

**The Twenty-first Amendment in the Twenty-first Century:
Lessons for Cannabis Reform**

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More than eighty years after the ratification of the Twenty-first Amendment, which effectively ended the nationwide prohibition of alcohol production, sale, and transport in the United States, critics and would-be-reformers of federal drug policy regularly make comparisons between the infamous “War on Drugs” to the “noble experiment” of Prohibition. Among the most salient similarities between the two cases are the encroachment on the home rule of states (whether justified or otherwise), the imposition on individual liberty, and the fostering of illegal underground economies and black markets rife with organized and unorganized crime. Similarly, many of the arguments that were formerly made against Prohibition are repeated today with regard to cannabis and other criminalized drugs—overcrowding of prisons, the increase in organized crime, the high cost of enforcement, and so forth.

Yet, these comparisons often belie the stark *differences* between Prohibition and the present prohibition of cannabis (commonly called “marijuana”), which will be the focus of this analysis, such that any policy implications of Prohibition’s repeal must take account of these differences. After recounting brief histories of alcohol and cannabis prohibition in the United States, I will outline the differences between the two prohibitions which allow us to conclude with three lessons that present-day policymakers and reformers can and should derive from the movement to end Prohibition.

A Brief History of Alcohol Prohibition and Repeal in the United States

Aimed at alleviating a variety of social ills, including declining public health, domestic violence, and poverty, the Temperance Movement arose in the nineteenth

century to oppose the substance that was considered to be the root of the problem: alcohol. Tied to such issues as abolition of slavery and women's suffrage,¹ the movement led to regional prohibitions in the last decades of the nineteenth century. Founded in the 1890s, the Anti-Saloon League became the country's most influential proponent of prohibition of alcohol.² As the League gained nationwide support and political influence, a constitutional amendment was proposed in 1917 that would prohibit the manufacture, transport, and sale of intoxicating beverages. This proposal would become the Eighteenth Amendment, which was ratified in January 1919 and went into effect in January 1920.³

In preparation for national Prohibition, Congress passed the National Prohibition (Volstead) Act in October, 1919, for the enforcement of constitutional criminalization of alcohol.⁴ Originally formed by the Volstead Act in 1920 as a unit of the IRS, the Bureau of Prohibition was created as an independent entity in 1927 and placed in the Treasury Department with the duty of "enforcement of all laws prohibiting or authorizing the manufacture, sale, and use of intoxicating liquors and narcotic drugs."⁵

By some accounts, Prohibition was a modest success in accomplishing certain of its aims, including lowering the consumption of alcohol. However, some of its unintended consequences—including loss of federal tax revenue and the prevalence of organized crime, coupled with the extreme difficulty of law enforcement—led to nationwide opposition to the Amendment and increasing political pressures to repeal it.⁶

¹ Okrent 42

² Ibid. 34

³ Ibid. 104—107

⁴ Okrent 108—109

⁵ Schmeckebier 1

⁶ See, e.g., Moore 1989 and Blocker 2006

Among the prominent proponents of repeal was John D. Rockefeller, Jr., whose father had previously contributed hundreds of thousands of dollars to the prohibitionist Anti-Saloon League.⁷ The highly influential Women’s Organization for National Prohibition Reform, likewise, contained many former prohibitionists.⁸ The DuPont brothers helped organize the Association Against the Prohibition Amendment, which began a publicity campaign in 1928 to gain support for their anti-Prohibition cause.⁹ The anti-Prohibition movement exercised a variety of different strategies, including attempting to change the definition of “intoxicating liquors,” electing “wet” politicians to all levels of government, and canvassing and lobbying to end Prohibition outright. They also expressed different rationales for favoring the repeal of the Eighteenth Amendment, including the Amendment’s fostering of organized crime, its failure to promote moderation, and the need to restore freedom of conscience and states’ rights.¹⁰

The repeal of Prohibition became a component of the Democratic Party’s platform, and Franklin Delano Roosevelt conducted his 1932 presidential campaign on an anti-Prohibition platform, calling Prohibition a “damnable affliction.”¹¹ After Roosevelt was elected, Congress passed the Cullen-Harrison Act of 1933, which permitted the sale of 3.2% alcohol. By that time, the Twenty-first Constitutional Amendment, which would repeal the 18th Amendment, had already been proposed and sent to the states for ratification.¹² The ratification of the Twenty-first Amendment, effectively ending

⁷ Okrent 300

⁸ Ibid. 340—341

⁹ Ibid. 299

¹⁰ Ibid. See 299, 340—41

¹¹ Olsen 8

¹² Okrent 352

nationwide Prohibition, was completed on December 5th, 1933, as the only amendment to be passed by state conventions rather than legislatures.¹³

A Brief History of Cannabis Prohibition in the United States

English colonists in the United States have grown and exported hemp, a variant of the cannabis plant, since the early seventeenth century, particularly for use in textiles.¹⁴ After tetrahydrocannabinol (THC), the active ingredient in this plant, was found to have desired effects on the mind and body, cannabis was used in the nineteenth and early twentieth centuries as a pharmaceutical, with some states requiring a prescription to purchase it, thus imposing an initial regulation on its use.¹⁵ Congress passed the Pure Food and Drug Act in 1906, which required that certain drugs, including cannabis, be accurately labeled with contents.¹⁶

During the early part of the twentieth century, the plant was linked, perhaps unreasonably, to various instances of violence and tension along the Texas-Mexico border with Mexican immigrants, who smoked cannabis recreationally and called it “marijuana.”¹⁷ As a consequence of the plant’s perceived ill-effects, various states and municipalities began regulating and prohibiting cannabis in the first few decades of the twentieth century.¹⁸ Louisiana, for example, banned it in the 1920s.¹⁹ As a component of an international movement to restrict recreational drugs, Indian hemp (which had a

¹³ Ibid. 354

¹⁴ Booth 9—41

¹⁵ Ibid. 109—119

¹⁶ Ibid. 161

¹⁷ Ibid. 158—161

¹⁸ Ibid. 163

¹⁹ Ibid. 165

relatively high THC content, compared with European hemp) became regulated under the International Opium Convention.²⁰

By the mid-1930s, virtually all states had some manner of cannabis regulation, and federal regulation was enforced through the creation of the Federal Bureau of Narcotics in 1930.²¹ Possession and transfer of cannabis became regulated in the United States under the Marihuana Tax Act of 1937, through the imposition of a tax on all sales of cannabis. These taxes on cannabis eventually transformed into *de facto* criminal law, as described by the Commission on Law Enforcement and Administration of Justice in 1967.²² While this act was repealed in 1969 after it was ruled unconstitutional, it was replaced with the Controlled Substances Act (CSA) in 1970,²³ which was a component of the Comprehensive Drug Abuse Prevention and Control Act of 1970.²⁴ The Drug Enforcement Administration (DEA) was created in 1973 as a branch of the Department of Justice, charged with investigating and prosecuting cases under the CSA.²⁵

In the decades since the DEA was created to enforce the CSA, state governments and local municipalities have begun a gradual process of de-criminalization and legalization of cannabis. Oregon de-criminalized cannabis in 1973, while Colorado, Alaska, Colorado, and California did the same in 1975. Presently, in 2014, the sale, possession, and use of marijuana (subject to certain regulations) is legal in three states: Washington, Oregon, and Colorado. While recreational marijuana is only legally

²⁰ Ibid. 142

²¹ Ibid. 176

²² Gerber 11

²³ Ibid. 135

²⁴ Ibid. 297

²⁵ Booth 292

available in these three states, 23 states and Washington, D.C., permit production, possession, and use of medical marijuana.²⁶

Analyzing the Differences between Alcohol and Cannabis Prohibitions

It is tempting to draw a direct parallel between alcohol de-prohibition and cannabis de-prohibition, such that one could reliably predict, for example, that organized violence related to cannabis will decrease on the basis that organized violence related to alcohol decreased after the Twenty-first Amendment went into effect in 1933. It *might* be the case that organized violence will decrease if cannabis is de-criminalized at a national level, though this cannot be *directly* inferred from the circumstances surrounding alcohol de-prohibition. Rather, the first step to drawing lessons from the movement to repeal Prohibition in 1933 in our present context is to understand the ways in which we can reasonably draw lessons, and those in which we cannot.

Accordingly, I lay out the manners in which the cases of alcohol de-prohibition in 1933 and marijuana de-prohibition in the present are asymmetrical—the legal, the social, and the geo-political conditions—in order to lay the groundwork for policymakers to draw appropriate lessons from the repeal of the Eighteenth Amendment.

Legal Differences

The first asymmetry between alcohol Prohibition and cannabis prohibition is the divergence in legal condition between the two cases, which has two facets: the legal status of the prohibition and the extent of proscription.

While national alcohol Prohibition in the United States was a function of a constitutional amendment (with the corresponding Volstead Act that governed enforcement), the national prohibition of cannabis is simply a function of federal law

²⁶ McVeigh 62

(while many states have parallel state regulations). Consequently, the method of repeal is different in each case. The repeal or modification of the CSA does not require a two-thirds majority of states bodies (either legislatures or conventions) to repeal the bill, as was required in the case of the repeal of the Eighteenth Amendment—it just requires a simple majority of state *representatives*. In a sense, this method of repeal is procedurally simpler, and likely easier to accomplish, all other things being equal.

There is also a divergence in the extent of proscription. The Eighteenth Amendment, and the corresponding legislation, did not prohibit simple possession and private use of alcohol—rather, it prohibited production, transport, and sale. In contrast to this limited extent of alcohol prohibition, cannabis is currently subject to comprehensive prohibition at a federal level, including the production, transport, sale, and possession of any amount of the substance. Since possession is illegal, some of the creative work-arounds of the Prohibition-era are effectively eliminated, such as bars offering a free beer with the purchase of food, or relying on one’s personal liquor supplies. In this sense, repeal of the nationwide cannabis prohibition would likely be more complicated and difficult because the status quo proscription is more comprehensive and wide-reaching than alcohol Prohibition.

In any case, we can conclude from these legal features that “Prohibition” is not a univocal concept—cannabis is not prohibited in precisely the same sense in which alcohol was prohibited in the 1920s, and repeal would not require precisely the same type of political action.

Social Differences

In addition to the legal differences, there is an asymmetry between alcohol and cannabis prohibitions in their relative social situations. The criminalization of alcohol began at a popular level through the Temperance Movement, but reached the level of federal prohibition in a relatively abrupt manner—through a single constitutional amendment that criminalized the production, transport, and sale of alcohol in the United States. Alcohol, which still had a relative hold on American society, was driven underground. Both before and during Prohibition, the prevalent consumption of alcohol as a social custom, especially among immigrants, did not necessitate intemperance (that is, immoderation).

The criminalization of cannabis, however, was a gradual process that began with individual state regulation, and culminated in federal prohibitions, and is presently undergoing a gradual process of de-criminalization at the state level. Because alcohol was more widely consumed, its prohibition was instantly more controversial than the criminalization of marijuana, which was less commonly used, at least among the most dominant and politically-influential segments of American society. Whereas alcohol went from legal to illegal and back to legal within a generation, there are relatively few who would remember a time before cannabis was nationally-prohibited. In any case, the status of cannabis as *malum prohibitum* for approximately 80 years, coupled with the totality of the prohibition, resulted in an American society that is still relatively less accepting of the substance than the United States was of alcohol in 1933.

According to a Gallup poll conducted in October 2014, 51% of Americans support the legalization of cannabis, while 47% oppose it.²⁷ This is in sharp contrast to 12% in favor of legalization (and 84% opposed) in 1969,²⁸ and 36% in favor (and 60% opposed) as recently as 2005.²⁹ However, these figures still pale compared to the public opinion of alcohol leading up to the ratification of the Twenty-first Amendment—approximately 74% of the American people favored repeal of the Eighteenth Amendment, while 26% opposed it.³⁰

The use of cannabis has been on the rise for decades, especially among youth. The National Center on Addiction and Substance Abuse at Columbia University reported in 2005 that 33.3% of college students reported using marijuana during the previous year. Still, according to a 2013 Gallup survey, only 38% of Americans admit to having *ever* used marijuana, while only 7% claim to, in the present, smoke marijuana.³¹ The relative popularity of cannabis among youth and within various subcultures has not translated into widespread social use among American society as a whole. Recreational marijuana is still, to some extent, an “outsider” drug, as opposed to caffeine or alcohol. While public opinion is changing relatively rapidly regarding its legal status, the recreational use of marijuana has not reached the level of social acceptability that alcohol held prior to Prohibition. Accordingly, predictions regarding the effects of cannabis legalization on use, and any regulations that are instituted as a result, must take into consideration the current relative lack of acceptance in comparison to alcohol during Prohibition.

Geopolitical Differences

²⁷ Gallup, 2014.

²⁸ Gallup, 1969.

²⁹ Gallup, 2005.

³⁰ Childs 260-261.

³¹ Gallup, 2013.

The final difference that is relevant for drawing an incisive relationship between alcohol de-prohibition and prospective cannabis reform is that of the global context. The geopolitical context in which alcohol prohibition was repealed in 1933 is in stark contrast to the present geopolitical criminalization of cannabis.

At the time the Twenty-first Amendment was ratified in 1933, the United States was one of the only countries in the world to prohibit alcohol. Many countries had prohibited alcohol in the first decades of the twentieth century, but the vast majority repealed their laws during the 1920s. Among them, Norway repealed its prohibition in 1923 for beer and fortified wine and 1927 for liquor; the Soviet Union repealed its prohibition laws in 1925; all Canadian provinces but Prince Edward Island repealed by 1929; Finland repealed in 1932.³² A notable exception to this trend was Iceland, which prohibited all alcohol from 1915 to 1935, after which only “strong” beer (2.25% or more alcohol by volume) was prohibited until 1989.³³

In contrast, most countries have imposed nationwide prohibitions on cannabis, stemming from the early twentieth century international movement to ban recreational drugs. If the United States permitted cannabis at a federal level, it would be among the relative few countries that have, to some extent, legalized (or de-criminalized) the sale, cultivation, and/or transportation of cannabis (which include Cambodia, Czech Republic, Jamaica, the Netherlands, Peru, Portugal, Russia, Slovenia, and Ukraine).³⁴

³² Several countries have prohibited alcohol since 1933, in some cases only for Muslim citizens, including Pakistan, Brunei, particular Indian states, Iran, Libya, Mauritania, Saudi Arabia, Sudan, Kuwait, and Afghanistan.

³³ Associated Press, 1988

³⁴ Possession or private use of cannabis is legalized or de-criminalized in many other countries. See New Health Guide, 2014.

Consequently, if it were to consider nationwide repeal of cannabis prohibition, the United States would be at the cutting-edge of national social policy, which is an asymmetrical position to that which it occupied with regard to alcohol. In 1933, the United States had no dearth of countries with which to seek alternative models of restriction. The anti-Prohibitionist pamphlet *32 Reasons for Repeal*, for example, was able to make an appeal to the regulatory systems in Canada, England, Sweden, Norway, and Denmark as viable alternatives to nationwide Prohibition.³⁵ However, in the present world, relatively few cannabis regulatory systems exist, so repeal at a federal level would be relatively risky in terms of predicted effect and effectiveness. Thus, the prescriptive power of the repeal of Prohibition in 1933 must be tempered with the relative isolation of the United States on the geopolitical stage and the unknowns regarding cannabis prohibition repeal.

Lessons from the Repeal of Alcohol for Cannabis Reformers:

Taking into account these asymmetries between the Twenty-first Amendment's de-prohibition of alcohol in 1933 and the prospective reform of federal drug policy, we can arrive at three lessons that can be drawn from the movement to repeal Prohibition in the 1930s: the necessities of reform at the national level, the differential distribution of legal regulation between the federal and state levels, and cannabis regulation that balances freedoms with public interests.

(1) If there is to be lasting and stable cannabis reform, it is necessary to repeal or reform cannabis policy at the national level rather than simply the state level.

By the time Congress issued a partial repeal of nationwide prohibition through the Cullen-Harrison Act in 1933, the Twenty-first Amendment, which would completely

³⁵ Association Against the Prohibition Amendment 15–21, 32

repeal the Eighteenth Amendment, had already been sent to the states for ratification. Upon ratification, alcohol production and sales could begin without federal intervention, apart from peripheral violations. Effectively, the repeal at the national level (through federal legislation and, finally, constitutional reform) was a condition for the possibility of states and localities deciding whether or not to permit alcohol, and for private establishments to actually begin to serve alcohol.

Under the doctrine of nullification, states are not required to enforce federal law, and can even hold laws in contradiction with federal law, but states cannot prevent the federal government from enforcing federal laws within state boundaries. However, nullification through the existence of state laws in contrast to federal law is not directly available in the case of a Constitutional amendment, such as the Eighteenth Amendment, for example. Accordingly, states were not technically required to *enforce* Prohibition, but they were not permitted to pass laws in contradiction to national Prohibition, for any such law would have been unconstitutional.

While the legalization of cannabis at the state level, in contrast, is not prohibited *per se*, reform at the federal level is no less practically-necessary if we are to foster stability in cannabis law and enforcement. Cannabis is still classified as a Schedule I drug at the federal level, which implies that it has "no currently accepted medical use in treatment in the United States,"³⁶ and the DEA enforces the law accordingly, often in tension with state laws. The DEA continues to enforce the CSA, even in the states of Washington, Oregon, and Colorado, where the sale, possession, and use of cannabis is legal. While recreational marijuana is only legally available in these three states, 23 states and Washington, D.C., permit production, possession, and use of *medical* marijuana.

³⁶ Drug Enforcement Administration 1

With the trend of states de-criminalizing cannabis, this tension and legal dissonance between the federal government and state governments can only be effectively resolved through *de jure* federal reform. In May 2014, following several high-profile raids on California medical marijuana shops, Congress restricted the DEA's use of federal funds to target medical marijuana operations that are legal under state laws. Raids of this sort that violated federal law while being permitted under state law were previously ruled to violate the 10th Amendment by a federal district court in *County of Santa Cruz v. Mukasey*. These changes, however, amount to *de facto* reform where comprehensive *de jure* reform is required, demonstrated by the continuance of DEA raids on state-sanctioned clinics.

National reform can come through gradual change, such as the present trajectory of federal cannabis policy, or through relative upheaval, such as the de-prohibition of alcohol. The present trajectory of cannabis reform at the state level, however, requires the latter, as state nullification in this case does not permit consistent or predictable enforcement, and the tensions between state and federal law will have a chilling effect on free action.

(2) It is necessary to balance regional restriction with federal de-prohibition and restriction.

In 1932, the Association Against the Prohibition Amendment published a pamphlet titled *32 Reasons for Repeal*. Its first stated reason for repeal was the conflict of federal and state power, as the Amendment was said to violate the Home Rule of the states.³⁷ Similarly, the second reason was a critique of the Amendment's centralization of

³⁷ Association Against the Prohibition Amendment 4

power in Washington.³⁸ It is clear from the remaining 30 reasons that Prohibition at *any* level of government is not, though their argument was primarily based on the power of states to govern themselves and regulate alcohol, in accordance with the 10th Amendment.

The repeal of the Eighteenth Amendment neither created a vacuum of alcohol regulation nor established a constitutionally-protected right to produce, sell, and consume alcohol. Rather, following the repeal of the Eighteenth Amendment in Section 1 of the Twenty-first Amendment, Section 2 leaves the regulation of alcohol firmly within the purview of the states, while also leaving open the possibility of federal regulation. Section 2 reads as follows:

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

The Federal Alcohol Administration Act of 1935 set the precedent that certain matters of production, wholesaling, containers, importing, advertising, and transporting between states would be regulated by the federal government. Meanwhile, state laws were left to govern issues relating to retail (except containers) and consumption of alcohol—who can buy alcohol, when alcohol can be sold, where individuals can consume alcohol, and so forth. Indeed, states could even determine *if* alcohol would be permitted to be produced, transported, or sold at all.

Nine states chose not to ratify the Twenty-first Amendment, most implicitly, while two states actively opposed it. Even in states that ratified the Amendment and did not prohibit alcohol at a state level, most states adopted a local option, allowing counties

³⁸ Ibid. 5

and local municipalities to decide whether or not to allow alcohol, and in what manner they would do so. As a consequence, after the repeal of national Prohibition, 38% of Americans still lived in areas where alcohol was prohibited.³⁹ Mississippi remained “dry” until 1966 and Kansas prohibited public bars even until 1987. In a similar way, reform of federal cannabis regulation will not necessarily have any particular effect on the policies and regulations of individual states—some states or municipalities may elect to prohibit cannabis indefinitely, based on community standards and other considerations.

After the repeal of the Eighteenth Amendment, the federal government came to regulate the elements of the alcohol industry that pertained directly to interstate and international commerce, as well as issues of standardization and transparency that related directly to public health (e.g. proper labeling, reuse of bottles, etc.). Whether or not this federal involvement in alcohol regulation is reasonable or not, and whether it infringes upon the home rule of states, can be debated. In any case, it is clear that in the years following the ratification of the Twenty-first Amendment, and leading to the present, federal regulations of alcohol have been balanced, to some degree, with state regulations.

The federal Department of Justice currently houses the DEA along with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which began as the Bureau of Prohibition until the Twenty-first Amendment required a bureaucratic transformation. Now primarily tasked with investigating and prosecuting the use of explosives and arms trafficking, and so forth, the ATF formerly collected federal alcohol taxes, while still investigating illegal alcohol imports, and labelling issues, among other things. In conjunction with the Alcohol and Tobacco Tax and Trade Bureau (which regulates alcohol containers, producers, and wholesalers), these two agencies govern all

³⁹ Mendelson and Mello 94

federal regulations on alcohol. Virtually all other facets of alcohol regulation rest with states and local law enforcement.

In stark contrast to the theoretically-complimentary relation of federal and state alcohol regulation, the DEA retains virtually all powers related to investigation and enforcement of drug offenses, while state and local governments have concurrent powers. Thus, with regard to the balance that has been achieved in terms of alcohol regulation, and foreseeing changes in cannabis policy, it is imperative to retain the capacity of local communities to make local decisions based on community standards, while also protecting the federal government's powers to regulate interstate and international commerce and conflict.

(3) Through substance regulation, it is necessary to balance individual freedoms with public interests.

In the interest of fostering public health and public safety, while also maintaining individual freedoms, it is imperative to engage in vigilant study and consideration with regard to present and potential future substance regulations. There are at least three facets of banned-substance-related public policy that must be considered: the scope of the regulation, the type of regulation, and the extent and manner of enforcement.

Potential models of cannabis regulation that aim at this balance can be found in the models of alcohol regulation that have been adopted by various states to decrease instances of drunken driving, public intoxication and disruption, domestic violence, liver disease, alcohol poisoning, and so forth, while also preserving the freedom of adults to buy, sell, and consume alcohol. In accordance with these aims, states have adopted drinking age laws, liquor license laws, regulations on time and place of sale, place of

consumption, and other regulations. These state-specific regulations are coupled with federal taxes and federal regulations of importers, producers, and wholesalers. Under this alcohol model, restrictions on supply are insufficient to foster a black market, thereby eliminating the most pernicious effects of strict prohibition.⁴⁰

It is vitally important to maintain the capacity of local communities to institute substance policies based on shared values and aims, but the United States does have examples of local decisions that strain the delicate balance between public goods and private freedoms. One such example is the restriction of alcohol sales on the Christian Sabbath.

While the existence and enforcement of so-called “Blue Laws,” which restrict commerce on Sundays, such as the sale of alcohol, lie firmly in the purview of states and local municipalities, the question still remains whether or not such laws are reasonable and advance a legitimate public purpose. Many critics maintain that such Blue Laws represent an unreasonable rights restriction, while not contributing in any substantial way (if any positive way at all) to public health and safety. Indeed, Blue Laws have been shown not to lower the rate of alcohol-related traffic accidents or fatalities.⁴¹ Furthermore, while there is a slight increase in drinking on Sundays after the repeal of Blue Laws, there is a correlating decrease in alcohol consumption on Saturdays, which even may be a public health benefit, because it levels out the consumption of alcohol so that there is a more even amount of consumption throughout the week.⁴²

Whatever character state regulations of cannabis take in the future, some of these interests are described in the Department of Justice's stated priorities with regard to states

⁴⁰ Miron and Zwiebel 189

⁴¹ Maloney and Rudbeck (2009)

⁴² Carpenter and Eisenberg (2009)

that have legalized cannabis, such as Colorado, Oregon, and Washington, which include the following:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use.⁴³

Unfortunately, these federal regulations—seemingly in the public interest—are still complicated by the tensions between federal and state enforcement, underscoring the fact that regulation requires *both* a reasonable balance between public interests and private freedoms *and* a suitable legal and political structuring.

Conclusions

Now the better part of a century removed from Prohibition, it seems as though American policymakers have yet to adequately account for the lessons of the Twenty-first Amendment and the circumstances surrounding Prohibition’s repeal. Even critics of the federal government’s prohibition of cannabis seem to have failed to fully account for the differences between the two contexts, such that we could draw reasoned and incisive conclusions.

We face the necessity of policy reform at the national level, though we do not have a great many countries on which to model the reform. We require the differential distribution of legal regulation between the federal and state levels, though the legal situation in which we must enact reforms is far more complex than one might otherwise

⁴³ Cole 1–2

think. It is also imperative to enact cannabis regulation that balances freedoms with public interests, though this reform will fall in a social climate that may not yet be as receptive as 1933 America was to Prohibition repeal. Whatever the future of American cannabis law, without taking these truths into account, public cannabis policy will be mired, as if the lessons of the Twenty-first Amendment were long since forgotten.

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