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RECONCEPTUALIZING CANNABIS
The Case for Demystifying, Decriminalizing, and Destigmatizing

By
Julia Peoples

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College.

Oxford, MS
May 2021

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ABSTRACT

JULIA PEOPLES: RECONCEPTUALIZING CANNABIS. The Case for Demystifying, Decriminalizing, and Destigmatizing. (Under the direction of Dr. William Berry)

Inflammatory rhetoric and increasingly punitive drug policies dominated marijuana politics in the past. Today, as 36 have legalized cannabis in some form and 17 states have legalized recreational marijuana, the federal government continues to perpetuate policies of the past. The following analysis investigates rhetoric and policies that led to the War on Drugs as well as their outcomes, the dramatic shift in public opinion as states began to legalize marijuana, and the successes and failures of state cannabis programs to identify gaps within the *MORE Act*, the ideal policy, and politically viable incremental change. State programs are incapable of addressing issues regarding data collection, research, and equity. The *MORE Act* passed by the House of Representatives in December 2020 presents a semi-comprehensive federal reform option. The ideal cannabis reform, however, should address guidelines for federal regulators, barriers to employment and entrepreneurship, incentivize state cannabis legalization and expedited expungements, expand research and data collection, and provide a framework for federal communications. Despite the act's shortcomings, it remains politically infeasible in today's polarized climate. Immediate incremental cannabis reform should take the form of action by the Attorney General and Congressional action expanding cannabis research supply and funding, requiring public health data collection, rescheduling marijuana, and authorizing doctors to write prescriptions for medical marijuana.

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Chapter One

While cannabis has been illegal in the United States since 1937, an escalation of drug policies and political rhetoric in the 1960s through the 1990s led to a massive increase in incarceration and public concern. This chapter analyzes the rhetoric and policies that built the current federal law regarding cannabis, as well as the shifts in public opinion that resulted from these political changes. Finally, this chapter seeks to analyze the factors which contributed to the recent shift in American politics and public opinion regarding cannabis that has resulted in a myriad of state policies which conflict with federal law.

The War on Drugs

The juxtaposition between marijuana policymaking and shifting public opinion and state policies regarding marijuana demands a federal solution. From the 1960s era of Law and Order to today's puzzle of legalized marijuana, American culture surrounding drugs, particularly cannabis, has changed significantly. Influenced by inflammatory political rhetoric conflating marijuana use with criminal activity, American citizens and policymakers have insisted on stricter penalties to combat the perceived large-scale "abuse" of cannabis. This conflation results in a separation between the reality of marijuana-related policies and the public's perception of the drug. States have led with cannabis reform, but the federal government has a responsibility and an opportunity to shift from prohibition to decriminalization and communication.

After releasing fear-based propaganda for over 20 years regarding cannabis, Congress enacted the *Narcotic Control Act of 1956*. This legislation amended the *Internal Revenue Code of 1954* to provide further penalties for drug offenders. The original code did not differentiate

between opium, coca leaves, and marijuana, ascribing the same penalties for offenses regarding all three (Cantor, 1961). With the passage of the *Narcotic Control Act* (1956), first-time offenders for the unlawful acquisition of cannabis were sentenced to imprisonment for two to ten years and faced a maximum fine of \$20,000 (Cantor, 1961). The adoption of harsh penalties for unlawful possession and transportation of marijuana - in addition to the already rampant hostile anti-marijuana political rhetoric - caused a shift in the American discourse: the public viewed drugs as a significant problem for the country.

The imposition of stricter sentencing laws resulted in a dramatic shift in the political climate surrounding cannabis. Political elites moved public opinion toward more punitive attitudes, but young Americans increasingly experimented with the drug. A rise in cannabis usage correlated with the emerging counterculture in the 1960s, primarily involving “college students, faculty, and protesters in the antiwar movement” (McKenna, 2014, p. 105). As a result, many suburbanites began to associate the drug with youthful delinquency. The earlier century’s propaganda further exacerbated this shift towards a “delinquent” marijuana user; consequently, an underlying fear of the unknown skyrocketed in the American public. In 1969, 48% of Americans responding to a Gallup poll said that “drug use was a serious problem in their community” (Robison, 2002, para. 3). In that same year, Robison also suggested that “only 4% of American adults said they had tried marijuana.” Misconceptions about the prevalence of the drug and its dangers ran rampant. Indeed, 34% of the same poll respondents were unaware of the effects of cannabis, but 43% percent thought “many or some high school kids” used it (para. 5). 60% of respondents believed that the drug was physically addictive. In the 1960s, with drug use rising, the political climate set the stage for the longest war in American history: the war on drugs.

Nixon's War On Drugs

In 1970, President Richard Nixon signed the *Comprehensive Drug Abuse Prevention and Control Act* to rationalize America's drug policy. Title II, known as *The Controlled Substances Act* (1970), established five schedules of drugs based on medical value, harm, and abuse potential. The act labeled Marijuana as a Schedule I drug and, thus, was relegated to a class of drugs with high abuse potential; consequently, marijuana was equated to LSD and heroin, with no accepted medical use in the United States, both recreationally and medically. The bipartisan piece of legislation sought to organize the federal drug code flexibly. The act changed penalties for trafficking depending on the drug's schedule: the maximum prison sentence for Schedule I drugs was 15 years; the maximum sentence for Schedule V drugs was one year (Courtwright, 2003). Penalties for possession included "no more than a year in prison and, at the discretion of the court, probation for first offenders" (Courtwright, 2003, p. 12). Additionally, the bill provided for no-knock warrants and funding for 300 new federal agents. The *Comprehensive Drug Abuse Prevention and Control Act* (1970) served as a nuanced piece of legislation, providing a framework for further criminalizing cannabis users by placing it in the most punitive category of drugs and expanding enforcement mechanisms while also removing mandatory minimums. The act itself did not lead to harsher punishments for marijuana offenses; instead, it set up a system in which the system could further demonize the drug and punish users more harshly in the next decade.

While the *Controlled Substances Act* (1970) organized drugs into schedules and provided law enforcement with more officers and options, it did not constitute a significant policy change. The Nixon campaign had only just begun the agenda-setting stage for the drug issue. On June 17, 1971, Nixon announced that "public enemy number one in the United States is drug abuse"

(Nixon, 1971, para. 1). Between 1970 and 1973, the Nixon administration worked with the nonprofit Advertising Council, releasing “approximately forty national television spots, sixteen radio spots, eleven magazine ads, thirty-three newspaper ads, and more than a dozen billboards,” which became known as the *National Drug Abuse Information Campaign* (Siff, 2018, p. 173). The campaign failed to stop rising cannabis use, with 12% of respondents to a Gallup poll saying they had tried marijuana in 1973, increasing eight percent during President Nixon’s first term (Robison, 2002).

In addition to the official campaign, Nixon frequently spoke about the damage drug abuse caused communities and families to invigorate “white, suburban voters” (Siff, 2018, p. 176). This rhetoric surrounding drug abuse, which applied to harder drugs, also extended to marijuana. Nixon’s rhetorical strategy included using the term dope to encompass drugs ranging from heroin to cannabis. An analysis of Gallup polls found “that public concerns about drugs peaked between 1971 and 1973,” and similarly “over six consecutive polls between 1971 and 1973, drugs were never less than fifth in the national rankings, usually ranked second or third” (Siff, 2018, p. 177). Although more Americans were using marijuana, even more believed drug use was a serious problem.

In the early 1970s, Nixon appointed a *National Commission on Marijuana and Drug Abuse* in response to political challenges regarding the drug’s Schedule I category (Shafer, 1972). In 1971, as the commission prepared their first report regarding the potential harm caused by cannabis, Nixon stated, “even if the commission does recommend that it [marijuana] be legalized, I will not follow that recommendation” (Belair, 1971, para. 2). The commission recommended decriminalization of the drug. In the commission’s first report, *Marihuana: A Signal of Misunderstanding*, Shafer (1972) noted that “marijuana’s relative potential for harm to

the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it” (p. 163). The commission considered the elimination of marijuana use “unattainable” and therefore recommended “to the public and its policy-makers a social control policy seeking to discourage marijuana use while concentrating primarily on the prevention of heavy and very heavy use” (p. 168). The *National Commission on Marijuana and Drug Abuse* recommended a “partial prohibition” system in which “medical, educational, religious, and parental efforts to concentrate on reducing irresponsible use and remedying its consequences” and the removal of “the criminal stigma and the threat of incarceration” would work to combat abuse of the drug (Shafer, 1972, p. 189). The *Commission’s* recommendations were ignored. On July 1, 1973, Nixon created the *Drug Enforcement Agency* after declaring “an all-out global war on the drug menace” (Augustyn, 2020). The agency served to enforce drug-related laws and consolidate conflicting government agencies under centralized leadership.

Despite Nixon’s success in creating societal fear surrounding drug abuse, drug use continued to climb in the United States: by 1977, 24% of respondents in the Gallup poll had tried marijuana (Robison, 2002). Concern about the prevalence and dangers of marijuana use rose swiftly. When President Gerald Ford took office in 1974, “the pressure for strict anti-drug policies” continued (St. John & Lewis, 2019, p. 20). Nevertheless, leniency slowly became the norm on the state level, resulting in a gap between federal and state law. In 1973, Oregon became the first state to decriminalize cannabis, with Alaska, California, Maine, Colorado, and Ohio following suit in 1975. In 1976, Robert C. Randall appeared before the District of Columbia Superior Court, appealing his conviction for the possession and cultivation of cannabis. He argued that cannabis was medically necessary to treat his glaucoma. The court held that the

“defendant’s interest in preserving sight outweighs government’s interests” (*Randall v. U.S.*, 1976). The Court recognized a medical value where the legislature had not, but this pattern would not continue. Increasing evidence that cannabis posed little danger to society and inflammatory political rhetoric from political elites led to confusion.

During the 1976 presidential campaign, President Jimmy Carter advocated for the decriminalization of low-level marijuana offenses (St. John & Lewis, 2019). As president, Carter pushed for drug policy reform, attempting to focus on rehabilitation instead of punishment. In 1977, President Carter asked Congress to “abolish all Federal criminal penalties for the possession of small amounts of marijuana” (Wooten, 1977, para. 1). He argued that “penalties against possession of a drug should not be more damaging to the individual than the drug itself” (Wooten, 1977, para. 6). Because of administration scandals, economic scandal, and a competitive presidential election, Carter’s visions of decriminalizing cannabis and transforming the war on drugs never became policy. In 1981, when President Ronald Reagan took office, he began expanding the War on Drugs quickly (Augustyn, 2020). By focusing on punishment rather than treatment, the Reagan administration moved drug policy in America in the opposite direction than Carter had hoped.

Reagan’s Escalation

During the 1980s, a rise in public concern over drug use and abuse set the stage yet again for stricter penalties for users and distributors of illicit drugs. In 1982, Reagan announced from the Rose Garden that “drugs already reach deeply into our social structure,” calling for Americans to “brand drugs such as marijuana exactly for what they are— dangerous” (Westhoff, 2013, p. 14). While the Reagan administration stressed the prevalence and danger of drugs in

America, marijuana use among those between 18 and 25 years old decreased by 15% between 1979 and 1982 (Westhoff, 2013). Nevertheless, public concern about drugs persisted.

In 1984, Reagan signed the *Comprehensive Crime Control Act*, which reaffirmed the federal government's solution for the rise in drug use— more punishment, not treatment. The act contained “increased federal penalties for the cultivation, possession, and sale of marijuana” (Westhoff, 2013, p. 15). Around this time, political rhetoric began to focus on marijuana as a gateway drug, which proved effective in altering public opinion. In 1985, two percent of respondents to a Gallup poll regarding attitudes toward the most important problem facing the country believed drugs and drug abuse were the most important problem (Gallup Trends, 2012). In May 1989, the percentage of respondents who thought drugs and drug abuse were the most important issues had risen to 27%. While the prevalence of drug use decreased in the 1980s, concern surrounding drugs continued to increase significantly, and political rhetoric encouraged fear. Beckett (1994) argues that “the politicization of the crime and drug issues has been the result of their social construction by the mass media and especially state actors” (p. 444).

In 1986, the Reagan administration passed the *Anti-Drug Abuse Act*, allocating “even more funding for law enforcement, laws, increased penalties, and prevention and educational programs” (Westhoff, 2013, p. 16). Notably, this act allowed prosecutors to pursue the death penalty for high-level drug traffickers. Reagan successfully implemented punishment-focused policies for nonviolent offenders by framing drug policy as a moral issue and instilling fear in Americans that rampant drug use and violent criminals had already infiltrated their communities.

These policies had an undeniable effect on incarceration rates: “there was more than a 400% increase between the 1980s and the 1990s in the chances that a drug arrest would ultimately result in a prison sentence” (Bobo & Thompson, 2006, p. 451). As former President

George H. W. Bush took office, public concern shifted from drugs to crime more generally. According to Gallup polls, 18% of respondents listed drugs and drug abuse as the most important issue facing the country today in 1990, but that number fell to nine percent in 1994. On the other hand, one percent of respondents listed crime as the most important issue facing the country in 1990, but 37% chose it in 1994 (Gallup Trends, 2012). This increased concern with violent crime, however, did not lead to less punitive drug policies.

Under President George H. W. Bush, the federal government continued associating drug users with violent criminals and formulated criminal justice policies that treated them as such. In 1990, the Bush administration developed a program known as ‘Smoke a Joint, Lose Your License’ in response to widely varying cannabis policies between states (Ingram, 1994). The federal government withheld federal highway funds from states that did not agree to suspend the driver’s license of people convicted of a drug offense for six months, regardless of whether the person convicted was driving at the time of arrest or not (Ingram, 1994). This policy and others promoted by the Bush administration continued the federal tradition of failing to recognize any medical use for cannabis or differentiate between marijuana and other illicit substances.

Clinton’s Crime Bill

As mass incarceration escalated within the United States, increasing drug use and continued inflammatory rhetoric led to more punitive policies, despite evidence that they did not work. When President Bill Clinton took office in 1993, he began speaking about the need for a bipartisan omnibus crime bill. In his 1994 State of the Union Address, Clinton advocated for the upcoming piece of legislation, referring to it as “the toughest crime bill in history.” That legislation, the *Violent Crime Control and Law Enforcement Act of 1994*, did indeed overhaul a large portion of the criminal justice system to create a more punitive environment for offenders.

The act provided for 100,000 new police officers, \$9.7 billion for prisons and \$6.1 billion for prevention programs, as well as \$2.6 billion in funding for the FBI, DEA, INS, United States Attorneys, and other Justice Department Components. Notably, the act also implemented a three strikes rule, which required mandatory life in prison without possibility of parole for repeat felony offenders, including some drug offenses. While conservative administrations previously sought tough on crime policies, the unprecedented 1994 bipartisan *Violent Crime Control and Law Enforcement Act* fundamentally altered federal criminal justice policies. By the time Clinton signed the act into law, mass incarceration had exploded in the United States, and with those convicted as a “habitual offender” sentenced to mandatory life without parole, incarceration rates would only continue to grow.

A noticeable increase in the federal prison populations began in the late 1980s, primarily due to the increasingly punitive policies used to place and keep drug offenders behind bars. Since then, those serving time in federal prisons for drug offenses are in the overwhelming majority due to the increase in punitive drug policies. Drawing on data from the Bureau of Justice Statistics, The Sentencing Project (2020) reports that in 1980, state prisons, federal prisons, and jails held 40,900 individuals incarcerated for drug offenses. By 2018, that number had grown to 443,200 individuals incarcerated for drug offenses, and drug offenders accounted for just over 47% of the federal prison population (The Sentencing Project, 2020). The government’s insistence on criminalizing marijuana and refusal to shift to a rehabilitative treatment model for drug offenders has taken a toll on the prison system, communities most severely affected by mass incarceration, and society.

Systemic racism affects every level of the criminal justice system, and drug policies designed to criminalize people of color exacerbate the discrimination within the system. African

American men face significantly higher incarceration rates than people of other races and genders, with Latino men coming in second. Despite representing less than 14% of the general population, in 2012, African Americans made up approximately 38% of federally sentenced drug offenders. Likewise, while Hispanic or Latino Americans make up less than 17% of the general population, they represented approximately 37% of federally sentenced drug offenders in 2012. Meanwhile, white Americans, who make up 72% of the general population, constituted approximately 21% of federally sentenced drug offenders in 2012 (U.S. Department of Justice, 2015). Academics have speculated and researched many potential causes and solutions for racial bias within the criminal justice system; however, data still shows that racial minorities face significantly higher arrest and incarceration rates for drug offenses in the United States.

In April 2016, a reporter from Harper's Bazaar looked back on his notes from an interview in 1994 with President Nixon's domestic policy chief, John Ehrlichman, who explained that the Nixon administration intended the racially disproportionate outcome. "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people," Ehrlichman stated (Baum, 2016, para. 2). Ehrlichman continued, "We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news." Perhaps the most damning comment came at the end of his monologue: "Did we know we were lying about the drugs? Of course we did" (Baum, 2016, para. 2). Nixon's campaigns succeeded with this strategy, and his predecessors continued the rhetoric for years to follow. The prison population continued to climb

as drug users' equation to criminals took hold in the American psyche, and more punitive punishments resulted.

Looking Ahead

Despite federal resistance, state laws continued to soften drug laws, reducing penalties and shortening mandatory minimums. Since the initial decriminalization of marijuana in the 1970s, four different approaches to decriminalization have emerged. The federal government has chosen prohibition, while state and local laws have varied between decriminalization, medical use, and legalization. Pacula and Smart (2019) explains that decriminalization refers to a wide variety of policies, from removing criminal status to a significant reduction of penalties associated with marijuana offenses or only first-time offenders. Because of the variance within decriminalized states, the term here loosely refers to policies ranging from reducing criminal penalties to removing illegal status. The research goes on to explain that the first wave of decriminalization occurred in the 1970s, California became the first state to recognize the significant change in public opinion surrounding cannabis by legalizing marijuana for medical use in 1996. As more states followed various decriminalization and medical marijuana policies, the conflict between federal and state law grew. In 2009, President Obama's administration announced that the federal government would no longer interfere with state laws regarding medical marijuana (Pacula & Smart, 2019). Between 2009 and 2013, 40 states eased their drug laws in some manner (Desilver, 2014). As the federal government stepped back on enforcement, many states chose leniency despite the drug's Schedule I status.

In 2012, Colorado became the first state to legalize cannabis for recreational use. Today, 17 and the District of Columbia have legalized recreational marijuana, and 36 states allow legal access through either medical or recreational policies. Despite this shift towards legalization,

police made 608,775 arrests for possession of marijuana, and police made an additional 54,591 arrests for the sale or manufacture of marijuana in 2018 (FBI, 2018). In total, marijuana offenses made up 40% of all drug arrests in 2018. Even in states with legal recreational marijuana, inmates continue to serve time for marijuana possession or distribution. Inmates will continue to serve long sentences due to the War on Drugs' lasting policies without federal action.

After a series of bipartisan compromises in Congress, President Trump signed the *First Step Act of 2018*, which developed a risk and needs assessment system and rehabilitative programs while also increasing the amount of time served inmates can earn (James, 2020). James explains that the act reduced mandatory minimum sentences and increased the severity of crime required to a serious drug felony, defined as offenses which have a maximum of 10 years in prison, rather than the previous trigger of any drug felony. The act also made “drug offenders with minor criminal records eligible for the safety valve provision, which previously applied only to offenders with virtually spotless criminal records” (James, 2020, p. 9). This compassionate release provision allowed inmates to appeal the release decisions or refusals to acknowledge a release request. Notably, the *First Step Act* applied the *Fair Sentencing Act of 2010* retroactively, allowing prisoners to petition the court to reduce sentences for crack cocaine offenses (Gotsch, 2019). Despite bipartisan support, the program had mixed results one year later, as judges approved sentence reductions, but the Department of Justice attempted “to block hundreds of eligible beneficiaries” (para. 2). Increasing access to rehabilitative programs, removing mandatory minimums, compassionate release, and retroactive application will remain important issues to any federal drug policy, but prohibition is the root of the problem. As the public increasingly favors leniency, demands for other drug and criminal justice policy changes will surge as well.

Chapter Two

Political elites have sought to manipulate public opinion in their favor throughout the history of politics, and rhetoric from the War on Drugs had various levels of success. This chapter aims to analyze the public's response to different types of rhetoric and the factors that led Americans to increase concern about drugs and increase consumption of cannabis simultaneously. The chapter will also analyze the rise in acceptance of cannabis and drug users more generally by the American public before moving to theories regarding the future of marijuana politics in the United States.

Public Perceptions

Campaigns that sought to spike public concern about drug use and crime altered the American psyche, leading to stricter penalization of drug possession, use, and distribution. Gallup Trends (2020) analyzed responses to Gallup National Attitudes surveys and found that in 1989, 27% of respondents identified drugs and drug abuse as the nation's most significant concern. Concern declined after that, reaching single digits in 1992 and then rising again to 17% in 1997. However, concern for drug use in the 21st century reached exceptionally low rates, with less than 0.05% of respondents listing drugs as the biggest problem in the nation in 2020. Despite this dramatic shift in public opinion, federal drug laws have changed very little, especially regarding cannabis. Although public concern decreased, it became more challenging to justify stricter drug policies. Still, the policies previously enacted at the federal level have proven long-lasting as public attention moves to other issues.

The public has grown increasingly open to the idea of marijuana legalization. In 1971, as President Nixon announced the War on Drugs, another analysis of Gallup polls found that approximately 12% of Americans supported the full legalization of marijuana (Jones, 2019). The analysis also revealed that despite the War on Drugs' height from 1980 to 1995 and the subsequent rhetoric from President Reagan and President H. W. Bush regarding violent drug users, around a quarter of Americans continued to support marijuana legalization. By the time Colorado legalized recreational marijuana in 2012, 50% of Americans supported legalization. After President Obama announced his administration would allow states to decide on the cannabis issue and President Trump continued that practice, support skyrocketed. By 2019, recreational marijuana use was legal in 10 states, and the number of Gallup respondents supporting legalization had increased to 66%. As five additional states voted to legalize recreational marijuana in November 2020, the number of Americans who supported the legalization of cannabis reached an all-time high of 68% (Brenan, 2020a). The relationship between public opinion and public policy cycled, with rhetoric usually driving concern. Figure 1 illustrates the shift in public support for cannabis legalization over this time period.

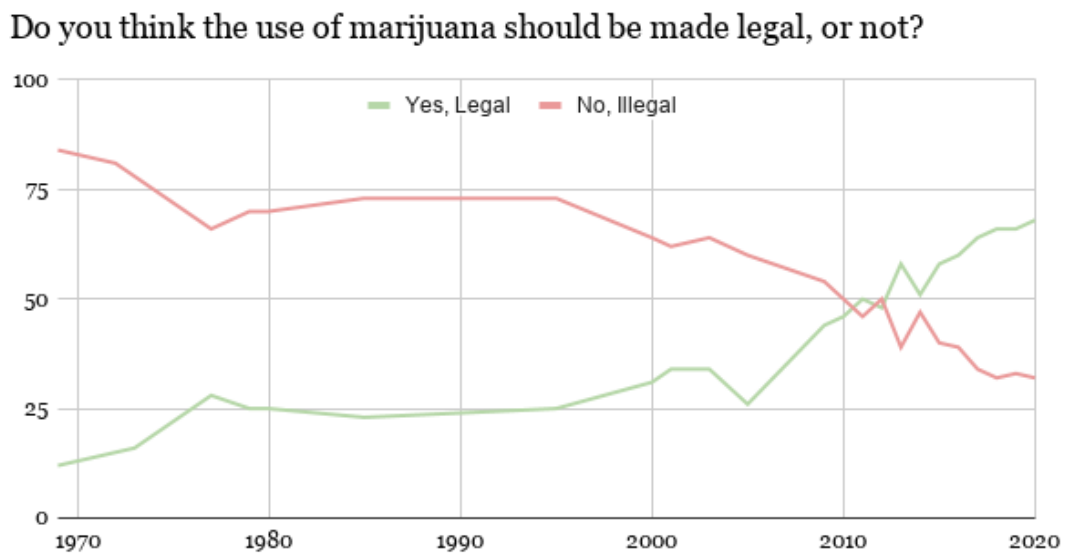


Figure 1: Public Opinion of Marijuana Legalization Over Time, 1970-2020.

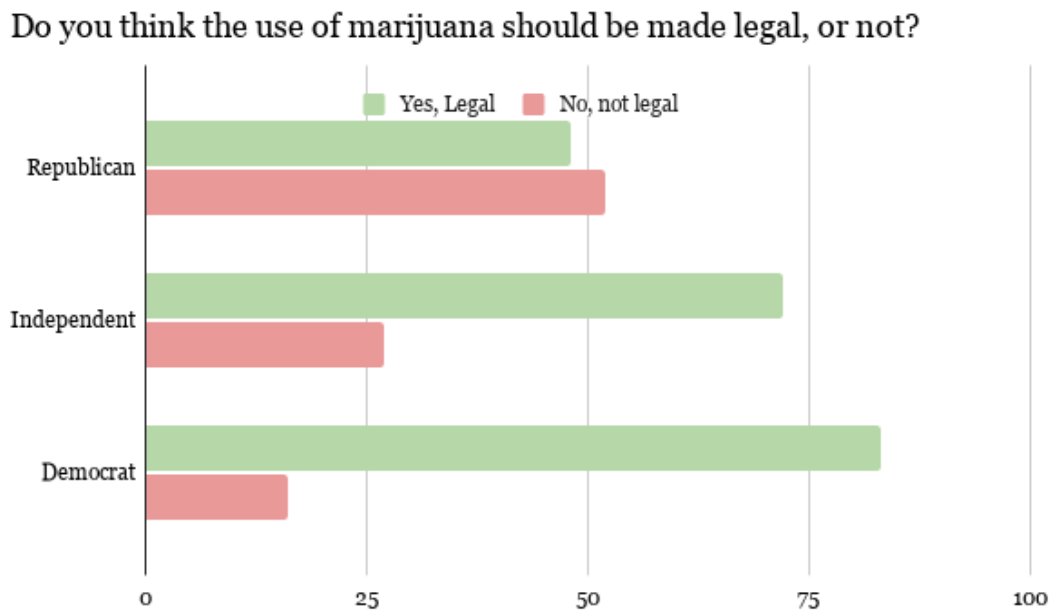
Source: Brenan, 2020a; Jones, 2019

As the drug became more widespread and information became more readily available through the Internet, public opinion began moving policy. 13 of the states who have legalized recreational marijuana have done so through ballot initiatives, illustrating the power of public opinion in cannabis policy today. Throughout the War on Drugs, public opinion followed politicians' rhetoric, while the criminalization strategy became self-fulfilling as Congress enacted stricter laws. Nevertheless, as America prepares to move forward, public opinion and citizen activism now often move cannabis policy directly, leaving policymakers behind.

Today, with several states functioning as experiments for the legalization issue, the public generally supports legalization in some form. In 2019, 91% of U.S. adults supported the legalization of medical marijuana (Daniller, 2019). Despite this, out of the 20 states that have only legalized medical marijuana, 14 have legalized it through their state legislatures. Only six have legalized through ballot initiatives. Another survey suggests 70% of American adults believe smoking marijuana is morally acceptable, while only 28% believe it is morally wrong (Brenan, 2020b). Nevertheless, marijuana remains a Schedule I substance under federal law. The states that have legalized cannabis have been able to do so because President Obama's administration announced that the federal government would not interfere with state cannabis laws. Presidents Trump and Biden continued that practice. Even so, in many states, people face arrest and incarceration daily for marijuana offenses. Public opinion may have dramatic shifts, but public policy can be slow to follow.

While most Americans believe the federal government should legalize cannabis, partisan differences remain an ongoing issue. Bipartisan policymakers created some of the most significant legislation punishing cannabis users. Still, Republican presidents, notably President Nixon and President Reagan, have traditionally utilized heavy rhetoric to turn the public against

marijuana and other drugs and their users. Figure 2 depicts a 2020 analysis of poll responses that revealed 83% of Democrats felt marijuana should be legal, and 16% of Democrats thought it should be illegal (Brenan, 2020a). On the other hand, 48% of Republicans said the use of marijuana should be legal, and 52% of Republicans said it should be illegal. The generational opinion gap remains but not as divided as the partisan gap. 79% of respondents ages 18-29 felt marijuana should be legal, while only 55% of respondents over 65 agreed (Brenan, 2020a). Given that older Americans tend to hold more conservative views and that they lived through the height of the War on Drugs as teenagers to young adults, the generational divide could feed into the partisan one. Despite marijuana’s Schedule I status, public support for the drug continues to increase exponentially, particularly for medical use, but also for recreational use across party lines, if not generations.



*Figure 2: Public Opinion on Marijuana Legalization by Party Affiliation, 2020.
Source: Brenan, 2020a*

One primary concern with marijuana legalization remains the possibility that youth rates of consumption could increase, illustrated by the public’s fear of youthful delinquency that

developed throughout the war on drugs and led to the implementation of many school drug education programs. The consumption of cannabis by adolescents has remained relatively stable since the 1990s, despite more permissive marijuana legislation (CDC, 2017). The perceived ease of access to the drug from youth has declined over the years. Survey responses show a “27% overall reduction in the relative proportion of adolescents ages 12–17—and a 42% reduction among youth ages 12–14—reporting that it would be very easy to obtain marijuana” between 2002 and 2015 (Salas-Wright et al., 2017, p. 777). Additionally, Salas-Wright (2017) found a significant increase in the number of “adolescents who felt it would be probably impossible to obtain marijuana” (p.778). The perceived harmfulness of cannabis by American youth has also declined since 1991, but “younger adolescents in states that pass medical marijuana laws have a lower overall decrease in perceived harmfulness than adolescents in states without medical marijuana laws” (Keyes et al., 2016, p. 2192). Even in states with medical marijuana laws, studies suggest little change in older adolescent attitudes and a trend of decreased perceived accessibility for younger adolescents. If adolescents still perceive cannabis as somewhat, if decreasingly, harmful and believe they would have difficulty obtaining it, the question now becomes how dangerous the American voters believe the drug is and how best to communicate risks to both young and old Americans.

Adolescents, as well as Americans on average, have grown less likely to perceive cannabis as a harmful drug. Still, adults have lost fear at a much more rapid pace than the American youth. Figure 3 illustrates survey results from 2002, which indicated that over 37% of Americans said that there was “great risk” in smoking marijuana once a month, and just over 27% of respondents said there was “moderate risk,” while under ten percent said there was “no risk” (SAMHDA, 2002). However, after a period of increased liberalization of marijuana laws,

Americans increasingly view marijuana as less harmful. In 2019, 23% of Americans still believed there was a “great risk” to smoking marijuana once a month (SAMHDA, 2019). Under 20% of respondents said there was “moderate risk,” and around 25% of respondents believed there was “no risk” to smoking marijuana (SAMHDA, 2019). Even as states have legalized medical and recreational marijuana and public opinion has shifted dramatically in favor of legalization, Americans remain somewhat aware of potential risks.

What level of risk is there in smoking marijuana once a month?

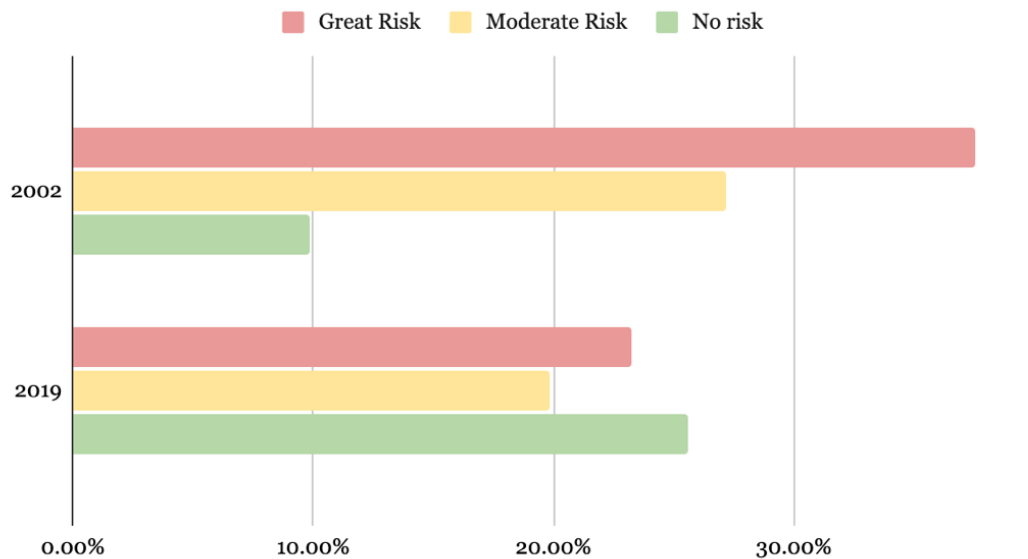


Figure 3: Public Perception of Risk in Smoking Marijuana Once a Month, 2002 vs. 2019. Source: SAMHDA, 2002, 2019

American public opinion has also become more liberal throughout the years concerning punishments for drug offenders. For instance, Americans overwhelmingly do not support jail time for possession of small amounts of cannabis. Doherty et al. (2014) found that 76% of survey respondents in 2014 said that offenders should face no jail time for minor possession of marijuana, as opposed to 22% of respondents that believe they should face jail time. The public also supports less punitive punishments for drug users as a whole. The analysis also found that support for repealing mandatory sentences for non-violent drug offenders rose from 47% in 2001

to 63% in 2014. Americans also favor treatment over punishment. In that same survey, 67% of respondents said that the government should focus more on providing drug offenders treatment. In comparison, 26% of respondents said they should focus more on prosecuting drug users, and seven percent said they do not know. Public opinion moved through “rising levels of punitiveness from the mid-1960s into the 1990s,” but support has declined since then for “tough on crime” policies (Enns, 2014, p. 862). As fears have subsided, the public has grown increasingly sympathetic to drug users, especially those who use cannabis.

Political Issues

The War on Drugs’ rhetoric helped change the public opinion of drugs from a minor problem to a significant national issue quickly. Politicians reached these heights of concern by associating drugs with delinquency, crime, and danger. Using fear-based rhetoric, political leaders could move the conversation to drug abuse so that when public concern reached high enough levels, they could institute stricter penalties for drug users and traffickers. By associating marijuana with other Schedule I drugs, politicians demonized the drug and instilled fear in the public. Rhetoric made the issue salient, and salience helped policymakers make the drug immoral and illegal. Once the public became concerned about drug abuse, they needed someone to deal with the issue. Nixon’s “law and order” strategy sought to fill this gap.

Real representative democracy requires that the government’s policies follow the public opinion because if representatives do not perform well, citizens will vote them out. For many states that have legalized recreational marijuana, public opinion has undoubtedly driven policy as the public proposed and voted for those ballot initiatives. Even in states whose legislatures passed recreational marijuana, and especially in states whose legislatures passed medical marijuana laws, the legislature appeared to follow public opinion on the issue. This interaction

underlies democratic theory, and yet, at the federal level, laws regarding cannabis have remained mostly unchanged despite dramatic shifts in public opinion. Representative democracy requires that the public vote out elected officials who do not perform in the way they expect or desire. Marijuana legalization, however, has failed to gain the saliency necessary to move voters on a large scale.

According to elite persuasion theory, political elites who present arguments to the public and build campaigns on specific issues can set the American public's agenda and direct their constituents toward their position. Research shows that elite persuasion can prove so effective that some voters do not even need to hear politicians make arguments to adopt their representatives' positions. Research suggests that policymakers "can shape constituents' views on issues by merely staking out their positions on issues" (Broockman & Butler, 2017, p. 218). With multiple public campaigns about the dangers of drugs in general and cannabis specifically, the presidents and policymakers who served during the beginning and height of the drug war successfully moved public opinion, allowing for significantly more punitive policies that have proved difficult to change. The political leaders of the time changed the laws by setting drugs high on the public agenda but moving cannabis alone up the ladder of issues on the agenda has proved a much more difficult task.

Policymakers at the federal level currently have little motivation to move on marijuana policy because while the public overwhelmingly supports marijuana, lukewarm support does not produce voters' action. Voters do not consider the illegality of marijuana a top problem facing this country, at least not in the way they did drugs and crime when the current policies began. Federally legalizing and regulating the substance can alleviate some of the burdens these issues take on Americans every day. Still, the matter lacks the salience to drive a campaign.

Marijuana remains a politically risky issue to campaign on because it lacks saliency. By making the communication forefront focus on other major political issues and adding cannabis to that strategy, the already publicly accepted policy change can become politically feasible. By informing voters of how cannabis links to systemic racism, healthcare, the economy, and freedom, supporters of legalization can push for changing votes because of the larger issues at hand that relate. Supporters of medical marijuana exist across the aisle, and the younger generations of voters overwhelmingly support the legalization of cannabis. The topic alone cannot change votes, but by beginning with other bipartisan issues, such as data collection, research, and medical marijuana access, supporters of recreational marijuana can motivate voters for incremental change (Broockman & Butler, 2017; Daniller, 2019; Doherty et al., 2014).

After the election of November 2020, significant changes occurred to the state of marijuana politics in America. Five states presented seven ballot measures to the people, and four of those states legalized recreational marijuana while one legalized medical marijuana (Goins, 2020). Every cannabis-related initiative on the ballot in 2020 passed. Arizona and New Jersey legalized recreational marijuana on top of their existing medical marijuana program. Montana legalized recreational marijuana through the passage of two separate ballot measures. Mississippi legalized marijuana for medical use. South Dakota legalized cannabis in medical and recreational settings in two different ballot measures. American citizens overwhelmingly favor legalization, as shown in the public opinion surveys they complete and their votes at each opportunity.

Chapter Three

The shift in American public opinion regarding cannabis was reflected by and reflective of a significant shift in state level policies which increasingly contradict federal law. The first section of this chapter discusses the reactions of each branch of the federal government to this shift. The analysis then moves to state medical marijuana programs and the strengths and weaknesses prevalent within, followed by a parallel analysis of state recreational marijuana programs.

Changing Landscape

While states took the lead on cannabis policy, the federal government resisted potential changes. The legislature remained mostly stagnant for 50 years regarding the drug. During this time, the Court deferred to Congress on cannabis laws and upheld the *Controlled Substances Act*. Since the Obama administration, the executive branch has ignored the issue, allowing the states to choose their marijuana policy and enforcing federal policy accordingly. Since California became the first state to legalize the use of medical marijuana, the variety of approaches to handling the drug within the United States has expanded to include widespread medical and recreational legalization. Under American federalism, states can serve as “laboratories of democracy,” as U.S. Supreme Court Justice Louis described the process by which states can attempt changes in policy as experiments for other states to understand political ramifications of the changes (*New State Ice Co. v. Liebmann*, 1932). In the case under which the term became popularized, the Court clarifies that a state may not use a political experiment as reasoning for overriding the Constitution. As in this case and countless other cases, the Supremacy Clause, the

clause in the U.S. Constitution that makes the Constitution and the laws of the United States the supreme law of the land (Hames & Ekern, 2019, p. 23) typically prevents states from implementing policies contrary to federal law, even if they intend to use it as an experiment. Nevertheless, medical and recreational marijuana programs continue to function mostly unchallenged within the United States (Pacula & Smart, 2019).

After Congress passed the *Controlled Substance Act of 1970*, they virtually ceased legislation regarding cannabis specifically. As states continued to legalize cannabis in both medical and recreational settings and to experiment with different regulatory options, questions arose about the legality of these state laws, given that Congress made no changes to federal marijuana policy.

According to the Supremacy Clause of the Constitution and subsequent judicial interpretations, when federal and state laws contradict each other, federal law usually takes precedence (Hames & Ekern, 2019, p. 23). Despite this general rule, functioning state marijuana programs remain unchallenged. Legal arguments regarding the constraints of federal preemption and the retention of state police powers could explain the lack of federal action regarding the ever-increasing gap between federal and state cannabis laws. Still, it has been politically unpopular to challenge state laws, even though federal commerce powers have successfully done so. By the time Colorado became the first state to legalize recreational marijuana, almost half of American adults believed the government should legalize recreational marijuana (Jones, 2019). In addition, cannabis advocates have developed talking points to appeal to voters of all political ideologies: state sovereignty, economic growth, personal liberty, medicinal use, mass incarceration, and more. For many Congress members, actively opposing and working against the increasing number of states legalizing some form of cannabis use could pose a serious

political risk. Nevertheless, working to change the *status quo* on cannabis legislation also holds political risks because the older generation remains the most likely to vote and the least likely to support marijuana legalization.

Congress's tradition of inaction continued until December 2020, when the House of Representatives voted to decriminalize cannabis federally. *The Marijuana Opportunity Reinvestment and Expungement (MORE) Act* “would remove marijuana from the national list of scheduled substances and eliminate federal criminal penalties for individuals who possess, manufacture or distribute the drug, effectively leaving states to decide marijuana’s lawfulness” (Porterfield, 2020, para. 2). Analysts predict that the Senate will not pursue the issue during the current session, but 66% of Americans approved of the act as of December 2020 (Porterfield, 2020; Easley, 2020). Whether the action moves through Congress, the vote made history as “the first time either chamber of Congress had ever endorsed the legalization of cannabis” (Edmonson, 2020, para. 2). After decades of inaction, the broad nature of the first proposed federal resolution to the discrepancy between federal and state law signals a possibility for federal legalization in the future through legislative action.

While more states began to reject federal legislation on cannabis, the judiciary responded in *Gonzales v. Raich* (2005) by acknowledging the federal government’s authority over the states regarding medical marijuana programs (Rosenbaum, 2005). After California legalized marijuana for medical use, the Clinton administration began the now-standard practice of avoiding enforcement in states with functioning medical programs. As nine other states legalized medical marijuana, the “Bush Administration adopted a contrary position that state law notwithstanding, any personal possession of marijuana, even for medical reasons and without any evidence of sale or commercial purposes, amounted to a criminal violation of the *Controlled Substances Act*”

(Rosenbaum, 2005, p. 680). Following this shift in federal enforcement policy, agents raided the home of a California medical marijuana patient, seizing plants grown for personal use. Arguments before the Supreme Court centered around the federal government's right to regulate cannabis grown for personal use under the Commerce Clause, which grants Congress the right to regulate interstate commerce. Despite the Court's recent preference for a more limited interpretation of the Commerce Clause, the majority held that "the California medical use law was in direct conflict with the terms of the CSA and thus fell under principles of preemption" (Rosenbaum, 2005, p. 681). Thus, the case essentially upheld the Constitutionality of the *Controlled Substances Act* and reinforced the traditional view of federal supremacy, even in the absence of police powers. Since then, the Court has declined to hear cases regarding marijuana policies in any form, deferring to Congress regarding the legality of cannabis. After President George W. Bush's administration, the federal government largely avoided enforcement of laws restricting marijuana possession in states with medical marijuana policies. Even with the Court's clear ruling that the *Controlled Substances Act* reigned supreme, states continued to legalize cannabis for medical use and eventually for recreational use as well.

President Obama's administration refrained from enforcing laws regarding cannabis in states with functioning programs, but the system remained informal and unsettled as state laws increasingly diverged from federal law. In 2013, one year after Colorado became the first state to legalize recreational marijuana, the Department of Justice issued a memorandum written by Deputy Attorney General James Cole. The memo explained that states which operated regulatory marijuana programs "were promised that the federal government would not seek to eliminate recreational marijuana markets wholesale" (Hansen et al., 2020, p. 3). This announcement did not alter federal law, but like President Obama's prior statements, it solidified the hands-off

approach that the executive branch has followed since that time. In 2018, the Department of Justice under President Trump’s administration issued a memorandum in which Attorney General Jefferson Sessions announced that “previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded” (Sessions, 2018, para. 3). Despite this rhetorical move away from the hands-off approach of the previous administration, the “Trump Justice Department has largely adhered to the Obama Administration’s enforcement priorities” (Firestone, 2020, para. 1). With the executive branch allowing businesses and individuals to comply with state law and avoid any federal penalties for doing so, states worked out policy alternatives and regulatory options on their own.

Existing medical marijuana and recreational marijuana laws within the states can serve as blueprints for plans while Congress reluctantly shifts in the other direction. The Supreme Court and Executive Branch remain unlikely avenues for federal change because of the separation of powers within the United States. Congress creates the laws, and it classified marijuana as a Schedule I drug, with political encouragement from the executive branch. Nevertheless, the legislative branch signaled potential change with the *MORE Act*, following the states that have already paved the way.

State Medical Marijuana Policies

The use of cannabis for its medicinal properties has existed for millennia. Still, most leading public health organizations have publicly refused to endorse medical marijuana or condemn programs, citing the need for more research. The Food and Drug Administration (FDA) has also not approved cannabis for any official medical treatment. In 1985, however, the FDA did approve the drug Marinol, which contains THC, the “psychoactive intoxicating component of cannabis,” for cancer and AIDS patients (FDA, 2020, para. 4). Despite this approval of THC, in

2006, the FDA released “an interagency advisory restating the federal government’s position that ‘smoked marijuana is harmful’ and the FDA has not approved the drug ‘for any condition or disease indication,’” based on “past evaluation” (Eddy, 2010, p. 10). In 2017, the FDA approved another drug containing THC for the same patients as those who qualified for Marinol (FDA, 2020). Epidiolex, a drug containing CBD but lacking THC, made history in 2018 as the first cannabis-derived drug approved by the FDA to treat epilepsy in adults and children over the age of two (FDA, 2020). Even with conflicting information, the public’s support for medical cannabis has grown to almost unanimous levels as states implemented programs and tested boundaries with marijuana regulations.

Notably, both the political propaganda and the law framed marijuana as having no medical usage since Congress classified the drug in 1970, even as President Nixon’s First Commission on Marihuana and Drug Abuse acknowledged marijuana’s potential for medical use. Federal restrictions have also stunted research regarding the safety and effectiveness of the drug. Despite these setbacks, existing literature and recent steps forward in drug approvals offer promising potential. As research and policy continue to develop, the national political landscape has changed rapidly as well. In 2018, former Republican Speaker of the House, John Boehner, announced that he believes “descheduling the drug is needed so that we can do research and allow VA to offer it as a treatment option in the fight against the opioid epidemic that is ravaging our communities” (Horton & Ingraham, 2018, para. 8). As leaders and citizens on both sides of the aisle have increased their support for cannabis at different rates, particularly in the medical realm, policies implemented across the United States also developed to use and regulate the drug differently.

Ballot initiatives remain a popular method of approving both medical and recreational marijuana programs. Citizens passed “seven of the first eight medical marijuana laws” this way (Mallinson & Hannah, 2020, p. 353). As legislators began to realize the popularity of medical marijuana programs and the potential for direct democracy’s success, legislative action became a more politically feasible option for approving medical marijuana programs. Still, ballot initiatives continue to serve as an opportunity to successfully adopt programs by the people in more traditionally conservative states, where legislatures have tended to hesitate on the issue.

Early medical marijuana programs varied in every aspect, from the amount of cannabis a patient could possess, how the patient could obtain cannabis, to the conditions that made one qualify for medical marijuana as a treatment. Eddy (2010) analyzes these differences, noting that California, the first state to legalize cannabis in a medical setting, required “a written or oral recommendation” by a physician for “the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief” (p. 19). Oregon’s original medical marijuana program, on the other hand, required that “physicians advise that marijuana ‘may’ mitigate the symptoms or effects of a debilitating condition” while allowing patients to cultivate their cannabis instead of providing for legal distribution processes (p. 20). Alaska created a “mandatory state registry for medical cannabis users” (p. 20). California, Oregon, and Alaska have expanded their medical marijuana programs at differing rates to include more conditions and alter some regulations before eventually transitioning to recreational programs. A patchwork of rules comprises the drug’s political landscape, from the first states to legalize medical marijuana to the states which have done so within the past year.

This variance appears mostly because the legislation's wording serves a crucial role in maintaining the balance between state medical marijuana programs and the federal government's enforcement arm. Complications with federal law halted Arizona's original medical marijuana program because the 1996 law permitted patients to possess marijuana with a prescription, but "federal law prohibits doctors from prescribing marijuana," creating legal and political barriers to implementing the program (Eddy, 2010, p. 22). The state later legalized medical marijuana in 2010 by a narrow margin before legalizing recreational use in 2020. With so many states continually updating and changing their laws, medical marijuana programs in the United States have tested many different methods of regulating the drug, with varying levels of success, lending knowledge to each other along the way.

Medical marijuana laws serve several purposes for the states which choose to implement them. These programs seek to provide patients with more treatment options and remove employment barriers for patients who choose to use medical marijuana, but without federal support they often fail to do so adequately (Pacula & Smart, 2017). Secondary goals of medical marijuana proponents include mitigating both the harm caused by the War on Drugs and the potential harm caused by illicit or excessive cannabis use by increasing research on the drug (Eddy, 2010). Along these lines, proponents of medical marijuana policies have a broad range of goals for the policy, making it somewhat difficult to measure the policy's ability to meet said goals. Regarding treatment options, medical marijuana laws succeed in their primary purpose of providing another opportunity for patients, but depending on the state and its program, a patient who would qualify for medical marijuana in one state may not in another (Eddy, 2010). Additionally, the lack of research due to federal restrictions make expanding medical access difficult (Pacula & Smart, 2017). Varying policies can lead to questions of equity between

citizens of different states. Some have access to treatment options that others do not without the federal government reconsidering the scheduling of marijuana.

Crime and incarceration remain essential topics of discussion with any level of cannabis policy. For states that have enacted medical marijuana, studies suggest that “even heavy medical marijuana use has a negligible effect on criminality” (Chu & Townsend, 2019, p. 517). Without any evidence to suggest a statistically significant increase in violent or property crime, “the liberalization of marijuana laws is unlikely to result in a substantial social cost from a surge in crime” (Chu & Townsend, 2019, p. 517). Medical marijuana laws typically do not affect incarceration rates, with only one state operating solely a medical marijuana program adding an automatic expungement process, making the vast majority of programs ineffective at addressing the lasting inequality of the War on Drugs (NORML, 2020). While researchers have failed to prove that medical marijuana laws significantly decrease crime, they also failed to prove that they increase crime, despite the fear of crime and violence as the primary purpose of prohibiting cannabis for medical or recreational use in 1970.

The lack of an increase in crime, however, serves as only one positive indicator of the policies’ effectiveness at mitigating any potential harm caused by increases in cannabis use. Other critical indicators include the rate of marijuana dependence or abuse within states with medical marijuana laws and adolescent use rate. Opponents of medical marijuana argue medical marijuana laws lead to increased availability and use of cannabis by adolescents and increased dependency on the drug by adults. Literature investigating cannabis usage patterns after a state’s passage of medical marijuana laws “suggests a potential association between medical marijuana laws implementation and increased current marijuana use among adults aged 21 or above, but not among adolescents and younger adults” (Wen et al., 2015, p. 71). Even as the country

implements more medical and recreational programs, adolescents do not perceive an increase in the availability of marijuana (Salas-Wright et al., 2017). Studies suggest that when states implement medical marijuana laws, the number of adults using the substance increases slightly, but children do not begin to use it more often. Even as adults use the drug at higher rates in states with medical marijuana laws, studies have found that “marijuana abuse/dependence was not more prevalent among marijuana users in these states” (Cerdá et al., 2012, p. 22). Total prohibition of cannabis may decrease use slightly among adults. Still, research suggests that it has little to no effect on adolescents or on marijuana dependence among adults when compared to a medical marijuana program.

Overall, medical marijuana programs have limited scope and efficacy in accomplishing the primary goals and potential reach of cannabis legislation. With medical marijuana laws, qualifying patients have greater freedom to choose their medication. Still, said freedom remains limited so long as the patient lives within a state where they may legally pursue the drug as a treatment. The regulations surrounding qualifying treatments and manners of obtaining cannabis mitigate most potential harm caused by illicit use or abuse of the drug. Despite successes in these effectiveness measures, medical marijuana laws fail to assist those in prison for marijuana offenses, even if they would now qualify for medical marijuana had their arrest occurred later in the state’s legislative history.

Recreational Marijuana Policies

People have used cannabis as both a medicinal and recreational drug for millennia. Still, the federal government only recognizes the drug for its recreational properties, as Schedule I drugs, which by definition have no medical value. Despite marijuana’s federal status, public policy has grown increasingly lenient as public approval increased and federally sponsored anti-

marijuana communications decreased. Use rates correlated with this shift, as “marijuana use in the United States has risen steeply since 2005 throughout all age groups” (Kerr & Yu Ye, 2017, p. 473). When public health communications focused on linking all drug users to crime and cannabis was illegal for all uses in all states, research shows “a decline in use during the 1980s and 1990s” (Kerr & Yu Ye, 2017, p. 478). However, research regarding whether the public’s attitude toward marijuana or public policy led to this increase in cannabis use remains inconclusive, as the two work together to produce rates higher than either would alone. Despite inconclusive scientific evidence or any substantial change in federal policy, states and citizens have entirely changed how they use, possess, cultivate, and distribute marijuana in America. Recreational policies that Americans once viewed as radical ideas have become common, without much resistance from the public or federal government.

As a political issue, the delicate nature of marijuana made grassroots campaigns for ballot initiatives popular for medical marijuana. This method has proven even more popular among recreational states, with 13 of the 17 states that have legalized cannabis through ballot initiatives. President Obama chose to remain silent on the issue when the first two states to legalize marijuana did so during his second campaign, likely because they did so through ballot initiatives and because legal questions about the federal government’s role in marijuana laws remained unclear at the time. Federal and state legislators divided fairly evenly across party lines regarding recreational marijuana, unlike medical marijuana, and that divide has remained wide. Even as 48% of Republicans and 83% of Democrats believed that the federal government should legalize cannabis, only five Republican House members voted for the *MORE Act*, while six Democrats voted against it (Walsh, 2020). Analysts do not expect the Senate to pass the *MORE*

Act solely because of party line affiliations with the issue. Because of this divide, ballot initiatives will likely remain a crucial part of recreational legalization.

In 2012, Colorado and Washington became the first states to legalize cannabis for recreational use. Colorado did so through a ballot initiative for Amendment 64 to the state constitution that removed all penalties for adults who possess marijuana and “requires the state to establish a regulatory structure for retail marijuana” (Co. Const. amend. 64, 2013). Washington passed Initiative 502, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older” (Wa. Initiative 502 §1, 2011). Each chose different regulatory agencies to oversee the program and different licensing standards, but each had similar regulations regarding sales, possession amount, driving under the influence, and taxes. The Colorado state constitutional amendment lists the legislation’s primary goals as “efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom” (Co. Const. art. XVIII, §16, 2013). The Washington Initiative sought to give law enforcement time to focus on violent and property crimes, “generate new state and local tax revenue,” and “take marijuana out of the hands of illegal drug organizations” (Wa. Initiative 502 §1, 2011). Both pieces of legislation describe the new manner of regulating marijuana consumption, possession, and distribution within their state as akin to alcohol regulation, illustrating the radical shift in public opinion as voters increasingly view the two drugs similarly.

While ballot initiatives remain the most successful method of legalizing recreational cannabis, the sweeping changes and often tight time constraints placed on state legislatures and state agencies have produced disorganized starts for recreational programs legalized in this way. In the first several states that adopted recreational marijuana policies, regulatory issues regarding a broad range of agencies and public issues arose quickly. In Colorado, the program has

coordinated efforts between experts in “public and environmental health, transportation, human services (which includes child protective services and behavioral health), health care coverage and access, public safety and law enforcement, revenue, and education” (Ghosh et al., 2016, p. 21). To track, report, and produce solutions for many issues that have arisen with recreational marijuana legalization, state agencies must maintain high collaboration levels. While state agencies have attempted to achieve the needed level of cooperation, “data collection and analysis has not kept pace with the booming industry cannabis” (Yates & Speer, 2018, p. 63). Like many markets that would follow Colorado, the hurried nature of ballot initiative programs and lack of federal infrastructure weakened the program’s organizational success and limited data collection in other areas necessary for proper policy analysis.

Six years after Colorado’s citizens voted to legalize recreational marijuana, the Colorado Department of Public Safety released a report studying the change’s impact. The report notes that “it is difficult to draw conclusions about the potential effects of marijuana legalization and commercialization on public safety, public health, or youth outcomes, and this may always be the case due to the lack of historical data” (Colorado Department of Public Safety, 2018, p.1). Despite these limitations, the data serves as a starting point for growth and improvement within Colorado’s recreational marijuana program. Between 2012 and 2017, marijuana-related arrests decreased as expected, but black people within the state still faced a marijuana arrest rate of nearly double that of white people (Colorado Department of Public Safety, 2018). States must ensure equitable enforcement of any cannabis policy to increase individual freedom and reconcile damage done to communities of color through the War on Drugs.

In addition to disproportionate arrest rates in Colorado, in 2020, 75% of respondents identified as dispensary owners in Colorado were white, while black respondents made up six

percent of both owners and employees (Analytic Insight, 2020). However, the state does not require retail marijuana license holders to provide personal data, so “these percentages should be interpreted with caution” (Analytic Insight, 2020, p. 17). In response to equity concerns, the state added “social equity licenses” and gave the governor authority to grant wide pardons for those convicted of certain marijuana offenses in June 2020 (Awad, 2020). Eight years after Colorado’s citizens legalized cannabis for recreational use, the communities most impacted by cannabis prohibition began to see movement towards reconciliation, with results of these policies remaining undetermined in the state’s saturated recreational marijuana industry.

In 2019, Illinois became the first state to legalize recreational marijuana markets through the state legislature rather than through a ballot initiative and the *Cannabis Regulation and Tax Act*. Despite the law having many similarities to previously enacted recreational programs, the legislature had time to sort through some potential efficiency and equity issues before the bill became law. The bill included responsibilities for multiple public agencies to regulate advertising, packaging, quality control, and licensing functions. The law also allowed for a Cannabis Regulation Oversight Officer in the Governor’s Office and a Community College Cannabis Vocational Training Pilot Program. Additionally, Illinois addressed equity issues resulting from the lasting effects of the War on Drugs in their initial recreational policy, rather than later as select other jurisdictions have done. The law allowed for automatic expungements for marijuana convictions that involved less than the now legally permissible amount. Owners of cannabis dispensaries cannot receive federal loans, so Illinois also allowed for a low-interest loan program for “qualified ‘social equity applicants’ to help defray the start-up costs associated” with starting a cannabis business. Illinois designed the program to help communities that the War on Drugs disproportionately impacted, but the delay allowed medical marijuana producers to

have a head start in the industry (Schuba, 2020). Because of this delay, Illinois has “not a single licensed marijuana business that counts a person of color as a majority owner,” despite the bill’s language promoting equity (Schuba, 2020, para. 3). Illinois experienced a more organized rollout of recreational marijuana than states that legalized it through ballot initiatives, but it ultimately fell short of addressing equity issues surrounding cannabis.

Despite the various equity concerns that require further attention for new legislation to begin the process of reconciling long-lasting damage from prohibition, research suggests that fears of increasing rates of traffic incidents and fatalities due to legalization are unfounded. Nationally, tests for the “presence of marijuana rose from 8.6% in 2007 to 12.6% in 2014” in nighttime weekend drivers (Bloch, 2020, para. 1). Roadside tests for marijuana impairment have relatively unreliable results, however, because “a high concentration may significantly impair one person but not another,” and cannabis can “stay in the system for weeks, thus appearing in roadside tests while no longer causing impairment” (Bloch, 2020, para. 2). These limitations have led to various policies for driving under the influence of marijuana. Some states have continued zero-tolerance policies for any level of cannabis in a person’s system while driving, and some states have set *per se* testing limits that would indicate impairment. Still, other states, namely Colorado, allow “drivers who are charged to introduce an affirmative defense to show that despite having tested at or above the legal limit, they were not impaired” (Bloch, 2020, para. 7). Despite difficulty with testing drivers, legalization has had a negligible effect on traffic fatalities. In Colorado and other states that have legalized recreational marijuana, “traffic fatalities decreased following the institution of medical marijuana laws and increased following legalization,” however that increase “lasted no more than a year, averaged an additional 1.1 fatalities per million, and mirrored changes in states without legalization” (Leyton, 2019, p. 291).

Without evidence to show increasing fatalities but increasing rates of drivers testing positive for cannabis in their systems, states will continue developing better testing mechanisms to determine whether a driver is currently impaired. Current research suggests that the roads' safety in states with recreational marijuana remains mostly unchanged, as does the communities' safety within these states.

As noted in both Colorado's and Washington's laws, proponents of recreational policies believed that "legalization would allow police agencies to prioritize other activities, which in turn would increase clearance rates and reduce crime" (Makin et al., 2018, p. 47). Still, the rhetoric from the War on Drugs connecting cannabis users with criminals lingered, contributing to the early hesitation to legalization. Despite this theoretical connection, studies "suggest that marijuana legalization and sales have had minimal to no effect on major crimes in Colorado or Washington" (Lu et al., 2019, p. 1). Some research results from Colorado even suggest that "the legalization of marijuana influenced police outcomes" (Makin et al., 2018, p. 47) and demonstrate "significant crime reductions in neighborhoods that receive marijuana dispensaries" (Brinkman & Mok-Lamme, 2019, p. 17). While the data remains limited and expanding, preliminary studies do not support the link between criminality and cannabis usage referenced frequently by politicians that led to the drug's listing as Schedule I in the *Controlled Substances Act*.

While researchers have not linked recreational marijuana policies to the severe public health and safety outcomes that opponents of the measures and federal policy suggested that they may, the programs have had demonstrably positive effects on the economies of the states which have enacted the policies. States that have legalized have collected substantial and increasing tax revenue from the marijuana industry, and unemployment rates remain low as the industry brings

jobs to these areas. By November 2020, Colorado had earned \$355,097,017 in marijuana tax revenue for that year and a total of \$1,563,063,859 since 2014, when the program began functioning (Colorado Department of Revenue, 2020). The state funnels these taxes into the state's marijuana tax fund, which funds health care, substance abuse prevention and treatment programs, public health initiatives, law enforcement, public school initiatives, and general legislative funds. In addition to raising state tax revenue substantially, recreational marijuana and the spillover effects of the policy exacerbated by marijuana tourism have brought jobs and businesses to the state. By measuring both direct and indirect impacts of cannabis on the economy, researchers estimate that "in 2015, the legal marijuana industry in Colorado created more than 18,000 new full-time jobs and generated \$2.4 billion in economic activity" (Ingraham, 2016, para. 1). Without proven adverse effects on society, the positive impact on freedom and the economy has led to a boom of states legalizing cannabis.

In November 2020, South Dakota made history as the first state to legalize cannabis for both medical and recreational purposes simultaneously through ballot initiatives. Despite opposition from the state's governor and legislature, the measure for "medical passed with seventy percent, and it was about fifty-three percent for recreational" (Kolpack, 2020, para. 7). Most of the South Dakota law provisions echoed restrictions made by other states that had success in other states. It gave the State Department of Revenue the responsibility to "license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article" (Ravnsborg, 2020, p. 4). In addition, the bill gave the state legislature through 2022 to create fully-functional recreational and medical marijuana programs. The bill lacked provisions requiring public health and safety data collection, but the legislature will likely assign those functions later. It remains unknown whether states will

manage to reliably track their recreational marijuana programs' successes and failures, especially considering the difficulties in obtaining accurate historical data for comparison. Without rigorous state budget considerations for data collection and analysis specifically or federal infrastructure to require and collect data, some aspects of marijuana legalization remain unclear.

Despite the limited nature of the literature on the overall effects of legalizing cannabis for recreational purposes, marijuana legalization increases in popularity in the United States. Oregon has also decriminalized possession of small amounts of street drugs “including heroin, cocaine, methamphetamine, ecstasy, LSD, psilocybin, methadone and oxycodone” (Crombie, 2020, para. 16) and legalizing “regulated use of psychedelic mushrooms in a therapeutic setting” for adults (Acker, 2020, para. 4). Both policies passed through ballot initiatives, Measure 109 and Measure 110, in November 2020. In legalizing psychedelic mushrooms, the state did not place them on the same level as their recreational marijuana program; instead, Measure 109 requires “psilocybin to be stored and administered at licensed facilities” (Acker, 2020, para. 10). Additionally, while Oregon has now decriminalized many drugs through Measure 110, possession of them remains a civil infraction, similar to a traffic infraction, carrying a fine, or the choice of substance abuse screening (Crombie, 2020). Measure 110 also reduces punishments for felony drug possession cases to misdemeanor status and “funnels millions in marijuana tax revenue toward what it calls Addiction Recovery Centers,” establishing a fund for “treatment, housing or other programs designed to address addiction” (Crombie, 2020, para. 18). While these measures may prove to achieve their goals of decreasing inequality and incarceration while maintaining or decreasing drug abuse rates, they also demonstrate the extent to which the public, particularly in Oregon, has changed their views on drugs and drug offenders.

Medical marijuana laws fall short in the same arena that currently enacted state recreational marijuana laws also fail, albeit not as severely. The War on Drugs decimated communities, and unfortunately, those impacted even only through marijuana-related issues still struggle to gain equal footing in medical and recreational states (Colorado Department of Public Safety, 2018; NORML, 2020). Automatic expungements for marijuana-related crimes continue to become more common, but federal offenders in these communities still face collateral consequences (Il. H.B. 1438). States have failed to support communities of color to the extent necessary to begin to mitigate the harm done to them, as white people overwhelmingly benefit more financially from medical and recreational marijuana laws (Analytic Insight, 2020; Schuba, 2020). State-by-state marijuana policies will never accomplish their goal of equitable treatment regarding cannabis entirely. The collateral damage from years of strict prohibition on a federal and state level requires both federal and state resources to solve (Thompson, 2017; Lampe, 2021). Also, obtaining complete and accurate data and analysis regarding the effects of legalization and the efficiency and effectiveness of different types of regulations will likely require federal infrastructure and funding (NASEM, 2017). Research into better testing methods for impairment and analysis into cannabis's health and safety, in all forms, also needs federal funding (Lampe, 2021). Despite these drawbacks, recreational marijuana laws can increase equality, freedom, financial security for the state, and the number of other crimes that police can solve if appropriately implemented and tracked (Colorado Department of Public Safety, 2018; Colorado Department of Revenue, 2020; Ingraham, 2016; Makin et al., 2018).

Chapter Four

The following chapter looks to the future of marijuana politics in the United States, arguing that states require federal intervention for their medical and recreational marijuana policies to function adequately. The first section addresses the areas in which intervention is most needed. The second section analyzes previous political rhetoric and communication tactics, while the third discusses the reality of cannabis use and scientific understanding both during the time of the rhetoric and today as a result of it. Finally, the chapter proposes an ideal federal policy to comprehensively address weaknesses in state programs and the *MORE Act* in implementation, racial justice, automatic expungements, collateral consequences, data collection, research supply, research funding, and communication.

Federal Intervention Needed

According to limited data from states that have legalized, the legalization of recreational marijuana brought about no substantial negative societal impacts. Patients experience greater freedom of choice when deciding to use cannabis as an experimental treatment. Police have more time to focus on other crimes, resulting in higher clearance rates (Makin et al., 2018). Though drivers increasingly test positive for marijuana on the road, positive tests do not always indicate active impairment, and traffic fatalities remain relatively stable (Bloch, 2020). Research suggests no increase in major crimes for states with recreational marijuana, and even a possible crime rate decrease in neighborhoods with dispensaries (Brinkman & Mok-Lamme, 2019; Lu et al., 2019; Makin et al., 2018). The number of adults in the United States who use cannabis has increased slightly, but the number of youths using the drug nationally has decreased somewhat since states

began legalization (CDC, 2017). Recreational marijuana has also contributed to large increases in tax revenue, substantial business opportunities, and an influx of employment opportunities in states that have legalized it (Colorado Department of Revenue, 2020, Ingraham, 2016). Stakeholders in states that have legalized recreational marijuana generally consider these programs successful.

Despite the successes these programs have experienced in criminal justice and economic outcomes from recreational marijuana, most recreational states have failed to utilize their laws to increase equality and responsibly move forward (Schuba, 2020; Analytic Insight, 2020). Without federal funding and fewer scientific research restrictions regarding cannabis, States will continue to regulate a product they do not fully understand. Research regarding alternative uses of cannabis and different frequencies of cannabis use needs support, and it currently faces significant barriers from the federal government (NASEM, 2017; Lampe, 2021). States also have scattered data regarding the public concern, perception of harm, health incidents, traffic incidents, criminal justice outcomes, and demographic information from people in the cannabis industry (Analytic Insight, 2020; Colorado Department of Public Safety, 2018; Keyes et al., 2016; Yates & Speer, 2018). The federal government has ignored a rapidly growing industry. Communication strategies have been confusing to both adults and children about the risks and benefits of consuming cannabis. States, individuals, and corporations have benefited economically from recreational marijuana, but policies continue to exclude people of color from benefitting, illustrating another need for federal intervention (Analytic Insight, 2020; Colorado Department of Revenue, 2020; Ingraham, 2016; Schuba, 2020). Criminal justice outcomes continue to disproportionately favor white defendants in all cases, including for marijuana offenses, and neither state nor federal level reforms to only cannabis laws can address that

(ACLU, 2020). However, federal recreational marijuana laws can alleviate disparities in outcomes in both the criminal justice system and the cannabis market.

States have attempted to address some of these failures, but most attempts have fallen short of a solution. States are incapable of changing federal research procedures. Some have tried to maintain accurate data collection to track the effects of legalization. Colorado added support for businesses in suffering communities, but only after established medical marijuana providers had saturated the market (Awad, 2020, Analytic Insight, 2020). Illinois provided a loophole for established medical marijuana providers to get a head start in the recreational market (Schuba, 2020). Still, the state offered an automatic expungement process once the state legalized recreational marijuana (The Cannabis Regulation and Tax Act, 2019). Repairing damages done by prohibition begins with federal support for affected communities, allowing for accurate tracking, analysis, and understanding of the effects of state-by-state recreational marijuana legalization. State programs have had successes, but their failures lie within the federal government's unwillingness to deviate from policies produced by the rhetoric from the War on Drugs.

Previous Communications

In the early 1970s, along with President Nixon's national campaign strategy, local agencies and other groups promoted federal anti-drug propaganda efforts. Siff (2018) analyzed this strategy, discovering that during this time, "pamphlets warning parents against the 'evil' and 'menace' of 'unpredictable' marijuana and stamped with the police department's shield" circulated in Los Angeles, with similar messages reaching communities across the country (pp. 184-185). Advertising agencies produced these public service announcements with haste, resulting in materials that appeared poorly researched, leading officials to complain "that

exaggerations in earlier anti-drug propaganda had, in effect, poisoned the well” (p. 185). After the public rejected scare tactics and exaggeration, national advertisements became gentler, and some even “acknowledged that common health fears about marijuana were unproven—but marijuana possession was nonetheless a federal felony, and a conviction could ruin one’s future” (p. 185). Messaging concerning the health effects of cannabis has rarely influenced individual action, especially as messages conflict.

The Ad Council, which consisted of multiple government-sponsored advertising agencies, decided to use the tagline, “Why Do You Think They Call It Dope?” to effectively communicate the risks of marijuana to youth, as further explained by Siff (2018). The campaign found that by using the term “dope” as “a broad-spectrum term for drugs, and in testing the theme line with kids, the effect was excellent” (p. 204). President Nixon had a “very positive, enthusiastic, and encouraging” reaction to this new campaign (p. 206). Because the *Controlled Substances Act* classified the drugs featured together, the federal government’s message became clear: marijuana is analogous to cocaine, heroin, and various pills. Conflicting advertisements were displayed across the country, often full of misinformation. As a result, marijuana use among young adults and teenagers grew while public concern also increased (Siff, 2018). If President Nixon’s administration sought to reduce marijuana consumption by young Americans, it failed miserably; however, if the campaign sought to lay the foundation for severe parental paranoia and connect cannabis with criminality, it succeeded.

President Ford used a softer approach rhetorically but maintained President Nixon’s policies. President Carter’s more lenient views on marijuana offenses never became policy. President Reagan famously attacked Carter’s policies on the campaign trail, declaring that “marijuana, pot, grass, whatever you want to call it, is probably the most dangerous drug in the

United States and we haven't begun to find out all of the ill-effects. But they are permanent ill-effects” (Aggarwal, 2013, para. 1). With younger generations rejecting the scare tactics and the knowledge that his voting base increasingly associated marijuana use with criminality, the Reagan administration created a campaign against drugs based on personal morality. Taking a broad approach similar to the Nixon administration’s later communications, President Reagan’s rhetoric blurred the lines between cannabis and other drugs using the tagline, “Just Say No” (Aggarwal, 2013). By implying a national decay of morality, and with crime and drug use rates spiking across the country, President Reagan offered individual morality as the solution to the American people’s fears while heightening them at the same time. Reagan consistently exaggerated medical evidence against cannabis throughout his presidency, ignoring decriminalization arguments and insisting that severe drug abuse had spread into communities across America. This strategy worked, leading to 27% of Americans listing drugs and drug abuse as the most serious problem in America in 1989 (Gallup Trends, 2012). The broad nature of the “Just Say No” campaign blurred lines between substances while blaming systemic failures on individual responsibility, leading to permanent consequences for the country’s politics and policies regarding marijuana.

President George H.W. Bush implemented policies against cannabis but rarely spoke about the topic. On the other hand, Waxman (2017) notes that President Clinton once admitted to smoking marijuana in England but famously said he “didn’t inhale” (para. 2). Despite this admission, he championed the *Violent Crime Control and Law Enforcement Act of 1994*, which exacerbated the state of the War on Drugs. President George W. Bush also had a “wild lifestyle” before entering politics and reportedly used cocaine during this time (para. 11). When asked about marijuana, however, he avoided the question. According to a leaked audio recording, he

said he did not want a kid to say, “President Bush tried marijuana, I think I will.” (para. 12). Whether President Bush admitted to marijuana use, and even as his administration sought to restrict the legalization of medical marijuana, President Clinton’s shy admission in 1992 altered the status quo regarding presidents and public knowledge of drug use.

President Obama openly discussed his previous drug use in his second memoir, published in 1995, two years before entering politics as an Illinois state senator. 24 years after he wrote that “Pot had helped, and booze; maybe a little blow when you could afford it” (Waxman, 2017, para. 13) regarding his relationship with his father, he became President of the United States. President Trump avoided the issue almost entirely, giving and taking lukewarm support from both sides throughout his tenure. President Biden supported the *Violent Crime Control and Law Enforcement Act* as a Senator, often describing marijuana as a “gateway drug” before his presidential run. However, on the campaign trail, he called for decriminalizing cannabis and expunging records for those “convicted of anything having to do with marijuana possession or use” (Angell, 2020, para. 16). While presidential rhetoric changed, public health communications rarely reflected the shift, and reality rarely reflected the propaganda used to enact and maintain long-lasting policies.

Reality

Despite the scare tactics and propaganda warning of addiction early in the War on Drugs, the survey delivered to President Nixon revealed that 41% of adults and 45% of youth ages 12 to 17 “who have ever used marijuana reported that they no longer use the drug” (Shafer, 1972, pp. 40-41). While abuse of the drug remained rare, an increasing percentage of Americans tried marijuana. During President Nixon’s first term, the number of Americans who said they had tried marijuana at some point rose by eight percent (Robison, 2002). The public grew increasingly

open to the liberalization of marijuana laws as experimentation among youth became more popular, and scare tactics often viewed as exaggeration, especially with President Ford's softened rhetoric and President Carter's acceptance.

In the 1980s, America experienced an increase in cocaine use and abuse, which "contributed to the reaction against marijuana law reform and helped refocus the public dialogue on bolstering drug law enforcement in general" (Slaughter, 1988, p. 442). Even as drug use declined and leveled off in the mid-1980s, the public called for increased punishments for offenders to protect American morality and youth from the drug (Slaughter, 1988). Just as the rhetorical strategy employed by prior executive branches made few effects on youth consumption rates, the criminalization strategy also failed to produce meaningful changes in youth behavior. As the number of those arrested and incarcerated increased exponentially from 1990 to 2002, "daily use of marijuana by high school seniors nearly tripled from 2.2% to 6%," the same rate of use as high school seniors in 1975 (King & Mauer, 2006, p. 4). The rhetoric of increasing demoralization during the War on Drugs created long-lasting policies that increasingly incarcerated people of color, but the messaging failed to decrease drug use. Cannabis use has increased in the United States since the early 2000s, particularly among states with recreational and medical marijuana policies, but surveys estimate the usage range hovered at 13.9% in 2016 (SAMHSA, 2017). Americans increasingly view the use of recreational marijuana as akin to that of alcohol and tobacco. While public perception of cannabis use has shifted drastically, the United States systematically incarcerates nonviolent marijuana offenders.

Relying on morality to criminalize cannabis users became the primary communication strategy for President Reagan's lasting "Just Say No" campaign and communications that followed. Even the data presented to President Nixon by the Shafer Commission in 1972,

however, “dismissed the theory that marijuana use caused violent crime and juvenile delinquency,” as do modern studies regarding the effects of legalization (Brinkman and Mok-Lamme, 2019; Lu et al., 2019; Makin et al., 2018; Slaughter, 1988, p. 423). Despite evidence that violent crime does not correlate with cannabis use alone, President Nixon and his successors continued to criminalize and demoralize marijuana offenders. The total number of arrests “by local, state and federal law enforcement officers soared from 20,000 in 1965 to 190,000 in 1970 and doubled again to 421,000 by 1973” and remained above 400,000 into the mid-1980s (Slaughter, 1988, pp. 420-421).

Even as America moved into a new era with the president who “didn’t inhale,” marijuana and drug arrests continued to skyrocket. Data shows that from 1990 to 2002, “the total number of marijuana arrests more than doubled from 327,000 to 697,000, an increase of 113%” (King and Mauer, 2006, p. 3). While drug arrests in general increased by 41% nationally, “of the 450,000 increase in arrests for drugs, 82.4% was solely from marijuana arrests, and 78.7% from marijuana possession arrests” (King and Mauer, 2006, p. 3). These arrest rates demonstrate that while the War on Drugs’ propaganda succeeded in demoralizing and criminalizing drug users, it failed to reduce drug use in America. Instead, “arrests have grown at a rapid rate while use patterns fluctuate but remain near the same level” (King and Mauer, 2006, p. 4). Even though two-thirds of the country supports legalization, “in 2018 alone, there were an estimated 692,965 marijuana arrests — the vast majority of which (89.6%) were for possession” (ACLU, 2020, p. 21). Between 2010 and 2018, marijuana arrests never dropped below 500,000 nationally (ACLU, 2020, p. 21). Americans continue to adapt to a new set of societal rules regarding marijuana, marijuana offenders, and drug offenders generally, but the criminal justice system and federal policy refuse to reflect the shift.

By remaining in the past on cannabis policy, the federal government chooses to ignore one of the harsh realities of racial disparity in the criminal justice system. Ehrlichman spoke about the Nixon administration's desire to criminalize and disenfranchise "the antiwar left and black people," (Baum, 2016, para. 2) and that desire has become a grim reality for black people across America. During the 1990s, law enforcement often focused on "low-level marijuana offenders," which led to disproportionate policing of black communities, and this issue continues to contribute heavily to large gaps in arrest rates for black and white people (ACLU, 2020, p. 43; King & Mauer, 2006, p. 5).

Surveys by the Substance Abuse and Mental Health Services Administration have shown that black and white populations in America use cannabis at comparable rates, as illustrated by Figure 4. 50.7% of white survey respondents had tried marijuana in their lifetime, as compared to 42.4% of black survey respondents (ACLU, 2020). Nevertheless, in 2018, black people were 3.64 times more likely to be arrested for marijuana possession than white people nationally, even as arrests for marijuana possession have declined as a whole (ACLU, 2020, p. 29). Figure 5 illustrates the extent of this disparity from 2010 to 2018. Racial disparities also exist at many other points in the criminal justice system for drug offenders, increasing the harm done to Black and Latino communities by over-policing and criminalizing cannabis exponentially (ACLU, 2020; Omori, 2018). The culmination of these disparities results in "black men receiving drug sentences that are 13.1 percent longer than sentences imposed for White men and Latinos being nearly 6.5 times more likely to receive a Federal sentence for cannabis possession than non-Hispanic Whites" (H.R. 3884, 116th Congress, 2020). These disproportionate outcomes have collateral consequences even after incarceration, furthering the damage done to communities of color through prohibition.

Usage of Marijuana For Ages 12+ (2018)

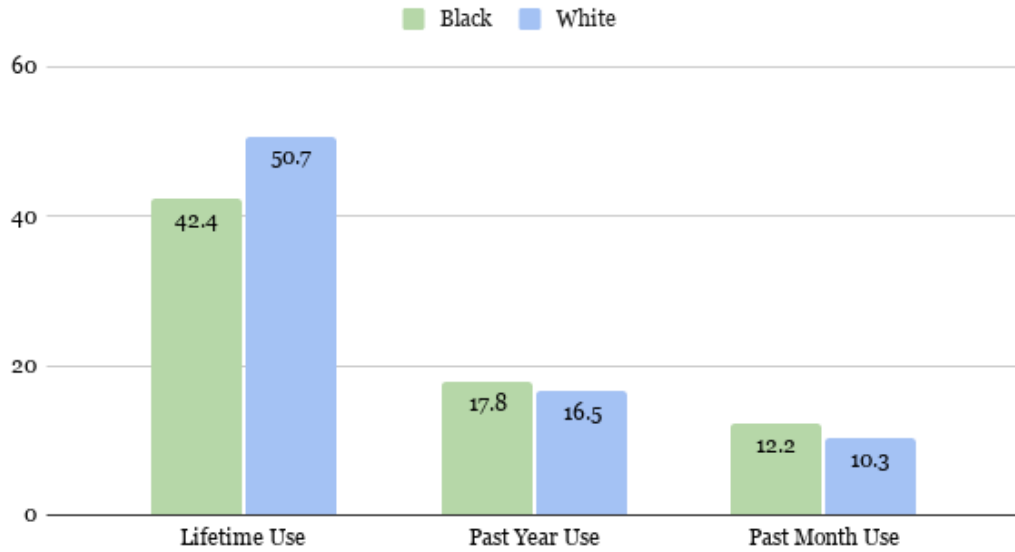


Figure 4: Usage of marijuana for ages 12+, 2018.
Source: ACLU, 2020

Marijuana Possession (MP) Arrest Rates per 100k

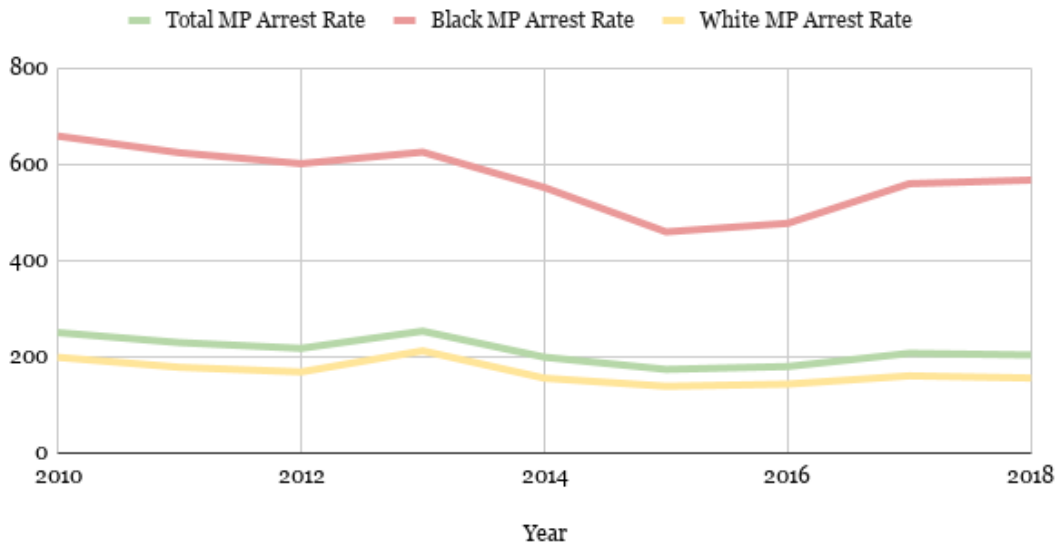


Figure 5: Marijuana possession rates per 100k by race, 2010-2018.
Source: ACLU, 2020.

The current state of extreme racial inequality under the criminal justice system requires a level of change that legalizing recreational marijuana cannot accomplish, even if done on the federal level. However, the federal government still has a responsibility to begin the process of repairing communities of color. African American people face higher arrest and incarceration

rates for marijuana-related offenses and once arrested, offenders face hurdles in the legal cannabis industry. Legal cannabis markets “often include a ‘good moral character’ clause,” which usually bars those with criminal records from seeking employment in the legal marijuana industry (Thompson, 2017, p. 126). Marijuana offenses can also “limit individuals’ eligibility for federal student financial aid and other benefits” (Lampe, 2021, p. 27). For those incarcerated for marijuana offenses, very few states include automatic expungement processes. Others simply expanded their policy to allow for a more straightforward expungement process, but that often requires access to legal representation.

In the last decade, change to the United States’ drug policy has become increasingly popular, as evidenced by the radical shift in state cannabis policies. On the national level, the *Fair Sentencing Act of 2010* diminished but did not eliminate the difference in crack and powder cocaine sentencing guidelines. The *First Step Act of 2018* applied that change retroactively, allowed prisoners requesting compassionate release to appeal, reduced mandatory minimums, and expanded their eligibility for release. Repairing the disparity caused by the prohibition of cannabis begins with a uniform policy of automatic expungements and pardons applied retroactively, but it does not end there.

Both medical and recreational marijuana have benefited the economies of the states that have implemented the policies. In 2019, medical and recreational marijuana stores were a 13.6-billion-dollar industry, and the medical and recreational marijuana growing industry collected over 8.1 billion dollars in revenue (Fernandez, 2019a, Fernandez, 2019b). This revenue has helped create jobs and generate tax income (Colorado Department of Revenue, 2020, Ingraham, 2016, Fernandez 2019a, Fernandez 2019b). States failed to produce an equitable cannabis market where people of color can participate and profit, despite an overall benefit to the economy. In

Illinois, the delay in social equity programming has led to no cannabis businesses with a person of color as a majority owner (Schuba, 2020). Also, the lack of mandatory reporting for these businesses confuses the evaluation of social equity aspects of the bill. As the *MORE Act* notes, “fewer than one-fifth of cannabis business owners identify as minorities and only approximately 4 percent are black” (H.R. 3884, 116th Congress, 2020). Without federal intervention, this industry will fail to seize an opportunity to help support the communities that have suffered the most from the War on Drugs.

The cannabis industry has various data collection gaps, lacking standards in evaluating the economic and social concerns and evaluating public health indicators and medical research. Researchers studying cannabis products “must navigate a series of review processes that may involve the National Institute on Drug Abuse (NIDA), the U.S. Food and Drug Administration (FDA), the U.S. Drug Enforcement Administration (DEA), institutional review boards, offices, or departments in state government, state boards of medical examiners, the researcher's home institution, and potential funders” (National Academies of Sciences, Engineering, and Medicine (NASEM), 2017, p. 378). The drug’s classification as Schedule I in 1970 resulted in these enhanced security regulations. Today, they lead to less active research regarding the safety and use of the most widely used drug in America. Researchers struggle to obtain both approval and funding for general research that lacks a clear public health purpose, as “less than one-fifth of cannabinoid research funded by NIDA in the fiscal year 2015 concerns the therapeutic properties of cannabinoids” (NASEM, 2017, p. 382).

Suppose they obtain approval from all of the necessary government agencies. In that case, cannabis researchers face a regulated supply chain, with all of the cannabis for research funded by the NIDA, cultivated at the University of Mississippi, and often frozen for later

analysis. This process results in a research product of a “lower potency than cannabis sold in state-regulated markets” (NASEM, 2017, p. 383). Researchers also struggle to conduct studies on alternative methods of consuming cannabis, such as edibles or waxes, because of the lack of available federal sources. Federal law also “limits the use of federal funding for such research,” excluding all Schedule I drugs unless “there is significant medical evidence of a therapeutic advantage” or ongoing “federally sponsored clinical trials” researching said advantage (Lampe, 2021, p. 31). The complexity of obtaining marijuana for research purposes and the lack of federal funding available to researchers for broader research on the drug’s therapeutic uses poses a severe threat to our understanding of society’s effect by prohibition or legalization.

Ideal Strategy

Successful cannabis legalization can benefit researchers, business owners, communities of color, taxpayers, state economies, recreational marijuana users, police departments, medical marijuana patients, marijuana offenders, and society. Undeniably, the use of cannabis poses some risk to individuals, but experiments of our democracy and others worldwide have failed to produce evidence of risk to society as a whole. When drug use declined in the 1980s, the trend reflected an underlying truth in Reagan’s rhetoric: marijuana was illegal, and one would likely face incarceration for possession of the substance. Americans today understand a simple underlying reality in the country’s myriad of regulations: even legal substances have risks, like alcohol or tobacco, and cannabis has medical benefits as well.

Congress must legalize recreational marijuana. Prohibition has caused numerous adverse outcomes for countless individuals, and America needs to take this small step toward repairing the damage done by the War on Drugs. As more states legalize, recreational marijuana policies increasingly positively impact the states’ economy and people. Over two-thirds of the country

supports legalization, and only nine percent of Americans do not support medical marijuana legalization (Daniller, 2019). The Senate has the opportunity to pass the *MORE Act*, but if the bill fails as predicted, effective cannabis regulation will still require Congressional action. Since 2014, Congress has passed “an appropriations rider prohibiting DOJ from using taxpayer funds to prevent states from implementing” medical marijuana programs annually. Still, they have not addressed recreational programs (Lampe, 2021, p. 26). Fueled by executive rhetoric and rising drug use, Congress chose to criminalize addicts, recreational users, and medical users alike. Congress must fix the issue, but they have the opportunity to use state policies as blueprints and to examine the most effective approaches available.

The *MORE Act* aims to “decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes” (H.R. 3884, 116th Congress, 2020). The *Act* first acknowledges that “the communities that have been most harmed by cannabis prohibition are benefiting the least from the legal marijuana marketplace” (H.R. 3884, 116th Congress, 2020). It also recognizes the potential economic benefits of legalizing cannabis for recreational use, as well as the costs of prohibition. The bill calls for the complete decriminalization of marijuana on the federal level, requires demographic data reporting for business owners and employees, creates an Opportunity Trust Fund for investing into communities of color and expungement costs, imposes federal taxes on cannabis, regulates packaging and testing, establishes a Cannabis Justice Office, has an equitable grant licensing program, includes automatic expungements for marijuana offenses, and creates other regulatory rules (H.R. 3884, 116th Congress, 2020). By decriminalizing cannabis, the *MORE Act* would release thousands of federal inmates and reduce the future prison population (CBO, 2020). The

MORE Act presents an opportunity to move forward as a country, but communication details will remain crucial to any recreational marijuana program's success.

The *MORE Act* does not regulate communications but gives the Secretary of Health and Human Services one year to “address the regulation, safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds” (H.R. 3884, 116th Congress, 2020). It also lacks a direct plan for proper public health communication and places the responsibility of developing one on the Director of the Cannabis Justice Office within the Community Reinvestment Grant Program (H.R. 3884, 116th Congress, 2020). Overall, the House has presented a bill to the Senate that addresses some issues that state legalization fails to, but gaps for future administrative rules remain.

Congress will inevitably write new laws regarding cannabis in the future, and the *MORE Act* sets the stage for radical change on the federal level. Congress must carefully curate the development and implementation of a federal marijuana legalization policy to ensure equitable access and adequate regulatory structures. An ideal policy would include social equity and racial justice components greater than those of the *MORE Act*, automatic expungements, and expanded access to employment and training for marijuana offenders. The ideal federal cannabis legalization policy must also address required heightened data collection and analysis. Researchers need expanded supply options for broader research topics regarding cannabis, and the policy must address funding for said research. Policies such as the *MORE Act* assign communication strategies to other agencies, but these agencies need close monitoring as communication strategy can affect the policy's success. Even so, the ideal approach would adapt more efficiently than our current law and include several other provisions.

Removal of marijuana from Schedule I alone does not legalize cannabis, and Congress will likely face challenges in forcing states to legalize it through the Commerce Clause. On the federal level, however, descheduling the drug “would not affect other existing statutes and regulations that apply to the drug and thus would not bring aspects of the drug into compliance with federal law” (Lampe, 2021, p. 29). Without additional legislation, the *MORE Act* would have the FDA continue to be in charge of regulating “marijuana and substances derived from the plant” (Lampe, 2021, p. 31). The agency currently considers interstate commerce involving the drug unlawful under the *Federal Food, Drug, and Cosmetic Act* (Lampe, 2021). Effectively implementing cannabis reform requires Congress to reduce the administrative barriers to participation in the industry. Prohibiting the FDA from restricting certain activities involving marijuana in compliance with state and federal law would allow the states to decide when to use their police powers to regulate cannabis without federal interference. States can choose to be more restrictive and use their police powers to do so. The FDA should focus on correcting state inadequacies in data collection, quality control, research funding, supply chain management, labeling and packaging, and advertising and communication mechanisms. The federal government should no longer penalize marijuana use but rather work with states to regulate the research, communication, and regulation regarding cannabis.

The *MORE Act* contains several provisions which increase equity in the legal marijuana industry, but the act does not fully address the problem. The criminal justice system disproportionately impacts people of color at every level, and it will not cease to do so through cannabis legalization alone. The act contains a provision that allows regulators to deny permits to individuals convicted of marijuana-related felonies, which will also disproportionately impact people of color (H.R. 3884, 116th Congress, 2020). Dispensaries with white owners have already

saturated the legal marijuana industry in most states. By allowing felony convictions of marijuana-related offenses to disqualify people from owning legal cannabis businesses, the act places more barriers between communities of color and healing from the War on Drugs. Marijuana legislation cannot solve all of the inequities caused by drug users' criminalization, but it should not further harm. The ideal policy would not contain any provisions which would bar felons from employment or entrepreneurship opportunities. If Congress wishes to reverse the damage done by the prohibition of cannabis, they must eliminate collateral consequences from marijuana convictions across industries.

Any comprehensive approach to federal cannabis legalization requires the automatic expungement of criminal records for those convicted of marijuana offenses. The *MORE Act* calls for this; however, not all marijuana-related convictions qualify for the automatic expungement process in the *Act*. Just as state expungements do not affect federal criminal records, federal legislation does not affect state expungement processes or criminal records. Ideally, federal marijuana legalization would include incentives for the states to develop an automatic expungement process for all marijuana offenses. The *MORE Act* only calls for the expungement of convictions, but arrests that do not result in a conviction may still appear on background checks and affect employment opportunities. Because people of color are more likely to be arrested and convicted, the federal government must incentivize automatic expungements on the state level for all marijuana offenses to create an equitable system for previous marijuana offenders.

Expanding access to cannabis for medical and recreational consumers but failing to do so for researchers has constituted one of the biggest state-by-state legalization failures. While the *MORE Act* does not address the barriers to research and funding, the House also passed the

Medical Marijuana Research Act in December 2020. This bill aims to simplify the registration process for researchers. It also expands supply access by requiring the Attorney General to register private suppliers complying with stated guidelines by one year from enacting the act (H.R. 3797, 116th Congress, 2020). Neither law, however, addresses funding or expanding the methods of consumption that researchers may study. The *Medical Marijuana Research Act* would significantly expand accessibility to supply and registration, but it would not fully solve it. Ideally, cannabis reform would allow researchers to access the same products that consumers do and fund studies to ensure the public can safely consume the products on the market, and fund further public health research.

Additionally, the *MORE Act* calls for data collection regarding business owners and employees in the marijuana industry but fails to require studies on the effects of legalization programs. Cannabis reform should seek to create a policy that provides guidelines and evidence to show which programs work so states can apply them accordingly. The *Marijuana Data Collection Act* introduced in the House in 2019 aimed to have federal regulators “conduct and update biennially a study on the effects of State legalized marijuana programs” (H.R.1587, 116th Congress, 2019). Congress needs to implement federally sponsored studies to understand the effects of different regulations. Data from states regarding the impact on vulnerable populations, public health, the economy, and criminal justice outcomes is crucial in determining how best to adjust policy in the future.

Effective public health communication regarding legal marijuana requires nuance and research to reflect the truth in an audience-friendly manner. A campaign cannot combine the drug with cocaine and heroin convincingly or realistically. Neither tobacco nor alcohol makes perfect analogies either, as the risks and psychological effects differ as well. Preventing youth

consumption, however, remains a common goal of all of these campaigns. States can set in place regulatory advertising standards now. Still, the FDA has enacted regulations to protect children from tobacco advertising, providing a general outline for cannabis communications with modification. By truthfully communicating the actual harm caused by underage marijuana use and explaining the need to reduce marijuana abuse, public health communications can bring young Americans into the discussion, rather than insisting they say no and ask no further questions. Labeling, packaging, and advertisements play a prominent role in preventing misuse of cannabis and informing citizens of mental health risks. Each population requires a different communication type, but each audience needs communications and regulations that tell them the truth. States have failed in this regard in many ways, allowing medical marijuana dispensaries to advertise unproven benefits and recreational marijuana dispensaries to advertise a lack of risk. Communications on all levels, from advertising to labeling, require heavy regulation to ensure that young Americans know the dangers of youth consumption of marijuana and that marijuana users have information on the known risks of acute and long-term use. Congress should make the federal government's stance on cannabis clear and ensure that agencies receive and present transparent information to the public about new scientific understandings.

The *MORE Act* represents a step forward in how the federal government treats marijuana in many different aspects, but it lacks key elements of comprehensive cannabis reform. The public no longer believes that marijuana should be illegal. President Biden has expressed support for the decriminalization of marijuana on the federal level. Data has not revealed severe adverse consequences for the states which have legalized. State-by-state legalization has created scientific research issues, data collection, public health communication, and equity in the criminal justice and economic realms. The *MORE Act* begins to address these problems but falls

short of remedying each area. The ideal marijuana policy moving forward must prohibit the FDA from restricting activities in compliance with federal and state laws. It must also remove barriers to employment and entrepreneurship in the marijuana industry based on marijuana offenses, not only convictions. The ideal policy must allow researchers to access the same products that consumers can and provide funding for studies on cannabis use. Finally, it must require further data collection from states that have legalized cannabis and clarify public health communication strategies.

Chapter Five

This final chapter examines the future of marijuana politics in the United States in comparison with international policies and with consideration for the political feasibility of reform proposals. The first section analyzes approaches taken by the Netherlands and Canada in comparison with the approach used by the United States. The second section compares proposals within the previously discussed ideal comprehensive policy to these international policies and analyzes their preliminary results. Finally, the chapter concludes with several suggestions for viable incremental change including action by the attorney general, expanding data collection and research, and rescheduling cannabis.

New Horizons

American experiments of democracy legalizing recreational marijuana have not resulted in significant societal harms, but these programs highlighted state-by-state legalization failures. On an international scale, cannabis regulation strategies have varied. Several countries have recently shifted toward leniency, decriminalization, and legalization. While America intensified the War on Drugs, the Netherlands decriminalized cannabis in 1976. Their approach allows for “the existence of outlets for low-volume cannabis sales, outlets that eventually became the well-known Dutch ‘coffee shops’” (Rolles, 2014, p. 1). Rates of cannabis use in the Netherlands have remained “equivalent to or lower than those of many nearby countries (which do not have coffee shops), and are substantially lower than those of the US” (Rolles, 2014, p. 1). While the Netherlands did not legalize cannabis, their decriminalization and lack of enforcement allowed for small changes, similar to the incremental approach states have taken in modern years. As the

United States moves forward with decriminalization and legalization, other international policies can provide further guidance for policy provisions and public health indicators.

In October 2018, Canada became the second country to legalize recreational marijuana, following Uruguay's legalization in 2013 as a strategy against the illegal drug trade. Canada's policy had three goals: "to keep cannabis out of the hands of youth, to keep profits out of the pockets of criminals, and to protect public health and safety by allowing adults access to legal cannabis" (Rotermann, 2020, para. 2). Results from both incremental and comprehensive international cannabis reform can provide insights into America's path forward. As more countries adopt policies that transform the Netherlands' idea of decriminalization into approaches like Canada's, evaluation of public health and equity indicators will remain crucial to the programs' success.

While cannabis legalization remains a relatively new concept, the level of incarceration in the United States for marijuana possession far exceeds that of its peers. Before legalization, Canadian police recorded 26,402 marijuana possession cases for 2018, but in 2019 "that number dropped to 46" (Austen, 2021, para. 19). The United States recorded nearly 700,000 marijuana arrests in 2018 (ACLU, 2020, p. 21). Despite the United States's robust criminal justice program focused on penalizing individuals at all levels, usage rates between Canadians and Americans have remained incredibly similar. Between 2000 and 2017, between nine and 12 percent of Canadians reported marijuana use in the past year (Rotermann and Macdonald, 2018). In the United States, that number moved from seven to nearly 13 percent (Kerr and Yu Ye, 2017). Preliminary results have found that cannabis use by Canadian youth has not increased since legalization, but usage has increased among Canadian adults, the same results America has experienced since the beginning of state-by-state legalization (Rotermann, 2020; CDC, 2017).

However, usage rate and prevalence of use fluctuations among American and Canadian adults have moved in tandem with societal norm changes, indicating the need for clear public health communication strategies (Lake et al., 2019). Canada has faced supply challenges in the legal cannabis market, but the shift's societal effects reflect those faced within the states who have legalized recreational marijuana.

Comprehensive Reform

Public opinion regarding cannabis has shifted within America. 36 states have legalized a form of marijuana, and 17 have legalized recreational marijuana. Adverse outcomes from moderate cannabis consumption by adults have failed to materialize, but the effects of prohibition restrict millions of Americans' freedoms. Federal law prevents reconciliation between states moving forward and the communities who have experienced the most harm. The *MORE Act* begins to solve the problem by descheduling the drug, removing immigration penalties for marijuana offenders, instituting opportunity funds for small businesses in adversely impacted communities, and calling for expedited expungements for federal marijuana convictions. The Senate remains unlikely to pass the *MORE Act* due to polarization that has made comprehensive reform increasingly difficult in the twentieth century (Porterfield, 2020). The ideal federal policy would go beyond the provisions of the *MORE Act* to regulate actions by the FDA, remove barriers to employment and entrepreneurship in the legal cannabis market for marijuana offenders, heavily incentivize expedited state expungement and legalization processes, ensure a smooth and free expungement process, provide funding for research, expand products available for research, require annual state public health studies, and provide a framework for federal communications.

When implementing comprehensive cannabis reform, Congress should ensure that people across the country receive equitable treatment under the many facets of the law. To do so with regards to cannabis reform, they must prohibit the FDA from restricting activities allowed under state and federal law regarding marijuana. The agency should help with data collection, quality control, research funding, supply chain management, labeling and packaging, and communication mechanisms. Still, it should not restrict licensed suppliers from conducting legal business or place heavy restrictions on research. Additionally, the ideal cannabis reform policy would heavily incentivize state adoption of uniform standards regarding the legality of cannabis, expungement processes, quality control mechanisms, social equity programs, and communications by withholding portions of federal funding. Without Congressional oversight, federal and state regulators will be free to place restrictions on the manufacture, consumption, and distribution of cannabis that could significantly diminish the program's success.

Barriers to employment and entrepreneurship in the legal marijuana industry will remain an ongoing challenge for the United States, but it is not alone. White owners constitute 84% of industry leaders in Canada's legal cannabis industry (Maghsoudi et al., 2020). The country, like many states, included social equity provisions when legalizing. Still, the damage that prohibition already caused to the communities of color proved too pervasive for simple equity measures to alleviate. The *MORE Act* attempts to get ahead of this problem by funneling tax revenue from the program back into the communities that have suffered the most from prohibition, unlike Canada's *Cannabis Act*. Nevertheless, the *MORE Act* allows regulators to deny licenses to sell marijuana to people convicted of a marijuana-related felony under the *MORE Act*. The ideal federal policy would require that marijuana-related crimes not exclude offenders from profiting from the legal marijuana marketplace. Congress must also ensure that they encourage robust

social equity programs in every state to provide equitable access to this growing industry's profits.

Canada's recreational cannabis policy allowed people with a simple possession charge for cannabis to have their record expunged. People with multiple possession charges do not qualify for the expedited process, which allowed for free expungements of cannabis expenses, but required applicants "to travel to the place of their arrest to retrieve their records" to begin the six-step process (Austen, 2021, para. 26). These requirements created barriers to access. The *MORE Act* presents a different set of problems, failing to allow for automatic expungements of all marijuana offenses, limiting the process to convictions, unlike Canada's Cannabis Act. The *MORE Act* currently requires an automatic expungement process for non-violent federal cannabis convictions. Still, the only incentive for states to follow suit provides funds to an equitable licensing grant program for the state (H.R. 3884, 116th Congress, 2020). The ideal cannabis policy will need to incentivize state adoption of a uniform automatic expungement process and expand the process to allow for expungements of arrests that did not end in conviction. While fair licensing programs will assist communities of color, federal cannabis reform should grant these funds to all states and incentivize states to legalize and adopt automatic expungement processes through more effective means. Congress could accomplish this by withholding federal funds to states who fail to legalize recreational marijuana and expunge all marijuana offenses. This measure effectively forces equitable treatment of cannabis users regardless of a person's state of residence or the state of the offense.

The ideal policy would also increase research funding and researchers' ability to access the drug. Researchers currently face a heavily regulated supply chain and lack access to products that consumers may purchase. Federal financing for general cannabis research has become

almost nonexistent, despite widespread use of the drug by the public. Upon implementing the *Cannabis Act*, Canada funneled millions of dollars into cannabis research (Geary, 2019). Still, the application process is complicated and often delayed, and researchers struggle to find funding for general public harm studies, as regulators prefer funding medicinal and substance abuse studies (Geary, 2019). The *Medical Marijuana Research Act*, which passed in the House alongside the *MORE Act*, addresses the supply chain problem by allowing private manufacturers and distributors to supply cannabis for research, which Canada also does (H.R. 3797, 116th Congress, 2020). The *Medical Marijuana Research Act* would not assist with the rigorous application process that researchers in both the United States and Canada face obtaining the same products found in retail dispensaries. The *Cannabidiol and Marijuana Research Expansion Act* allows researchers to access other consumption methods while also provides for shifting regulations regarding that allowance. The ideal policy must ensure an expedited application process upon legalization and increase accessibility to federal funds for general cannabis research to reflect the substance's legal shift. The ideal approach must also expand suppliers and products that researchers may use to reflect the legal marketplace.

The lack of data collection and analysis on the state level regarding the effects of cannabis legalization has constituted an enormous failure. While some states have added public health studies to their legalization plan, they lack detail and consistency. The *MORE Act* requires data collection regarding the legal marijuana industry but fails to realize public health data's potential to guide future regulation (H.R. 3884, 116th Congress, 2020). Canada carefully tracks the cannabis market and the effects of legalization, allowing the country to tailor regulatory responses to fill holes left by the initial legislation. For instance, since legalization, Canadians have increasingly bought cannabis from legal sources and decreasingly purchased from illegal

sources (Rotermann, 2020). Further data collection regarding the amount of cannabis purchased and other consumer buying habits may help develop more effective incentives for legal cannabis consumption (Rotermann, 2020). The *Marijuana Data Collection Act*, which has stalled in the House for two years, suggests biennial studies on legalization's effects in search of similar insights (H.R.1587, 116th Congress, 2019). As Congress continues to delay action regarding data collection from legalized states, states will continue to pass legislation that cannot respond to public health concerns. Ideally, required public health data collection would take effect before comprehensive legalization or at the minimum simultaneously.

Exaggerations made during the War on Drugs continue in schools across America today, damaging the credibility of future public health campaigns about cannabis and other drug use types. The scientific consensus about the potential health benefits and risks of cannabis also continues to confuse communication efforts. In the past, this confusion led to officials making baseless claims about risks that the public rejected as misinformation. Future communication strategies regarding legal recreational cannabis must address these gaps in trust by “recognizing and acknowledging unknowns and uncertainties” (Steiner et al., 2019, p. 9). Public health officials in Canada have emphasized the balance between “neither stigmatizing cannabis use (which drives people to avoid health care or treatment) nor normalizing its use, given that we suspect it can have serious health consequences for some individuals” (Steiner et al., 2019, p. 10). Canada has also planned targeted campaigns for different populations, such as youth, business owners, and cannabis tourists (Steiner et al., 2019). To ensure campaigns educating the public about cannabis use have positive results, the United States must avoid exaggerations or assumptions. Instead, public health communications should target populations separately and honestly about the potential risks of cannabis and ways of reducing their risk.

Cannabis reform in the United States must also include regulations regarding marketing and packaging within cannabis businesses. Canada has robust packaging requirements that include prohibiting bright colors or decorative logos and requiring child-proof containers and testing information labels. In addition, the country included regulations regarding advertising cannabis products falsely and to children in their law legalizing the drug. The *MORE Act* gives federal regulators one year to produce these guidelines. Ensuring robust quality control and packaging regulations will remain crucial.

Immediate Incremental Reform

Notably, many of the provisions above require Congress to push states for comprehensive reform. At the same time, analysts predict that the Senate will not pass the semi-comprehensive reform on the table, the *MORE Act*. As Americans, and policymakers, remain sharply divided, the likelihood of ideal reforms remains low. Still, several provisions of the *MORE Act* and the ideal federal cannabis reform discussed above have bipartisan goals and outcomes, without incentives that may cause division and lead to legal challenges. Until Congress can implement comprehensive reform, altering the Department of Justice's approach, increasing funding and choices for researchers, requiring public health data from the states, and legalizing medical marijuana and allowing doctors to prescribe marijuana may prove more politically feasible.

In 2013, Deputy Attorney General James Cole issued a memo explaining that the Department of Justice would allow states with recreational marijuana to continue to operate those programs without federal interference (Hansen et al., 2020). Attorney General Jefferson Sessions reversed that promise in a 2018 memo (Sessions, 2018). Despite this formal reversal, in practice, the department changed relatively little. President Biden signaled support for cannabis decriminalization. Still, as the administration plans the path forward, support for cannabis within

the Department of Justice can help stabilize new state programs and markets. President Biden's Attorney General, Merrick Garland, has expressed that he believes the department should "not allocate our resources to some things like marijuana possession" (Hudak, 2021, para. 4). Formally declaring a hands-off approach to cannabis prosecution for activities legal under the state law in which they occur can set the stage for the Biden administration's intent to support cannabis reform that the president expressed on the campaign trail. It seems likely that a laissez-faire approach will continue as the norm from the Department of Justice, but an announcement can help stabilize markets and decrease federal cannabis cases.

Additionally, Garland has expressed a desire to reevaluate "charging policies and stop charging the highest possible offense with the highest possible sentence" (Hudak, 2021, para. 4). These decisions can have significant impacts on people throughout the country. Creating comprehensive policies to mitigate the harm that the criminal justice system has on non-violent drug offenders can serve as a small, politically feasible step that the executive branch can take. Garland has acknowledged the disproportionate harm caused to people of color through cannabis prohibition. He should use his position to work with state laws while advocating for clemency and policy changes on all available levels.

Other intermediate opportunities for cannabis reform often require bipartisan support, but there are several areas in which Congress can achieve that. For instance, both parties supported the *Medical Marijuana Research Act* and the *Cannabidiol and Marijuana Research Expansion Act*. Both appear to have more potential to become law than the *MORE Act*. The cannabis industry desperately needs more research. Products have expanded rapidly in these new markets, growing in potency and changing consumption methods. An expanded supply of different potencies with easier access to the drug can help researchers understand the products Americans

buy every day. Expanding data collection can also benefit states with legal cannabis options and those without, as the stalled *Marijuana Data Collection Act* sought to do. As more states continue to move forward with legalization, understanding the effects of the drug on individuals and these policies on society becomes crucial to creating the optimal approach. Even if the *Medical Marijuana Research Act*, the *Cannabidiol and Marijuana Research Expansion Act*, and the *Marijuana Data Collection Act* fail, each of the provisions included in these policies may have the potential to expand research as part of a larger compromise. By separating the research and data collection from policies that provide leniency toward the drug, policymakers may have more success, as the *Medical Marijuana Research Act* or *Cannabidiol and Marijuana Research Expansion Act* may demonstrate.

Many states legalized medical marijuana before the legalization of recreational marijuana. There are several avenues in which the federal government could consider legalizing and expanding access to medical marijuana as a stepping stone to comprehensive reform. Descheduling the drug may be politically infeasible at the moment but rescheduling the drug to a Schedule II or Schedule III substance would recognize a medical value for the drug. Rescheduling would increase researchers' ability to conduct and obtain funding for cannabis research. Without rescheduling, a lack of research will continue to serve as a barrier to future legislation. Congressional action serves as the simplest way to reschedule marijuana, as an amendment to the *Controlled Substances Act* or through a larger marijuana reform bill (Hudak and Wallack, 2015; 21 U.S. Code §812). Rescheduling a drug alone does not allow a doctor to prescribe that drug. Congress could, however, include a provision that requires the FDA to allow doctors to prescribe cannabis for a range of conditions, encouraging doctors and patients to make informed decisions as research develops. With 91% of Americans believing that the federal

government should legalize medical marijuana, seeking to reschedule the drug and expand prescribing powers through Congress may prove possible sooner than descheduling the drug and implementing comprehensive reform.

Nevertheless, Congress does not have to act for the United States to reschedule cannabis. Rescheduling through the executive branch involves the Attorney General, often with the Drug Enforcement Agency, and the Secretary of Health and Human Services work independently to evaluate risks and benefits to determine if they should reschedule the drug (Hudak and Wallack, 2015; 21 U.S. Code §812). If the Secretary of Health and Human Services and the Attorney General determine that rescheduling is appropriate, the White House will conduct a regulatory review. The politics of these many different actors can become complicated, and the executive branch “may be unwilling to spend political capital on this issue” (Hudak, 2015). Rescheduling cannabis has the potential to ease tensions between the myriad of state and federal laws, open doors to treatment for patients nationwide, and provide a path for future reform. Congressional action remains the easiest path to rescheduling and provides an avenue to expand access to medical marijuana nationwide.

While most Americans support cannabis legalization, comprehensive reform lacks political feasibility in today’s polarized climate. Decades of propaganda connecting drug users to violent crime have led to an overly punitive system that will require decades of reform to mitigate and correct. These reforms seem unlikely in the current political climate. Still, action by the Attorney General, bipartisan research and data collection legislation, rescheduling of marijuana, and expanding prescription options can set the stage for a more responsive political environment in the future.

Conclusion

The disjointed nature of marijuana politics in America begs for a federal solution. The public no longer agrees with prohibition and criminalization, but the legislature remains likely to gridlock on semi-comprehensive change. Nevertheless, until semi-comprehensive or the ideal reform can become politically feasible, incremental change can set the stage for expansion. Action by the Attorney General clarifying the Department of Justice's intention to not interfere with state programs and reevaluating charging and sentencing policies would signal the executive branch's intentions for progress. Bipartisan Congressional efforts to enhance data collection and research funding and supply would provide more information to build future policies. Finally, Congress should reschedule marijuana and expand doctors' prescribing powers to promote medical marijuana programs and further expand research opportunities.

The War on Drugs

Political rhetoric has fueled fear about marijuana for nearly a century in America. This fear allowed for the passage and acceptance of the *Controlled Substances Act of 1970*, which listed cannabis as a Schedule I drug. Other products of this fear include the *Comprehensive Crime Control Act of 1984* and the *Anti Drug Abuse Act of 1986*, which increased penalties for drug offenses and allowed for the death penalty in high-level trafficking cases. The bipartisan *Violent Crime Control and Law Enforcement Act of 1994*, which created the three-strikes rule for felony drug offenders, also resulted from this fear. After California legalized marijuana for medical use in 1996 and Colorado legalized it for recreational use in 2012, federal policymakers noticed the changing tide of marijuana politics. The *First Step Act of 2018* reduced mandatory

minimums for drug offenders, increased the seriousness of the crime required to trigger the mandatory sentences, and expanded compassionate release options while retroactively applying the *Fair Sentencing Act*. In December 2020, the House passed the most comprehensive legislation regarding cannabis reform to pass either chamber of Congress, the *MORE Act*.

Public Perception

Concern for drug use among Americans reached a peak in the 1980s and has declined since then. At the height of the War on Drugs, approximately 25% of Americans believed the federal government should legalize cannabis (Jones, 2019). In 2014, 67% of Americans believed low-level marijuana offenders should face no jail time, 63% supported removing mandatory sentences, and 67% believed the government should focus on drug offenders' treatments over punishment (Doherty et al., 2014). In 2020, 68% of Americans believed the government should legalize recreational marijuana, and 91% believed it should legalize medical marijuana (Brennan, 2020a). Partisan and generational differences remain, and these intertwine to make cannabis reform politically risky.

Changing Landscape

36 states have some type of cannabis program. 17 states and the District of Columbia have legalized recreational marijuana. Recreational marijuana, medical marijuana, and CBD legalization have become regular updates to the American political landscape. The Court has been deferential to Congress regarding cannabis policies. Congress largely ignored the issue until December 2020, when the House of Representatives passed the *MORE Act*. President Obama's administration announced that they would not interfere with state cannabis programs, and President Biden and Trump have continued that tradition.

State medical and recreational marijuana programs have had success, but they remain limited in their ability to heal wounds caused by nearly a century of federal cannabis prohibition. The implementation of these programs has not resulted in increases in crime or adolescent use (Chu & Townsend, 2019; Lu et al., 2019; Makin et al., 2018; Brinkman & Mok-Lamme, 2019). Rates of drivers testing positive for cannabis in states with recreational marijuana have increased slightly, but roadside testing for the drug can be unreliable, and traffic fatalities have not changed significantly (Bloch, 2020; Leyton, 2019). The economies of states that have legalized cannabis have benefitted from the change as the industry brought jobs and tax revenue (Colorado Department of Revenue, 2020; Ingraham, 2016). Despite these successes, states with recreational marijuana still struggle with equity and data issues. Black and Hispanic people still face higher arrest rates for marijuana offenses, and the legal marijuana industry remains overwhelmingly white (Colorado Department of Public Safety, 2018; Analytic Insight, 2020; Schuba, 2020). Data collection and research issues have also plagued state programs (NASEM, 2017).

Current Reality

In the past, inflammatory rhetoric dominated marijuana politics, but expanding marijuana use and evolving state laws have decreased public fear. Despite the change in the American psyche, prohibition continues to have adverse consequences for millions of individuals. In 2018 alone, almost 700,000 people were arrested for marijuana offenses, approximately 90% of which were for possession (ACLU, 2020). Despite similar cannabis use rates across races, Black and Hispanic people face higher arrest rates, higher incarceration rates, and longer sentences on average than white people (ACLU, 2020; H.R. 3884, 116th Congress, 2020). Collateral consequences from arrests and convictions pose barriers to employment, entrepreneurship, student loans, and other federal benefits (Thompson, 2017; Lampe, 2021).

New Horizons

The *MORE Act* would decriminalize cannabis on the federal level, require data from legal marijuana markets, invest in communities of color and expungement costs, regulate packaging and testing, establish a Cannabis Justice Office, establish an equitable grant licensing program, create an expedited expungement process for federal marijuana convictions, and establish other regulatory rules. Still, it fails to adequately regulate FDA action, remove barriers to employment and entrepreneurship, incentivize expedited state expungement and legalization, expand research funding and supply, require public health data collection, or provide a framework for communications. Ideally, Congress would overhaul the system of cannabis prohibition that has caused harm to communities of color across the country. In reality, the federal government has several avenues of incremental change that can begin the move away from prohibition immediately.

These incremental changes should begin immediately with the Attorney General for the Biden administration announcing that the Department of Justice will not interfere with legal state markets. The Attorney General should also reevaluate sentencing and charging policies in favor of leniency for marijuana offenders. Bipartisan Congressional action regarding the expansion of research supply and funding, data collection regarding the effects of cannabis programs have the potential to pass immediately. Finally, the legislature should reschedule marijuana and expand doctors' prescribing powers to decrease incarceration, increase research, and destigmatize the drug.

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