



A serious hearing on marijuana prohibition was overdue

Trevor Burrus

November 27, 2019

Last week, the House Judiciary Committee approved the MORE Act, a bill that would de-schedule marijuana and assist those who have been impacted by convictions. Although the bill will certainly not go anywhere, especially during impeachment hearings, it is a welcome development from a Congress that, in 1937, rushed to prohibit marijuana based on spurious testimony and hyperbolic fearmongering. One way or another, it is time to give marijuana the congressional hearing it deserves and to end our disastrous, ignoble experiment with prohibition.

Thirty-three states allow for medical marijuana, while 11 states and the District of Columbia have legalized marijuana for recreational use. In each of those states, anyone consuming marijuana for any reason is violating federal law. When a substance is simultaneously legal and illegal, someone has screwed up somewhere, and the Congress that passed the Marijuana Tax Act of 1937 is a good place to start.

The act didn't receive much fanfare when President Roosevelt signed it into law because most people had likely never heard of marijuana or had only a vague idea of what it was. That included people like Republican minority leader Bertrand Snell of New York who, when the bill was brought to the floor, objected to whether it was "a matter we should bring up at this late hour of the afternoon? I do not know anything about the bill." Snell was assured that the Ways and Means Committee were unanimous on the bill with "no controversy about it." But, "what is the bill?" asked Snell. Sam Rayburn of Texas helped him out, "It has something to do with something that is called marihuana. I believe it is a narcotic of some kind."

Rayburn was understandably confused, as were many others. Cannabis had long been popularly known as an ingredient in tinctures and other remedies. It's likely that many who voted for the law, as well as many of their constituents, were unaware that marijuana was another name for cannabis.

And that's exactly how Harry Anslinger, the commissioner of the Bureau of Narcotics, wanted it. Marijuana—when pronounced with a Spanish trill—elicited racial imagery that Anslinger was more than happy to leverage into support for prohibition. He was helped by the newspaper empire of William Randolph Hearst, who, as a sort-of Fox News of the day, used his papers to sow fear. One article described the effects of "murder smoke": "Ask the police, they'll tell you a tale about 'Murder Smoke' crimes, a tale that will freeze the warmest blood in the calmest veins."

During the hearings before the Ways and Means Committee, the lone dissenting witness was Dr. William Woodward from the American Medical Association. He wasn't particularly a fan of marijuana, but he voiced his concerns that Congress was behaving too rashly without sufficient examination of the data. Sure, Anslinger had provided a parade of anecdotes from his "gore file"—a collection of articles taken mostly from Hearst's newspapers describing horrific crimes attributed to marijuana users—but where was the testimony from the Bureau of Prisons? If child use was such a problem, why hadn't the Children's Bureau been consulted? If it induces mania and psychosis, where was the testimony from the Division of Mental Hygiene?

Most concerning to Woodward was the effect the law would have on medical research and uses. Were the Congress to act without proper restraint and wisdom it would curtail "future investigation may show that there are substantial medical uses for Cannabis."

Woodward's testimony was met with hostility and indifference. The Marijuana Tax Act was passed on a voice vote.

Modern prohibitionists are certainly willing to offer new reasons that marijuana should be illegal. But prohibitionists are playing with a stacked deck due to the careless actions of past congresses, especially in 1937. Dr. Woodward was correct: the Marijuana Tax Act and subsequent legislation essentially shut down research into the medical benefits of marijuana. While research has become somewhat easier to perform, prohibitionists can still argue that marijuana has yet to be proven medically effective.

Most tragically, marijuana prohibition has harmed millions of lives, particularly the poor and people of color. The day after the tax act was signed, Samuel Caldwell, an unemployed farmhand in Colorado, became the first person convicted under the law. He was sentenced to four years of hard labor and a \$1,000 fine. Harry Anslinger was in the courtroom when the sentence was pronounced. He wrote, "Marijuana has become our greatest problem. But we will enforce the law to the very letter." Thanks to a neglectful Congress he got his wish.

Trevor Burrus is a research fellow in the Cato Institute's Robert A. Levy Center for Constitutional Studies and editor-in-chief of the Cato Supreme Court Review.