

# counterpunch

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*A Civil Liberty is a Civil Liberty*

## Obama's War on Medical Marijuana

by NORM KENT

In the past few months, the Obama Administration has defrauded medical cannabis advocates by launching a full scale, 'shock and awe' attack against dispensaries in California. The legal actions constitute a complete reversal of the position Attorney General Holder had stated he would follow. The operation has been shameful and disgraceful, warranting censure, but it is not the focus of this article.

There are many responsible persons in the anti-prohibition movement who have suggested 'regulation by medicalization' was a false panacea from its inception. Flaws in the California system have allowed critics to expose that access to marijuana has not been legitimately reserved for those who are ill, but transparently available to anyone who wanted to get high, but that too, is not the focus of this article.

The reality is that the California system may not be a sham, but it is shamelessly flawed. Reformers need to own up to it. We can't further a blatant lie and be true to ourselves.

I am entirely grateful that California has paved the way in leading the country to a path of legalization. I proudly hold a dual residency between California and Florida, and show my medical card from Cali to envious compatriots in Fort Lauderdale all the time. But I acquired my last card for fifty bucks by walking into a mobile RV that was parked at a metered spot adjacent to a medical marijuana festival, without ever documenting my medical history to a physician.

If you go to the doctor for an exam, you should at least have to pull your pants down, get your genitalia squeezed, and be asked to cough. I earned my card with a year of chemotherapy and cancer, but my partner got one too, and he is a fit 25-year-old college graduate, whose worst ailment in life has been an extended case of athlete's foot.

I believe that the medical cannabis card is a ticket to freedom I should already have had. That is why I have fought in this movement for forty years, from the days Stuart Mott held parties for us in Washington, D.C., when Ramsey Clark was Attorney General. That was a time, I think, when some of us thought marijuana would be legal by 1980. We know in our hearts that the hand was never theirs to give and the arm is rightfully ours. I should not have to tell my government in 2012 that I want a license to use a medicine that kept me alive when I had cancer in 1999; that I used comfortably as a college student in 1969.

I am supportive of each and every person who wants to use marijuana medicinally or recreationally. The point I raise for your consideration is that many honorable reformers who wholeheartedly believed in unfettered legalization may have unintentionally compromised their principles when they enthusiastically endorsed medical marijuana initiatives.

By submitting to a regulatory authority supervising the dispensation of marijuana in a controlled environment, we did not stand our ground and insist that responsible adults be allowed to freely acquire cannabis without restrictions, regardless of whether they were ill or not. We instead accepted what the government gave us, because decent and honorable reformers saw the medical programs achieving two goals.

First, they were fulfilling a legitimate need while being responsive to a demanding public. We wanted cannabis accessible medically, and we grasped for it, at any price or cost.

Second, these noble experiments were excellent stepping-stones that we all hoped would logistically facilitate knocking the government out of the marijuana regulation business entirely. We chose medical because it was expedient and would push the needle our way. Now we can all have our medical cards, but look at the hand we have dealt ourselves. Instead of using marijuana privately in our homes, we have told the government where they can find us. That is pretty ironic in and of itself, isn't it?

Sadly, the reality now is that the process of medical regulation by state agencies is threatened by increased federal law enforcement. Worse, everyone is blaming the permissive flaws in the California system for creating stringent controls in their own. This does not mean the cause was a mistake or the goals were not honorable. It means we may have to explore alternative avenues and new roads. California dispensaries were raided last month, Colorado ones this week. What does this tell you?

As I write this morning, there are proposals before the Los Angeles City Council to authorize a ban on medical dispensaries. Have we all sold our clients a bill of goods? Have we encouraged them to open up clinics and comply with state licensing laws only to see the cities shut them down while the federal government seizes their properties corporately and prosecutes them individually? What did Edison say: "Is this what God hath wrought?" Is this what we intended when we began the fight to allow patients to acquire marijuana medicinally?

Many in our movement saw this day coming years ago. Articles in the NY Times dating back to 2004 warned about the abuses inherent in California's pioneering medical marijuana program. Shrewd reformers at the local and national level knew that these defects would eventually lead to a law enforcement backlash, which could potentially undermine the ability of patients to get their medicine. Sadly, we face that today from a hypocritical Obama administration. We can say we are surprised this particular president reversed his course. We cannot say we are surprised that this day has come.

Whether it is the National Organization for the Reform of Marijuana Laws, the Drug Policy Alliance, or the Marijuana Policy Project, or Students for a Sensible Drug Policy, we have all had in common the goal of ending prohibition. None of us have ever named our group 'The National Organization for the Administration of Sensible State Regulated Medical Marijuana.'

Last month's ABA *Health Lawyer Newsletter*, published a marvelous article entitled "*The Cannabis Conundrum: Medication vs. Regulation.*" Basically, it said we are dealing with an ideological dance between adversaries seeking to expand access to marijuana versus those seeking to control it. The article by Moira Gibbons reached a conclusion that:

"the ability to satisfy all stakeholders in the medical marijuana juggernaut seems largely illusory... but as traditional medications fail patients who have serious or debilitating illnesses, and no other viable treatment options are available, providing access to marijuana for medical purposes is humane and arguably a form of public health protection."

In March of 1997, Thomas Szasz, the noted civil libertarian, writing in *Liberty Magazine*, warned us about the dangers of creating a therapeutic state. Here are his exact words:

"Drug prohibitionists were alarmed last November, when voters in Arizona and California endorsed the referendums permitting the use of marijuana for "medical purposes." Opponents of drug prohibition ought to be even more alarmed: The advocates of medical marijuana have embraced a tactic that retards the repeal of drug prohibition and reinforces the moral legitimacy of prevailing drug policies."

Medical marijuana does not now, nor ever has, equaled freedom. "*Anyone committed to individual liberty must reject medical marijuana as counterfeit compassion,*" wrote Sheldon Richman, a former senior editor at the Cato Institute two years ago.

Why should we require any free citizen, patients included, to have to explain to a doctor why they are responsibly consuming a natural herb they should otherwise be free to use as they wish anyway?

Why should we embrace a system, where we know in advance, some people are going to use a ruse to get their medicine? It has contributed to the very consequences we are dealing with today.

With the federal government targeting dispensaries, seizing properties, arresting the sick and innocent, we need to be legally on the offensive, nationally unified, and morally outraged.

Americans need to author their own drug policy, and not abdicate that right to physicians, the pharmaceutical lobby, or the government. Thomas Szasz was prophetic when he warned we were blinding ourselves by asking the government to adopt a “more rational policy.”

When we debate methods of regulation, supervision, or control of cannabis, we can easily become divided. When we advocate for responsible adult access and a corollary end to prohibition, we are united. There is a rational solution. All free Americans should be brothers and sisters in arms in a global struggle against prohibition.

Nearly one million Americans a year are still arrested and prosecuted for the use and possession of cannabis, whether it is medicinally or recreationally. If we end the injustices of prosecution for the possession of marijuana for any reason, we will not need to debate- for any reason- whether it should be medicalized and regulated; it will be free and unfettered. A civil liberty is a civil liberty regardless of why you exercise that right.

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