

23. The War on Drugs

Congress should

- repeal the Controlled Substances Act of 1970;
- direct the administration not to interfere with the implementation of state initiatives that allow for the recreational or medical use of marijuana;
- repeal the federal mandatory minimum sentences; and
- shut down the Drug Enforcement Administration.

Ours is a federal republic. The federal government has only the powers granted to it in the Constitution. And the United States has a tradition of individual liberty, vigorous civil society, and limited government. Identification of a problem does not mean that the government should undertake to solve it, and the fact that a problem occurs in more than one state does not mean that it is a proper subject for federal policy.

Perhaps no area more clearly demonstrates the bad consequences of not following such rules than does drug prohibition. The long federal experiment in prohibition of marijuana, cocaine, heroin, and other drugs has given us crime and corruption combined with a manifest failure to stop the use of drugs or reduce their availability to children.

In the 1920s, Congress experimented with the prohibition of alcohol. On February 20, 1933, a new Congress acknowledged the failure of alcohol prohibition and sent the Twenty-First Amendment to the states. Congress recognized that Prohibition had failed to stop drinking and had increased prison populations and violent crime. By the end of 1933, national Prohibition was history, though many states continued to outlaw or severely restrict the sale of liquor.

Today, Congress must confront a similarly failed prohibition policy. Futile efforts to enforce prohibition have been pursued even more vigorously since the 1980s than they were in the 1920s. Total federal expendi-

tures for the first 10 years of Prohibition amounted to \$88 million—about \$1 billion in 2015 dollars. Now, drug enforcement costs about \$27 billion a year in federal spending alone.

Those billions have had some effect. Total drug arrests are now more than 1.5 million a year. Since 1989, more people have been incarcerated for drug offenses than for all violent crimes combined. There are about 300,000 drug offenders in jails and prisons, and 50 percent of the federal prison population consists of drug offenders.

Yet, as during Prohibition, all the arrests and incarcerations haven't stopped the use and abuse of drugs, or the drug trade, or the crime associated with black-market transactions. Cocaine and heroin supplies are up; the more our Customs agents interdict, the more smugglers import.

As for discouraging young people from using drugs, the massive federal effort has largely been a dud. Every year from 1975 to 2012, at least 82 percent of high school seniors said they found marijuana “fairly easy” or “very easy” to obtain. During that same period, according to federal statistics of dubious reliability, teenage marijuana use fell dramatically and then rose significantly, suggesting that cultural factors have more effect than the “war on drugs.”

Repeal the Controlled Substances Act

The United States is a federal republic, and Congress should deal with drug prohibition the way it dealt with alcohol prohibition. The Twenty-First Amendment did not actually legalize the sale of alcohol; it simply repealed the federal prohibition and returned to the states the authority to set alcohol policy. States took the opportunity to design diverse liquor policies that were in tune with the preferences of their citizens. After 1933, three states and hundreds of counties continued to practice prohibition. Other states chose various forms of alcohol legalization.

The single most important law that Congress must repeal is the Controlled Substances Act of 1970. That law is probably the most far-reaching federal statute in American history: it asserts federal jurisdiction over every drug offense in the United States, no matter how small or local in scope. Once that law is removed from the books, Congress should move to abolish the Drug Enforcement Administration and repeal all the other federal drug laws.

There are a number of reasons why Congress should end the federal government's war on drugs. First and foremost, the federal drug laws are constitutionally dubious. As noted, the federal government can exercise

only the powers that have been delegated to it. The Tenth Amendment reserves all other powers to the states or to the people. However misguided the alcohol prohibitionists turned out to have been, they deserve credit for honoring our constitutional system by seeking a constitutional amendment to explicitly authorize a national policy on the sale of alcohol. Congress never asked the American people for additional constitutional powers to declare a war on drug consumers. That usurpation of power is something that few politicians or their court intellectuals wish to discuss.

Second, drug prohibition creates higher levels of crime. Addicts commit crimes to pay for a habit that would be easily affordable if it were legal. Police sources have estimated that as much as half of the property crime in some major cities is committed by drug users. More dramatically, because drugs are illegal, participants in the drug trade cannot go to court to settle disputes, whether between buyer and seller or between rival sellers. When black-market contracts are breached, the result is often some form of violent sanction, which usually leads to retaliation and then open warfare in the streets.

Make no mistake, the annual carnage from gang violence has little to do with the mind-altering effects of a marijuana cigarette or a meth pipe. It is instead one of the grim and bitter consequences of an ideological crusade whose proponents will not yet admit defeat.

Third, U.S. intelligence officials have repeatedly warned us of possible terrorist attacks. Given that danger, it is a gross misallocation of law enforcement resources to have federal police agents looking for marijuana fields when they could be helping to discover terrorists on U.S. territory. The Drug Enforcement Administration has 10,000 agents, intelligence analysts, and support staff members. Their skills would be much better used if they were redeployed to full-time counterterrorism investigations or recruited into local police departments to work unsolved murder and rape cases.

Fourth, drug prohibition is a classic example of throwing money at a problem. The federal government spends some \$27 billion to enforce the drug laws every year—all to no avail. For years, drug war bureaucrats have been tailoring their budget requests to the latest news reports. When drug use goes up, taxpayers are told the government needs more money so that it can redouble its efforts against a rising drug scourge. When drug use goes down, taxpayers are told that it would be a big mistake to curtail spending just when progress is being made. Good news or bad, spending levels must be maintained or increased.

Fifth, drug prohibition channels more than \$40 billion a year into a criminal underworld that is occupied by an assortment of criminals, corrupt politicians, and terrorists. Alcohol prohibition drove reputable companies into other industries or out of business altogether, which paved the way for mobsters to make millions in the black market. If drugs were legal, organized crime would stand to lose billions of dollars, and drugs would be sold by legitimate businesses in an open marketplace.

Sixth, drug prohibition has exacerbated racial tensions in America. The immense profits to be had from a black-market business make drug dealing the most lucrative endeavor for many young minority men. Drug dealers become the most visibly successful people in inner-city communities, the ones with money and clothes and cars. Social order is turned upside down when the most successful people in a community are criminals. Even though most will end up in prison, the money tempts many young men away from seeking lower-paying legal employment. Since the police are tasked with combating the drug trade, they constantly clash with the residents in minority neighborhoods.

Students of American history will someday ponder the question of how today's elected officials could readily admit to the mistaken policy of alcohol prohibition in the 1920s but recklessly pursue a policy of drug prohibition. Indeed, the only historical lesson that recent presidents and Congresses seem to have drawn from Prohibition is that government should not try to outlaw the sale of booze. One of the broader lessons that they should have learned is this: prohibition laws should be judged according to their real-world effects, not their promised benefits. If the 115th Congress subjects the federal drug laws to that standard, it will recognize that the drug war is not the answer to problems associated with drug use.

Respect State Initiatives

The failures of drug prohibition are becoming obvious to more and more Americans. In 2012, voters in Colorado and Washington approved ballot initiatives that legalized marijuana for recreational purposes. In 2014, voters in Alaska, Oregon, and the District of Columbia approved similar measures. Several more states—California, Massachusetts, Maine, and Nevada—followed suit in the fall of 2016.

A particularly tragic consequence of the war on drugs has been the refusal to allow sick people to use marijuana as medicine. Prohibitionists insist that marijuana is not good medicine, or at least that legal alternatives

to marijuana are equally good. Those who believe that individuals should make their own decisions, not have their decisions made for them by Washington bureaucracies, simply say that that's a decision for patients and their doctors to make. But in fact there is good medical evidence of the therapeutic value of marijuana—despite the difficulty of doing adequate research on an illegal drug. A National Institutes of Health panel concluded that smoking marijuana may help treat a number of conditions, including nausea and pain. It can be particularly effective in improving the appetite of AIDS and cancer patients. The drug could also help people who fail to respond to traditional remedies.

More than 70 percent of U.S. cancer specialists in one survey said they would prescribe marijuana if it were legal; nearly half said they had urged their patients to break the law to acquire the drug. In 2013, Dr. Sanjay Gupta, the chief medical correspondent for CNN, apologized to his viewers for previously voicing his opposition to medical marijuana without having done his own homework. He admitted that he had basically assumed that the Drug Enforcement Administration had sound scientific proof that marijuana could not benefit persons who are ill. After studying the subject more thoroughly, Gupta said, “We have been terribly and systematically misled for nearly 70 years in the United States, and I apologize for my own role in that.”

The most relevant point for federal policymakers is that 29 states have authorized physicians licensed in those states to recommend the use of medical marijuana to seriously ill and terminally ill patients residing in the states, without being subject to civil and criminal penalties.

If it is inappropriate for governors and mayors to entangle themselves in foreign policy—and it is—it is also inappropriate for federal officials to entangle themselves in state and local politics. In the 114th Congress, Reps. Dana Rohrabacher (R-CA), Steve Cohen (D-TN), Duncan Hunter (R-CA), Thomas Massie (R-KY), Jared Polis (D-CO), Justin Amash (R-MI), and others jointly proposed the Respect State Marijuana Laws Act of 2015, which would have prohibited federal interference with any person acting in compliance with state rules pertaining to the production, possession, or delivery of marijuana. The 115th Congress should enact a similar bill without delay.

One of the benefits of a federal republic is that different policies may be tried in different states. One of the benefits of our Constitution is that it limits the power of the federal government to impose one policy on the several states.

Repeal Mandatory Minimums

The common law in England and America has always relied on judges and juries to decide cases and set punishments. Under our modern system, of course, many crimes are defined by the legislature, and appropriate penalties are defined by statute. However, mandatory minimum sentences and rigid sentencing guidelines shift too much power to legislators and regulators who are not involved in particular cases. They turn judges into clerks and prevent judges from weighing all the facts and circumstances in setting appropriate sentences. In addition, mandatory minimums for nonviolent first-time drug offenders result in sentences grotesquely disproportionate to the gravity of the offenses. Rather than extend mandatory minimum sentences to further crimes, Congress should repeal mandatory minimums and let judges perform their traditional function of weighing the facts and setting appropriate sentences.

Conclusion

Drug abuse is a problem for those involved in it and for their families and friends. But it is better dealt with as a moral and medical problem than as a criminal problem—“a problem for the surgeon general, not the attorney general,” as former Baltimore mayor Kurt Schmoke put it.

Congress should repeal the Controlled Substances Act of 1970, shut down the Drug Enforcement Administration, and let the states set their own policies with regard to currently illegal drugs. They would do well to treat marijuana, cocaine, and heroin the way most states now treat alcohol: it should be legal for stores to sell such drugs to adults. Drug sales to children, like alcohol sales to children, should remain illegal. Driving under the influence of drugs should be illegal.

With such a policy, Congress would acknowledge that our current drug policies have failed. It would restore authority to the states, as the Founders envisioned. It would save taxpayers’ money. And it would give states the power to experiment with drug policies and perhaps devise more successful rules.

Repeal of prohibition would take the astronomical profits out of the drug business and destroy the drug kingpins who terrorize parts of our cities. It would reduce crime even more dramatically than did the repeal of alcohol prohibition. Not only would there be less crime: reform would also free federal agents to concentrate on terrorism and espionage and would free local police agents to concentrate on robbery, burglary, and violent crime.

The war on drugs has lasted longer than Prohibition, longer than the Vietnam War. Prohibition has failed, again, and should be repealed, again.

Suggested Readings

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—Prepared by David Boaz and Timothy Lynch