

Should Pot Be Legal?

Legalizing marijuana will hurt drug lords, help cash-strapped states, and ease burdens on police and prisons. Yet D.C. dithers.

By: Thomas G. Donlan – June 1, 2013

America's 40-year crawl toward legalization of marijuana is picking up speed. Twenty-six states have taken steps toward legalization, some quite bold. Just last week, Colorado Gov. John Hickenlooper made one of the biggest moves yet, signing a package of bills addressing how marijuana will be grown, sold, taxed, and used. The measures, which follow Colorado voters' approval of legalization last fall, form the cornerstone of the nation's first fully legal market for pot. Come Jan. 1, Colorado residents over 21 will be allowed to buy marijuana at retail stores and smoke it for their pleasure. The state of Washington, where voters also passed a referendum to legalize marijuana, will be next. If all goes well with those pioneering efforts, it may be only a matter of time before more states follow.

Proponents say Americans should be allowed to smoke cannabis as a matter of basic personal freedom, adding that a society that enjoys legal whiskey, beer, wine, and tobacco has no business outlawing a recreational drug like pot that has fewer unhealthy side effects. After all, tens of millions of Americans enjoy smoking marijuana, if illegally.

It's Prohibition all over again. That Gatsby-era law gave rise to the Mafia, rampant crime, and in the end, increased drinking. As Rep. Steve Cohen (D., Tenn.) put it recently, "This is the time to remedy this prohibition."

Plenty of people agree. The Pew Research Center recently found that 52% of Americans support legalized possession of small quantities of marijuana. It was the first time a national poll produced a majority against pot prohibition, although the Gallup Poll and other national polls are coming close. The Pew survey found that nearly every group in the country is part of the gradual change in public attitudes -- men, women, whites, blacks, rich, and poor.

It's not just about the right to light up. With the nation's retail marijuana market estimated at about \$30 billion, legalization also would bring some important economic benefits. It could lead to sharply lower prices, striking a blow to the Mexican drug cartels and American street gangs. Pot could be produced in the U.S. for much less than Mexican pot produced illegally. By some estimates, illegality adds 50% to marijuana's prices. If both countries legalized the drug, Mexicans might grow a lot of it and sell it to American consumers, but the inexpensive legal product would not draw the attention of the ultraviolent Mexican drug traffickers any more than Mexican tomatoes do.

Legalization also could bring some relief to cash-strapped states. Marijuana taxes would join levies on liquor, tobacco, gambling, and other pursuits that once were banned. A report prepared for the libertarian Cato Institute suggests states could raise

a total of about \$3 billion from marijuana taxes, and other estimates are even higher. California alone could pull in \$1.4 billion a year, a state tax authority has projected. That may seem minor compared with a state budget approaching \$100 billion, but it would top the \$1.3 billion that California now gets from alcohol and tobacco taxes combined.

Colorado may get about \$100 million a year in tax revenue, and Washington could get \$310 million. But there is wide disagreement on appropriate tax rates for marijuana. Colorado will be asking voters to approve two sales taxes totaling 25%, while Washington is looking to tax producers, sellers, and buyers -- for a total haul of 75%. That might be so high that it keeps the underground market alive.

Unquestionably, a loosening of marijuana laws would ease burdens on law enforcement. Some 663,000 people were arrested for marijuana possession in 2011, up 32% since 1995. In New York, according to the pro-legalization Drug Policy Center, a pot bust typically requires 2.5 hours of a policeman's time. Until Mayor Michael Bloomberg changed the policy in February, the arrested automatically spent a night in the police lockup. Nationwide, some 128,000 people are in state or federal prisons for marijuana offenses. That's 8% of all U.S. prisoners.

Norm Stamper, former chief of the Seattle Police Department, thinks Washington's new law will be a big help. "It will give the police an opportunity to focus much more time, energy, and imagination on going after predatory criminals," he says. Legalization, he adds, also has "opened the door to a much more positive relationship between young people and police."

LITTLE WONDER that more than half of the states have loosened their marijuana rules. Starting with Oregon in 1973, 15 states have decriminalized possession of small amounts of the drug, which means it's illegal but lightly punished, typically with a \$100 fine; 18 states and the District of Columbia have legalized marijuana possession and sale for medical purposes, such as easing the pain of cancer. In all, the number of states taking at least one step to liberalize their pot laws is 26. Two more got ready to join last month: The Illinois legislature passed a medical-marijuana bill, and the Vermont legislature passed a decriminalization bill. Both bills await signing by the states' governors.

The federal government, however, has not moved toward legalization, not one bit. In fact, the states with medical-marijuana laws are defying or ignoring the federal government, which classifies marijuana as a drug with a high potential for abuse, no currently accepted medical use, and a lack of acceptable safety, even for use under medical supervision. Efforts to persuade regulators to change the classification of marijuana have been rejected over and over, as recently as 2011.

Emboldened by a 2005 Supreme Court ruling that allows federal prohibition to trump state legalization, the feds have arrested owners of some of the medical dispensaries in California, a state that has permitted dispensaries to operate since 1996. It's entirely unclear how Uncle Sam is going to react when retail sales go into full swing in Colorado and Washington. Attorney General Eric Holder has been promising to produce a policy, but nothing has yet emerged from the Justice Department.

To eliminate the conflicts, Rep. Dana Rohrabacher, a California Republican, last month introduced a bill to require the feds to respect state laws on marijuana. "The Herculean

effort undertaken by the federal government to prevent the American people from smoking marijuana has undeniably been a colossal failure," he says. Lacking a groundswell of bipartisan support, however, Rohrabacher's bill is considered to have no chance of passage.

"It is likely that we are going to proceed state by state, and that Congress will be unlikely to touch this issue with a pole of any length," says William Galston of the Brookings Institution. "We may very well be a patchwork nation for the next generation."

OTHER STATES WILL JOIN the patchwork as more state officials take a cue from Gavin Newsom, lieutenant governor of California and former mayor of San Francisco. "I was a coward a couple of years ago," he says, referring to the days when he opposed legalization. He switched positions after concluding that legalization would be an important step in his vision for criminal-justice reform.

Newsom, who owns a collection of bars, restaurants, and wineries, also has a more fundamental issue with pot prohibition. "When I'm watching a guy do shots of Jack Daniel's at my bar, I'm thinking, 'That's legal, but a guy at home with his wife on a weekend smoking marijuana is illegal?' It's absurd."

Though he hopes to guide California to legalization, Newsom says the state will first have to improve the regulation of its medical-marijuana dispensaries: "So many of us have had the experience where you're stuck at a traffic light, and you look across the street at a dispensary, and you see a lot of young folks running in and out, and you may even turn the corner and see folks reselling the drug." Until that problem is fixed, he says voters may not believe the state can monitor full legalization.

Another prerequisite: stronger spines in politicians. Many legislators, in California and elsewhere, are fearful of backlashes from antilegalization groups, which warn of increases in crime and harm to youths and families. But eventually, elected officials may come around. Newsom, who is up for re-election in November, hopes to set an example: "If I win and these groups don't come after me, I've got to think some other people will say, 'Hey, they didn't come after him -- maybe it's not as politically toxic as we thought.'"

PERHAPS THE MOST IMPORTANT hurdle for the legalization movement will be the experiences in Colorado and Washington state. If other states are to move toward legalization, these two pioneers will have to demonstrate that legal pot markets can function smoothly and safely.

Though the details of the states' regulations have yet to be hammered out, the bottom line for consumers in both states is similar: If you are over 21, you'll be able to freely buy pot at licensed retail outlets. Already, you can possess as much as an ounce of marijuana, so long as you don't use it in public.

The bills signed by Colorado's governor last week included provisions for curbing drugged driving: You can't get behind the wheel if your blood contains more than five nanograms per milliliter of tetrahydrocannabinol, or THC, marijuana's key component. A pot smoker can get to that level with as little as one puff, but the numbers decline rapidly over the next three hours, says the National Highway Traffic Safety Administration.

Colorado also took steps to prevent marijuana use among youths, making it a crime to share pot with someone under 21 and banning marketing that seems aimed at kids. It's easy to see why the state is worried. The National Survey on Drug Use and Health estimated that 2.6 million Americans had tried marijuana for the first time in 2011, and their average age was 17. The new pot smokers were more numerous than the 2.4 million Americans who smoked tobacco cigarettes for the first time in 2011, whose average age was also 17. Alcohol was still the most popular among recreational substances, with 4.7 million Americans estimated to have taken their first drink in 2011 -- 83% of them younger than age 21.

The push for marijuana legalization can't afford any slip-ups by Colorado or Washington in dealing with the youth population or anything else. "You're one tragedy away in Colorado and Washington from it not being an inevitability," says California's Newsom. On the other hand, he says, success in those states would bode well for legalization in his state and others.

Last month, the legalization movement got a lift from beyond U.S. borders. The Organization of American States, a consortium of nations in North, Central, and South America, released a report suggesting the legalization of marijuana be considered as a step in the war on drugs.

The last president of Mexico, Felipe Calderón, had done something of the same. He was the first Mexican president to broach the idea of drug legalization while still in office. And he wasn't just talking about Mexico. "Our neighbor is the largest consumer of drugs in the world," Calderón said in 2011. "And everybody wants to sell him drugs through our doors and windows. If the consumption of drugs cannot be limited, then decision makers must seek more solutions -- including market alternatives -- in order to reduce the astronomical earnings of criminal organizations."

Calderón left office last year, and his successor, Enrique Peña Nieto, flatly opposes legalization of drugs. Marijuana use, he says, often leads users to harder drugs. Nieto's position is no doubt heartening to drug lords, whose money makes them very powerful in Mexican politics. Legalization in Mexico, it's fair to say, faces formidably long odds.

THE U.S. GOVERNMENT, for its part, should at least move to eliminate the widespread confusion between state and federal laws over marijuana use, which has been reaching absurd proportions. Banks in California, for instance, are so unclear about where things stand that they won't let medical-marijuana dispensaries open accounts. As a result, many of the stores are run as cash businesses, inviting robberies. To pay taxes, some are showing up at the state's revenue department with bags of cash.

Whether Congress realizes it or not, a good number of citizens want the problem fixed. The same Pew study that found a majority of people favoring legalization also found that 60% of Americans think the federal government should not enforce its prohibition in states that permit marijuana use. And 72% agreed with the proposition that federal enforcement of marijuana laws is not worth the cost.

Rep. Rohrabacher's plan is as good a fix as any. It's straightforward and sensible: The federal government can help enforce antipot laws in states that want them, but it must mind its own business in states that don't want marijuana to be criminal.

Eventually, the federal government may repeal all of its laws against pot use, pot production, and pot dealing.

They could be replaced by laws no tougher than those that apply to liquor. Just as it was with the repeal of Prohibition in 1933, Congress could allow states to continue pot prohibition by local option, or to draft their own regulatory systems.

Given the unwillingness of many in Congress to even talk about marijuana, the day of full repeal is probably far off. But tending to the clumsy conflicts between state and federal governments is something that can and should be addressed right now.