Facts and Recommendations: How Cannabis legalization can be used
to repair the damage to communities worst affected by the US War on Drugs.

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ABSTRACT

The war on drugs is a war against people of color. Although it encompasses numerous substances with detrimental and addictive effects, no substance has been quite so targeted in this fight than Cannabis, and no groups have been so differentially harmed in the enforcement of its policies than black and brown communities.

In most cases, the governing powers are oblivious of the facts and border on cynicism when this issue is raised. The so-called war was a futile exercise that not only failed to bring about positive change but deepened the inequalities that exist between the privileged and underprivileged communities in American society. Futile because the war on drugs has failed to bring about the expected positive change in terms of reduced drug (narcotic) use. [1]

This letter is a plea to the New York State to reexamine the end goals of cannabis legalization and use this as an opportunity to right the wrongs that were brought about by the so-called war on drugs.

The objective is to provide a framework for formulating policies that will help the affected people groups recover and be in a position to reap equal rewards from the legalization of cannabis.

Without such measures, these communities will continue to bear the brunt of cannabis prohibition and the war on drugs years on without hope for a recourse. To begin this recovery journey, conventional wisdom and logic needs to be critiqued.

Cannabis legalization, in and of itself, does not equal social justice.

Legalization, even at the federal level, will only equal social justice if the government and other stakeholders prioritize affirmative action and other measures that will create equitable opportunities for participation in the legal cannabis market. This necessitates understanding the root cause of the problem and dealing with it head on without fear, favor, or prejudice.

Is the State of New York willing and ready to do this? Or does it lack sufficient incentive to do this?
BIOGRAPHICAL SKETCH

Joshua Christine is the first to finish high school on his fathers side, the first to finish college in his family and the only to go on to a masters program. He is a veteran of the United States Marine Corps where he attended the Defense Language Institute in Monterey, CA. After being injured in the line of duty ended his Marine Corps career, Joshua went on to attend Portland Community College where he studied Business Management. After transferring to the University of Pennsylvania he then earned a BA in Political Science while running a small-business focussed consulting business. From 2019-2020 he attended Cornell University where he now submits the final piece in his effort to earn an MPS degree in The Environment and Natural Resources.
ACKNOWLEDGEMENTS

Growing up in hardship and poverty myself and seeing the communities around me suffer at the hands of police under the justification of the war on drugs, I never thought I would find myself here today. First and foremost this project, and what I hope to achieve with it is dedicated to my friends and family over the years who have been impacted and incarcerated due to American drug policy, especially to my brother, Jacob who remains behind bars. Rest in peace Pazi, Dallavis, Tyler, my best friend, you are always missed and never forgotten.

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Background Information

In 1850, cannabis was for the first time listed in the United States Pharmacopeia as a medicinal herb. Years later in 1973 the era of cannabis prohibition began with the passage of the Marihuana Tax Act (MTA). [2]

This began a period of federal prohibition that went on to become the current listing of cannabis in the Controlled Substance Act (CSA) which categorizes cannabis as a Schedule I drug. Listing on this schedule implies that cannabis has “no accepted medical use and at the same time has a high potential for abuse.”

Over 80 years ago, America’s first Drug Czar, Harry Anslinger crusaded marijuana’s prohibition claiming that black people and Latinos were the primary users of marijuana. He went further to suggest that marijuana use made “these people” forget their place in America’s society. [3]

There is more to this.

In 1923, a paper by William Randolph Hearst who controlled a journalism empire reported that “Marihuana is a short cut to the insane asylum.” The paper went further to claim that a single window box of cannabis when consumed was enough to drive the whole US population crazy.

In 1930, Anslinger made an obviously prejudiced claim stating that out of the 100,000 marijuana users in the US, a majority were people of color (Negroes, Hispanics, and Filipinos). Of course, there were no facts to support this claim.

It is Anslinger who popularized the term marijuana in place of cannabis which had an anti-Mexican connotation. This theme has been featured boldly in the anti-cannabis movie - Reefer Madness - where marijuana use is associated with violence and promiscuity. [3]

So, we find that marijuana has been labeled as a lethal and anti-social drug to say the least. And then, it is strongly linked to people of color.

Already we can see the inklings of a prejudiced approach in the form of a war that from its inception was targeted at people of color.
Years later (1960s) the Nixon government launched the anti-marijuana campaign, aka war on drugs, which was clearly based on non-scientific claims about the dangers of cannabis. This was directed at people of color who had been branded as the primary marijuana users. At about this time the hippie movement was at its peak and it is no surprise that marijuana became almost synonymous with this movement.

With this happening in the background it became very easy for the police to raid the homes of these communities making random arrests, and vilifying them on accounts of marijuana use. Of course, this disrupted the livelihoods and normal functioning of the affected people groups making their existence a living hell. The same was clearly not happening in the white neighborhoods- despite similar rates of cannabis use.

In the early 1970s, President Nixon formed the National Commission on Marihuana and Drug Use which was led by Gov. Raymond Schafer, this was also known as the Schafer commission. [4]The commission gave its findings in 1972 which in summary did not support the exaggerated negative claims about cannabis. If anything the commission did recommend for the decriminalization of marijuana possession. The highly researched report found that unlike the popular belief that marijuana users were likely to be aggressive they were actually passive and timid. Hence, they did not pose an imminent danger to society.

Here is an excerpt from the Schafer report:

“That some of these original fears were unfounded and that others were exaggerated has been clear for many years. Yet, many of these early beliefs continue to affect contemporary public attitudes and concerns.”

National Commission on Marihuana and Drug Abuse

March 22, 1972
**Other Significant Findings By The Schafer Commission:**

1. Marijuana use was not directly linked to physical or mental abnormalities
2. There is no marked difference between young people who use marijuana and those who use alcohol or tobacco
3. There is no causal relationship linking marijuana use to subsequent heroin use
4. Marijuana users displayed normal social functioning, jib and academic performance
5. There is no evidence linking marijuana use to violent behavior or crime
6. There is no evidence linking marijuana use to genetic defects in humans [4]

Unfortunately, this report was ignored and archived. Since then nearly 15 million people, a majority being people of color, have been continued to be arrested for marijuana use.

*Nixon's futile War on Drugs, which spanned for a period of ~50 years was based on a false premise without evidence-based research. Unfortunately, a sub-group of people was severely affected and years on they are still reeling from these negative effects.*

The policing of communities of color for marijuana offenses has been savage to say the very least.

In July of 2016, St. Anthony, Minnesota Police Officer Jeronimo Yanez killed Philando Castile after Yanez allegedly feared for his life after Castile ‘had the audacity to smoke marijuana’ in front of a 5 year old child. Apparently Castile’s second-hand marijuana smoke warranted death.

Are this not the racial stereotypes and race mongering that fueled the decades of cannabis prohibition? And if this is so, would it not be accurate to state that the intention of was to curtail the rights and freedoms of certain communities aka people of color?

Michelle Alexander in *The New Jim Crow states that young African American men have paid the heaviest price for the war on drugs.* [5] *They have endured massive arrests and incarcerations.*
But now that we are talking about legalizing marijuana, what happens to those who have already done the penance? Is it okay to turn a blind eye to this injustice?

People of color have continued to unfairly suffer from the negative impact of cannabis prohibition. They have been arrested, charged, fined, and incarcerated to prove a point: the government still has the reins when it comes to combating drug use. Unfortunately, not much headway has been made in this regard. In spite of pouring trillions of dollars to combat drug use not much has been achieved save from the prisons being filled with POCs who’ve been the target of this futile but expensive war. [1, 3]

Although more Americans than ever before want marijuana legalized, communities of color continue to be disproportionately impacted by its illegality. These disparities persist even in states that have made reforms to cannabis policies through decriminalization, medical legalization and adult use legalization. These disparities further reinforce the ‘war on communities of color’ narrative which has been described above.
Current State of Affairs

According to the U.S. Census Bureau 2010, New York has a population of 19,378,102 and is the third largest state in the US.

This was made up of 12,740,974 (65.7%) whites, 3,073,800 (15.9%) blacks, 1,420,244 (7.3%) Asians, 8,766 (0.0%) Pacific Islanders, and 1,441,563 (7.4%) of other races. Hispanics and Latinos of all races make up 3,416,922 (17.6%) of the state's population; non-Hispanic whites make up 58.3% of the state's population. [6]

This means that 7,030,044 people in the state of New York are POC who have an unemployment rate at 7.5%.

In the State of New York only 18% of small businesses are minority run, even though this group makes up 36% of the entire population.

Clearly, even with regular businesses there is already a disparity that puts POC at a disadvantage. Extrapolated, even if the cannabis industry was “regular” it would still be difficult for people of color (those who have borne the brunt of prohibition) to access financial opportunities in this industry.

What is the estimated value of the legal adult-use marijuana market in the state of New York?

The value of this market is expected to hit $7 billion by 2025 [7] fueled by the legalization of recreational cannabis. This is expected to generate an annual tax revenue of about $300 million. The industry is expected to generate over 30,000 jobs with a median salary that is higher than the national average. Given the economic constraints being experienced by the state this extra revenue is a key incentive for legalization. Clearly, New Yorkers have every reason to be excited about the economic prospects of legalization. Unfortunately, people of color — especially those who’ve been disproportionately targeted by the war on drugs - may be shut out of this potentially lucrative opportunity.

What’s going on in other states looks grim as well.
Currently, eleven states and the District of Columbia allow for recreational marijuana use among adults, while 33 states allow for medical use of marijuana.

Many African Americans are concerned about the lack of access to the legal cannabis market due to capital constrains and systemic economic racism. Consequently, the legal cannabis industry is almost entirely white. A 2017 report showed that less than one fifth of cannabis businesses are owned by people of color. [8] Even when affirmative action is applied in issuance of licenses, capital remains as a significant barrier to access.

Equity programs meant to help POCs access the legal cannabis industry have encountered their fair share of setbacks. This includes being plagued by cash constraints and grappling with bureaucratic battles that cause frustrating delays. For example in LA, the social equity program has left many business owners stranded and in financial woes due to protracted delays. Aspiring business owners have to incur huge capital expenses before they can get access to funding under the social equity program which sometimes is not forthcoming. With time, such businesses may be forced to fold- up as they wait for funding. As this is happening, the LA cannabis continues to be dominated by those not affected by the war on drugs.

Clearly, the playing field has not been levelled and this is unjustly working against some players.

Today, over criminalized communities continue to suffer from the fallout of our nation’s drug laws, even in states that have legalized marijuana and seen dramatic drops in the number of people arrested for marijuana crimes. That’s because legalization has not eradicated the indefensible rate at which Black and Latinx people are arrested for marijuana offenses in these states. In fact, many states have seen an even steeper rise in the percentage of Black and Latinx people having their lives impacted by a marijuana arrest. Two years after decriminalization in the nation’s capital (DC), a Black person is 11 times more likely than a white person to be arrested for public use of marijuana. [9]

While progress in reforming our nation’s drug laws is vital, we must remember that if we legalize without righting the wrongs of past marijuana enforcement, we risk reinforcing the decades of disproportionate harm communities of color have faced and endured.
People in the United States use and sell marijuana at roughly the same rate regardless of their race, yet a Black person is almost four times more likely than a white person to be arrested for marijuana possession nationwide. [10] In addition, roughly 13,000 people were deported or separated from their communities and families in 2013 alone for marijuana-related offenses.

While it is not a panacea for past harms, thoughtful legalization can help us forge a more equitable future.

This is one of the main reasons enforcement is key to reform. When it comes to drug law reform, policing, which more rightly can be titled over-policing, is at the headwaters of the injustices communities of color suffer.
Problem Statement

In the United States, despite similar rates of consumption and sales across racial and ethnic lines, African Americans are 4x more likely to be arrested for a marijuana offense. [10]

A 2020 report of marijuana-related arrests in Albany, New York in the period spanning July 2019 to July 9, 2020 showed that 97% percent of those arrested or ticketed were Black. Only four whites were arrested during this period for marijuana related offences. This happened despite evidence showing that Black and white people use marijuana at the same rate.” [11] This spells out significant racial bias.

According to Michelle Alexander, legal scholar and author of The New Jim Crow, “Nothing has contributed more to the systematic mass incarceration of people of color in the United States than the War on Drugs.” During the past two decades, this war has been fueled largely by marijuana arrests. A 2010 ACLU report exposed that almost half of all drug arrests were for marijuana and that 88% of those arrests were for marijuana possession only. [12]

This implies two things. First, the war on drugs has largely been a war against marijuana use. Secondly is that this war against marijuana has affected people of color more than it has affected their white counterparts.

For decades police have targeted communities of color, using marijuana laws as their legal excuse to stop, search, arrest, prosecute and criminalize Black and Brown individuals while simultaneously and comparatively ignoring the same conduct happening at similar rates in many white communities.

This, however, should come as no surprise as marijuana prohibition was racist from its inception.

As long as there are penalties associated with marijuana use, and police officers are able to continue to disproportionately enforce those penalties without accountability, Black, Latino and low-income communities will continue to be harmed by cannabis laws. And make no mistake this harm is real.
The issue here may not even be the penalty associated with marijuana use but the bias that comes with dishing out this penalty. That is why changing of laws in and of itself may not be the answer to the problem.

Furthermore, policing often haunts Black and Brown persons alleged to associate with cannabis even after their tragic deaths. Sandra Bland, Trayvon Martin, Freddie Gray and countless other deaths have been further stigmatized by police and media who seek to use past experiences with marijuana to convey criminality and justify what can only rightfully be described as injustice.

Even non-fatal encounters with police carry negative impacts that can last a lifetime. The collateral consequences of a marijuana offense and accompanying record have the following consequences:

- Affects eligibility for public housing
- Limits access to student financial aid
- Limits employment opportunities
- May affect child custody determinations
- Negatively affects one’s immigration status

In a nutshell, a marijuana related offence can lock one out of all forms of opportunities. Also take into consideration that black and brown communities are already disadvantaged when it comes to accessing equal opportunities to whites in the first place.

Moreover the experiences that Black and brown communities have with law enforcement officials regarding cannabis have diminished faith in, and respect for the law and those that disproportionately enforce it. Are they really to be blamed?

Communities of color are long overdue for relief in this racially enforced war on drugs. Those who care at all about Black and brown communities must too come to realize that past, current and future cannabis policies are a social justice issue and that the war on drugs and the policing of communities of color, particularly for marijuana possession, must come to an end.

Historical injustices need to be addressed if legalization is to deliver the results that it is expected to deliver.
Analysis

Deep-pocketed investors are eager to dive in and reap the financial rewards of the legal cannabis market that is about to open up in New York. Social justice is a central issue in this state and state legislators that are involved in the legalization process need to make every effort to ensure that groups that were negatively and disproportionately affected by cannabis prohibition benefit equally from this potentially lucrative opportunity. If a social equity program is not initiated and funded right from the start it will be very difficult for the state to correct things once the large corporations have taken over the industry.

As has already happened in other states, black and brown communities are likely to be locked out of the legal cannabis industry if adequate measures to loop them in are not instituted. Factors that may lock them out include having a marijuana related criminal record which may deter them from accessing opportunities in the space. Cash constrains is another barrier to entry; starting a legal cannabis business will cost you a couple of hundreds of thousands of dollars. This includes getting access to real estate opportunities, legal and insurance fees as well as licensing fees. All this needs to be put in place before would-be beneficiaries of equity programs can get access to funding.

Lack of technical know-how on running a successful business is still another issue that may lock out people of color from the legal cannabis industry. The industry is heavily regulated and requires high level skill for one to navigate through the complex framework. Legacy operators may not have adequate knowledge on how to go about this. Unfortunately, they find themselves competing against multi-nationals that are equally trying to profit from the similar opportunities. If this status quo is maintained legalization may also become a failure like the “war on drugs” has been.

If action is not employed correctly large agro producers will continue to dominate the market and financially exclude smaller local producers and farmers.
How can this be prevented?

a) Employing affirmative action to allow the following categories of people to access the legal cannabis market:
   - People of color
   - Women
   - Indigenous people
   - Economically disadvantaged populations
   - FGLI farmers
   - People with previous marijuana related drug convictions

b) Actively incentivize marginalized groups to enter the industry
   - Offer Tax incentives/ abatement
   - Increase access to funding
   - Offer business training

c) Actively inhibit or limit large corporation’s access to the market for some duration
   - Limit the number of licenses that are issued to large corporations
   - Prioritize issuance of licenses giving preference to NY based companies

New York is one of the nation’s LEADERS in small business promotion and activity. It prides itself on the diversity of its citizens and its small business owners. Therefore, this should be no different with the cannabis industry
Recommendations

In January, the New York State Bar Association adopted a report (NYSBA) that endorsed the legalization of recreational cannabis in NY. [13] The report recommends the creation a social equity program among other things. This report also recommends for New York to review the successes and pitfalls of social equity programs in states that have rolled this out already and use this as a learning point for public policy decisions. The social equity program should not be implemented before this analysis is complete.

The social equity program in Massachusetts requires that equity applicants must have lived for at least five years in an “area of disproportionate impact.” Alternatively, they should have an income that is less than 400% of the federal poverty level. Lastly, they may also have a past marijuana conviction or be a spouse or child to someone who has.

The Massachusetts Economic Empowerment Priority Review Program prioritizes issuance of licenses to applicants that demonstrate business practices that promote economic empowerment in communities that were disproportionately affected by the war on drugs.

The social equity program in Michigan offers one-on-one assistance to social equity applicants that help them with the license application process and connects them to resources that might be of help.

The Illinois social equity program offers several provisions including technical assistance that is offered by the Illinois Department of Commerce and Economic Opportunity. Social equity applicants are automatically given bonus points that are added to their application score. They also get access to low-interest loans and have lower license application fees.

The proposed social and economic equity plan for New York has components such as offering low-interest loans, business training, and incentives for investing in communities affected communities.
Other vital areas that New York State needs to look into include:

1. Limit the ability of large corporations to dominate market by increasing the transaction cost for corporations through increased licensing fees and taxation.
2. Require those large corporations who are approved to hire some % of felons, POC, NYS residents, etc.
3. Remove barriers for and incentivize marginalized groups involvement in the industry.
4. Partner with private companies to offer legal aid, education, and training in the industry.
5. Utilize available government funds but earmark % for programs aimed at these groups in this industry.
6. Remove prohibitive restrictions to accessing licensing. This includes doing away with the compulsory $10,000 fee for “joining the lotter.” This also includes expunging records of marijuana related criminal offences that may hinder applicants from accessing the legal cannabis market. This is unjust and reinforces the same (intentional or not) institutional racism which created these problems in the first place.
7. Creation of new state programs to entice marginalized communities or FGLI farmers to start agribusiness in the industry.
Minority Cannabis Business Association (MCBA) 2017 Model Legislation Summary

The MCBA Act provides a framework for cannabis legalization and lays out provisions for remedying the undue burden that was placed on POCs in the enforcement of cannabis prohibition. It also stipulates measures to prevent the reoccurrence of such and gives suggestions to encourage the participation of affected groups in the legal cannabis industry.

It has given a list of recommendations for a model cannabis equity policy. (14) The State of New York should look into this as well. We have highlighted the key recommendations in the section below:

1. The reform of penalties that are associated with marijuana use and possession
2. To offer relief to persons with prior marijuana-related convictions
3. To prevent further punishment for marijuana-related offences such as loss of licensure or increase of sentences
4. The expungement of adult and juvenile criminal records for marijuana use
5. Restricts the discrimination of employees at the workplace on the basis of marijuana use
6. Addressing the employment disparities that are related to marijuana-related convictions
7. Prohibits housing discrimination based on cannabis-related criminal convictions
8. Prohibits restrictions (that are stricter than those of tobacco use) in use of public spaces
9. Prohibits any form of financial discrimination that is based on cannabis-related offences
10. Encourages racial, gender, and ethnic diversity in the cannabis industry
11. Encourages licensure for minority-owned, women-owned, LGBT-owned cannabis businesses.
12. Prohibits biased zoning restrictions for cannabis businesses
13. Prohibits “cannabis use” being used as a limiting factor in parental rights, child welfare, and probate matters.
14. Prohibits the restriction of educational or scholarship opportunities to students based on prior marijuana-related convictions
15. Advocates for the for the creation of an Office of Justice Reinvestment to cater for a lawful marijuana industry
16. Advocates for the creation of a Cannabis Control and Licensure Commission (CCLC) for regulatory oversight

17. Advocates for the creation of a Cannabis Advisory Board to give recommendations about the cannabis economic sector and related issues

18. Advocates for the creation of a comprehensive tax framework for the cannabis industry

This Act has a severability clause that ensures that the rest of the Act will remain in force if one or more sections are found to be invalid.

We must address, combat, and eventually eliminate discriminatory policing practices and the structural racial bias at every step of our criminal legal system. Legalization measures must have equity as a vital component to avoid continuing to harm certain and to address the years of hardship and stigma that criminalizing marijuana has wrought.

Legalizing marijuana must come with expungement, with reinvestment in the communities most harmed by enforcement, with limitations on how police can interact with people who they suspect of a marijuana offense, with legal nonpublic spaces for smoking marijuana for those who cannot smoke in their residence, with a prohibition on deportation for people with marijuana convictions, and with full inclusion of those most impacted by criminalization of marijuana in the new marijuana industry.
Summary

Marijuana has been a key driver of mass criminalization in this country and hundreds of thousands of people, the majority of whom are Black or Latinx, have their lives impacted by a marijuana arrest each year. But the tide is turning against the remnants of a drug war targeted at Black and Brown people that was never meant to increase public safety in the first place.

Along with the harm of incarceration and conviction, a simple marijuana charge has a negative ripple effect.

Having a marijuana conviction on your record can make it difficult to secure and maintain employment, housing, or secure government assistance for the rest of your life. This is why clearing people’s records of marijuana convictions is a necessary addition to any legalization measure. If we believe that marijuana is not worthy of criminal intervention, then it is only right we stop the suffering inflicted on people by a marijuana prosecution. Especially since we know this disproportionately falls on the shoulders, and families, of low-income communities and communities of color.

The prohibition of cannabis has disproportionately affected POC and other marginalized groups in the United States and in NYS especially (POC are four times more likely to be arrested for marijuana use than their white counterparts). Now that the vast majority of NY citizens (two to one) support legalization/decriminalization efforts, it is not only the duty of the state to obey its citizens and act in their best interest, but it is also fiscally responsible and lucrative for both individuals and the state as a whole in this case.

While big business is poised to dominate the emerging cannabis market in NY as it has in other states, the conclusion is not forgone. NY has an opportunity to position itself as a leader, not just nationally, but globally, in creating a more equitable and positive outcome.

In 2019, Colorado generated over $302 million in taxes from the medical and recreational marijuana markets. Data from the New Frontier suggests that legal marijuana could generate up to $105.6 billion in tax revenue by 2025. In NYS, it is likely these trends would continue, however with the sector anticipated to grow to a value of $7 billion over the next 5 years. With this, NYS could stands to increase state revenue, financial resources, and global prestige; but
moreover, to raise the average income of its citizens and create economic opportunity for huge sector of its residents. The short term benefits of this increase would be reflected in tax revenues both directly through income, wage, and business taxes, however the long term effects of this widespread economic boom could ripple out for years to come in sales and real estate taxes.

If the mission of the State senate is to draft laws on behalf of the 19million+ citizens of NY, then it is in the interest of this mission that they enact laws which are in the best interest of most of these citizens.

Groups making less than $50k/yr are typically less productive with regards to state revenue than those above that threshold. Thus it is in the best interest of the state to bring the median income of these groups up to at least that threshold.

NYS should therefore be proactive in limiting the ability of large agribusiness to dominate the market, and instead decentralize and democratize the burgeoning industry by actively cultivating small businesses, especially those of communities hardest hit by nearly a century of racially motivated and disproportionately enforced effects of the war on drugs and prohibition of marijuana.

People who have been harmed by the enforcement of marijuana must have a place in the burgeoning marketplace created by legalization. Indeed, any legalization bill should include provisions that enable people who have struggled to find employment due to a marijuana conviction to participate meaningfully in the marijuana industry. Excluding people directly impacted by marijuana criminalization from the industry further entrenches the outsized impact that the war on drugs has had on communities of color.

If we legalize without mindfulness of the full ecosystem of the criminal legal system and how it impacts people, then corporate and industry-backed legalization efforts will lead us away from what is right and just. That is why we must support legalization legislation that truly help roll back overcriminalization, end the failed war on drugs once and for all, and usher in a more equitable future through drug law reform nationwide.

Such efforts to extend racial justice must explicitly be tied to a program of economic justice and New York State has the power now, more than ever, to enact such programs.
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