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From Killer Weed to Popular Medicine: The Evolution of American Drug Control Policy, 1937–2000

> Here we have a drug that is not like opium. Opium has all the good of Dr. Jekyll and all the evil of Mr. Hyde. This drug [marijuana] is entirely the monster Hyde, the harmful effect of which cannot be measured.
> —Harry J. Anslinger, Hearings on the Marihuana Tax Act, U.S. House of Representatives Committee on Ways and Means, 1937

> If you're undergoing cancer chemotherapy, severe nausea and vomiting are common side effects. And they often fail to respond to available medications. Fortunately, there is a medicine that can help. It's marijuana. Question 2 allows dying and suffering patients to use small amounts of marijuana. Non-medical use remains illegal. Morphine helps; marijuana helps. Vote yes on 2. We want to be able to offer you every medicine that helps.
> —"Doctor" with Richard Baldwin, M.D., Television Ad Aired in Support of Question 2 in Maine, 1999

On November 2, 2004, Montana voters made two critical but seemingly contradictory electoral choices. First, along with their counterparts in thirty other states, they voted to reelect George W. Bush as president. Second, they approved a medical marijuana ballot initiative by a margin of 62 to 38 percent—the second largest margin of victory for such measures to date. In fact, in this paradigmatic "red state," Montana voters backed medical marijuana in greater numbers and by a greater percentage than they supported the reelection of the president.[1]

The ratification of Initiative 148 in Montana was the latest in a string of victories for the statewide medical marijuana movement. Despite

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staunch federal opposition, 56 percent of California voters approved the first medical marijuana measure in 1996. Proposition 215 permitted patients with illnesses ranging from AIDS and cancer to anorexia and migraine to use medical marijuana with a physician's recommendation.[2] In the four years after the passage of Proposition 215, seven additional states followed in California's footsteps.[3] From 1995 to 2005, no state has rejected an initiative that solely addressed medical marijuana. By the early twenty-first century, over one-fifth of the American public lived in states where the use, possession, and in some cases cultivation of medical marijuana was permitted under state law.[4]

Table 1. Statewide Votes for Medical Marijuana, 1996-2000

State	Year	Number	Yes	No
California	1996	Proposition 215	56%	44%
Arizona	1996	Proposition 200	65%	35%
Alaska	1998	Question 8	58%	42%
Oregon	1998	Measure 67	55%	45%
Nevada	1998	Question 9	59%	41%
Washington	1998	Initiative 59	59%	41%
Maine	1999	Question 2	61%	39%
Colorado	2000	Amendment 20	54%	46%

Factors Affecting the Evolution of Drug Control Policy

The medical marijuana movement represents an effort to reform one important aspect of marijuana laws, yet scant attention has been paid to the reasons for its success. This article has two primary objectives related to that oversight. First, it analyzes the creation and entrenchment of federal institutions and elite attitudes that for decades supported a tough-minded approach to drug policy. Medical marijuana initiatives have been successful in spite of the federal government's wishes, but in order to understand that success we must place it in the historical context of federal drug control policy. The aggressive implementation of the Marihuana Tax Act of 1937 along with a concerted public information campaign hardened antidrug attitudes and brought about near-total prohibition. While legislation passed during the 1970s ushered in a softening of state and federal drug laws, many of those laws were ineffectual or impermanent. Throughout much of the twentieth century, negative stereotypes about drugs and users helped justify the federal emphasis on law enforcement, interdiction, and punishment as the primary weapons in the war against drugs.

The second part of this article argues that shifts in institutional venue and frameworks surrounding marijuana and its users were the key factors in the electoral success of the medical marijuana movement of the 1990s. The shift in venue was spearheaded by a group of drug policy reformers who exploited their prolific skills and resources to achieve success through the ballot initiative process, in part by transforming the way in which drug policy debates were framed. For years, drug policy reformers had been aware of opposition from federal and state representative institutions. Medical marijuana proponents were successful in large part because they were able to use the direct democracy process to harness the power of public opinion as a policymaking resource. Aware of the public's opposition to more ambitious reform proposals such as drug legalization, proponents avoided directly challenging the federal government's long-standing model of drug control as essentially deviant and threatening to mainstream American values. Instead, circumventing traditional institutions and sharpening their mass-based appeals, proponents activated public opinion by framing the medical marijuana debate around sympathetic themes of health, patient rights, and compassion.

As the medical marijuana story demonstrates, interest groups that have the skills and resources with which to wage direct democracy campaigns have increasingly come to reject the messiness, compromise, and deliberation of representative institutions in favor of the initiative's promise of greater flexibility, simplicity, and finality. With more and more policy issues—such as taxes and spending, gaming, same-sex marriage, and legislative redistricting—being settled by state publics rather than representative institutions, the medical marijuana movement offers several important lessons for students of the policymaking process, direct democracy, and federal-state relations. This article explores the conditions under which policy entrepreneurs choose the initiative route and the factors that enhance the success of their efforts. The findings indicate that the ability to access and exploit alternative policymaking venues and paradigms can dramatically alter the content of policy advocacy and the direction of policy outcomes. I show how the process of venue- and paradigm-shopping can promote the coexistence rather than the resolution of opposing policy systems and approaches. State legislators and governors often use the initiative process to champion their own policy preferences or, after initiative passage, lend support and compliance to measures that might ruffle feathers at the federal level.[5] The growing willingness of policy entrepreneurs to invoke the initiative process may heighten political conflict between federal and state institutions and actors with divergent policy priorities.

Early Drug Control Policy and the Turn to Direct Democracy

Before the twentieth century, drugs such as marijuana, cocaine, and opium were sold openly and were commonly used as painkillers. The first Western physician to take an interest in marijuana was W. B. O'Shaughnessy, who found it useful as an analgesic and anticonvulsant and whose work led other physicians to study the drug's potential to treat conditions including migraines, insomnia, and anxiety.[6] Around the turn of the twentieth century, groups including the medical community, commercial and political elites, Progressive reformers, and racist and nativistic interests lobbied for drug control legislation.[7] Faced with a rise in drug imports, more widespread drug addiction, a shifting population of users, and pressure from international treaty obligations, the United States ratified its first drug control legislation. The Pure Food and Drug Act of 1906 required that narcotic ingredients be listed on the labels of patent medicines shipped in interstate commerce.[8] Designed primarily to control the nonmedical sale and use of opiates and cocaine, the Harrison Act of 1914 required that all physicians and druggists handling these drugs register with the Internal Revenue Service, pay a special annual tax, and keep detailed records.[9]

The Harrison Act added a new layer of controls to an already extensive system of state and local antidrug laws. As such, historian Joseph F. Spillane argues, it represented both "a culmination of years of drug control efforts, [and] also a new beginning."[10] In the nineteenth century many states used their authority to control the licensing of pharmacists who sold cocaine and to rein in the spread of opium dens or confine them to certain areas of the community. These laws, however, were full of loopholes, only sporadically enforced, and used in highly selective ways. Given the limitations on federal police power at the turn of the twentieth century, many at the time questioned whether the federal government would ever exert regulatory authority over drug control policy.[11]

In order to sidestep constitutional questions about federal control over the production and distribution of drugs, the nation's early drug laws were framed as revenue measures, and they attracted little elite or public attention. But government officials and antidrug advocates, with the aid of sympathetic Supreme Court decisions that affirmed the constitutionality of the revenue collection authorized under the Harrison Act, transformed this legislation into the bedrock of the modern drug control regime.[12] With antidrug crusader Harry J. Anslinger at the helm of the Federal Bureau of Narcotics from 1930 to 1962, the federal government redoubled its efforts to eradicate the problem of drugs from American society. As the predominant voice in the area of narcotics in

the United States, Anslinger oversaw the abandonment of a public health approach and the hardening of antidrug laws and attitudes around a criminal justice paradigm.[13] The singular achievement of his thirty-two-year tenure, Spillane notes, "was the maintenance of a remarkably consistent federal drug control philosophy."[14]

It is a truism of American politics that multiple access points in the structure of the American polity give a great deal of power to losers in policymaking debates.[15] With its federalism, separation of powers, judicial review, and direct democracy, the political system offers a variety of access points to interest groups and policy advocates who lose a battle in one particular institutional venue. Unsuccessful entrepreneurs also have an incentive to alter the list of participants, perhaps broadening the scope of conflict to include the previously uninvolved.[16] Aware of strong support for the drug policy status quo among national institutions, policymakers, and the public, medical marijuana advocates chose a different institutional venue and a different paradigm of drug use and drug users in order to attempt to reform one aspect of marijuana laws. Without the twin decisions to abandon representative institutions in favor of direct democracy, and to use the initiative process to tap into public sentiments in favor of patient rights and medical autonomy, the medical marijuana movement would have continued to languish in unsympathetic federal institutions and agencies.[17]

Political scientists have come to devote more attention in recent years to the growing willingness of policy advocates to abandon traditional institutions and wage political battles in unconventional arenas, including the statewide direct democracy process, courts, bureaucratic agencies, and through the media. Much of the literature on direct democracy engages normative questions about its appropriateness in a representative system or critically evaluates features of initiative campaigns, including the role of money and special interests, levels of voter competence and turnout, and protection of minority rights, often from the standpoint of democratic theory.[18] Other work focuses primarily on initiative outcomes, exploring policy differences between initiative and noninitiative states, legislative response to successful initiatives, and initiative implementation.[19]

This study approaches direct democracy primarily from the perspective of ballot petitioners. I investigate what factors lead policy entrepreneurs to the initiative process and how direct democracy alters the nature of the policymaking process for entrepreneurs who craft and market their proposals in the context of a political campaign. The results confirm the conventional wisdom that money is a vital component of initiative

campaigns, but with some important caveats: rather than manufacture approval, I find that the application of money and professionalism in initiative politics amplifies the impact and facilitates the political expression of existing grassroots and public support that lay the groundwork for money's effectiveness. Ample funding also enables ballot petitioners to frame initiative campaigns around sympathetic themes that will resonate with a public, rather than an elite, audience. Finally, the results show that venue-shopping on the part of ballot petitioners may intensify federal-state conflict on issues where the preferences of state publics (and cooperative legislators and governors) differ from those of federal actors and institutions.

Federal Drug Control Institutions and Supporting Ideas

The story of American narcotics policy in the twentieth century can perhaps best be described as a history of repeated attempts to control deviance. The stereotypical addict has been the cocaine-addled African American, the opium-smoking Chinese, or the Mexican or youthful marijuana user, and punishment and treatment have each at times been considered the most effective way to curb drug abuse. Regardless of these different stereotypes and approaches, drug use and drug users have always been seen as essentially deviant, as threatening to mainstream American norms and values.

Unlike opiates and other narcotics that were the subject of earlier regulation, marijuana was not brought under the sphere of federal influence until the late 1930s. In the nineteenth century, drugs such as heroin and cocaine were widely accessible and used as painkillers; doctors prescribed opiates to treat gastrointestinal illnesses, fever, and rheumatism, and medical journals recommended marijuana as an anticonvulsant and relaxant, among other uses.[20]

While several factors helped bring about a shift in attitudes and policy toward narcotics in the early twentieth century, two are particularly important: first, increasingly negative views of drugs, drug users, and drug addiction helped fuel the drive for regulation; second, the United States sought to fulfill its international pledges and take the legal and moral lead in an international drug control effort by passing domestic antidrug legislation.[21] As Jill Jonnes notes in her history of American drug control policy, "the largely lower-class drug culture that society finds so alarming and repugnant . . . was not created by the criminalization of drugs. It existed *before* drugs were illegal, and indeed brought about antidrug

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legislation."[22] By 1900, public concern about potential abuse of opiates, cocaine, morphine, and heroin was growing, fueled in part by the ease of access to these drugs both domestically and internationally.[23] The moral framework of drug use as deviant took root in public attitudes during the late nineteenth and early twentieth centuries, even before the emergence of legal controls.[24] In the 1990s medical marijuana opponents reinvoked this framework in order to cast the debate over that issue in strictly drug policy terms, and not, as medical marijuana advocates preferred, as a question of patient rights and compassion.

The federal government came reluctantly to the decision to regulate marijuana. The Commissioner of the Federal Bureau of Narcotics (FBN) and the nation's first drug czar, Harry J. Anslinger, preferred that individual states enact legislation to prohibit marijuana use.[25] By 1936, the FBN had encouraged all forty-eight states to pass the Uniform State Narcotic Act, which Anslinger and the bureau had helped draft, making marijuana available only by prescription. The FBN's public relations campaign to pass the Uniform Act was so successful that many states demanded a federal antimarijuana law.

While they acknowledged pressure from state officials, Anslinger and his bureau questioned whether a federal antimarijuana law would be constitutional.[26] Treasury Department General Counsel Herman Oliphant is credited with devising a solution to the constitutionality problem: a marijuana transfer tax. Oliphant suggested that the Marihuana Tax Act (MTA) be modeled after the National Firearms Act, a law recently upheld by the Supreme Court that used taxation to control the interstate spread of machine guns.

The MTA outlawed the nonmedicinal, untaxed possession or sale of marijuana. The use of the federal taxing power allowed Anslinger and Congress to shield their true motive—prohibiting marijuana use—behind a prohibitive tax, thereby avoiding the kind of judicial scrutiny surrounding states' rights issues that had followed the passage of the Harrison Act in 1914.[27] While under the Harrison Act a nonmedical user could not legitimately buy or possess narcotics, in both the National Firearms Act and the Marihuana Tax Act Congress "permitted" anyone to buy a gun or marijuana but required him or her to pay a steep transfer tax and carry out the purchase on an order form.[28] The MTA required that all manufacturers, importers, dealers, and practitioners register their names and places of business and pay a special occupational tax ranging from $1 to $24 a year. While the Harrison Act's small tax justified its function as a revenue measure, the Marihuana Tax Act imposed a prohibitory tax and did not generate any revenue.[29] The tax on transfers was

much higher than the cost of the drug itself, at $100 per ounce for unregistered persons and $1 an ounce for registered persons.[30] Penalties for unlawful possession were steep, punishable by a $2,000 fine, five years' imprisonment, or both.[31]

In his testimony during the MTA hearings in the spring of 1937, Anslinger related graphic horror stories about the effects of marijuana, including insanity, murder, and addiction, to a congressional audience that knew little about the drug itself or its effects.[32] Anslinger often cited one case in particular, that of Victor Licata, a twenty-one-year-old Florida man who "killed his parents, two brothers and a sister while under the influence of a Marihuana 'dream' which he later described to law-enforcement officials. He told rambling stories of being attacked in his bedroom by his 'uncle, a strange woman and two men and two women,' whom he said hacked off his arms and otherwise mutilated him; later in the dream he saw 'real blood' dropping from an axe."[33] Anslinger also offered up other instances of marijuana-induced crime to the committee: "In Chicago, recently two boys murdered a policeman while under the influence of marihuana. . . . Recently, in Baltimore a young man was sent to the electric chair for having raped a girl while under the influence of marihuana."[34] Anslinger ominously warned House Ways and Means committee members about the dangers of marijuana: "Here we have a drug that is not like opium," he cautioned. "Opium has all the good of Dr. Jekyll and all the evil of Mr. Hyde. This drug is entirely the monster Hyde, the harmful effect of which cannot be measured."[35] There was just one outspoken opponent of the Act in Congress, and American Medical Association representative Dr. William C. Woodward was the only opponent to speak at congressional hearings. His testimony questioning the alleged effects of the drug and the need for federal regulation was sharply criticized by committee members.[36]

The Marihuana Tax Act was framed as a revenue measure, but its language and implementation effectively brought about prohibition. The rules for physician compliance were complex, and its extensive, broad requirements made registered persons subject to the administrative discretion of the Treasury Department.[37] Violators were subject to a steep fine or imprisonment, and the Treasury Department and the Federal Bureau of Narcotics had broad enforcement powers that allowed them to decisively shape its implementation.[38] The passage and implementation of the MTA contributed to the development of a "punitive, law enforcement-oriented approach with little concern for treatment or rehabilitation of addicts."[39]

The FBN used its enforcement powers essentially to proscribe the medical and nonmedical use of marijuana. Anslinger saw to it that

marijuana was removed from the *United States Pharmacopeia* in 1941 (it had been listed in every edition since 1850), thus ending its use as a medical treatment and eliminating any reason for medical research.[40] In the 1950s, drug penalties were increased and mandatory minimum penalties imposed at the federal (in the Boggs Act of 1951 and Narcotics Control Act of 1956) and state (twenty-eight states passed "little Boggs acts" by 1956) levels.[41]

While the federal government took the lead in antidrug efforts during Anslinger's tenure, voices of dissent did not go completely unheard. As noted above, during the MTA hearings, Dr. William C. Woodward and U.S. Public Health Service representative Dr. Walter L. Treadway raised concerns about the veracity of Anslinger's claims about marijuana's effects, but their statements were criticized or ignored. The only outspoken opposition to marijuana criminalization in Congress in the 1930s and 1940s came from John M. Coffee, Democrat of Washington, who condemned the punitive approach to drug policy and the denial of treatment to drug addicts.[42] In 1942 the *American Journal of Psychiatry* and the *Journal of the American Medical Association* published an article and an editorial, respectively, that criticized assumptions about marijuana's deleterious effects and its lack of therapeutic value.[43] Perhaps most important, a commission appointed in 1938 by New York City Mayor Fiorello LaGuardia presented findings in 1944 that "dispelled many of the myths that had spurred passage of the [Marihuana Tax] Act," finding no link between marijuana and crime, aggressive or antisocial behavior, or personality change.[44] Still, the cumulative impact of these challenges to the Marijuana Tax Act was relatively minimal, and the period from 1937 until the late 1950s marked the zenith of the exclusively punitive approach to drug policy.

The FBN's decades-long control over drug policy exemplifies the lesson that a closed policy subsystem can result in a policy monopoly.[45] Political scientist Elaine B. Sharp has argued that Anslinger presided over the creation of a powerful subgovernment in drug control policy that remained firmly in place well into the 1950s.[46] Anslinger and his supporters established a link between marijuana, politically marginal ethnic minorities, and crime and violence. Indeed, throughout the twentieth century federal policymakers built support for drug control legislation by linking drug use and users with unpopular groups and behaviors. If antidrug legislation was the first step in the creation of the modern drug control regime, then efforts by federal bureaucrats and their supporters to enforce that legislation through public information campaigns were a critical element of its consolidation.

Symbolism and imagery played an important role in the early efforts to regulate narcotics in the United States. Women's drug use came under particular scrutiny in the early twentieth century, as it was regarded as a violation of conventional gender roles and a threat to modernity, capitalism, social reproduction, and democratic citizenship.[47] Nonmedical use of narcotics "was seen as undermining the bourgeois values of thrift, self-denial, and future orientation, and rejecting conventional middle-class norms regarding class, gender and sexuality."[48] Spillane notes that in the late nineteenth and early twentieth centuries "antidrug attitudes preceded formal legislation, and subsequent efforts at legal control are best understood as attempts to formalize these concepts into law."[49]

In the 1930s, the population with which marijuana use was identified served as a justification for federal antimarijuana efforts and solidified addicts' status as social outcasts.[50] Marijuana, according to H. Wayne Morgan, "was chiefly identified with suspect marginal groups," including artists, jazz musicians, bohemians, petty criminals, Mexicans, and African Americans.[51] Domestic concern about marijuana originated in the Southwest, an area that saw an influx of Mexican immigrant laborers in the 1920s. Mexicans were thought to be prone to criminal and deviant behavior; during the Great Depression they became an unwelcome population and Southwestern states complained to the federal government about their marijuana use. In the early 1920s, New Orleans police claimed that marijuana use was responsible for a large number of crimes, particularly among the city's black population.[52] The association between marijuana and politically marginal groups stirred fear about the drug's effects, helped to justify its regulation, and ultimately led to a "latent social consensus" that supported marijuana laws for several decades.[53]

During the two years prior to the passage of the Marihuana Tax Act, Anslinger's Bureau of Narcotics stepped up its campaign for federal legislation in the press. Anslinger spoke before women's clubs, temperance groups, church organizations, and at congressional hearings in an effort to spread information, and he used position papers and periodical articles to disseminate his views. In 1936 the FBN released the propaganda film "Reefer Madness," in which a high school principal ominously warns that marijuana use and addiction can shatter children's lives.

After the passage of the MTA, the FBN made "a concerted effort to influence public opinion by publicizing the 'marijuana menace.'"[54] With the support of a number of powerful allies, including the Hearst newspaper chain and the Women's Christian Temperance Union, the bureau conducted a well-coordinated campaign through articles, public events, and hearings to spread messages about the dangers of marijuana.[55]

Marijuana use was thought to promote insanity, crime, and violence ("marihuana incites to immorality and crime," one 1939 publication warned) and was seen as a threat to impressionable youth (articles from the time featured such titles as "Marihuana Menaces Youth" and "Youth Gone Loco"). Public and elite interest in and opposition to the emerging drug control regime was almost nonexistent, and any opposition that did emerge was quickly squelched.[56] The framing of marijuana and its users and the suppression of dissenting views helped to justify federal legislation and solidify public attitudes. For decades both remained highly resistant to change.

But the FBN's policy monopoly was not immutable. Anslinger retired as FBN commissioner in 1962, and his successors did not bring the same drive and ambition to the job. During the same time period, the FBN's control over information began to crumble as mental health professionals responsible for treating addicts gained a voice in policy debates. These individuals sought to redefine drug abuse as a disease that required health measures rather than a law-enforcement problem that demanded punishment.[57] As funding for mental health programs blossomed and the view that addiction was a disease gained credibility, support for an exclusively law-enforcement-based approach to drug policy declined. Scientific research on the potential therapeutic properties of marijuana and government-sponsored commissions that produced reports recommending more research into medical uses promoted a softening in federal and state policy. Sharp describes this period as one of transformation from a homogenous, closed subgovernment that emphasized crime and punishment to a diversified issue network in which treatment and prevention-oriented interests became more active.[58]

In addition, during this time marijuana rose in prominence as a political issue and drug use (and perceptions thereof) spread from unpopular minorities to middle-class youth and professionals, leading many to question the effectiveness of prohibitive enforcement and mandatory sentences.[59] Marijuana policy became a social issue and the drug became the subject of popular debate, headlines, hearings, and reports.[60] Marijuana took on a politically charged meaning as it became associated with antiwar, antiauthority sentiments. Music and movies of the 1960s often depicted or even glorified marijuana use, and celebrities, journalists, politicians, and others admitted to using the drug and sometimes were arrested for possession.[61] As Jonnes notes, during this period "America's illegal drug culture had avid advocates and spokesmen," and "self-confident young people [declared] the absolute benefit and good of drugs in the quest of pleasure and self-enlightenment."[62] This "embourgeoisement" of

marijuana use led to a breakdown of the marijuana consensus and reductions in drug penalties and sparked a backlash by those who derided marijuana's association with the "counterculture."[63]

With the growing policy influence of mental health professionals and the changing population of users, the 1970s were a high-water mark for drug policy reformers. In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act, which brought all preceding antidrug legislation under one statute. While the constitutional justification for the Marihuana Tax Act was lodged in the federal taxing power, the 1970 Act marked an important shift in favor of using the interstate commerce clause to justify federal narcotics regulation. The provisions of the CDAPCA and congressional hearings on the measure also differed significantly from those of previous legislation.

The CDAPCA's justification for federal regulatory authority rested upon three main arguments: that controlled substances may be manufactured within a state but were transported between states; that it was impossible to determine the pattern of distribution of narcotics, which required both intrastate and interstate controls; and that intrastate narcotics control furthered interstate efforts.[64] Much more so than earlier drug control legislation, the CDAPCA offered an explicit justification for federal authority over drug control policy grounded in the interstate commerce clause. Backtracking from the laws of the 1950s, the CDAPCA abandoned mandatory minimum sentences, reduced simple possession of all drugs to a misdemeanor, and established five schedules for drugs based on potential for abuse and accepted medical use. Marijuana was placed in Schedule 1, the most restrictive category. According to the CDAPCA, marijuana and other Schedule 1 drugs, including heroin and LSD, have no accepted medical use and a high potential for abuse.

The tone of the congressional hearings on the CDAPCA contrasted starkly with the Marihuana Tax Act hearings. A number of opponents were permitted to testify against the measure, and physicians, psychiatrists, and public health officials took a prominent role.[65] Much attention was given to questions of research, education, information, rehabilitation, and the social framework and consequences of drug use. There was also a greater willingness to reflect on the nature, causes, and effects of drug abuse compared with the discussion surrounding the MTA.[66]

During the CDAPCA hearings held by the House Subcommittee on Public Health and Welfare (the MTA hearings were held in the House Ways and Means Committee and the Senate Finance Committee), one senator's remark reflected the shifting perspectives of the time with regard to drug control strategy: "Law enforcement is necessary and

proper, but it will never by itself suffice to solve the problem. We must strive to eliminate not only the supply of illegal drugs, but also the demand. Education and research will help to reduce the demands for drugs. . . . Statements about the harmful effects of drugs are based more on fear than on fact."[67] Daniel X. Freedman, a University of Chicago psychiatrist who testified in support of the bill, attacked the federal government's long-standing approach to drug control policy: "The 'sword of Damocles' approach characteristic of the Anslinger era wielding vague threats and harassment to researchers by narcotics acts has stifled—and according to recent testimony still does inhibit—both research and treatment."[68] The passage of the CDAPCA seemed to augur a new era in American drug control policy.

Legislators in the 1970s as well as Presidents Richard M. Nixon, Gerald R. Ford, and Jimmy Carter were sympathetic to the new approach to drug policy that abandoned an exclusive law-enforcement focus. While some observers criticized him for the tactics he used to prosecute the war on drugs, Nixon increased budgets for law enforcement and treatment, prevention, and research programs. In particular, Nixon created the Special Action Office for Drug Abuse Prevention (SAODAP) in 1971 to coordinate all federal prevention and treatment activities, and in 1973 the National Institute on Drug Abuse was established and became the central federal agency for drug research, treatment, and prevention. Soon after the creation of SAODAP, the number of cities with federally funded treatment services and the number of people assisted in these programs increased dramatically.[69] While the treatment movement gained force in the 1970s, it coexisted alongside an antidrug strategy whose primary emphasis continued to be law enforcement.

While Carter spoke publicly about the drug issue less than either Nixon before him or Ronald Reagan after him, Carter did endorse the decriminalization of marijuana hardly six months after his election in a 1977 message to Congress.[70] The federal government even gave a boost to the nascent medical marijuana movement when it allowed a glaucoma patient legal access to medical marijuana. This decision led to the inauguration of the Investigational New Drug program, which provided medical marijuana to a handful of patients until its termination in the early 1990s.

The states also embraced the drug policy reform movement. By 1974, virtually all states had followed the federal government's lead and reduced possession of marijuana from a felony to a misdemeanor. By the end of 1978, eleven states had passed marijuana decriminalization statutes and four states had passed resolutions recognizing the medical

value of marijuana.[71] Other state laws legalized the use of marijuana for patients with certain illnesses by prescription, but made no provisions for supply of the drug since physicians are prohibited from prescribing Schedule 1 substances.

While the 1970s were a time of much activity in state and federal drug policy, many of the laws passed during that era were ineffectual or impermanent. At the federal level, drug control legislation ratified in the 1980s brought about the resurgence of the Anslinger-era regime. The state laws dealing with medical use of marijuana were largely symbolic—the federal government's prohibition of marijuana remained in place and it controlled all legal supplies of the drug at its University of Mississippi marijuana farm. State laws encouraging research on medical marijuana, research programs that could not provide access to medical marijuana, and provisions granting physicians permission to prescribe an illegal drug ultimately had little effect on federal law or patient access to marijuana. Because they conflicted blatantly with federal law and ignored the issue of implementation, "by the time California voters approved Prop. 215 in 1996, most state medicinal marijuana laws had been collecting dust for the better part of two decades."[72]

The 1980s witnessed a renationalization of drug control policy and a renewed emphasis on law enforcement, interdiction, and punishment as the primary weapons in the war against drugs. Between 1981 and 1993, budgets for drug law enforcement surged from $855 million to more than $7.8 billion.[73] Nancy Reagan's high-profile "Just Say No" campaign, which emphasized the effects of drug abuse on young people, encouraged parents to talk to their children about the dangers of drugs, and discouraged children from using drugs, was a major initiative of Ronald Reagan's presidency.

As was the case in previous eras, the Reagan antidrug campaign was shaped in part by changing patterns of drug use. By the early 1980s cocaine had surpassed marijuana and heroin as the number-one law-enforcement priority. The cocaine-related death of Boston Celtics draft choice Len Bias and stories about crack babies and drug use by minority groups fueled public fear. Growing concerns about drug use by children and the persistent connection between drugs and crime led to a federal crackdown. According to one scholar, as a result of society's emphasis on women's fundamental position as mothers and caregivers, the 1980s escalation in female addiction in particular was viewed as threatening not only to social and biological reproduction, but to civilization itself.[74] At one point in the late 1980s, public opinion polls showed that a majority of the public considered drug abuse the nation's number one problem.[75]

A growing conservatism on social and moral issues also helped lead to a backlash against the permissiveness of the 1970s. Eva Bertram and her colleagues report that Reagan's drug policy agenda was shaped by "a sizable and vocal national constituency that had grown impatient with the permissive attitudes toward drug use and other counterculture activities of the previous decade."[76] During his brief but influential tenure in the late 1980s, drug czar William J. Bennett claimed that America's drug problem resulted from "this tradition of freedom and liberty, which gets distorted into license and 'do your own thing' and the gospel of the sixties."[77] Just as Anslinger solidified the nascent link between marijuana and unpopular groups and behaviors in order to discourage its use and stigmatize its users, Bennett and other antidrug activists in the 1980s were similarly preoccupied with the moral and cultural implications of drug use for youth and other impressionable populations.

In 1984, 1986, and 1988, Congress passed antidrug legislation that effectively reversed the reforms of the 1970s, increasing penalties for violating federal drug laws, reinstituting mandatory minimum penalties, expanding the government's ability to use forfeiture as a weapon against drug traffickers, and creating new drug-related regulations for schools and colleges.[78] The antidrug measures of the 1980s "underscored the extent to which the drug issue had become politicized, with the White House and members of Congress from both parties jockeying to have a leadership role on policy development, or at least to avoid embarrassment on the issue as elections loomed."[79] As presidents, legislators, and other federal and state policymakers reinstated a law-enforcement-centered drug control regime with solid public support, the voices of drug policy liberalization activists faded.

The federal government's drug policy regime persisted in large part due to its ability to cement drug control legislation and antidrug attitudes in place as part of a deviance model that for decades brooked little vocal opposition. As new information became available, new voices entered the debate, and drug laws began to soften, in the 1970s the drug treatment movement coexisted uneasily with the federal government's law-enforcement-centered approach. However, with a supportive president, Congress, and bureaucracy, the law-enforcement paradigm and the war on drugs were resumed with vigor in the 1980s. Faced with a series of presidents unsympathetic to their cause, their efforts stymied by courts, legislatures, and governors, drug policy reformers were keenly aware that the possibility of fundamental change to federal drug laws was extremely slim.

New Institutions and New Ideas: Direct Democracy and the Medical Marijuana Movement

For two decades, liberalization activists lobbied federal and state policymakers to revise their drug laws, to little avail. Neither the public nor representative actors were willing to consider drug legalization, and the deviance model remained firmly in place. However, beginning in the early 1990s, drug policy reformers set their sights on a different goal. With polls showing strong public support for the idea of medical marijuana, advocates shifted their attention to this more modest proposal and to the statewide direct democracy process, an institutional venue that allowed them to capitalize on existing support by framing the issue around sympathetic themes including patient rights, medical autonomy, and compassion. The idea of medical marijuana did not originate in the 1990s, but its electoral success is largely attributable to the decision to target the ballot initiative process. In fact, the first factor that Americans for Medical Rights (the organization behind nearly all of the successful initiative efforts) considered in deciding whether to campaign for medical marijuana was whether a state allowed the initiative.[80] The next section of this article draws on case study data from California and Maine to examine the reasons for and consequences of policy entrepreneurs' decision to work through the direct democracy process. I selected California because it was the first state to ratify a medical marijuana measure and was the birthplace of the medical marijuana movement, and Maine because it was the only Eastern state to ratify such a measure and one with a different political and cultural environment than California.

It was a series of political setbacks in the 1980s and early 1990s that led drug policy reformers to the medical marijuana issue and to the initiative process. In the 1970s, glaucoma patient Robert Randall lobbied the federal government for access to medical marijuana. His efforts helped bring about the Investigational New Drug Program in 1976, through which the U.S. Public Health Service provided medical marijuana to a handful of patients.[81] During the 1980s, as AIDS became more widespread (particularly among gay men), AIDS patients began to discover medical marijuana as a treatment for "wasting syndrome" and for the nausea that sometimes accompanied new medications. Faced with a flood of applications from AIDS patients, especially those in the San Francisco Bay Area, officials in the George H. W. Bush administration claimed that the IND program undercut the administration's opposition to the use of illegal drugs and terminated the program in 1991. The

Clinton administration's decision not to reopen it ended for the time being the possibility of legal access to medical marijuana.

Drug policy reformers experienced other disappointments in the 1980s. The legalization group NORML (National Organization for the Reform of Marijuana Laws) had been petitioning the federal government since 1972 to reschedule marijuana from Schedule 1 to a less restrictive category; in 1988 those efforts reached a dead end when Drug Enforcement Administration administrator John Lawn rejected the recommendation of the DEA's chief administrative law judge that marijuana be placed in Schedule 2 (which would have made it available for medical use).[82] Meanwhile, Republicans and Democrats were engaged in a political battle to out-tough one another on drugs and crime, and a prime-time televised address by Ronald Reagan and heavy media coverage spotlighted the drug issue.[83] By late in the decade, 64 percent of the public believed that drugs were the nation's number-one problem.[84] Marijuana rescheduling and drug legalization were political nonstarters.

Meanwhile, during the early 1990s, the possibility that marijuana could be an effective medicine continued to spread among AIDS patients and politically active gay men in San Francisco, who were arguably the most affected by the disease during its early years. With strong support from significant numbers of AIDS patients and gay men, San Francisco passed California's first local medical marijuana initiative, Proposition P, a largely symbolic measure, in 1991.[85] Success in a handful of other liberal California counties and strong poll numbers led advocates to set their sights on the state Assembly.[86]

California lawmakers sponsored three medical marijuana measures between 1993 and 1995. A symbolic 1993 measure was approved by the state Assembly with a bipartisan majority, and a 1994 bill that would have rescheduled marijuana so that physicians could prescribe it was vetoed by Governor Pete Wilson.[87] Senator John Vasconcellos's (D-San Jose) AB 1529, which would have provided a defense against charges of marijuana possession, cultivation, and use for patients with certain diseases (including cancer, AIDS, multiple sclerosis, and glaucoma) with a doctor's recommendation, was the most ambitious medical marijuana bill considered in any state legislature to date. In his October 1995 veto message, Wilson claimed that the measure created a conflict with federal law, would effectively legalize marijuana possession and cultivation, and would complicate efforts to enforce existing marijuana laws.[88] Not two months later, the initiative that became Proposition 215 was certified by the state attorney general's office and signature-gathering began.[89] In other states as well, including Maine, the road to initiative

passage was littered with failed legislative attempts to ratify medical marijuana bills.[90]

The primary opponents of medical marijuana were state law-enforcement organizations such as the California Narcotic Officers' Association, the California Sheriffs' Association, and the Maine Chiefs of Police Association. These organizations and their representatives, accustomed to lobbying for their interests through the legislative process, argued that medical decisions should not be made by popular vote. Disseminating their views mainly through ballot arguments and position papers, opponents relied on the deviance paradigm that federal actors had traditionally invoked in order to stir public opposition to drug policy reform. In particular, opponents' arguments centered around the connection between medical marijuana and drug legalization and the conflict initiatives would create between state and federal law.[91]

For their part, major medical associations voiced two primary concerns: the lack of hard scientific evidence demonstrating marijuana's medical effectiveness, and fears about physicians' vulnerability to prosecution under federal law.[92] Unlike law-enforcement organizations, the American Medical Association and state affiliates treaded a careful line: while they were not philosophically opposed to the idea of medical marijuana (and in fact continue to publicly support more scientific research on its medical applications), they did object to state legislatures and voters circumventing the normal Food and Drug Administration approval process for new drugs.

Medical marijuana supporters insisted that the initiative was a last resort. Attempts to secure approval from federal and state institutions had failed, blocked by Congress, the DEA, and state legislatures and governors. By the mid-1990s, they had become disillusioned with the legislative process. One Proposition 215 supporter waxed philosophical about the initiative process: "The initiative was invented in California to give the people a chance, when their own legislature and governor were unable to act. So we were just availing ourselves of the law—which is, after you've tried, you know, at the State Capitol, you still have this as an option."[93]

Proponents were also keenly aware that the public was more willing to support medical marijuana than were politicians.[94] A March 1995 poll commissioned by medical marijuana advocates showed that, depending on question wording, between 59 and 66 percent of Californians said they would support a medical marijuana initiative.[95] After 1995, national polls documented up to 79 percent support for medial marijuana, and several state polls showed similar levels of support.[96] In addition, a June 1996 poll found that one-third of Californians surveyed said they had

actually known someone who had used marijuana for medical reasons.[97] Nearly a full year before the all-volunteer Proposition 215 campaign was "professionalized" with an infusion of funds and campaign officials from Californians for Medical Rights (the precursor to Americans for Medical Rights), public opinion was already quite familiar with and sympathetic to the idea of medical marijuana.

The ballot initiative allowed proponents to expand the scope of conflict beyond what they saw as fainthearted legislators and powerful opponent law-enforcement organizations in order to harness the public's support for patient rights and medical autonomy as a policymaking resource, which they then brought to bear on the medical marijuana issue.[98] Advocates believed that the initiative process could deliver a policy outcome consistent with the majority will that the legislative process was unable to achieve. As one California proponent put it, "What we were doing was trying to use the initiative process for the classic purpose that it is intended, which is to break a logjam in the political process and make sure that the people are heard."[99]

Aside from their philosophical commitment to direct democracy, the process offered practical benefits for medical marijuana advocates—and it severely disadvantaged their opponents. Backing from financier George Soros and others enabled advocates to assemble the organization, funding, and other resources with which to mount ambitious initiative campaigns. Proponents used these resources to exploit the features of initiative politics, in particular the ability to lobby voters directly through advertising in a campaign environment with few other cues or information sources on which voters could base their decisions.

Meanwhile, opponents in Maine and California acknowledged that their lack of familiarity with the initiative process, restrictions on their ability to raise campaign money, and poor fund-raising skills put them at a disadvantage compared to the fight against medical marijuana they could wage in state capitals.[100] The initiatives broadened the scope of conflict, diminished the advantages law enforcement enjoyed in state legislatures, and enhanced the importance of fundraising, policy marketing, and strategic issue framing—skills that law-enforcement groups largely lacked.

The Next Step: Framing the Debate

Despite the high levels of public support for medical marijuana and other advantages that medical marijuana proponents enjoyed, they still waged

an aggressive campaign in order to reinforce that support, court swing voters, and contest opponents' arguments. One of the first rules of initiative politics is that ballot measures are defeated by their weakest provision.[101] Much of the campaign strategy centered around efforts to control the message, to determine the grounds on which the campaign was contested. There was no sense of inevitability on either side.

Sharp points out that "federal drug control policy throughout the Anslinger era of subgovernment hegemony showed an emphasis on a criminal rather than a medical model of the drug problem."[102] In the 1990s, the challenge that medical marijuana proponents faced was to create and promote a different image of marijuana and marijuana users. In contrast to the early twentieth-century medical paradigm that defined drug addicts as sick people in need of treatment, medical marijuana supporters sought to define marijuana use itself as having therapeutic purposes, and marijuana users as patients in need of relief from suffering. Proponents sought to transform the stereotypical image of marijuana users from socially marginalized outsiders whose addiction led to objectionable behavior to ill people who needed the drug to manage their pain. They crafted an alternative frame of marijuana that emphasized not crime, deviance, and violence, but health, patient rights, and compassion.

One of the most important goals of medical marijuana advocates was to encourage the public to make a distinction between recreational and medical use of marijuana. While liberalization activists in the 1970s supported the legalization of marijuana for recreational purposes and framed their position in the language of pleasure, freedom, and choice, medical marijuana advocates' narrower, more sympathetic way of framing the debate was more difficult for opponents to challenge.

The proponents' campaign communications revolved around themes of patient rights, treatment options, compassion, and common sense and, to opponents' dismay, avoided or deflected the more controversial issue of recreational use. As one proponent wrote in a May 1996 memorandum, "It is absolutely essential that [Californians for Medical Rights] be doggedly neutral on the subject of recreational legalization/decriminalization. Our whole campaign must be predicated on the distinction between medical and recreational use—it is our enemies who want to blur the issue."[103] While many proponents quietly or privately supported other measures to liberalize drug policy such as harm reduction and marijuana decriminalization, they sought above all in the medical marijuana campaigns to preserve the distinction between medical and recreational use. In a memorandum distributed to supporters just before election day, an advocate recommended on election night and

in postelection press coverage that "the primary message that goes out is that this is first and foremost *a victory for the patients rights movement.*"[104] Americans for Medical Rights (AMR) officials wanted to recast the issue of medical marijuana from "something that you would identify with burnt-out hippies to then changing that to something you would identify with a middle-class, upper-middle-class woman that has breast cancer."[105] Jim Baumohl documents a similar strategy on the part of advocates of morphine maintenance in the 1930s to normalize addicts' status as "ordinary, working people who were not 'dope fiends.'"[106] In the case of medical marijuana, an AMR strategy document illustrates how important this goal of "mainstreaming" the issue was: "Our goal at the start is to prove that the campaign is a mainstream organization that defies certain stereotypes about pro-marijuana organizations. Everything from having clean-looking letterhead with medical symbols, not marijuana leaves, to consistently writing clear and brief press releases and statements, will begin to establish in the minds of reporters that the campaign is credible and staffed with professionals."[107] Similarly, one of the key spokespersons for Maine's Question 2 campaign was a retired veterinarian who, according to a Maine proponent, "looked like anybody's grandfather or father, and did not look like a pot smoker and didn't look anything like a hippie. . . . We wanted [voters] to think, wholesome, wholesome, [this] could be your grandfather or mine, and that was the image we kept right with."[108]

Advocates applied their resources to market the medical frame of marijuana through free and paid media, ballot pamphlets, coalition-building, and other tools. Heart-tugging television spots featuring sick patients or relatives of individuals who had died of cancer or AIDS spotlighted themes of patient rights, health, and compassion. Supportive physicians and law-enforcement officials appeared in advertisements in order to lend legitimacy to the cause.[109] Campaign officials worked arduously to gain the endorsements of prominent medical and health associations, individual health-care workers, and influential newspapers.[110] Public events in which individuals with AIDS or cancer showed up in wheelchairs or on crutches reinforced the perception of the medical marijuana movement as patient-driven. In letters to the editor and articles in local newspapers, supporters cast the debate in such a way as to encourage voters to approach it from a standpoint of patient rights.

In the 1990s, medical marijuana supporters successfully shifted the terms of debate from concerns about addiction, apathy, and listlessness to feelings of sympathy and compassion for normal Americans with chronic pain for whom the drug offered relief from suffering. By

emphasizing the needs of patients and the backing of respected parties such as physicians, nurses, and supportive law-enforcement officers and local politicians, advocates gave an already supportive public more reason to vote for medical marijuana initiatives.

Lessons

The medical marijuana story provides new evidence concerning how modern drug policy reformers have used the direct democracy process to attempt to change one important aspect of marijuana laws. The findings presented here reinforce some of the lessons of the direct democracy literature while also offering several important qualifications. In particular, two of the most common criticisms of the ballot initiative process are that it is dominated by special interests and that the growing influence of political consultants, pollsters, and media advisers has distanced direct democracy from its populist roots.[111] The medical marijuana initiative campaigns suggest that money and professionalization may not manufacture public support for ballot initiatives, but can instead amplify the effects of existing public and grassroots support for medical rights and other sympathetic themes. Even before Soros and others decided to bankroll the Proposition 215 campaign, nearly two-thirds of Californians supported medical marijuana—in fact, it was the 1995 poll numbers documenting strong support for medical marijuana in California that encouraged Soros to get involved in the first place.[112] In 1997, before Americans for Medical Rights had established a presence in Maine, 60 percent of Mainers favored medical marijuana.[113] In addition, research I conducted in Maine and California documented support for medical marijuana that existed on the grassroots level before the first legislative measures were introduced. While the medical marijuana movement has experienced electoral success, the public remains firmly opposed to drug legalization.[114] However, AMR and its affiliates deflected this more controversial issue and used their money and skills to frame the debate around patient rights, medical autonomy, and compassion.

Claims about the bloated influence of money and professionalization in initiative politics may ignore the extent to which favorable public opinion and grassroots advocacy lay the groundwork for the application of these critical initiative resources. The money that poured into the Proposition 215 and Question 2 campaigns (which totaled over $2 million and $700,000, respectively) was particularly influential in ensuring that the measures were placed on the ballot—particularly in California,

where the all-volunteer signature drive could not muster the resources to collect enough signatures.[115] It is far less clear that money was responsible for the medical marijuana movement's success at the ballot box. The results suggest that the strategic framing of policy alternatives can be significant not solely in shaping preferences or changing minds, but in activating public support and making it electorally relevant.[116] Future research should explore further the dynamics of public support for initiative issues before and after initiative campaigns become professionalized.

The decision to lobby for medical marijuana through the initiative process contributed to a different policymaking process than the one waged in federal and state institutions and agencies. Many of the arguments and themes that supporters and opponents of legislated bills raised reappeared in initiative campaigns in California and Maine. But the language and scope of those messages and the ways in which they were communicated differed significantly. The lack of voter cues, the public nature of initiative campaigns, and the absence of compromise and flexibility shaped the content of the policymaking process, allowing proponents to craft broadly worded measures and use their significant fund-raising advantage to reinforce public support through issue framing and media strategies. There are fundamental differences in policy formulation and enactment in legislative and initiative settings: legislative bills are often written and modified with input from a variety of political actors and experts but are then decided by a vote of elites; ballot initiatives are typically crafted in private by political amateurs but their results are determined by a public audience. In the case of medical marijuana, the features of initiative politics benefited the political skills and resources of proponents while putting opponents at a distinct disadvantage.

In addition to altering the content of the policymaking process, the findings also show that the initiative can produce effects that differ from outcomes that emerge from representative institutions. Contrasting policy images and subsystems can flourish in a system that allows subnational electorates to ratify policy changes that differ from federal law. As interest groups increasingly come to use state initiative processes as a tool for policy change in a federal system, the institutions of direct democracy may allow these separate policy tracks on the state and national levels to be created and sustained without being resolved.

Since Proposition 215 was passed, the federal government has attempted to prevent its implementation by threatening to revoke the prescription licenses of physicians who recommend marijuana and by closing California's most prominent marijuana buyers' clubs. AMR has shown little concern for federal opposition to medical marijuana

initiatives, but this position may soon change.[117] In June 2005, the Supreme Court ruled in *Raich v. Ashcroft* that patients in states that had ratified ballot initiatives were not protected from federal prosecution. Still, most states continue to defend the citizen-approved measures, and state officials refuse to assist federal agents in prosecuting medical marijuana cases. The case will have important implications for the future of the medical marijuana movement as well as states' rights, federal power, and the interpretation of the commerce clause.

In order for initiative implementation to be successful, state and federal governments must cooperate to clarify and streamline the meaning, intent, and execution of ballot measures. Instead, because in many states initiative policymaking and implementation take place apart from the normal legislative policymaking process, there is little incentive for government actors to collaborate and the possibility of federal-state conflict therefore lurks in the background. While political conservatives have historically achieved success through the initiative process on issues dealing with taxes and spending, liberals may fare well when policy issues (including medical marijuana, assisted suicide, and same-sex marriage or civil unions) are framed in the language of rights. As policy entrepreneurs increasingly look to the institutions of direct democracy to resolve all kinds of public problems, conflicts between state and federal political actors, institutions, law, and policy may become more common.

Conclusion

This study has briefly outlined the history of American drug control policy and the conditions that prepared the ground for the medical marijuana movement. I have argued that venue and paradigm shifts helped facilitate the rise and electoral success of the medical marijuana movement. Without the decision to invoke direct democracy as a policymaking institution, drug policy reformers' efforts would have continued to be frustrated in federal and state courts, agencies, and legislatures.

The second component of the medical marijuana story involved the emergence and political success of a paradigm of drugs and drug users that separated the controversial question of recreational use from the more popular issue of medical use. While perceptions of drug use by politically marginal ethnic minorities long helped to justify tough federal antidrug legislation, medical marijuana activists were extremely successful in making the "face" of the movement a suffering patient who evoked public compassion among the white middle class.

The dynamics of direct democracy policymaking allowed a well-funded national group to probe and shape public opinion about medical marijuana and, circumventing political parties, state legislators, and governors, spearhead a series of state initiative campaigns. Through effective policy marketing, AMR then capitalized on and reinforced the public support for medical marijuana it had identified. While advocates' efforts to advance the medical frame of marijuana consisted of working to reinforce that support through position papers, ballot pamphlet arguments, free and paid media, and coalition-building efforts, opponents in law enforcement struggled with little funding to communicate their arguments and medical associations treaded a line of cautious opposition.

What implications will the medical marijuana movement have for federal drug control policy? Federal actors and institutions, including the Clinton and George W. Bush administrations and the DEA, have made their opposition clear. Policy change in the states has not led to federal reform. Rather, two factors—the ballot initiative (which provided a means for public opinion to be heard and invoked) and policy entrepreneurs' framing efforts (which emphasized a medical, compassionate image of marijuana and its users)—have allowed the coexistence of two different policy images and approaches. Medical marijuana reformers have achieved some success in changing one aspect of marijuana laws in part due to their skillful use of the initiative process to tap into public sentiments about patient rights, medical autonomy, and compassion while at the same time avoiding a direct challenge of the deviance paradigm. The future of the medical marijuana movement and drug control policy in general will depend in large part on the federal government's response to the electoral success and implementation of statewide medical marijuana measures.

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Notes

1. According to exit polls, 275,373 voters supported I-148, the medical marijuana measure, for a margin of victory of 62 percent to 38 percent. Meanwhile, 265,473 individuals, or 59 percent of all voters, voted to reelect George W. Bush. See cnn.com/election for more details, as well as Walter Kim, "What Color Is Montana?" *New York Times Magazine,* 2 January 2005, 12.

2. Marijuana has most often been proposed to be useful as a medicine for diseases and conditions including cancer chemotherapy, AIDS wasting syndrome, glaucoma, epilepsy, and multiple sclerosis. See Lester Grinspoon, M.D., and James B. Bakalar, *Marihuana: The Forbidden Medicine* (New Haven, 1993).

3. In addition, in Hawaii (2000), Vermont (2004), and Rhode Island (2006), medical marijuana measures were passed through the legislative process. This article focuses on the period from 1996 to 2000, which witnessed the rise of the medical marijuana movement.

4. Most measures passed after Proposition 215 abandoned many of its more controversial features and included only popular and consensual provisions. For example, the Maine initiative restricted the use of medical marijuana to patients only with severe illnesses, including cancer and AIDS, and allowed patients to possess only small amounts of the drug.

5. Elisabeth Gerber, Arthur Lupia, Mathew D. McCubbins, and D. Roderick Kiewet, *Stealing the Initiative: How State Government Responds to Direct Democracy* (Upper Saddle River, N.J.: 2001).

6. Grinspoon and Bakalar, *Marihuana: The Forbidden Medicine.*

7. One historian of drug policy has called this policy shift one of history's great about-faces. David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* (Cambridge, Mass., 2001).

8. Drug policy historians note a distinction between two major groups of drug manufacturers: so-called "ethical drug firms, who identified themselves as such on the grounds that they supplied drug products exclusively for medical purposes," and firms selling patent medicines, which distinguished themselves from ethical firms "not so much by their products . . . but by their choice of targets. Patent medicines were directly, and without apology, aimed at the general public." Joseph F. Spillane, "The Road to the Harrison Narcotics Act: Drugs and Their Control, 1875–1918," in Jonathan Erlen and Joseph F. Spillane, eds., *Federal Drug Control: The Evolution of Policy and Practice* (New York, 2004), 1–24: 4–5.

9. See Jill Jonnes, *Hep-Cats, Narcs, and Pipe Dreams: A History of America's Romance with Illegal Drugs* (New York, 1996); Erlen and Spillane, eds., *Federal Drug Control;* Sarah W. Tracy and Caroline Jean Acker, eds., *Altering American Consciousness: The History of Alcohol and Drug Use in the United States, 1800–2000* (Amherst, 2004).

10. Spillane, "The Road to the Harrison Narcotics Act," 1–24: 18.

11. Ibid.

12. After wrestling with the question of its legality for years, in the 1928 *Nigro v. United States* ruling the Supreme Court declared that the Harrison Act was constitutional. Other Supreme Court cases involving the Harrison Act included *U.S. v. Jin Fuey Moy* (1916), *U.S. v. Doremus* (1918), and *Linder v. U.S.* (1928). See John C. McWilliams, *The Protectors: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930–1962* (Newark, Del., 1992).

13. Rebecca Carroll, "Under the Influence: Harry Anslinger's Role in Shaping America's Drug Policy," in Erlen and Spillane, eds., *Federal Drug Control,* 61–99.

14. Joseph F. Spillane, "Federal Policy in the Post-Anslinger Era: A Guide to Sources, 1962–2001," in Erlen and Spillane, eds., *Federal Drug Control,* 209–20: 209. For a classic overview of American drug control policy in the twentieth century, see David F. Musto, *The American Disease: Origins of Narcotic Control* (New Haven, 1973); for overviews of marijuana policy, see Jerome L. Himmelstein, *The Strange Career of Marihuana* (Westport, Conn., 1983), and Richard J. Bonnie and Charles H. Whitebread II, *The Marihuana Conviction: A History of Marihuana Prohibition in the United States* (Charlottesville, 1974).

15. Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (Chicago, 1993).

16. Ibid. E. E. Schattschneider, *The Semi-Sovereign People* (New York, 1960); Roger W. Cobb and Charles D. Elder, *Participation in American Politics: The Dynamics of Agenda-Building* (Baltimore, 1983).

17. Ironically, the nature of ballot initiative politics did not eliminate the role of courts and legislatures in drug control policy, but only shifted their influence from policy formulation to policy implementation.

18. Together and separately, Gerber, Bowler, Donovan, and Tolbert have produced a great deal of scholarship in this area. See, for example, Shaun Bowler and Todd Donovan, *Demanding Choices: Opinion, Voting, and Direct Democracy* (Ann Arbor, 1998); Shaun Bowler, Todd Donovan, and Caroline J. Tolbert, eds., *Citizens as Legislators: Direct Democracy in the United States* (Columbus, 1998); Richard Briffault, "Distrust of Democracy," *Texas Law Review* 63 (1985): 1347–75; Richard J. Ellis, *Democratic Delusions: The Initiative Process in America* (Lawrence, Kans., 2002); Barbara S. Gamble, "Putting Civil Rights to a Popular Vote, *American Journal of Political Science* 4, no. 1 (1997): 245–69; Elisabeth R. Gerber, *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation* (Princeton, 1999); Elisabeth R. Gerber, Zoltan L. Hajnal, and Hugh Louch, "Minorities and Direct Legislation: Evidence from California Ballot Proposition Elections, *Journal of Politics* 64 (2002): 164–77; Thomas E. Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (Cambridge, Mass., 1989); John Haskell, *Direct Democracy or Representative Government? Dispelling the Populist Myth* (Boulder, 2001); Arthur Lupia, "Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections, *American Political Science Review* 88 (1994): 63–76; Elisabeth R. Gerber and Arthur Lupia, "Voter Competence in Direct Legislation Elections, in Stephen L. Elkin and Karol Edward Soltan, eds., *Citizen Competence and Democratic Institutions* (University Park, Pa., 1999): 147–60.

19. Gerber, Lupia, McCubbins, and Kiewet, *Stealing the Initiative*; Elisabeth Gerber, "Legislative Response to the Threat of Popular Initiatives, *American Journal of Political Science* 40 (1996): 99–128; Edward L. Lascher Jr., Michael G. Hagen, and Steven A. Rochlin, "Gun Behind the Door? Ballot Initiatives, State Policies, and Public Opinion, *Journal of Politics* 58 (1996): 760–75; John G. Matsusaka, "Fiscal Effects of the Voter Initiative: Evidence from the Last Thirty Years, *Journal of Political Economy* 103 (1995): 587–623.

20. John C. McWilliams, "Through the Past Darkly: The Politics and Policies of America's Drug War, *Journal of Policy History, Special Issue on Drug Control Policy: Essays in Historical and Comparative Perspective* 3, no. 1 (1991): 356–92; H. Wayne Morgan, *Drugs in America: A Social Sistory, 1800–1980* (Syracuse, 1981); Courtwright, *Forces of Habit.*

21. Morgan, *Drugs in America;* Courtwright, *Forces of Habit*; William B. McAllister, "Habitual Problems: The United States and International Drug Control," in Erlen and Spillane, eds., *Federal Drug Control,* 175–207.

22. Jonnes, *Hep-Cats, Narcs, and Pipe Dreams,* 417.

23. Erler and Spillane, eds., *Federal Drug Control.*

24. Jonnes, *Hep-Cats, Narcs, and Pipe Dreams.*

25. Anslinger wanted to sidestep questions of constitutionality that arose surrounding the Harrison Act, to prevent judicial displeasure at too many marijuana possession cases coming before federal courts, to avoid the ire of the pharmaceutical industry, and to protect the new bureau's autonomy and reputation.

26. Since the early twentieth century, the federal government has offered a series of justifications for its regulation of narcotics, ranging from international treaty obligations to the federal taxing power to, most recently, the interstate commerce clause.

27. States' rights advocates critical of the Harrison Act, in particular the American Medical Association, were concerned about the federal government's involvement in seeming to regulate the practice of medicine, which had traditionally been a state function. See McWilliams, *The Protectors.* In his testimony in favor of the Marihuana Tax Act before the House Ways and Means Committee, Clinton M. Hester, assistant general counsel for the Treasury Department, acknowledged that "although the $100 transfer tax in this bill is intended to be prohibitive, as is the $200 transfer tax in the National Firearms Act, it is submitted that it is constitutional as a revenue measure." U.S. House, Committee on Ways and Means, *Taxation of Marihuana: Hearings Before the Committee on Ways and Means,* 75th Cong., 1st sess., Washington, D.C., 1937, 9. The Harrison Act set several important precedents in American drug policy, including a changed view of addiction from a disease to a

vice and a crime and a pattern of drug law enforcement that emphasized interpretation and enforcement of drug legislation. Marijuana was not included in the Harrison Act due in part to opposition from the pharmaceutical industry.

28. Bonnie and Whitebread, *The Marihuana Conviction;* Kenneth J. Meier, *The Politics of Sin: Drugs, Alcohol, and Public Policy* (Armonk, N.Y., 1994).

29. Bonnie and Whitebread, *The Marihuana Conviction,* 124; Meier, *The Politics of Sin,* 63.

30. Physicians were among the only individuals who could be registered; for the time being, marijuana was still available and legal for medical use.

31. The constitutionality of the MTA was challenged but ultimately upheld by the U.S. Supreme Court in *United States v. Sanchez et al.,* 340 U.S. 42 (1950), in which the Court decided that the transfer tax on marijuana was a legitimate use of federal taxing power.

32. During congressional testimony, House Ways and Means Committee members asked questions about the growth and production, properties, and effects of marijuana that suggested a lack of familiarity with the drug. U.S. House, Committee on Ways and Means. *Taxation of Marihuana;* McWilliams, *The Protectors;* Elaine B. Sharp, *The Dilemma of Drug Policy in the United States* (New York, 1994); Grinspoon and Bakalar, *Marihuana, the Forbidden Medicine.* The link between marijuana use and insanity, as well as mental illness generally, was strong in Britain and its colony India in the late nineteenth century; for a good account, see James H. Mills, *Cannabis Britannica: Empire, Trade, and Prohibition: 1800–1928* (Oxford, 2003).

33. Qtd. in McWilliams, *The Protectors,* 54. The quotation is from Anslinger's private papers on the Victor Licata case, dated 17 October 1933, which are held by the Special Collections Department of Pattee Library at The Pennsylvania State University.

34. U.S. House, Committee on Ways and Means, *Taxation of Marihuana,* 23.

35. Ibid., 19.

36. Ibid.; Bonnie and Whitebread, *The Marihuana Conviction.*

37. U.S. House. 75th Cong., 1st sess., *H.R. 6906, An Act to impose an occupational excise tax upon certain dealers in marihuana, to impose a transfer tax upon certain dealings in marihuana, and to safeguard the revenue therefrom by registry and recording.* Washington, D.C., 1937.

38. For example, Section 14 authorized the Treasury Department secretary to "make, prescribe, and publish all necessary rules and regulations for carrying out the provisions of this Act and to confer or impose any of the rights, privileges, powers, and duties conferred or imposed upon him by this Act upon such officers or employees of the Treasury Department as he shall designate or appoint."

39. Sharp, *The Dilemma of Drug Policy in the United States,* 22.

40. Meier, *The Politics of Sin,* 37.

41. "When President Eisenhower signed the Narcotic Control Act on July 18, 1956," one historian notes, "he put into place the heaviest penalties for U.S. narcotics law violations to that point." Rebecca Carroll, "The Narcotic Control Act Triggers the Great Nondebate: Treatment Loses to Punishment," in Erlen and Spillane, eds., *Federal Drug Control,* 101–44: 111.

42. Eva Bertram, Morris Blachman, Kenneth Sharpe, and Peter Andreas, *Drug War Politics: The Price of Denial* (Berkeley and Los Angeles, 1996).

43. Grinspoon and Bakalar, *Marihuana, the Forbidden Medicine.*

44. Ibid., 11. See also Bonnie and Whitebread, *The Marihuana Conviction,* 204; McWilliams, *The Protectors.*

45. Baumgartner and Jones, *Agendas and Instability in American Politics.*

46. Sharp, *The Dilemma of Drug Policy in the United States,* 135.

47. Nancy D. Campbell, *Using Women: Gender, Drug Policy, and Social Justice* (New York: Routledge, 2000); Michelle McClellan, "'Lady Tipplers': Gendering the Modern Alcoholism Paradigm, 1933–1960," in Tracy and Acker, eds., *Altering American Consciousness,* 267–97; Lori E. Rotskoff, "Sober Husbands and Supportive Wives: Marital

Dramas of Alcoholism in Post–World War II America," in Tracy and Acker, eds., *Altering American Consciousness,* 298–326.

48. Caroline Jean Acker, "Portrait of an Addicted Family: Dynamics of Opiate Addiction in the Early Twentieth Century," in Tracy and Acker, eds., *Altering American Consciousness,* 165–81: 167.

49. Spillane, "The Road to the Harrison Narcotics Act," 9.

50. Jonnes, *Hep-Cats, Narcs, and Pipe Dreams.*

51. Morgan, *Drugs in America,* 138; Mills, *Cannabis Britannica.*

52. Meier, *The Politics of Sin,* 33.

53. Bonnie and Whitebread, *The Marihuana Conviction,* 222.

54. Meier, *The Politics of Sin,* 34; see also Himmelstein, *The Strange Career of Marihuana.*

55. The newspapers and magazines of William Randolph Hearst's media empire, as well as social reform groups such as the Women's Christian Temperance Union, had been engaged in a crusade against narcotics for years before the passage of the MTA. Hearst developed a personal relationship with Anslinger, and he knew that sensational stories about the dangers of marijuana use among Mexicans, African Americans, and other politically unpopular groups would sell newspapers. See Spillane, "Building a Drug Control Regime," in Erlen and Spillane, eds., *Federal Drug Control.* See also Harry J. Anslinger and Courtney Riley Cooper, "Marihuana: Assassin of Youth," *American Magazine,* July 1938, 18–19, 150–53; Wayne Gard, "Youth Gone Loco," *Christian Century,* June 1938, 812–13.

56. See, for example, Himmelstein, *The Strange Career of Marihuana;* Bertram et al., *Drug War Politics;* Carroll, "The Narcotic Control Act Triggers the Great Nondebate."

57. Musto, *The American Disease,* 291.

58. Sharp, *The Dilemma of Drug Policy in the United States,* 136.

59. Ibid.

60. Himmelstein, *The Strange Career of Marihuana;* Jonnes, *Hep-Cats, Narcs, and Pipe Dreams.*

61. Jonnes, *Hep-Cats, Narcs, and Pipe Dreams;* Larry Sloman, *Reefer Madness: A History of Marijuana in America* (Indianapolis, 1979).

62. Jonnes, *Hep-Cats, Narcs, and Pipe Dreams,* 238.

63. Ibid.; Himmelstein, *The Strange Career of Marijuana.*

64. Much of the language dealing with the justification for federal control over illegal drugs can be found in the Findings and Declarations portion of Title II on Control and Enforcement, which concluded that "federal control of the intrastate incidences of traffic in controlled substances is essential to the effective control of the interstate incidences of such traffic." U.S. Public Law 91-513. 91st Cong., 2d sess.

65. U.S. House, 91st Cong., 2d sess., Subcommittee on Public Health and Welfare of the Committee on Interstate and Foreign Commerce. *Drug Abuse Control Amendments–1970: Hearings Before the Subcommittee on Public Health and Welfare of the Committee on Interstate and Foreign Commerce.*

66. Ibid. For example, in a statement on the Senate floor in 1970, Senator Edward Kennedy articulated the broader view of drug abuse that emerged during the 1960s and 1970s in which the law enforcement approach was seen as, by itself, incapable of solving America's drug problem. "Drug abuse is not only a law enforcement problem, or only a medical problem," Kennedy argued, "it is a legal, moral, medical, psychological, social and cultural phenomenon." U.S. Senate, Senator Kennedy of Massachusetts speaking during the testimony on Controlled Dangerous Substances Act of 1969, 91st Cong., 2d sess. *Congressional Record* (19 January 1970–27 January 1970), vol. 116, pt. 1.

67. U.S. House, Subcommittee on Public Health and Welfare of the Committee on Interstate and Foreign Commerce, *Drug Abuse Control Amendments–1970,* 109.

68. Ibid., 116.

69. Bertram et al., *Drug War Politics,* 88–89; see also Jonnes, *Hep-Cats, Narcs, and Pipe Dreams,* chap. 14.

70. Qtd. in Dan Baum, *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (Boston, 1996), 95; Sharp, *The Dilemma of Drug Policy in the United States.*

71. Meier, *The Politics of Sin.* The decriminalization statutes retained civil fines for minor marijuana offenses but eliminated arrest and jail, substituting a citation similar to a traffic ticket.

72. Patrick McCartney, "Green Fire," manuscript, April 2003.

73. Bertram et al., *Drug War Politics,* 110.

74. Campbell, *Using Women.*

75. Musto cites a September 1989 *New York Times* poll in which the drug issue surpassed all other causes for concern in the United States. Musto, *The American Disease,* 281.

76. Bertram et al., 111.

77. Qtd. in Baum, *Smoke and Mirrors,* 291.

78. Sharp, *The Dilemma of Drug Policy in the United States,* chap. 4.

79. Ibid., 56.

80. Alan W. Bock, *Waiting to Inhale: The Politics of Medical Marijuana* s(Santa Ana, Calif., 2000). Twenty-four states permit the use of the ballot initiative.

81. Eight patients are still receiving medical marijuana through the IND program. "U.S. Rescinds Approval of Marijuana as Therapy," *New York Times,* 11 March 1992, A21; Karen Auge, "Medicinal Pot: A Heated Debate; Voters to Weigh Legalizing Patients' Medical Use," *Denver Post,* 16 July 2000, A1.

82. Consistent with their attempts to frame the debate over medical marijuana in terms of medicine and public health, many medical marijuana advocates argue that the DEA should not be responsible for making decisions about medical marijuana policy. However, supporters were also disenchanted with the Food and Drug Administration's drug approval process, which they believe disadvantages "natural" remedies like marijuana that are not developed by profit-seeking drug companies. This dissatisfaction with the scheduling of marijuana and the way in which new drugs, particularly "natural, plant-based medicines," are approved may also help explain the nontraditional policymaking route advocates pursued. See Bill Zimmerman, Rick Bayer, and Nancy Crumpacker, *Is Marijuana the Right Medicine for You? A Factual Guide to Medical Uses of Marijuana* (New Canaan, Conn., 1998).

83. Joseph B. Treaster, "The 1992 Campaign; Candidates' Records; Four Years of Bush's Drug War: New Funds but an Old Strategy," *New York Times,* 28 July 1992, A1.

84. Bertram et al., *Drug War Politics,* 115.

85. Proposition P, which passed with nearly 80 percent of the vote, recommended that the state of California allow marijuana to be used as a medicine.

86. In California politics, populous liberal regions such as the Bay Area can often set agendas and determine policy outcomes for the rest of the state. Many opponents of Proposition 215 point out that the initiative failed in most California counties but succeeded in the most populous ones, where it received a disproportionate amount of voter support. Only 27 of California's 58 counties approved the measure, and many of these were among the state's most liberal Northern California counties, such as San Francisco, Santa Cruz, and Marin. The population centers of the state, including San Francisco (78.1 percent), Los Angeles (55.7 percent), Sacramento (53.8 percent), and San Diego (52.1 percent), all gave majority support to Prop 215, while a number of the less populous counties in the Central Valley decisively rejected it. "Supplement Statement of Vote." [Available online], California Secretary of State. Available from http://vote96.ss.ca.gov/. Accessed 6 August 2003.

87. Greg Lucas, "Bills on Pot, Needles Die in Flurry of Vetoes; Wilson Acts at Last Minute on Controversial Measure," *San Francisco Chronicle,* 1 October 1994, A1; "Votes—Roll Call, SB 1364." [Available online.] Available from http://www.leginfo.ca.gov/. Accessed 6 August 2003.

88. Ibid. Letter from Senator John Vasconcellos to Governor Pete Wilson, 15 September 1995. I obtained the latter document as well as other such documents cited

here either from interview subjects or from the California and Maine State Archives; Governor Pete Wilson, Veto Message, 15 October 1995.

89. Proposition 215 proponents were not the first to propose a marijuana-related initiative in California, but they were the most successful: from 1966 to 1996 marijuana activists introduced more than a dozen propositions dealing with the drug, all but one of which failed to qualify for the ballot (Proposition 19, which would have decriminalized possession, cultivation, and use of marijuana for adult personal use, was rejected overwhelmingly by voters in November 1972).

90. In Maine, a bill that lawmakers approved in 1992 was rejected by Republican Governor John McKernan, and a 1994 measure was withdrawn due to the threat of a gubernatorial veto. Both measures would have provided a defense against possession and cultivation of a small amount of marijuana for medical purposes and applied only to patients with particular diseases who were not responding well to traditional treatments. A 1997 medical marijuana bill passed the Joint Standing Committee on Health and Human Services on a near-unanimous vote but died on the House floor.

91. Personal interview by author, 28 January 2003, Newport Beach, Calif., tape recording; personal interview by author, 30 January 2003, Sacramento, tape recording; personal interview by author, 19 May 2003, Portland, Maine, tape recording; telephone interview by author, 4 March 2003. Written notes, telephone interview by author, 12 February 2003. Written notes, California Narcotic Officers' Association, "Use of Marijuana as a 'Medicine,'" 17 June 1996; Thomas J. Gorman, "Marijuana is NOT a medicine" (Sacramento: California Narcotic Officers' Association, 1996).

92. Personal interview by author, 29 January 2003, San Francisco, tape recording; personal interview by author, 20 May 2003, Augusta, Maine, tape recording; CMA On-Call: The California Medical Association's Information-On-Demand Service, Document #1315, The Compassionate Use Act of 1996, The Medical Marijuana Initiative, CMA Legal Counsel, January 2003.

93. Personal interview by author, 30 January 2003, Sacramento, tape recording.

94. Ibid. Joshua L. Weinstein, "Medical Marijuana Question Likely to Go to Maine Voters," *Portland Press Herald,* 24 November 1998, 3B.

95. Californians for Compassionate Use, "David Binder Poll Results, California Medical Marijuana Initiative." This document was obtained from a California interview subject. Respondents were more likely to support medical marijuana when asked if they would be in favor of "a ballot proposition that would end the prohibition on possession of marijuana for personal medical use where the medical use has been recommended by a licensed physician or other certified medical provider." When given more specific information about the content of the initiative, including a provision that would allow patients to cultivate their own marijuana, support dropped to 59 percent. These results foreshadow the proponents' campaign strategy, which emphasized the general idea of medical marijuana rather than the particular, more controversial features of the ballot initiative. The poll had a sample size of 750 and a margin of error of +/- 3.6 percent; interviews were conducted from 2 March to 8 March 1995.

96. In Maine, polls conducted in 1997 and 1999 showed high levels of support for a ballot initiative. In both Maine and California, as well as nationally, questions about legalization elicited much less favorable opinions. Californians for Compassionate Use, "David Binder Poll Results, California Medical Marijuana Initiative." Document obtained from California interview subject. Fairbank, Mauslin, & Associates, Maine Statewide Poll, 17 June 1997. Document obtained from Maine interview subject. See also Richard Schmitz and Chuck Thomas, with Robert Kampia, eds., "State-by-State Medical Marijuana Laws: How to Remove the Threat of Arrest," [Available online.] Marijuana Policy Project, available from http://www.mpp.org/statelaw/index2.html. Accessed 1 June 2002.

97. Californians for Medical Rights Press Release, "Poll Illuminates Reasons Voters Support Prop. 215," 28 October 1996. As stated above, many of the campaign materials I cite were obtained either directly from proponents and opponents I interviewed or from

California freelance journalist Patrick McCartney, who is writing a book about Proposition 215 and generously agreed to share many of his files with me.

98. Schattschneider, *The Semi-Sovereign People.*

99. Personal interview by author, 27 January 2003, Santa Monica, Calif., tape recording.

100. I conducted personal interviews with several medical marijuana opponents in Maine and California, including representatives from the California Narcotics Officers' Association (the main opponent of Proposition 215), the California State Sheriffs' Association, and the Maine Chiefs of Police Association. I also conducted interviews with a number of physicians, including representatives of medical organizations.

101. Jim Shultz, *The Initiative Cookbook: Recipes and Stories from California's Ballot Wars* (San Francisco, 1996).

102. Sharp, *The Dilemma of Drug Policy in the United States,* 135.

103. Memo from Dale Gieringer, coordinator, California NORML, to Californians for Medical Rights, Re: "Our Message and How to Win the Campaign," 1 May 1996.

104. Memo from Jim Gonzalez to Bill Zimmerman, George Zimmer, and others, 1 November 1996.

105. Personal interview by author, 30 January 2003, Sacramento, tape recording.

106. Jim Baumohl, "Maintaining Orthodoxy: The Depression-Era Struggle over Morphine Maintenance in California," in Tracy and Acker, eds., *Altering American Consciousness:* 225–66, 251.

107. AMR Campaign Briefing Book, June 1998, table 3, p. 2. This effort to mainstream the medical marijuana issue offered potential advantages both to patients (who could benefit from more liberal attitudes toward their medical marijuana use) and to advocates who might have had a broader agenda (thus perhaps paving the way for more ambitious drug law reform measures in the future—a key concern of medical marijuana opponents).

108. Personal interview by author, 19 May 2003, Portland, Maine, tape recording.

109. For instance, in a radio advertisement aired in support of Maine's medical marijuana initiative in 1999, Cumberland county sheriff Mark Dion argued that "people who are gravely ill should be able to use any medicine that reduces their pain and suffering," and claimed that the initiative at stake was a "public health issue." "New Radio Ad Featuring Sheriff Hits Radio Waves, Internet." [Available online.] Mainers for Medical Rights, formerly available from http://www.mainers.org/newsclips/radio102399.htm. Accessed 23 July 2002.

110. The official stance of the American Medical Association and its state affiliates is to withhold endorsements of medical marijuana initiatives and instead support more research on medical marijuana. Still, proponents did secure endorsements from some smaller but influential medical groups, such as the California Academy of Family Physicians and the California Nurses Association. In addition, the group Mainers for Medical Rights published the names of more than 175 health-care professionals who supported Question 2.

111. Of many examples, see Ellis, *Democratic Delusions;* Haskell, *Direct Democracy or Representative Government?* David S. Broder, *Democracy Derailed: Initiative Campaigns and the Power of Money* (New York, 2000).

112. Telephone interview by author, 7 April 2003, California, written notes.

113. Fairbank, Mauslin, & Associates, Maine Statewide Poll, 17 June 1997.

114. "Interdiction and Incarceration Still Top Remedies," The Pew Research Center for the People and the Press, 21 March 2001, available from http://people-press.org/reports/display.php3?ReportID=16. Accessed 3 October 2005.

115. Amendment to Ballot Measure Committee Campaign Disclosure Statement, filed by Californians for Medical Rights, 2 June 1997; telephone communication with Diana True, Maine Commission on Governmental Ethics and Election Practices, 12 August 2003.

116. Finkel advances a similar argument in a study of campaign effects; see Steven E. Finkel, "Reexamining the Minimal Effects Model in Recent Presidential Elections," *Journal of Politics* 55, no. 1 (1993): 1–21.

117. For example, in comments in a February 2000 e-mail message to a state medical marijuana advocate, an AMR official confidently argued that "the feds are a paper tiger on this issue. They have the power to solve the medical marijuana issue. But they don't have the resources, backbone or political support to do anything that really stops progress in the states." Received from telephone interview subject (Arkansas), 11 February 2004.