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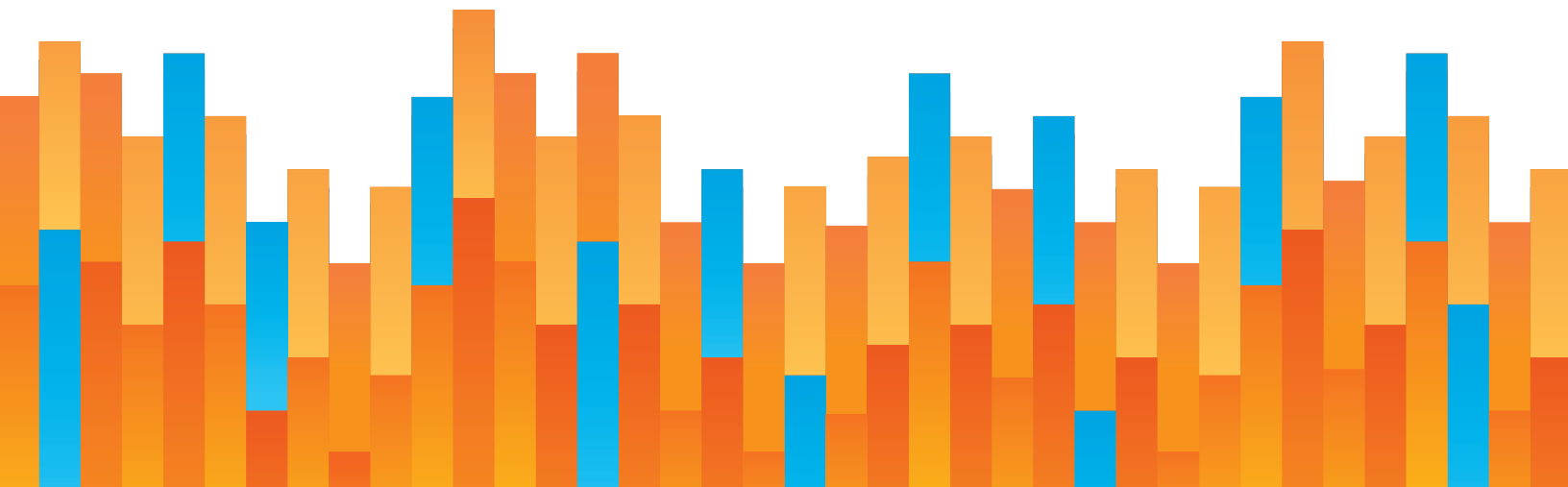
**LAW ENFORCEMENT  
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# DRUG LEGALIZATION HANDBOOK

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## PART 3

# TAKING DRUGS OFF THE SCHEDULE: ELIMINATING THE CONTROLLED SUBSTANCES ACT

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As illustrated by recent state-level debates over marijuana legalization, people worry a lot about *how* to legalize drugs. They suggest regulation, taxes, new state agencies, and more in an effort to convince voters—and themselves—that they are serious about getting it “right.” But this focus on legalizing drugs the “right way” misses the mark. Instead, Congress must repeal the laws that cause drugs to be treated differently than any other consumer good.

Throughout the 19th century,<sup>30</sup> there were few regulations on or prohibitions of narcotics and other drugs. In the early 20th century, Congress passed the Harrison Narcotics Tax

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<sup>30</sup> David T. Courtwright, “Treating Drug Problems: Volume 2: Commissioned Papers on Historical, Institutional, and Economic Contexts of Drug Treatment,” National Academies Press (U.S.), 1992, <https://www.ncbi.nlm.nih.gov/books/NBK234755/>.

Act,<sup>31</sup> establishing restrictions and regulations on the import, production, and distribution of opiates. The Harrison Act followed the 1912 International Opium Convention,<sup>32</sup> which was the first international drug control treaty. Despite lobbying efforts by the United States, this treaty did not include marijuana. However, regulations on marijuana were not far behind, with the 1937 Marihuana Tax Act imposing a tax on the sale of marijuana.<sup>33</sup>

Congress passed the primary piece of prohibition legislation, the Controlled Substances Act, in 1970. Among other provisions, the CSA established the drug scheduling system that is still used today.<sup>34</sup> This created five tiers: drugs with “high abuse potential with no accepted medical use” (Schedule I), drugs with “high abuse potential...[and] an accepted medical use” (Schedule II), drugs with “intermediate abuse potential” (Schedule III), drugs with “abuse potential” less than Schedule III but more than Schedule V (Schedule IV), and drugs with “the least potential for abuse” (Schedule V). Importantly, this classified marijuana as a Schedule I substance, considered more dangerous than heroin or fentanyl (Schedule II drugs).

The Drug Enforcement Administration was established in 1973 to “enforce the controlled substances laws and regulations of the United States.” The establishment of an agency focused specifically on prohibition happened in conjunction with the beginning of the “War on Drugs.” One of the major amendments to the CSA was the Anti-Drug Abuse Act of 1986 which redefined threshold quantities and kinds of controlled substances and introduced enhanced penalties for drug violations.<sup>35</sup> Along with the Comprehensive Crime Control Act two years earlier, prohibition focused solidly on punishment.<sup>36</sup>

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<sup>31</sup> United States Congress, 63rd Session, Harrison Narcotics Tax Act, 1914. Available at: [http://www.naabt.org/documents/Harrison\\_Narcotics\\_Tax\\_Act\\_1914.pdf](http://www.naabt.org/documents/Harrison_Narcotics_Tax_Act_1914.pdf).

<sup>32</sup> United Nations Office on Drugs and Crime, “The 1912 Hague International Opium Convention,” Accessed May 2023 at: [The 1912 Hague International Opium Convention](https://www.unodc.org/documents/convention/1912_hague_international_opium_convention.html).

<sup>33</sup> United States Congress, 75th Session, Marihuana Tax Act, 1937, Available at: <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/50/STATUTE-50-Pg551a.pdf>.

<sup>34</sup> Michael Gambay, “The Federal Controlled Substances Act: Schedules and Pharmacy Registration,” *Hospital Pharmacy*, Vol. 48, No. 6 (June 2013), pp. 473-474, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3839489/>

<sup>35</sup> <https://www.congress.gov/bill/99th-congress/house-bill/5484>

<sup>36</sup> <https://www.congress.gov/bill/98th-congress/senate-bill/1762>

So, where do we go from here? State efforts to legalize medical and recreational marijuana are steps in the right direction, but decisive federal action would have a substantially more profound impact.

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Repealing the federal laws that treat drugs differently than other products is the best way forward. There is no need for government to design rules and regulations for the sale of drugs: markets arise when needed. Letting the market solve a problem created by the government is the best possible outcome.

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