general welfare. Prohibition is even a threat to democracy!
This necessitates us to change policies and to return to the proper application of the "droits naturels, inaliénables et sacrés" of the individual citizen, as they have been described by philosophers of the pre-prohibition era. Continuing prohibition is throwing us back into the dark middle ages of characterized by the burning of heathens and witches, with the UN.INCB in the role of Inquisition.

- 1 Du contrat social. Book I, chapter VI. "To find a form of association that defends and protects with all its might the person and the possessions of all its members, and by which anybody who associates himself with the others only obeys himself and remains free as before".
- 2 Du contrat social, book I, chapter IV.
- "Nobody has a natural authority over his equals"
- 3 "Liberty consists of the power to do whatever is not injurious to others; thus the enjoyment of the natural rights of every man has for its limits only those that assure other members of society the enjoyment of the same rights; such limits may be determined only by law."
- 5 John Stuart Mill 1859: On liberty. Chapter IV.
- 6 Art. 3
- 7 art. 29.2
- 9 By example by the state monopolies as in the Dutch East Indies for opium, or as over the counter medicines.
- 10 Article 295 obliged all Parties to the Treaty to obey to the the Hague Convention and to enact the necessary legislation within twelve month.
- 12 In the twenties the Netherlands were the world's biggest producer of pure cocaine, as we succeeded to grow a Erythroxylon variety in the Dutch East Indies.
- 13 J.S.Mill: On liberty. Chapter IV
- 14 ibidem

??

©html 1995 drugtext web-lab