

# Notes on a Post-Prohibition Research Agenda

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## Introduction

On June 6, 1932, John D. Rockefeller Jr. released a public letter to Nicholas Murray Butler, president of Columbia University, announcing Rockefeller's surprising support for a resolution Butler was proposing for the Republican Party platform: *repeal of alcohol prohibition*. It caused a political sensation.

This did not come easily for Rockefeller. "I was born a tea-totaler; all my life I have been a tea-totaler on principle," he wrote, noting that neither he nor his parents or grandparents had "ever tasted a drop of intoxicating liquor." His mother and grandmother had been temperance crusaders who prayed "on their knees in the saloons" to save men from the "horrors of drunkenness." The letter shocked anti-liquor crusaders because for years prior to prohibition, Rockefeller and his father had been prominent backers of the Anti-Saloon League, the powerful lobby most responsible for the passage of national alcohol prohibition (McGirr 2016, 237–38). They ardently hoped the new law would eliminate alcohol and the many problems attributed to it. Millions of Americans shared that hope. The crusade against drink was the utopian fantasy of many native-born, white middle-class Protestants, but it was the largest social movement in the US at the beginning of the 20th century (Gusfield 1963; Levine 1985; Okrent 2010; McGirr 2016).

After a dozen years of national alcohol prohibition, however, Rockefeller came to the "profound conviction" that whatever benefits prohibition brought were "more than outweighed by the evils" that were "likely to lead to conditions unspeakably worse than those which prevailed before." He found

that drinking generally has increased; that the speakeasy has replaced the saloon . . . that a vast army of lawbreakers has been recruited and financed on a colossal scale; that many of our best citizens, piqued at what they regarded as an infringement of their private rights, have openly and unabashed[ly] disregarded the Eighteenth Amendment; that as an inevitable result respect

for all law has been greatly lessened; that crime has increased to an unprecedented degree—I have slowly and reluctantly come to believe.<sup>1</sup>

In the crisis context of the Great Depression, alcohol prohibition made less and less sense to more and more people. Urban Democrats supported repeal. Some key Republicans were joining them, including newspaper baron William Randolph Hearst. Rockefeller saw that Republicans were losing support by backing prohibition and wrote that he hoped to take alcohol policies “out of the field of partisan politics.”

Rockefeller understood that after decades of demonizing alcohol it would be “difficult for our people as a whole to agree in advance” on a new alcohol control system. So he asked his top adviser, Raymond Fosdick, to set up a public policy institute to study the alternatives and draft a model alcohol control law that might guide local governments. They recommended a flexible “local option” model that allowed states to set specific alcohol regulations. The 18th Amendment was repealed in 1933, and within two years nearly all states had their own alcohol control systems that closely followed the model law (Levine and Reinerman 1991). To some extent, the states had become, in Justice Brandeis’s famous phrase, “laboratories of democracy” with regard to alcohol policy.

Here in 2020, Americans again find themselves at an historic inflection point, this time about cannabis policy. Through the political haze we can see the rough contours of a post-prohibition paradigm coming into view. First, there has been a *generational shift in experience*, from a tiny sliver of the population having used cannabis in 1960 to half the adult population having done so by 2010 (NIDA 2019). Second, this has led to a *discursive shift* in the culture from a discourse shaped by temperance and prohibition, drug wars, and “just say no” campaigns, to one in which the ingestion of consciousness-altering substances, cannabis in particular, is commonly understood not as deviance, disease, addiction, or mental illness but simply something many ordinary people *do* (e.g., Parker, Aldridge, and Measham 1998; Eisenbach-Stangl, Moskalewicz, and Thom 2009). Cannabis use is a cultural practice, one among many technologies of the modern self deployed for pleasure, against pain, or both (see Walker 2017). This shift in attitudes can be measured many ways but is most obvious in opinion polls and voting behavior showing majoritarian support for cannabis legalization.

Third, there has been a *political/policy shift* in which state and local policies have been enacted as if national cannabis prohibition was a thing of the past. Despite federal law, at the time of this writing voters and legislators in 34 states have legalized medical marijuana and in 16 of these states have legalized adult use. As officials now enact various reforms to regulate cannabis, the “laboratories” of the states are in effect conducting novel post-prohibition policy experiments. Several additional states have taken steps toward decriminalization, and more legalization initiatives are gaining support. Cannabis is a burgeoning industry, providing tens of thousands of jobs and many millions in tax revenue. In politics and policy, cannabis has undergone a moral passage into legitimacy. Together, these shifts mark the early stages of *de facto* repeal of cannabis prohibition.

Although the trend line seems clear, the forces favoring cannabis prohibition run very deep in American culture; they are unlikely to slink away in defeat, political tails between their legs. To sustain the trend toward the legal regulation of cannabis, advocates will need research that addresses the questions that defenders of prohibition will continue to raise.

Rockefeller’s observations about the unintended consequences of alcohol prohibition 90 years ago hold for drug prohibition today. The lessons that led to repeal of the 18th Amendment, however, have only recently and partially been applied to cannabis and other criminalized drugs. Drug prohibition was largely invented by anti-alcohol crusaders and alcohol prohibition agents who were zealous in their attempts to suppress other drugs after repeal of alcohol prohibition. The new Federal Bureau of Narcotics stoked race and class prejudices, creating fears of “alien” drugs and “dangerous classes” of users in a process I call *reciprocal demonization* (Duster 1970; Musto 1973; Bonnie and

Whitebread 1974; Epstein 1977). From their inception, drug laws were deployed as mechanisms for the social control of the “other.”

The cumulative effects of drug prohibition continue to cloud public understanding, creating fear and moral condemnation that are then mobilized into political support for continued prohibition. It is still taken as “common sense” that drugs cause crime, disease, and overdose deaths. It is less well understood that such claims are partly self-fulfilling. “Drug-related crime” is caused as much by the dehumanizing funnel of narrowing options shaped by prohibition as by addiction *per se* (Rosenbaum 1981). The spread of HIV/AIDS and hepatitis-C among people who inject drugs stems from syringe sharing, which has more to do with the criminalized context of drug use than with drugs themselves. Most opiate overdose deaths are more a function of the lack of potency labeling and quality controls in illicit markets than of the alleged depravity of “junkies.”

In short, the dangers citizens have been led to fear most about illicit drugs are as much the predictable effects of drug *policy* as the effects of drugs. Prohibition helped create the conditions under which drug use is more likely to be problematic, and thus helped create the consequences that then appear to confirm the need for prohibition.

## The Drug Policy Reform Movement

As the costs and consequences of drug prohibition climbed in the 1980s, activists forged a drug policy reform movement from a growing array of public health officials, physicians, attorneys, elected officials, researchers, and religious leaders who challenged prohibition. They made drug policy contested terrain. Elements of this first emerged internationally. Dutch reformers created licensed cannabis retail shops. British drugs workers set up syringe exchanges. Swiss and German officials created safe consumption spaces and opiate maintenance programs. Then Portugal, Belgium, Denmark, Australia, Spain, Argentina, Uruguay, and Canada all moved away from the hardline prohibitionist policies advocated by US and UN drug control agencies and toward decriminalization and harm reduction.

In the US, the National Organization for the Reform of Marijuana Laws began pushing for cannabis legalization in the 1970s. In the 1980s drug policy reformers joined with AIDS activists to establish syringe exchanges, which were adopted as crucial public health measures to reduce the spread of HIV/AIDS (e.g., Kerr et al. 2010) and hepatitis-C in 150 or more US cities, despite federal laws prohibiting them. In the 1990s the Drug Policy Alliance and medical marijuana advocates began to win state-level laws. Since 2000, the drug war’s disproportionate damage to communities of color has made drug policy reform a top priority for civil rights and racial justice organizations, from the NAACP and the Congressional Black Caucus to Black Lives Matter (Burns 2019). These strands of drug policy reform activism may be understood as green shoots of citizen resistance to the state apparatus of prohibition. The wide range of reforms, innovations, and policy experiments now underway make this an epochal moment in the history of drug policy, with cannabis leading the way.

The drug policy reform movement faced substantial opposition, not least from a drug control industrial complex that lobbied hard for prohibitionist policies and funding (e.g., Frydl 2013). For years, reformist discourse about drugs was suppressed and key policy questions were excluded from scientific forums. Scientists were warned that they should avoid using even the term “harm reduction” if they wanted their research papers accepted and their grants funded. There is a growing medical literature on the therapeutic potentials of cannabis (Institute of Medicine 1999), but the scientific studies necessary to demonstrate its precise efficacy for specific types of patients have been systematically blocked by the Drug Enforcement Administration (which then cites the lack of scientific evidence of efficacy as the reason for their blockage).

The National Institute on Drug Abuse is the principal source of funding for research on drug issues. But as its name implies, NIDA focuses primarily on the physiological, neurological, and

psychological aspects of *individual abuse*, addiction, and treatment. Equally important research on the *social context* of drug use and drug-related problems—including the impact of prohibitionist policies—is rarely funded. More important for the post-cannabis prohibition epoch now dawning, studies of what users have found *beneficial* about cannabis, their rules and rituals for self-regulating use, protective practices, and strategies for natural recovery, have received very little support. Until recently, studies of the therapeutic potentials of cannabis for cancer patients or of MDMA or LSD for veterans with post-traumatic stress disorder have not been funded (see Pollan 2018; Giffort 2020). These are among the scientific casualties of the drug war.

This distortion of public discourse about drugs in the service of state orthodoxy about prohibition has been toxic to both science and democratic policymaking. In such a fear-ridden, heavily moralized policy arena, a more open knowledge production process will be essential for evaluating reform policies. The antidote is to crank open the analytic aperture, conduct solid research on previously *verboten* questions, and have honest discussions of the evidence. Since at least Galileo, politically inconvenient scientific knowledge has often been buried. One core task facing post-prohibition researchers is to excavate such knowledge.

In 2011, the Global Commission on Drug Policy issued its report on the War on Drugs. It recommended what is now coming to pass with cannabis: “robust experimentation with harm reduction, decriminalization and legal regulatory policies.” The first “principle” articulated in the report is, “Drug policies must be based on solid empirical and scientific evidence. The primary measure of success should be the reduction of harm to the health, security, and welfare of individuals and society.” Drug prohibition’s true costs and benefits have never been systematically compared to those of legal regulation according to this criterion. But this is now possible for cannabis. Given the carefully cultivated fears about drugs and the resistance to drug policy reform, research on cannabis legalization and other alternatives to prohibition must be especially rigorous. The more reforms are adopted, the more important it is for research to identify their limitations and unintended consequences. In this way research can help create an evidence-based feedback mechanism so that cannabis regulations and other reforms can be evaluated, adjusted, and made more effective.

## *Playing Defense*

Reforms of all sorts are never safely set in stone; sooner or later they always require defending. In recent years, democratic civil society movements in Eastern Europe and in developing nations moved forward only to get pushed backward. In the US at this writing, key elements of the New Deal from the 1930s—labor rights, bank regulation, Social Security—are under attack from a renascent Right. The civil rights movement has had to win its victories for racial justice again and again; even now the Voting Rights Act of 1965 is being eviscerated. Legal reforms alone often remain vulnerable if the political values behind them are not woven into culture and institutionalized.

In drug policy, the Netherlands successfully pioneered a licensed cannabis sales system but has been pressured by neighboring nations to constrict it. England partially decriminalized cannabis but then reversed course. In the US, research has clearly established the cost-effectiveness of treatment in lieu of incarceration for drug offenders (Ryddell and Sohler Everingham 1994; Caulkins et al. 1997; McVay, Schiraldi, and Ziedenberg 2004; Ettner et al. 2006), yet police unions, prison guards, and prosecutors still oppose this and push for harsher punishments. Even with unequivocal evidence of their safety and efficacy (e.g., Kerr et al. 2010; California Department of Public Health 2018), syringe exchange programs continue to face local opposition. Despite polls showing majority support for medical marijuana laws and legalization (e.g., Hartig and Geiger 2018), dispensaries and retail outlets still face zoning, regulatory, and other challenges. In short, cannabis policy reforms will surely require defending, and research will be the front line of that defense.

A post-prohibition research agenda should begin with a *human rights perspective* on drug use, namely the presumption that sovereign individuals—not the state—have the right to decide what they put into their own bodies.<sup>2</sup> This perspective is also fundamental to rigorous scientific research on drug policies, for drug users have essential expertise about their drug use and how it affects their lives. No matter how troubled or troubling some of them may seem (particularly in a prohibitionist context), people who use drugs must be seen presumptively as full citizen subjects rather than pathologized objects of social control—part of “us,” not “them.” To understand the risks and rewards of drug use, researchers must be able to understand how citizens who use drugs react to the evolving constellation of conditions they confront.

### ***Is Availability Destiny?***

The drug control industry and other opponents of cannabis legalization have for many years confidently predicted that greater availability would inevitably lead to greater cannabis consumption and, therefore, more problems (for a useful overview, see Room et al. 2010). An early clue about this claim came in the 1970s, when 11 US states passed limited forms of marijuana decriminalization. Several evaluations showed that neither use prevalence nor drug-related problems increased more in those states than in similar states that did not decriminalize (Johnston, Bachman, and O'Malley 1981; Maloff 1981; Single 1981). Since the 1980s, the Netherlands has had up to 400 “coffee shops” licensed to sell cannabis (Beileman and Goeree 2000). Dutch rates of cannabis use prevalence, however, have remained on par with or below those of most neighboring countries that prohibit cannabis and at just over half the prevalence rate in the US (Reinarman, Cohen, and Kaal 2004; Room et al. 2010).

In 1996, California voters passed Proposition 215, a medical marijuana initiative that spawned a sprawling system of dispensaries and dramatically expanded availability. Opponents worried that this would lead to an upsurge of use by youth (e.g., Levy 2013). Yet marijuana use by California high school students *declined* slightly for nearly a decade and remained below pre-1996 levels longer (Skager and Austin 2004). After Colorado, Washington, Oregon, and Alaska legalized adult recreational use, the percentage of their high school students who reported past-month cannabis use remained stable or declined (Washington State Department of Health 2016; Colorado Department of Public Health 2017; Oregon Health Authority 2019; Brooks-Russell et al. 2019; Anderson et al. 2019). A recent analysis of European data (Stevens 2019) showed no statistically significant association between cannabis policy liberalization and use by young people. Availability is not destiny.

But the fact that the sky has not fallen does not mean that questions about the effects of increasing availability are settled. Unlike illicit markets, licensing and regulation provide strong economic incentives for cannabis dispensaries and retail outlets to enforce age restrictions scrupulously. Of course, many young people still consume cannabis. But if keeping it out of the hands of youth is a worthy policy objective, then post-prohibition research should explore how some youth get around age restrictions, the frequency and quantity of their use, and whether they experience problems. And what if cannabis consumption *does* increase over time under regulated sales? This in itself would not constitute a self-evident evil, but it would be important for researchers to determine whether increased prevalence led to an increase in *problematic* use and, equally important, whether increased use of cannabis had any positive collateral impacts such as a decrease in opioid or alcohol consumption.

### **Of Markets and Regulations**

As with post-repeal alcohol control, states that have legalized cannabis have replaced prohibition with regulated markets. This can take various forms. After alcohol prohibition was repealed, taxes

were structured to favor milder beverages, and “dram shop” laws limited the size of drinks and the hours saloons could be open. Other regulations were designed to prevent the liquor industry from agglomerating excessive market power through vertical integration (controlling production and sale).

Opponents of cannabis legalization raise the specter of “Big Cannabis” *a la* “Big Tobacco” and “Big Pharma,” arguing that unfettered market forces tend to result in industry concentration and undue wealth and political influence that could disadvantage public health. Traditional underground growers who produced cannabis under prohibition also worry about “Big Cannabis” squeezing them out and obtaining corporate patents on strains of cannabis.

Beyond limiting sales to adults, on which there is broad consensus, what exactly should be regulated and how should such regulations be enforced? When Dutch *de facto* legalization led to greater commercialization, more coffee shops, and advertising that glamorized cannabis, use became more prevalent among youth. The Dutch government tightened their rules; now coffee shops cannot display so much as a marijuana leaf in their windows. Youth prevalence edged back down (MacCoun and Reuter 2001). In the US, state-level legalization has led to billboards promoting cannabis stores along major freeways. Millions have been spent on clever cannabis marketing. Anyone visiting a licensed cannabis outlet will notice the extraordinary variety of products and paraphernalia on offer. Should there be limits on cannabis commercialization? If so, what kinds? Who decides?

Unless regulations are thoughtful and enforced, the drive for more profits will likely yield more promotion and larger grow operations to maximize economies of scale. In any industry, big players tend to push out or acquire smaller players, leading to a concentration of capital. Large growers will advocate for the right to do whatever will maximize crop yields and profits. In some areas with good growing climates, there has been a land rush and tree clearance. There are already private equity firms that invest solely in cannabis-related businesses, and multinational conglomerates are being formed. What are the implications of all this for the workers who tend, clip, and ship the plants? For consumers? Neighbors? In post-prohibition spaces where the artisanal is becoming corporate, people who worry about “Big Cannabis” aren’t just being paranoid.

News headlines hint at some of the potential risks of commercialization. Big Pharma firms Purdue and Johnson & Johnson have agreed to pay billions in settlements for having misleadingly promoted Oxycontin and its chemical cousins, which helped create the opioid epidemic (Hoffman 2019). The prominent corporate consulting firm McKinsey advised Johnson & Johnson to “turbocharge” sales by getting “more patients on higher doses of opioids” and to study techniques “for keeping patients on opioids longer” (Bogdanich 2019). A leading manufacturer of nicotine vaping devices, Juul Labs, apparently targeted schools and youth camps to promote use of e-cigarettes, which they marketed in candy flavors and in the handy form of rechargeable USB drives (Kaplan 2019). The Centers for Disease Control report a 13-fold rise in the use of e-cigarettes among high school students since 2011 (Cullen et al. 2018).

The industry, the state, and cannabis consumers now face a question that has long confronted alcohol policy: *Should we allow a consciousness-altering drug to be marketed just like any ordinary commodity?* Both before and after repeal of alcohol prohibition, the answer has been various forms of “No.” The trick is to find the optimal balance of licensing requirements, fees, taxes, labor safeguards, environmental protections, and retail regulations—without so burdening the legal industry that small businesses are priced out and the black market resurges. However, some noncommercial production and distribution (home grows and other “gray market” transactions) may serve as a brake on both monopolization and excessive enforcement. The post-prohibition research agenda will have to include questions about the political economy of cannabis and the modes of governmentality being invented to regulate it.

Finally, will the deepening immersion of cannabis in the whirlpool of advanced capitalism affect the ceremonial or sacred aspects of cannabis long treasured by users? Marx wrote that in the ceaseless churn of capitalism “all that is solid melts into air, all that is holy is profaned.” Weber noted that

capitalist modernity brings a relentless efficiency, an “iron cage” of rationality (from which, ironically, cannabis has often served as a valued escape). Norman Zinberg (1984) argued that the *culture* surrounding drugs is intrinsic to their powers—that the psychological set of user expectations and the structure of the social settings in which it is used are fundamental parts of their effects and the meanings we inscribe upon those effects. If so, then post-prohibition researchers might also ask, how will the altered states of consciousness themselves be altered by the increasing commodification of cannabis?

## Notes

- 1 Quotes from the Rockefeller letter were taken from Levine (1985, 10–11), based on the Rockefeller Family Archives, 1920s–1930s.
- 2 Whether and to what degree this principle should hold for other market participants, e.g., “dealers,” would depend on the cannabis product type, the scale of operation, whether it was medically authorized, other applicable regulatory rules, etc. Answers will require much public debate and a far more complicated analysis than space allows here.

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