

Preface

This book provides a historically grounded examination of marijuana policy reform and ultimately the move toward legalization over a period extending back more than one hundred years. In the context of the recent legalization of marijuana in nine states and Washington, D.C., and a time when a significant majority of the population of the United States is in favor of the legalization of recreational marijuana, we look back to consider how we arrived at this point. We argue that, examined under a larger historical lens, the prohibition of marijuana constitutes a historical anomaly. More specifically, considered with a larger historical lens (and also in light of scientific evidence on marijuana), if the passage of the federal Marihuana Tax Act constitutes the beginning of marijuana prohibition in the United States and the 1996 passage of medical marijuana legislation in California its end, complete prohibition of marijuana in the United States lasted fifty-nine years. We agree with Andrea Reiman (2015a), policy manager for the Drug Policy Alliance, who comments, “When the entire history of cannabis is taken into account, its use as a medicine and a source of healing dwarfs its time as a dangerous recreational drug with no medical benefit.”

The book also considers the effects of marijuana, both the good and the bad; the evidence on its medicinal applications; and the (absurd) persistence of the U.S. government to retain the substance as a Schedule I drug under the Controlled Substances Act (enacted in 1970). The state of denial on the part of the federal government with its continued refusal to reschedule the drug (reaffirmed in August 2016) is sadly entirely consistent with the gov-

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ernment's long-standing, science-optional, and essentially evidence-free approach to marijuana. It is also consistent with a variety of marijuana demonization strategies employed by the government that essentially began in the 1930s with Harry Anslinger, first director of the Federal Bureau of Narcotics. These strategies of demonization, and the organizations and agents primarily used to deploy them, are addressed in depth and deconstructed in the chapters to follow. In the final two chapters of the book we consider the rapidly changing landscape of marijuana policy, both in the United States and in a select group of other countries, a landscape that seems to shift on an almost monthly basis, and where we may be going from here.

Our approach in this book is somewhat different from that of drug policy scholars such as Mark Kleiman and Jonathan Caulkins. While we respect their work, we believe that drug policy scholars have been too focused on the negative outcomes (some real, some imagined) of marijuana policy reform and have not devoted sufficient attention to the historical record on marijuana and the incremental developments with respect to policy reforms. By no means do we ignore some of the negative outcomes associated with marijuana legalization, but these have often been overstated, while many of the positive outcomes have been ignored or neglected. We argue that, while it is still somewhat early to evaluate the successes and failures of marijuana law reform, the absence of serious negative outcomes constitutes a positive.

A Note on the Sources Used in This Book

In discussing the history, effects, and legal reforms related to marijuana, we, of course, include extensive (although by no means exhaustive) coverage of research published in medical, scientific, social scientific, and other academic journals. However, in contrast to most “academic” books, this book also relies heavily on so-called gray literature—publications and reports that are not peer reviewed and are produced by organizations such as various government agencies, nonprofit organizations, and think tanks, as well as what are sometimes referred to as special interest groups. The benefit of employing such sources is that they often provide the most up-to-date information and current data on issues of relevance because they are usually not subject to the long delays associated with the publication of peer-reviewed studies.

The specific gray literature sources we utilize include a number of reports produced by both federal agencies (e.g., the Drug Enforcement Administration [DEA], the National Institute on Drug Abuse, and the Office of National Drug Control Policy [ONDCP]), as well as federally sponsored programs such as regional High Intensity Drug Trafficking Areas) and various state agencies (especially agencies in states that have legalized recreational marijuana that are responsible for cannabis regulation, such as the Washington

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State Liquor and Cannabis Board). We also draw on materials from organizations such as the Drug Policy Alliance (DPA), the Marijuana Policy Project (MPP), and the National Organization for the Reform of Marijuana Laws (NORML). We are aware that some view these organizations as “advocacy groups” in the marijuana policy context, and we would tend to agree. However, we demonstrate that many of the arguments made by these organizations are compelling. For the most part, these so-called advocacy groups refer to actual scientific studies in their publications. In contrast, much of the information on marijuana published by federal government organizations is often misleading and, in some cases, simply false. It is also important to note that, while government agencies are not typically referred to as advocacy groups, some might be appropriately characterized as such. For example, under the Office of National Drug Control Policy Reauthorization Act of 1988, the director of the agency is mandated to “ensure that no federal funds appropriated to the Office of National Drug Control Policy shall be expended for any study or contract relating to the legalization (for a medical or any other use) of a substance listed in Schedule I of the Controlled Substances Act and take such actions as necessary to oppose any attempt to legalize the use of a substance (in any form) listed in Schedule I” (White House 1998). Such mandates can (and do) lead to significant biases in the publications of the ONDCP and often lead to questionable actions on the part of ONDCP officials and other federal government agencies in their response to marijuana.

We also draw extensively on print and Internet media discussions related to marijuana—in particular the publications of several reporters/journalists who have, as part of their work, focused specifically on marijuana issues and have published numerous well-written, thoroughly researched, and important articles related to topics addressed in this book.¹ Similar to the advantages associated with using information from gray media sources, print and Internet media sources provide the most current information on important marijuana-related topics. In many instances, these sources have the

1. We are indebted to the following reporters/journalists (some of whom we have contacted), as our research benefited tremendously from their reporting: Ricardo Baca, the founding editor of the *Denver Post's Cannabist* edition (established in 2013); Russ Belville of the *Huffington Post*; Noelle Crombie of the *Oregonian*; Jake Ellison of the *Seattle Post-Intelligencer*; Thomas Fuller of the *New York Times*; Evan Halper of the *Los Angeles Times*; Josh Harkinson of *Mother Jones*; Jack Healy of the *New York Times*; Josiah Hesse of the *Guardian*; Rob Hotakainen of *McClatchy*; John Ingold of the *Denver Post/Cannabist*; Christopher Ingraham of the *Washington Post*; Patrick McGreevy of the *Los Angeles Times*; Melissa Santos of the (Tacoma) *News Tribune*; Brooke Staggs of the *Orange County Register/Cannifornian*; Jacob Sullum of *Forbes*; Alicia Wallace and Polly Washburn of the *Denver Post/Cannabist*; Kristen Wyatt of the *Associated Press*; and Bob Young of the *Seattle Times*.

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additional advantage of providing local, “on-the-ground” information that we use to emphasize the considerable variation across and within states with respect to the implementation of marijuana law reform.

In incorporating information from this wide array of sources in our narrative, we are cognizant of the perils associated with “fake news.” However, based on our assessments of these sources, and as we demonstrate throughout this book, fake news (or, at least, alternative/distorted/decontextualized “facts”) is a more common feature in some reports produced by federal government agencies and opponents of marijuana law reform.

Outline of the Book

Chapter 1 considers the major policy shifts and trends occurring in the United States with respect to marijuana as of late 2017. Among the issues discussed is the recently rejected proposal to reschedule marijuana under the Controlled Substances Act. Marijuana has been considered a Schedule I drug under this act since 1970. Under the provisions of the act, a Schedule I substance “has a high potential for abuse, has no medical use in the United States, and has a lack of accepted safety for use under medical supervision” (Drug Enforcement Administration 2005). Currently, marijuana is placed alongside drugs such as heroin and LSD, which are also Schedule I substances.

The refusal of the federal government to reschedule marijuana is problematic in several ways, including but not limited to the fact that it deprives researchers of access to quality marijuana (the kind typically available on the street) for the research needed to demonstrate its possible medicinal applications and its possible negative effects, depriving patients of medicine that could assist them in treating their conditions and maintaining a war stance on marijuana that the vast majority of Americans have long since tired of and largely rejected. Only three months after the DEA refused to reschedule marijuana, in November 2016 four more states (California, Maine, Massachusetts, and Nevada) legalized recreational marijuana (Alaska, Colorado, Oregon, Washington State, and Washington, D.C., legalized recreational marijuana between 2012 and 2014), meaning that one in five Americans now lives in a state where recreational marijuana is legalized. In addition, thirty states have legalized medical marijuana.

Chapter 1 also devotes considerable attention to the shifting support for the reform of marijuana laws over time. When marijuana legalization was first considered in Gallup opinion polls in 1969, only 12 percent of Americans supported it, but this figure reached 60 percent in October 2016 (Ingraham 2016e), and currently support for medical marijuana legalization is in excess of 90 percent (Washburn 2017a). Support for marijuana legalization varies considerably across demographic categories as well as political affili-

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ation and remains in flux. But, as the sky has not fallen following the legalization of marijuana in several states, and as the substance has become increasingly normalized and accepted, it is likely that public support for legalization will continue to rise.

Chapter 1 also examines marijuana use patterns over time and discusses in detail the concern that heavy use and youth use may be especially likely to increase following legalization. While we agree that these issues are worthy of concern because the harms associated with marijuana use appear to be greatest among heavy users and young users, we consider whether available data support the claim that heavy and youth use is significantly greater under legalization. Data on the sales of marijuana and the associated tax revenue for states that have legalized the substance are also considered, as is the “mainstreaming” of marijuana, as reflected in myriad goods, services, practices, and references to marijuana’s presence in American culture and entertainment.

Chapter 1 also considers the forces that have driven reform in marijuana policy over the last several decades, most notably fiscal issues (states can collect significant tax revenues from the sale of legal marijuana, revenues that are not available when marijuana is illegal); changes in normative attitudes, especially among the young; and an increased recognition of the profound and disproportionate harm the drug war in general and the war on marijuana in particular has done (and continues to do) to racial and ethnic minorities in the United States.

Chapter 2 traces the social, political, and legal history of marijuana, beginning with a review of medical and scientific literature on the substance in the 1800s and the seminal 1893–1894 Indian Hemp Drugs Commission report. This chapter also devotes significant attention to what is the most influential (and controversial) period of marijuana regulation in the history of the United States, the 1930s and 1940s, what some have referred to as the “reefer madness” era, and the role of Harry Anslinger. As director of the Federal Bureau of Narcotics, Anslinger was the primary architect of a campaign to demonize marijuana and gain approval for the Marihuana Tax Act, passed in 1937, which resulted in the first federal prohibition of marijuana. To accomplish this, Anslinger used a variety of strategies designed to create fear of marijuana, many of which persist in anti-marijuana rhetoric and campaigns to the present day. Drawing heavily on racist beliefs and fears during this period, Anslinger emphasized that marijuana was a substance used primarily by Mexicans and “Negroes” and that the substance led to the commission of crime, especially violent crime and sexual depravity.

Chapter 2 also considers the report of the La Guardia Committee, appointed by New York City mayor Fiorello La Guardia to provide a thorough examination of marijuana’s risks and effects on society. The report included a consideration of all available scientific literature on the topic of marijuana,

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an examination of the prevalence of marijuana use in society (focusing on New York City), and a clinical study examining the physiological and psychological effects of marijuana on users. The findings refuted virtually every claim made by Anslinger and other anti-marijuana propagandists. Among the highlights of the La Guardia Committee report were that chronic marijuana users could quit using the substance without experiencing withdrawal or craving, that the use of marijuana did not lead to the use of cocaine or heroin (rejecting the so-called gateway drug theory), and that the use of marijuana did not increase an individual's propensity to commit criminal acts (Mayor's Committee on Marihuana 1944). Also during the 1930s–1940s period, interesting debates regarding marijuana's harm emerged in medical and scientific literature; Chapter 2 discusses these debates in some detail.

Following a brief discussion of marijuana-related developments in the 1950s through the 1970s, a period in which an increasing percentage of American youth (and youth in other Western countries) began to use marijuana, we proceed to a discussion of developments during the administration of President Richard Nixon, the most significant of which was the first (official) declaration of a war on drugs and the (at the time, supposedly temporary) placement of marijuana in Schedule I of the Controlled Substances Act. Chapter 2 devotes significant attention to the reports of a number of committees/commissions appointed in several countries to examine drug (particularly marijuana) problems and to recommend policy alterations. With one exception, each of these reports concluded that marijuana was not a dangerous drug and its use did not lead consumers to the use of harder drugs and, most important, emphasized that penalties for possession of the substance should be reduced if not eliminated altogether. The conclusions of these various commissions/committees, which have been almost completely ignored by contemporary drug scholars as well as marijuana prohibitionists, are vitally important to consider, as they rejected a number of common myths about the drug.

The second part of Chapter 2 addresses developments related to marijuana and other illicit drugs during the presidencies of Richard Nixon, Gerald Ford, Jimmy Carter (who supported decriminalization of marijuana), Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush. Reagan initiated what might be referred to as the “second” (with Nixon's being the first), and much more intense, war on drugs (including marijuana) and the administrations of George H. W. Bush, Clinton, and George W. Bush continued the war. We devote considerable attention to the views and actions of the directors of the ONDCP, as these “drug czars” were highly influential in the approach and outcomes associated with the drug war. Chapter 2 also discusses developments during the Obama administration; although Obama had indicated that his administration would deemphasize federal government intervention in states with legalized medical and recreational mari-

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juana, by no means did the war on drugs or the war on marijuana end under his administration. We conclude with a discussion of two key developments with respect to recreational and medical marijuana at the federal level—the Cole memorandum of 2013 and the Rohrabacher-Farr amendment of 2014, which provided guidelines regarding federal intervention in states with recreational and medical marijuana laws and have proven to be important even today.

In Chapter 3 we address the effects of marijuana and its classification as a Schedule I drug. As noted previously, this designation indicates the substance has no approved medical use and a high potential for abuse (however, more harmful drugs such as methamphetamine and cocaine are included in the less restrictive Schedule II). Given the federal justification of the Schedule I status of marijuana, we discuss the scientific evidence concerning the drug's relative harms across a variety of domains. We consider its acute (including psychoactive) and chronic effects, its addictive potential, and its medicinal uses, drawing extensively on a 2017 comprehensive report by the National Academies of Sciences, Engineering, and Medicine (NASEM) that reviewed approximately ten thousand studies on the substance. The report concluded that although marijuana poses some public health risks, the available evidence indicates that it has several medicinal applications. The NASEM report also concluded that the Schedule I status of marijuana impedes research on both the benefits and relative harms of marijuana.

Given that several opponents of marijuana law reform (some of whom will admit that marijuana is relatively benign compared to other psychoactive substances) have emphasized that its use leads to consumption of “harder” drugs, in Chapter 3 we critically examine the logic of and (generally lack of) empirical support for the timeworn and stubbornly enduring gateway drug theory. We also address the emerging important scientific evidence indicating that users of more harmful drugs (most notably opiate drugs) are replacing these drugs with marijuana. Considering the evidence reviewed in Chapter 3 in its totality, it is clear that marijuana should not be placed in Schedule I of the Controlled Substances Act; in fact, many argue that it should be removed from the act entirely (Drug Policy Alliance 2013).

Chapter 4 examines and deconstructs a number of themes commonly employed by individuals and organizations opposed to marijuana law reform. Drawing on Chris Mooney's (2005) concept of “science abuse,” which he defines as “any attempt to undermine, alter, or otherwise interfere with the scientific process, or scientific conclusions, for political or ideological reasons,” we consider the various strategies used to frame what is known about marijuana. Dating back to roughly the reefer madness era of the 1930s and 1940s, common strategies to demonize the substance include providing information that is known to be a lie; decontextualizing (for example, not providing information on the relative risks of marijuana against those of a

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commonly used alternative psychoactive substance, such as alcohol); denying, particularly as demonstrated with respect to the long-standing and clear empirical evidence on the medicinal benefits of marijuana; and cherry-picking anecdotes to create the impression that an outcome allegedly associated with marijuana use is in some way typical rather than aberrant.

With these contextual frames in mind we consider the available scientific evidence on topics such as whether marijuana use leads to cognitive deficits or declines in IQ and whether providing legal access to marijuana (medicinal or recreational) will lead to increased use of the drug by young people, as well as claims that more permissive marijuana laws will lead to an increase in automobile collisions and traffic fatalities. In this chapter we emphasize that marijuana, like any psychoactive substance, has the potential to generate adverse effects. But we also emphasize that the harms of the substance are all too often presented in a context that overstates, distorts, and (often deliberately) insufficiently contextualizes these harms. It thus seems necessary to remind people that *legalization did not create marijuana*; it has existed, and humans have consumed the substance, for thousands of years.

In Chapter 5, we continue our examination of marijuana demonization, but we focus on the most prominent agents and agencies of demonization, including federal government agencies such as the ONDCP, the DEA, and the National Institute on Drug Abuse. At the state and local levels, the most notable marijuana demonizers are certain law enforcement organizations (especially federally funded High Intensity Drug Trafficking Areas) and officials, as well as criminal justice system officials more generally. We include a critical overview of reports produced by these organizations, as well as the specific actions they have taken with respect to marijuana. Several of the reports distort the available scientific evidence on marijuana, cherry-pick information from sources that are consistent with their anti-marijuana philosophy, and deliberately or conveniently ignore evidence that is inconsistent with their prohibitionist arguments. We also briefly consider opposition to marijuana legalization as manifested in the stances of purveyors of legal drugs (pharmaceutical companies and beer and alcohol producers/distributors) and professional medical associations. The chapter also includes a discussion of the views (and misinformation propagated by) the most prominent U.S. organization opposed to marijuana legalization—Project SAM (Smart Approaches to Marijuana) and its president, Kevin Sabet. The chapter concludes with a consideration of other recent contributions to the marijuana legalization debate offered by former drug czars John Walters and William Bennett.

Chapter 6 examines the path to marijuana legalization in several U.S. states, as well as developments with respect to the regulation of marijuana in several foreign countries. We address in depth the four states (Alaska, Colorado, Oregon, and Washington) and Washington, D.C., that legalized recre-

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ational marijuana prior to 2016 and also cover states that legalized the substance in 2016 (California, Massachusetts, Maine, and Nevada). The most recent state to legalize marijuana (Vermont) is also discussed.²

In this chapter we consider the techniques and strategies employed by groups and individuals who have supported these various legalization measures and document how constituencies opposing marijuana legalization have emphasized many of the same themes of demonization that we cover in Chapter 4. Chapter 6 also addresses some of the nuances of various legalization schemes, including differing tax rates, allowance for home cultivation of marijuana, the vertical integration of cannabis businesses, and local variation in the implementation of marijuana legalization—in particular, local bans and moratoria on marijuana sales. The chapter concludes with a discussion of marijuana policy developments in other countries, with a particular focus on Canada (where recreational marijuana will be legal as of July 2018),³ Uruguay (where marijuana was legalized in 2014), and the Netherlands.

Chapter 7 considers the rapidly shifting marijuana policy landscape as of late 2017. Among the issues addressed are the ongoing debates surrounding marijuana's Schedule I federal status and a number of problems arising from this status, including conflicting or absent guidelines in banking and taxation. The chapter also considers a number of controversial issues, including the absence of people of color in the marijuana industry (both ironic and glaring given the profound harm that prohibitionist drug policies have done to minority communities over the past several decades) and the fear that the marijuana industry will be “corporatized,” or eventually controlled by a few powerful and influential producers that through lobbying, advertising, and other strategies will strive to increase use of marijuana (and thereby increase their profits). We also address the effects of legalization on the black market in marijuana—of particular importance because many states have not legalized the substance and cannabis from legal markets can be diverted to states where it remains illegal.

Chapter 7 also examines signs that the federal government's approach to marijuana (which, under the Obama administration, was largely, although not completely, characterized by a hands-off approach in states where marijuana has been legalized medically and/or recreationally) may be shifting. We pay particular attention to President Donald Trump's attorney general, Jeff Sessions,⁴ who is staunchly opposed to marijuana (both medicinal and

2. As this book was going to press, on November 6, 2018, voters in Michigan approved a ballot measure legalizing recreational marijuana, and voters in Missouri and Utah approved the legalization of medical marijuana. A recreational marijuana legalization measure in North Dakota failed.

3. Sales of recreational marijuana in Canada were scheduled to begin on July 1, 2018, but were delayed until October 17, 2018.

4. Sessions “resigned” as attorney general on November 7, 2018.

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recreational) and who, in August 2017, sent a series of rather threatening letters to the governors of four states (Alaska, Colorado, Oregon, and Washington) that had legalized marijuana. Sessions's letters (which were largely based on highly suspect and, in some cases, false "data" from High Intensity Drug Trafficking Area reports) asserted that marijuana legalization was attended by a number of problems in these states and hinted that the federal government would take action. However, as we address in some detail, the governors of these states largely rejected these claims and responded to Sessions's somewhat veiled threats by emphasizing that legalization had not created severe problems—in fact, there are several benefits arising from it. The governors indicated that they would defend marijuana legalization in their states, especially given that voters had approved it. The chapter concludes with a discussion of further interesting developments with marijuana at the federal level, including a proposal by Senator Corey Booker to completely legalize marijuana through the Marijuana Justice Act.