

THE BROOKINGS INSTITUTION
BROOKINGS CAFETERIA PODCAST
A PLAN FOR MARIJUANA POLICY REFORM

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PROCEEDINGS

DEWS: Welcome to the Brookings Cafeteria, the podcast about ideas and the experts who have them. I'm Fred Dews.

Over the last few decades, public attitudes about marijuana use have transformed, from sharply negative attitudes to widespread public acceptance of marijuana for medical and recreational purposes. And yet cannabis remains illegal at the federal level and in many states, and the consequences enforcement of laws against marijuana use and possession in the War on Drugs continue to damage lives and communities.

In this episode, I speak with Brookings Senior Fellow John Hudak about his new paper, "Reversing the War on Drugs: A five-point plan," in which he lays out a series of policy actions the Biden administration could take short of full federal legalization to promote justice and equity and to help reverse some of what he calls the disastrous consequences of the War on Drugs.

Also on this episode, Senior Fellow David Wessel, director of the Hutchins Center on Fiscal and Monetary Policy, explains how the onset of the COVID-19 pandemic exposed vulnerabilities in our financial markets—especially in the "shadow banking system," such as bond mutual funds.

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First up, here's David Wessel.

WESSEL: I'm David Wessel, and this is my economic update.

COVID-19 was, of course, primarily a public health disaster. In the U.S. alone, it has killed more than 600,000 people. It was an economic disaster as well, one that was met with a

forceful response from Congress, Presidents Trump and Biden, and the Federal Reserve. Less visible to most Americans, the onset of the pandemic in March 2020 also highlighted some vulnerabilities in our financial system, vulnerabilities that would have deepened the recession had the Fed not pumped \$1.5 trillion in March and April 2020 to keep the world's most important financial market – the market for U.S. Treasury debt – functioning.

The simple story: the current structure of the market for U.S. Treasuries is not robust enough to allow big-money institutions to sell large amounts of Treasuries at predictable prices when markets are under severe stress – even though that is the precise reason these firms and funds hold Treasuries. And when the Treasury market doesn't function, credit flows to households, businesses and governments are disrupted with serious consequences for the real economy.

As detailed in the recent report of our Task Force on Financial Stability, the U.S. and other countries shored up the capital foundations and regulation of the regulated banks after the Global Financial Crisis of 2008-09. As a result, banks withstood the COVID shock well. The problems were all in what's sometimes called the “shadow banking system,” or the less than euphonious “non-bank financial system”— the markets, institutions, money managers, and funds that are an increasingly large share of the flows of credit in our economy but are not as tightly regulated or supervised as the banks. Bond mutual funds, clearinghouses for derivatives, life insurance companies that sell variable annuities, and so on.

Now this is not the sort of thing that the ordinary American worries about. But failure to address the vulnerabilities in the shadow banking system put the whole economy at risk. We learned the hard way back in 2008-09 that what happens in financial markets doesn't stay in financial markets.

The rapid growth of mutual funds that allows ordinary investors to buy a portfolio of corporate bonds are one example. People put money into these mutual funds expecting to be able to take their money out instantly, just as they take money out of a bank. But these funds hold bonds that rarely trade, and when all the bond funds try to sell their holdings to raise cash to meet their shareholders' demand at once, the prices of those bonds fall in a "fire sale" and that makes it costly and maybe impossible for businesses to borrow money. That's what happened in March 2020 – and the Fed, again the Fed, stepped in. It's good that the Fed can and does move swiftly in times like these. It's good that we have fire departments. But we also have building codes, fire prevention systems, and smoke detectors. We need more of them in the shadow banking system.

DEWS: You can find more about this issue from the Hutchins Center in a recent report of the Task Force on Financial Stability at [brookings.edu/hutchinscenter](https://www.brookings.edu/hutchinscenter). And now, here's my interview with John Hudak on "Reversing the War on Drugs: A five-point plan"

John, welcome back to the Brookings cafeteria.

HUDAK: It's good to be back, Fred.

DEWS: It's great to see you again. And let's start this discussion not with your paper "Reversing the War on Drugs," which we'll get to here in a few minutes, but with a story that's been in the news lately. And it's perhaps the biggest marijuana related story of the last few weeks, which is the suspension of the U.S. sprinter Sha'Carri Richardson from the U.S. Olympic team for smoking marijuana to cope with the death of her biological mother. This happened right before the Olympic trials in which she smashed the competition. But now she's not going to compete in Tokyo, where she was favored to win gold. You and Rashawn Ray wrote an op-ed about this that I'll post in the show notes. What does this case say about marijuana policy today?

HUDAK: I think that the case tells us a little bit about marijuana policy, but really the reaction to this situation is where the story is. I think we're seeing across America, and really around the world, a pushback against decades of policies that criminalize or penalize the use of cannabis among individuals, among athletes, among employees, among everyday citizens. And what it shows us is that the conversation is changing, perspectives are changing, and a lot of people are ready for something new, whether that is new policy with regard to the World Anti-Doping Agency or whether it's new policy with regard to what the federal government or state governments or local governments are doing when it comes to cannabis.

DEWS: Well, it certainly highlights all those issues, which you also talk about in your paper. So, let's turn to that now. Again, it's called "Reversing the War on Drugs: A five-point plan." It's posted on the Brookings website and as always, I'll link to it in our show notes. But let's start with the larger context of where the Biden administration itself is on cannabis policy.

HUDAK: The Biden administration has really shown no interest in taking the step toward full scale cannabis reform. And in a lot of ways, that has frustrated activists not just in grassroots communities, but it's frustrated activists and Congress, people who have supported cannabis reform for, in some cases, only years and other cases for decades, recognizing that there is a very powerful connection between our nation's cannabis laws and their enforcement and criminal justice and racial justice issues. And while candidate Biden ran on a platform that really focused on the plight of communities of color in the United States, he has, at least in the context of cannabis, not shown a real eagerness to connect those two issues and to step toward reform.

DEWS: I do want to hit those criminal justice and racial justice issues here in a minute. But to that point about President Biden and his kind of personal approach to cannabis reform,

you've also written about that. Can you kind of walk us through why you think Biden personally has been reluctant to pursue more sweeping cannabis reform?

HUDAK: Yeah, it's obvious that President Biden has been reluctant to support cannabis reform. And while as a practice I try not to get inside the head of an individual when it comes to issues, especially issues regarding drug policy, individuals' viewpoints and perspectives can be deeply personal and can be informed and usually are informed by a variety of different ideas, experiences, and individual interactions.

But we do know a couple of things about President Biden that tend to line up with what we have seen in polling or in focus group questioning about why individuals hold anti-cannabis reform views. And the first one is the president's age. He's the first president and will surely be the only president who comes from the Silent Generation. That is the generation before Baby Boomers. We know that in the United States population, the Silent Generation is the least likely to be supportive of cannabis reform of any other age demographic, any other generation in the population. And so that lines up fairly effectively with someone who's going to oppose cannabis reform.

At the same time, we know from President Biden's experience as a law and order senator, he was someone who for decades supported very powerfully strong penalties for drug users, drug dealers, drug traffickers, et cetera. And that tends to weigh on a person as well.

And then the third point is that we know that there is a history of substance abuse in the Biden family. Hunter Biden has been public about his own struggles. Substance abuse and the conversations in the 2020 campaign highlighted those previous struggles. And we know that it's not true for every individual who has a family member with a substance abuse past or present or an individual who personally has dealt with a used disorder. But we do know that for some

subset of individuals who have experienced that, particularly when a child has a substance use disorder, they are much less inclined to support drug reforms and drug liberalization than individuals who've not experienced that.

DEWS: John, let's move on to the context of marijuana policy nationally, and you've written a lot and done a lot of research on this topic: in your book "Marijuana: A Short History," published by Brookings Press. You wrote a Brookings Essay that I worked with you on. You've got a lot of research on the issue of federal cannabis policy, but also state level policies, how they interact, how they conflict. Can you walk us through a little bit what is the state of federal cannabis and state-level policies today?

HUDAK: So right now, federal cannabis policy is effectively where it has been for much of the last 50 years. Cannabis is illegal in the United States for medical use, for recreational use. There is a very small sliver of legal use in the United States, and that is for federally approved researchers to use cannabis in either medical or other scientific study. But other than that, it's illegal in all circumstances at the federal level.

At the state level, it's a bit different. Since 1996, we've now seen more than three dozen states and the District of Columbia pass some sort of reform to set up a fully functioning medical cannabis system where individuals with certain conditions can get approval from their doctor to purchase cannabis from a dispensary, or in some cases to grow it at home or to have a caregiver grow it for them. That's a huge step in a very short period of time, in just twenty-five years going from zero states to three dozen states.

At the same time since 2012, we've now seen 18 states plus the District of Columbia pass full scale cannabis legalization. That means that anyone over the age of 21 can possess it, purchase it, use it—typically not using it in public, but using it in proper places, typically in the

home. And again, that is a dramatic step. In nine years, we've gone from no states having those policies in place to states that that nearly total half of the American population.

DEWS: And I think Oregon is one of those states, and that's the state in which Sha'Carri Richardson consumed marijuana, which is legal at the state level. But then, as you've pointed out, it's illegal at the federal level and with the sport's governing body doping agency, so that sets up a big conflict there.

HUDAK: Yeah, Oregon is actually an interesting case. It was in the second wave of states to legalize cannabis for adult use in 2014, and in 2020 it actually took the step to become the first state to legalize psychedelics, as well as arguing that drug reform is broader than cannabis and that our nation's drug laws generally are outdated. And so, in a lot of ways, Oregon has been a leader in liberalization of drug policy in this country.

DEWS: So, let's move on to that really major issue that you've also written about: the social justice argument for cannabis legalization. What is that argument?

HUDAK: So, the argument really dates back to the history of cannabis prohibition and what we know what I've written about in my book, "Marijuana: A Short History," what others have written powerfully about, including Michelle Alexander in her book "The New Jim Crow," and dozens or hundreds of other authors, is that our nation's drug laws were not set up and in particular, our nation's cannabis laws were not set up to protect society against something that we feared because of science. These laws were set up to vilify Mexican immigrants and African Americans and hippies and other outgroups and other minority groups in our society. And not only with those laws set up to vilify those groups, but the enforcement of those laws fell heavily on those groups who were targeted.

And so even today, we know that Black Americans, for instance, are 3.6 times more likely than white Americans to be arrested for a cannabis related offense, even though usage rates between Blacks and whites is about even. And so that creates not just an issue in a moment, not just an issue when we look in 2020 what is happening in Black America versus white America when it comes to cannabis. But it has created a systemic racism within drug policy that has been institutionalized and the effects of which have snowballed over decades, really devastating communities. We know that drug enforcement in the United States is targeted not just demographically, but also geographically, and given the ongoing challenges of segregation in the United States, we know that oftentimes demography equals geography. And so entire communities are being robbed of economic, educational, and social opportunities because of the foundation of the nation's drug laws and the enforcement of those laws.

And so, steps forward in terms of reforming our laws will help ameliorate the challenges that can exist. But we also have to look back and understand how do we fix the past? How do we fix the mistakes and the racism that has been both the foundation and the core of these policies for the better part of one hundred years?

DEWS: You've also spoken about racial resentment as underpinning the war on drugs. Was that systemic racism in the way that drug laws were created and enforced reflective of the racial resentment?

HUDAK: Absolutely. And so, there are really a couple of parts of this. One is laws being put into place to stoke fears of otherness. And then at the same time, that otherness tends to be the source of white Americans, in particular, privileged Americans in particular, being able to point to a group and say that is the reason we have problems. That group is the cause of our problems. And so what better way under that brainwashed version of how the world is working

to address it than to say we're going to use these laws to stop those people from doing bad things to us into our children and to our communities. And so racial resentment is a huge part of why our nation's drug laws look like they are and why they're enforced in the way that they are, both historically and today.

DEWS: So your paper and again, it's titled "Reversing the War on Drugs: A five-point plan," lays out a five-point plan that the Biden administration itself can implement around cannabis reform, and it stops short of full federal legislation. So, point one is a national apology for the war on drugs. Why is a national apology important and what form would that take?

HUDAK: So, to start, the five-point plan I put forward is certainly not the most reform minded plan that's out there. It's more pragmatic, given the realities of the Biden administration. And there will be activists who will read this paper and be angry that it doesn't go far enough. And while I think that there should be steps further than what my paper argues, the reality is that we know the president is not on board with full-scale legalization. And we know that Democrats don't have 60 votes in the Senate to pass legalization, full scale legalization. They probably don't even have 50 votes in the Senate right now to pass full scale legalization. So, in the short term, we know that full scale legalization is not a reality.

So, in the interim, I argue there are steps that we can take. And the first step in that five-point plan is a national apology. That is for the president of the United States to issue a proclamation apologizing for the war on drugs, apologizing for the devastation it has wrought in communities across the United States, particularly in communities of color, and to acknowledge that racism is the root of our nation's drug laws and that reforms are necessary to reverse that type of institutionalized systemic racism that drug laws are one part of in terms of systemic racism and the policies that reflect them in this country.

I think it's also even more powerful for that apology to come from someone like President Biden, someone who helped write many of our nation's drug laws while he was in the United States Senate, while he was chair of the Senate Judiciary Committee, someone who has really taken a hard line approach against not just drug traffickers, not just drug sellers, but even drug users. And so, for an apology like that to come from someone like Bernie Sanders or Cory Booker or other liberals who have really spent a long period of their career pushing back against these types of laws could be effective. But for it to come from the source of the nation's laws is not just a national apology, but in many ways a personal apology for crafting those laws could be meaningful. It's not sufficient in itself, but it's a very important first step.

DEWS: I want to follow up on that political question if I may. The surveys show, and you've written about this in the paper, that a large majority of Americans support decriminalization of marijuana. And yet, as you've just observed, it couldn't get through Congress and it also might end up being a political liability for any president. Can you talk about those political aspects of it?

HUDAK: You know, it's a tough nut to crack understanding why cannabis legalization is so popular. We know about 68 or 69 percent of Americans support adult-use legalization in the U.S. But it can't get through. And the reason for that is, for a lot of members of Congress, a lot of senators and even presidents, they still see the possibility of being attacked as soft on crime or weak on drugs or worse, creating a policy that's going to get children addicted to drugs. They see that as really damning.

Now those attacks used to land in the 1980s and in the 1990s. But what we've seen is they're not landing today. People don't see drug policy in that same way. But if you're, you know, an older elected official, the memory of those types of political attacks linger with you.

And unfortunately, they're not replacing or updating their own understanding of the politics of the day. And it puts them out of step with a lot of Americans. I think the best example of how cannabis legalization, support for cannabis legalization, is not a liability is that the second to last Senate race in Texas, Ted Cruz and Beto O'Rourke faced off against each other in deep red Texas. And Ted Cruz was vehemently opposed to cannabis legalization. And Beto O'Rourke supported full scale national legalization. And Ted Cruz won by just about a point. Beto O'Rourke was not trounced for having that position on cannabis despite Ted Cruz's best efforts. And I think if a liberal in Texas can run on a full scale legalization platform and come closer than any Democrat has come to winning statewide office since 1994, it shows you that the liability of that position is no longer what it was.

DEWS: One another point that you make in the paper has to do with your call for a Superfund program to clean up what you call the disaster of cannabis enforcement. Now, Superfund, as I understand it, was the major environmental cleanup program of the 1980s. Maybe it still goes on today, I don't know. Can you talk about why you're calling for a Superfund program to address the disaster of cannabis enforcement?

HUDAK: Yeah, the Superfund program in the environmental context still exists today. And what it does is it identifies challenges, environmental challenges, that exist within communities in some cases identifies who is the cause of that, if it is identifiable. And then uses funding, typically a blend of public funds and private funds, to clean up that area, to rehabilitate that land, that water supply, whatever environmental entity was affected by pollution, and to try to make that community whole again. And I think it's easy for the average American to understand an environmental disaster. We all had a place in town where some sort of waste used to be dumped or a factory that probably wasn't doing what they should with regard to the

chemicals that they were using. And after the factory goes under, it's a mess. No one wants to buy that land. No one wants to try to revitalize that land. So, it takes a government to step in to try to revitalize that. It's easy for people to understand the disaster that an old factory can mean for a community.

It's a lot harder, especially for white Americans, to understand the disaster that racialized drug enforcement can cause within a community or more importantly, within units within a community. And so if we start to identify using data where that enforcement has had the biggest impact, where it continues to have an impact, where those lost opportunities exist, we can identify down to very specific targets within towns and within cities who has been harmed the most and what communities have been harmed the most and try to reinvest in those communities.

It's important to remember, and I argue this in the paper, that the drug war impacts more than just the people who are arrested. The drug war impacts families. It impacts communities. It impacts the fabric of communities, particularly when you have hundreds or thousands of typically Black and brown men being introduced to the criminal justice system, many of them spending time in jail. And in that extraction of human capital, of innovation, of educational opportunities, all has an ongoing impact that snowballs over time as this happens to generations of individuals. So, in the same way that we think of environmental waste impacting a community, we have to think of that waste that is racialized law enforcement having that same impact in communities in there being in need to clean it up.

DEWS: I want to ask you about one of the other points in your five-point plan, and it has to do with the presidential commission to study federal cannabis legalization. I think that's a really interesting problem. And again, you've talked about the issue of understanding why medical science of what cannabis can and can't do, but there's restrictions on studies because of

the way that cannabis is scheduled in the federal drug schedule. Can you just talk about that particular point in your plan?

HUDAK: That ends up being a controversial point in my plan. Actually, there are a lot of very strong pro-cannabis reform individuals and activists out there who look at this issue and say, why the hell do we need another commission or another study to tell us what we already know? My response to that is that that works for you. But if this was so obvious to everyone else, this is something that would have passed Congress already and it hasn't. There are a lot of members of Congress, there are United States senators on both sides of the aisle, a current president of the United States, who has not been exposed to enough of the data and enough of the science and enough of really the data coming out of state level programs to be able to understand and evaluate the issue wholly and in an unbiased way.

And I think a presidential commission elevates that research. And we've had presidential commissions on the issue of cannabis before. Many of them actually came back and recommended more liberal policies than were in place, the most recent one being the Shafer Commission in the 1970s that came back and said to President Nixon, cannabis isn't as bad as your administration is playing it up to be. We should probably take steps away from criminalization and toward decriminalization. And what President Nixon did was ignore the study, threw it in a drawer, criticized it in a public press conference, and then never spoke of it again. That's not the type of treatment this issue needs. But when a president treats the issue in that way, it has ripple effects throughout our government and throughout our society.

And so I think the best thing that we can do is have an unbiased conversation about what cannabis policies have meant for this country, what cannabis reform can do to reverse the harms of those previous policies, and what the experience of cannabis reform, good and bad, has been

in the state so far. We've had nine years of legalization in Colorado and Washington. We've had 25 years of medical legalization in California. There's enough data right now to help inform someone like President Biden or someone like a Republican moderate or a Democratic moderate in the Senate who's on the fence or uninformed about the issue about what the future can mean. And that commission, I think, is the path not to convince every American, but to convince that last group of Americans needed for that critical mass.

DEWS: Well, John, I want to point out to listeners that there are at least two other points that you make in the paper in your five-point plan. I encourage listeners to go to our website and download the paper and read it. It's a great analysis of a possible path forward. Plus read your other work on marijuana policy. And as always, I want to thank you for sharing your time and expertise with us today.

HUDAK: Thanks for having me, Fred.

DEWS: Again, the paper is called "Reversing the War on Drugs. A five-point plan." You can find on our website, [brookings.edu](https://www.brookings.edu).

A team of amazing colleagues helps make the Brookings Cafeteria possible. My thanks go out to audio engineer Gaston Reboledo; Bill Finan, director of the Brookings Institution Press, who does the book interviews; my communications colleagues Marie Wilkin, Adrianna Pita, and Chris McKenna for their collaboration. And finally, to Soren Messner-Zidell and Andrea Risotto for their guidance and support.

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