

AN END TO Marijuana Prohibition

The drive to legalize picks up

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NEVER before have so many Americans supported decriminalizing and even legalizing marijuana. Seventy-two percent say that for simple marijuana possession, people should not be incarcerated but fined: the generally accepted definition of “decriminalization.” Even more Americans support making marijuana legal for medical purposes. Support for broader legalization ranges between 25 and 42 percent, depending on how one asks the question. Two of every five Americans—according to a 2003 Zogby poll—say “the government should treat marijuana more or less the same way it treats alcohol: It should regulate it, control it, tax it, and only make it illegal for children.”

Close to 100 million Americans—including more than half of those between the ages of 18 and 50—have tried marijuana at least once. Military and police recruiters often have no choice but to ignore past marijuana use by job seekers. The public apparently feels the same way about presidential and other political candidates. Al Gore, Bill Bradley, and John Kerry all say they smoked pot in days past. So did Bill Clinton, with his notorious caveat. George W. Bush won’t deny he did. And ever more political, business, religious, intellectual, and other leaders plead guilty as well.

The debate over ending marijuana prohibition simmers just below the surface of mainstream politics, crossing ideological and partisan boundaries. Marijuana is no longer the symbol of Sixties rebellion and Seventies permissiveness, and it’s not just liberals and libertarians who say it should be legal, as William F. Buckley Jr. has demonstrated better than anyone. As director of the country’s leading drug-policy-reform organization, I’ve had countless conversations with police and prosecutors, judges and politicians, and hundreds of others who quietly agree that the criminalization of marijuana is costly, foolish, and destructive. What’s most needed now is principled conservative leadership. Buckley has led the way, and New Mexico’s former governor, Gary Johnson, spoke out courageously while in office. How about others?

A SYSTEMIC OVERREACTION

Marijuana prohibition is unique among American criminal laws. No other law is both enforced so widely and harshly and yet deemed unnecessary by such a substantial portion of the populace.

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Police make about 700,000 arrests per year for marijuana offenses. That’s almost the same number as are arrested each year for cocaine, heroin, methamphetamine, Ecstasy, and all other illicit drugs combined. Roughly 600,000, or 87 percent, of marijuana arrests are for nothing more than possession of small amounts. Millions of Americans have never been arrested or convicted of any criminal offense except this. Enforcing marijuana laws costs an estimated \$10-15 billion in direct costs alone.

Punishments range widely across the country, from modest fines to a few days in jail to many years in prison. Prosecutors often contend that no one goes to prison for simple possession—but tens, perhaps hundreds, of thousands of people on probation and parole are locked up each year because their urine tested positive for marijuana or because they were picked up in possession of a joint. Alabama currently locks up people convicted three times of marijuana *possession* for 15 years to life. There are probably—no firm estimates exist—100,000 Americans behind bars tonight for one marijuana offense or another. And even for those who don’t lose their freedom, simply being arrested can be traumatic and costly. A parent’s marijuana use can be the basis for taking away her children and putting them in foster care. Foreign-born residents of the U.S. can be deported for a marijuana offense no matter how long they have lived in this country, no matter if their children are U.S. citizens, and no matter how long they have been legally employed. More than half the states revoke or suspend driver’s licenses of people arrested for marijuana possession even though they were not driving at the time of arrest. The federal Higher Education Act prohibits student loans to young people convicted of any drug offense; all other criminal offenders remain eligible.

This is clearly an overreaction on the part of government. No drug is perfectly safe, and every psychoactive drug can be used in ways that are problematic. The federal government has spent billions of dollars on advertisements and anti-drug programs that preach the dangers of marijuana—that it’s a gateway drug, and addictive in its own right, and dramatically more potent than it used to be, and responsible for all sorts of physical and social diseases as well as international terrorism. But the government has yet to repudiate the 1988 finding of the Drug Enforcement Administration’s own administrative law judge, Francis Young, who concluded after extensive testimony that “marijuana in its natural form is one of the safest therapeutically active substances known to man.”

Is marijuana a gateway drug? Yes, insofar as most Americans try marijuana before they try other illicit drugs. But no, insofar as the vast majority of Americans who have tried marijuana have never gone on to try other illegal drugs, much less get in trouble with them, and most have never even gone on to become regular or problem marijuana users. Trying to reduce heroin addiction by preventing marijuana use, it's been said, is like trying to reduce motorcycle fatalities by cracking down on bicycle riding. If marijuana did not exist, there's little reason to believe that there would be less drug abuse in the U.S.; indeed, its role would most likely be filled by a more dangerous substance.

Is marijuana dramatically more potent today? There's certainly a greater variety of high-quality marijuana available today than 30 years ago. But anyone who smoked marijuana in the 1970s and 1980s can recall smoking pot that was just as strong as anything available today. What's more, one needs to take only a few puffs of higher-potency pot to get the desired effect, so there's less wear and tear on the lungs.

Is marijuana addictive? Yes, it can be, in that some people use it to excess, in ways that are problematic for themselves and those around them, and find it hard to stop. But marijuana may well be the least addictive and least damaging of all commonly used psychoactive drugs, including many that are now legal. Most people who smoke marijuana never become dependent. Withdrawal symptoms pale compared with those from other drugs. No one has ever died from a marijuana overdose, which cannot be said of most other drugs. Marijuana is not associated with violent behavior and only minimally with reckless sexual behavior. And even heavy marijuana smokers smoke only a fraction of what cigarette addicts smoke. Lung cancers involving only marijuana are rare.

The government's most recent claim is that marijuana abuse accounts for more people entering treatment than any other illegal drug. That shouldn't be surprising, given that tens of millions of Americans smoke marijuana while only a few million use all other illicit drugs. But the claim is spurious nonetheless. Few Americans who enter "treatment" for marijuana are addicted. Fewer than one in five people entering drug treatment for marijuana do so voluntarily. More than half were referred by the criminal-justice system. They go because they got caught with a joint or failed a drug test at school or work (typically for having smoked marijuana days ago, not for being impaired), or because they were caught by a law-enforcement officer—and attending a marijuana "treatment" program is what's required to avoid expulsion, dismissal, or incarceration. Many traditional drug-treatment programs shamelessly participate in this charade to preserve a profitable and captive client stream.

Even those who recoil at the "nanny state" telling adults what they can or cannot sell to one another often make an exception when it comes to marijuana—to "protect the kids." This is a bad joke, as any teenager will attest. The criminalization of marijuana for adults has not prevented young people from having better access to marijuana than anyone else. Even as marijuana's popularity has waxed and waned since the 1970s, one statistic has remained constant: More than 80 percent of high-school students report it's easy to get. Meanwhile, the government's exaggerations and outright dishonesty easily backfire. For every teen who refrains from trying marijuana because it's illegal (for adults), another is tempted by its status as "forbidden fruit." Many respond to the lies about marijuana by disbelieving warnings about more dangerous drugs. So much for protecting the kids by criminalizing the adults.

THE MEDICAL DIMENSION

The debate over medical marijuana obviously colors the broader debate over marijuana prohibition. Marijuana's medical efficacy is no longer in serious dispute. Its use as a medicine dates back thousands of years. Pharmaceutical products containing marijuana's central ingredient, THC, are legally sold in the U.S., and more are emerging. Some people find the pill form satisfactory, and others consume it in teas or baked products. Most find smoking the easiest and most effective way to consume this unusual medicine, but non-smoking consumption methods, notably vaporizers, are emerging.

Federal law still prohibits medical marijuana. But every state ballot initiative to legalize medical marijuana has been approved, often by wide margins—in California, Washington, Oregon, Alaska, Colorado, Nevada, Maine, and Washington, D.C. State legislatures in Vermont, Hawaii, and Maryland have followed suit, and many others are now considering their own medical-marijuana bills—including New York, Connecticut, Rhode Island, and Illinois. Support is often bipartisan, with Republican governors like Gary Johnson and Maryland's Bob Ehrlich taking the lead. In New York's 2002 gubernatorial campaign, the conservative candidate of the Independence party, Tom Golisano, surprised everyone by campaigning heavily on this issue. The medical-marijuana bill now before the New York legislature is backed not just by leading Republicans but even by some Conservative party leaders.

The political battleground increasingly pits the White House—first under Clinton and now Bush—against everyone else. Majorities in virtually every state in the country would vote, if given the chance, to legalize medical marijuana. Even Congress is beginning to turn; last summer about two-thirds of House Democrats and a dozen Republicans voted in favor of an amendment co-sponsored by Republican Dana Rohrabacher to prohibit federal funding of any Justice Department crackdowns on medical marijuana in the states that had legalized it. (Many more Republicans privately expressed support, but were directed to vote against.) And federal courts have imposed limits on federal aggression: first in *Conant v. Walters*, which now protects the First Amendment rights of doctors and patients to discuss medical marijuana, and more recently in *Raich v. Ashcroft* and *Santa Cruz v. Ashcroft*, which determined that the federal government's power to regulate interstate commerce does not provide a basis for prohibiting medical-marijuana operations that are entirely local and non-commercial. (The Supreme Court let the *Conant* decision stand, but has yet to consider the others.)

State and local governments are increasingly involved in trying to regulate medical marijuana, notwithstanding the federal prohibition. California, Oregon, Hawaii, Alaska, Colorado, and Nevada have created confidential medical-marijuana patient registries, which protect bona fide patients and caregivers from arrest or prosecution. Some municipal governments are now trying to figure out how to regulate production and distribution. In California, where dozens of medical-marijuana programs now operate openly, with tacit approval by local authorities, some program directors are asking to be licensed and regulated. Many state and local authorities, including law enforcement, favor this but are intimidated by federal threats to arrest and prosecute them for violating federal law.

The drug czar and DEA spokespersons recite the mantra that "there is no such thing as medical marijuana," but the claim is so specious on its face that it clearly undermines federal credibility.

The federal government currently provides marijuana—from its own production site in Mississippi—to a few patients who years ago were recognized by the courts as bona fide patients. No one wants to debate those who have used marijuana for medical purposes, be it Santa Cruz medical-marijuana hospice founder Valerie Corral or NATIONAL REVIEW's Richard Brookhiser. Even many federal officials quietly regret the assault on medical marijuana. When the DEA raided Corral's hospice in September 2002, one agent was heard to say, "Maybe I'm going to think about getting another job sometime soon."

THE BROADER MOVEMENT

The bigger battle, of course, concerns whether marijuana prohibition will ultimately go the way of alcohol Prohibition, replaced by a variety of state and local tax and regulatory policies with modest federal involvement. Dedicated prohibitionists see medical marijuana as the first step down a slippery slope to full legalization. The voters who approved the medical-marijuana ballot initiatives (as well as the wealthy men who helped fund the campaigns) were roughly divided between those who support broader legalization and those who don't, but united in seeing the criminalization and persecution of medical-marijuana patients as the most distasteful aspect of the war on marijuana. (This was a point that Buckley made forcefully in his columns about the plight of Peter McWilliams, who likely died because federal authorities effectively forbade him to use marijuana as medicine.)

The medical-marijuana effort has probably aided the broader anti-prohibitionist campaign in three ways. It helped transform the face of marijuana in the media, from the stereotypical rebel with long hair and tie-dyed shirt to an ordinary middle-aged American struggling with MS or cancer or AIDS. By winning first Proposition 215, the 1996 medical-marijuana ballot initiative in California, and then a string of similar victories in other states, the nascent drug-policy-reform movement demonstrated that it could win in the big leagues of American politics. And the emergence of successful models of medical-marijuana control is likely to boost public confidence in the possibilities and virtue of regulating non-medical use as well.

In this regard, the history of Dutch policy on cannabis (i.e., marijuana and hashish) is instructive. The "coffee shop" model in the Netherlands, where retail (but not wholesale) sale of cannabis is de facto legal, was not legislated into existence. It evolved in fits and starts following the decriminalization of cannabis by Parliament in 1976, as consumers, growers, and entrepreneurs negotiated and collaborated with local police, prosecutors, and other authorities to find an acceptable middle-ground policy. "Coffee shops" now operate throughout the country, subject to local regulations. Troublesome shops are shut down, and most are well integrated into local city cultures. Cannabis is no more popular than in the U.S. and other Western countries, notwithstanding the effective absence of criminal sanctions and controls. Parallel developments are now underway in other countries.

Like the Dutch decriminalization law in 1976, California's Prop 215 in 1996 initiated a dialogue over how best to implement the new law. The variety of outlets that have emerged—ranging from pharmacy-like stores to medical "coffee shops" to hospices, all of which provide marijuana only to people with a patient ID card or doctor's recommendation—play a key role as the most public symbol and manifestation of this dialogue. More

such outlets will likely pop up around the country as other states legalize marijuana for medical purposes and then seek ways to regulate distribution and access. And the question will inevitably arise: If the emerging system is successful in controlling production and distribution of marijuana for those with a medical need, can it not also expand to provide for those without medical need?

Millions of Americans use marijuana not just "for fun" but because they find it useful for many of the same reasons that people drink alcohol or take pharmaceutical drugs. It's akin to the beer, glass of wine, or cocktail at the end of the workday, or the prescribed drug to alleviate depression or anxiety, or the sleeping pill, or the aid to sexual function and pleasure. More and more Americans are apt to describe some or all of their marijuana use as "medical" as the definition of that term evolves and broadens. Their anecdotal experiences are increasingly backed by new scientific research into marijuana's essential ingredients, the cannabinoids. Last year, a subsidiary of *The Lancet*, Britain's leading medical journal, speculated whether marijuana might soon emerge as the "aspirin of the 21st century," providing a wide array of medical benefits at low cost to diverse populations.

Perhaps the expansion of the medical-control model provides the best answer—at least in the U.S.—to the question of how best to reduce the substantial costs and harms of marijuana prohibition without inviting significant increases in real drug abuse. It's analogous to the evolution of many pharmaceutical drugs from prescription to over-the-counter, but with stricter controls still in place. It's also an incrementalist approach to reform that can provide both the control and the reassurance that cautious politicians and voters desire.

In 1931, with public support for alcohol Prohibition rapidly waning, President Hoover released the report of the Wickersham Commission. The report included a devastating critique of Prohibition's failures and costly consequences, but the commissioners, apparently fearful of getting out too far ahead of public opinion, opposed repeal. Franklin P. Adams of the *New York World* neatly summed up their findings:

Prohibition is an awful flop.
We like it.
It can't stop what it's meant to stop.
We like it.
It's left a trail of graft and slime
It don't prohibit worth a dime
It's filled our land with vice and crime,
Nevertheless, we're for it.

Two years later, federal alcohol Prohibition was history.

What support there is for marijuana prohibition would likely end quickly absent the billions of dollars spent annually by federal and other governments to prop it up. All those anti-marijuana ads pretend to be about reducing drug abuse, but in fact their basic purpose is sustaining popular support for the war on marijuana. What's needed now are conservative politicians willing to say enough is enough: Tens of billions of taxpayer dollars down the drain each year. People losing their jobs, their property, and their freedom for nothing more than possessing a joint or growing a few marijuana plants. And all for what? To send a message? To keep pretending that we're protecting our children? Alcohol Prohibition made a lot more sense than marijuana prohibition does today—and it, too, was a disaster.