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Why cannabis legalization is less like marriage equality and more like health care reform.

By Jonathan Rauch

Is marijuana legalization on the gay marriage track toward decisive and irrevocable public acceptance? The liberals and libertarians who support it—call them libertarians, to borrow a term from the Cato Institute’s Brink Lindsey—certainly hope so, and the similarities are not hard to see.

Public approval trends for legal marijuana and gay marriage look remarkably similar. (See chart below.) Both have crossed the magic 50 percent line defining majority support, and both, as a result, have seen recent political breakthroughs. In 2012, Colorado and Washington legalized the production, sale, and use of marijuana; since 2009, meanwhile, eight states have legalized medical marijuana, bringing the total to twenty-one (including Washington, D.C.). Gay marriage has similarly picked up momentum, winning adoption in three state initiatives in 2012 and subsequently legalized in an additional eight states. Here is one thing we can say for sure: whatever happens next, there will be no going back to the status quo ante. Drug warriors and marriage traditionalists will need to come to terms with that fact.

But, having noticed the obvious similarities between legal marijuana and legal gay marriage, marijuana reform advocates—especially liberals who care about government’s effectiveness and reputation—need to pay at least as much attention to the less obvious differences. Otherwise they may encounter some of the same sickening surprises they have run into with an issue that may seem not at all like marijuana, but that in fact has much in common with it: Obamacare.

At first glance, this might seem like a stretch. What can a top-down federal reform of the health care system tell us about a state-led reform of drug laws? Quite a lot, actually. Marijuana legalization, unlike gay marriage but very much like Obamacare, requires the government to execute a complicated new program well. Indeed, one might argue that legalizing marijuana is to the states that are doing it much as Obamacare is to the federal government: a test of modern government’s ability to innovate at a time when it is under siege. Consider, then, four lessons Obamacare holds for marijuana reformers.

Change in public opinion over same-sex marriage and marijuana legalization by year

1. Pragmatism trumps moralism.

Gay marriage is a moral values issue. Proponents see it as a core civil right; opponents see it as a violation of God’s or nature’s laws. Moral attitudes are slow and difficult to change—not a lot of people will be convinced one way or another by looking at statistics. But once moral opinions do change, they tend to change decisively and durably, which is why the change in attitudes toward homosexuality has become a cascade in the last decade. And gay marriage, to its proponents, is not something merely to be grudgingly allowed; it is something to celebrate, the exercise of the virtues of commitment and love. To some extent, marijuana legalization fits the moral template: the stigma that used to attach to toking has

diminished since the Reefer Madness days. Public morality no longer supports a zero-tolerance attitude toward pot use. But that is where the similarity ends.

Last year, my colleagues E. J. Dionne and William Galston conducted a comprehensive analysis of the public opinion data available on marijuana. Their conclusion: though some people do see marijuana liberalization as a moral value—a freedom issue—mainstream opinion sees no virtue in smoking weed. Opinion has moved toward legalization because the public—including sizable majorities of conservative Republicans as well as liberal Democrats—has come to believe that prohibition is a failed policy and legalization might work better. As such, support for legalization is pragmatic, conditional, and precarious.

That is not true of support for gay marriage, but it is similar to support for Obamacare. True-blue liberals and hard-boiled conservatives may believe that Obamacare is a moral issue (a test of the country's compassion; a threat to the country's values), but most of the public cares mainly about whether it works. If it creates chaos, fails to contain costs, or leaves many people feeling worse off, it will be—in fact, already is—on very thin ice with the public. Likewise, if marijuana legalization creates chaos, fails to contain crime, or leaves many people feeling worse off, a backlash and subsequent rejection and retrenchment are quite possible, leaving policy stranded between failed prohibition and stalled liberalization.

2. It's the implementation, stupid.

So marijuana legalization needs to work—or at least it needs not to fail. Moreover, it needs to be perceived to work. Unfortunately for it, it is not self-implementing. Gay marriage requires little more than a few legal changes and the issuance of marriage licenses. There are assuredly complexities, such as what to do about incompatible state and federal policies and how to handle disputes over religious objections, but they are secondary issues that do not call into question the legitimacy of same-sex marriage itself.

Marijuana legalization, by contrast, is like Obamacare in being anything but binary. Changing the law is merely the first step down a long and tortuous road. Colorado, Washington, and any other states that may eventually legalize need to create administrative and bureaucratic structures to regulate the growth, distribution, and sale of marijuana; they also need to coordinate those efforts with continuing law enforcement against illegal sellers. They need to set tax levels high enough to deter heavy use but not so high as to sustain a black market. They need to make all kinds of regulatory determinations, from how marijuana can be marketed to what level of use constitutes impairment; they must defend those rules in court and regroup when they lose. They need to work out a modus operandi with a hostile federal legal regime and a skeptical law enforcement establishment. They need to track outcomes, identify problems, and make adjustments. And not least, as the president so painfully forgot during the fight for Obamacare, they need to make their case effectively to the public all along the way.

All of that sounds almost unmanageable when listed on paper. But in fact, early indications are that Colorado and Washington are faring reasonably well. If they pass the implementation test, marijuana legalization could prove that obituaries for effective, adaptive government—some of them written by me—are premature. But if they yield chaos or crisis, they would discredit the policy they seek to promote.

As of now, I'm cautiously optimistic that the states' experiments will be made to work, not perfectly but well enough. But libertarians and drug reformers need to get it through their heads that just passing legalization initiatives is not enough. They need to stick around once the vote is over and commit to the hard slog of making the policy succeed.

3. Overpromising is perilous.

This, of course, is something Obamacare supporters are learning the hard way. ("Keep your current insurance, if you like it"? And we'll see about near-universal coverage, cost-curve bending, and budgetary savings.) Of course, to overcome public resistance to any reform, you must make promises, usually optimistic ones. But there is a price to pay for overdoing it.

Here again, marijuana legalization faces some of the same challenges as Obamacare. Voters in Colorado and Washington were told that legalization would produce new gushers of revenue for education and public safety; many experts at the time warned that the revenue claims were unrealistic. Similarly, legalization was touted as a public safety measure, redirecting policy resources toward more serious forms of crime, but experts say that suppressing the black market as it fights for market share may initially require more law enforcement resources, not fewer.

The public safety and revenue arguments for legalization are entirely legitimate and, over the long run, likely to prove valid. In the short run, however, the best way to avoid an Obamacare-style collision with reality is to tailor expectations by making clear to the public that legalization is a journey, not a destination, and that magical results won't come overnight.

4. Avert zero-sum politics.

Obamacare would have been a lot easier to launch and fix if the Republican half of the country did not feel invested in its failure. Zero-sum politics—which scores any Obamacare success as a win for Democrats and a loss for Republicans, rather than as a win for the country—has proved toxic to the environment for reform.

The same has not quite happened for marijuana legalization, but it could. Drug warriors vigorously object to legalization; many expect legalization to fail and hope to nip it, excuse the pun, in the bud. But many are also cognizant that the old approach was unsustainable and unsuccessful. Partly because marijuana legalization has usurped the limelight, the Obama administration's drug czar, Gil Kerlikowske, has received too little notice and credit for steering federal antidrug policy away from criminalization and toward prevention and treatment; even drug warriors increasingly speak of addiction as a disease and accept that we will never incarcerate or zero-tolerate our way out of the problem.

To these drug warriors of good faith, responsible proponents of marijuana legalization need to address a message. What Colorado and Washington are doing is conditional legalization, wrapping marijuana within a regime of regulation that uses both carrots (legitimate profits for those who follow the rules) and sticks (punishments for those who don't) to better control the marijuana market and more effectively deploy public resources. The alternative, should regulated legalization fail, might be chaotic legalization or policy drift, which would be worse, even from a drug war point of view. So drug warriors have a stake in helping Colorado and Washington and other states find new paths toward an effective drug-control framework—just as liberalizers have a stake in keeping a regulatory handle on marijuana markets.

To avoid the zero-sum mind-set and all the counterproductive friction that goes with it, that message is politically essential. It has the additional advantage of being true.