

Drinking Smoke¹

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I. Introduction

The United States are experiencing one of the biggest social movements in their history. Mirroring the era of alcohol prohibition, cannabis is slowly undergoing a process of decriminalization and gradual acceptance in society. The first States to legalize the recreational use of cannabis were Colorado and Washington, with many more attempting to follow their example. These two governments have a year to decide whether cannabis will be regulated by the State or be assimilated into the private market. Petitions have been sprouting across the country, in States like Missouri, Montana, Oregon, and Nebraska, for decriminalization and legalization of cannabis.⁵ The movement is forcing the federal government to evaluate the situation meticulously.

In section II of this paper we discuss the demand for marijuana. Section III is given over to a discussion of an analogous case, the prohibition of alcohol. In section IV we argue in favor of the legalization of marijuana. The burden of section V is to discuss cracks in marijuana prohibition: the fact that this law seems to be on the way out. We conclude in section VI.

II. Demand for Marijuana

¹ The authors thank Jordan Reel for helpful comments on an earlier draft of this article. The usual caveats always apply.

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⁵ Altieri, Erik. "8 States May Legalize Marijuana This Year – Did Yours Make the List?" *NORML Blog Marijuana Law Reform 8 States May Legalize Marijuana This Year Did Yours Make the List Comments*. NORML, 09 Feb. 2012. Web. 08 Apr. 2013. <<http://blog.norml.org/2012/02/09/8-states-may-legalize-marijuana-this-year-did-yours-make-the-list/>>.

The demand for cannabis has become more apparent with its ubiquitous appearance in movies such as *Pineapple Express*, *Ted*, *A Very Harold and Kumar 3D Christmas*, *This is the End*, and *Your Highness*.

Pew Research, an American think tank organization based in Washington D.C., performed a nationwide survey on people's views on marijuana in March of 2013. The results were released in April of 2013 and revealed that 52% of Americans support legalization of marijuana while 45% oppose it. This is the very first time a majority of Americans surveyed have supported marijuana legalization. The research showed that, in all demographics, support for marijuana has increased. The morality of smoking marijuana has even become a non-issue, for half of Americans now say it is not a moral issue.⁶ The most important statistics may be the following: "More than half of young people (56%) say they have tried marijuana, and 27% say they have tried it in the past year... About half of those 30- to 49 [in age] (51%) and 50-64 [in age] (54%) have tried marijuana."⁷ The high prevalence of use⁸ assists by pushing legalization of marijuana even faster. However, seeking legalization at the state level may be more successful than at the national level.

The Substance Abuse and Mental Health Services Administration (SAMHSA) publicly released the *Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings* on September 3, 2013.⁹ The findings and associated tables illuminate the results of an annual survey, the National Survey of Drug Use and Health (NSDUH), of 70,000 Americans 12 years of age or older. Though the survey is a State operation, which should always be contemplated with skepticism, the NSDUH is currently and widely viewed as the most comprehensive study of drug and alcohol use in the United States. The relevant marijuana data are as follows:

1. 7.3% of Americans surveyed in 2012 confirmed marijuana use in the past month; this is an increase from 7% in 2011 and 6.2% in 2002 (this difference was statistically significant at the 0.01 level)
2. 12.1% of Americans surveyed in 2012 confirmed marijuana use in the past year; this is an increase from 11.5% in 2011 (this difference was statistically significant at the 0.05 level) and 11% in 2002 (this difference was statistically significant at the 0.01 level)

⁶ Ibid.

⁷ Ibid.

⁸ And its normalization.

⁹ Substance Abuse and Mental Health Services Administration, *Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

3. 42.8% of Americans surveyed in 2012 confirmed marijuana use in their lifetime; this is an increase from 41.9% in 2011 and 40.4% in 2002 (this difference was statistically significant at the 0.01 level).

Thus, the American State's own data reveals that the use of marijuana has steadily expanded over the past decade.

III. Prohibition of Alcohol

During the 1920's, alcohol demand was also high, if not more so. Despite the 18th Amendment,¹⁰ the demand for alcohol was large enough that people were willing to risk the danger to traffic alcohol across borders. This paved the way for gangsters and other entrepreneurs to capitalize on supplying alcohol to dry counties. In a similar fashion, the demand for cannabis has provided a large incentive for people to supply marijuana regardless of the law. The many prohibition-related issues are a clear sign that law enforcement does not work the way government intends. The most basic law of economics, supply and demand, illustrates the fact that anyone can get what he wants if he is willing to pay the price. "Authorities" should not fool themselves into thinking they have complete control over people's lives. Regulations on the market process are only a nuisance and hold back economic prosperity. Higher federal officials are, however, professionals at dispersing cost and concentrating wealth.

Men seek to accomplish their goals whether it hurts or benefits the many. When a person obtains a position of power, it is easy to be swayed by luxurious gifts and donations. As a new law or policy is being debated, it is important to inquire who shall benefit. Behind every veil there is a hidden truth. During the 1920's prohibition, companies like Coca-Cola and Walgreens profited. Today, police unions, pharmaceuticals, breweries, and prisons are capitalizing on the illegality of cannabis.¹¹

Interest groups are intimately involved in the drafting of much legislation. These groups have the most to gain from lobbying for various laws. The benefits from the legislation they endorse are often at the expense of society. Prohibition is no exception. Coca-Cola was one of the most successful companies to cash in on the prohibition of alcohol.

¹⁰ The 18th Amendment established prohibition of alcoholic beverages in the United States, which made the production, transport, and sale of alcohol illegal, but not consumption.

¹¹ Fang, Lee. "Exclusive: Why Can't You Smoke Pot? Because Lobbyists Are Getting Rich Off of the War on Drugs." *Republic Report*. 7 Mar. 2012. Web. 29 Apr. 2013. <<http://www.republicreport.org/2012/exclusive-why-cant-you-smoke-pot-because-lobbyists-are-getting-rich-off-of-the-war-on-drugs/>>.

Coca-Cola was originally sweetened with wine, but after prohibition, John Pemberton¹² replaced the wine with sugar and sold it as an ideal temperance drink.¹³ This allowed Coca-Cola to act as a replacement for alcoholic beverages as well as a mixer for the harsh alcohol being illegally imported.

Alcohol prohibition was considered by many an attempt to improve American society. Despite these intentions, “[p]rohibition failed to eliminate alcohol, and even exacerbated many of the social ills related to its consumption, because government is limited both by its knowledge of how people react to regulation and also by the incentives faced by the regulators themselves.”¹⁴ Overall, prohibition was a complete failure. Alcohol could not be forcibly removed from the American lifestyle. However, this law was enacted through a democratic process, which presumably represented the will of the majority of people; but this was simply not the case. The most powerful lobbyist for prohibition, the Anti-Saloon League (ASL), artificially decreased the Congressional representation of those against prohibition by manipulating the Congressional district lines. All of those against prohibition were grouped into a few districts, while those in favor of prohibition occupied many districts. The abuse of district lines was dubbed gerrymandering, named after Governor Elbridge Gerry of Massachusetts. Gerrymandering created an overrepresentation of those for prohibition in the State legislatures as well as in Congress.¹⁵ Anti-prohibition groups could not check the ASL as it slowly increased its influence on legislation. The ASL, legally, took advantage of the system with the help of various other interest groups. This event is a prime example of State folly and the ability of different private groups to work together for a common but unjust end.

Without such support, the ASL could not have implemented prohibition nor kept it on the books for as long as it did. Interest groups, like the ASL, were and still are the backbone for the persistence of prohibition. Companies like Coca-Cola and Walgreens recognized and capitalized upon the profit potential from prohibition. Coca-Cola tripled its sales due to lack of competition and Walgreens expanded from 20 to 525 drug stores.¹⁶ Even the American Medical Association (AMA) realized the profit potential. The AMA initially supported the concept of prohibition, claiming that alcohol had no

¹⁰ Doctor John Pemberton was a pharmacist from Atlanta, Georgia who invented Coca-Cola in a three-legged brass kettle in his backyard.

¹¹ Solar Navigator "History Coca Cola John Pemberton." Coca Cola Marketing History. Solar Navigator, Web. 03 Apr. 2013.

¹² Rogers, Douglas. "The Fiasco of Prohibition." *The Freeman : Foundation for Economic Education*. FEE, 22 Dec. 2010. Web. 03 Apr. 2013. <http://www.fee.org/the_freeman/detail/the-fiasco-of-prohibition>.

¹³ Ibid.

¹⁶ Ibid.

value. After passage of the Volstead Act,¹⁷ however, the AMA asserted that alcohol could be used to treat 27 different conditions and ailments.¹⁸ Thus, alcohol prohibition was initially promoted under the slogan of improving everyday life; but behind the veil, one finds interest groups pulling all the strings in the legislation process. Unfortunately, citizens today are still being deceived by the same tactics used almost a century ago.

IV. Prohibition of Marijuana

Cannabis prohibition was first introduced in the U.S. by the State of California in 1913. However, it was an obscure amendment promulgated by the State Board of Pharmacy. The issue received no attention from the press and was part of the earliest anti-narcotics campaign inspired by anti-Chinese sentiments in California.¹⁹

The prohibition of marijuana by the State of Utah is an interesting story. Mormons in Utah were unable to practice polygamy after the practice was outlawed in 1910. This led many Mormons to move out of the country in order to maintain their polygamous lifestyle. Many relocated to Mexico and experimented with marijuana. When they decided to return to Utah, some brought marijuana with them. The head of the Mormon Church did not tolerate this development and influenced the legislature to outlaw marijuana in 1914.

The Rocky Mountain and southwestern States, consisting of Texas, New Mexico, Colorado, and Montana, banned marijuana due to racial prejudice towards Mexican.²⁰ The white population was wary about a large immigration of Mexicans seeking better economic opportunities. Marijuana accompanied the immigrants.

¹⁵ The Volstead Act was enacted in 1919 to provide enforcement for the Eighteenth Amendment, prohibiting the manufacture and sale of alcoholic beverages. President Woodrow Wilson vetoed the act, but it became law after Congress voted to override the veto.

¹⁶ Rogers, Douglas. "The Fiasco of Prohibition." *The Freeman : Foundation for Economic Education*. FEE, 22 Dec. 2010. Web. 03 Apr. 2013. <http://www.fee.org/the_freeman/detail/the-fiasco-of-prohibition>.

¹⁷ Gieringer, Dale H. "The Origins of California's 1913 Cannabis Law." *CA NORML Costs of Prohibition*. May 2012. Web. 03 Mar. 2013. <<http://canorml.org/background/ca1913.html>>.

¹⁸ Olsen, Carl. "The Early State Marijuana Laws." *Schaffer Library of Drug Policy*. Web. 03 Apr. 2013. <<http://www.druglibrary.org/olsen/dpf/whitebread05.html>>; The racism towards Mexicans was so high that a Texas legislator openly said, "All Mexicans are crazy, and this stuff (marijuana) is what makes them crazy." Montana's law said, "Give one of these Mexican beet field workers a couple of puffs on a marijuana cigarette, and he thinks he is in the bullring at Barcelona."

After witnessing such bans, northeastern States outlawed marijuana as well, fearing that users of other drugs like heroin or cocaine may switch to marijuana.²¹ This view is the opposite of the debunked gateway theory espoused by many drug warriors today.²²

The initial criminalization of marijuana was never based on any actual studies. It was the ignorance of foreigner-fearing States, which led to negative views of cannabis. Before the bans, cannabis was being used as medicine, and today it is used legally in some States. At this point, many wonder why marijuana remains outlawed. The answer is the power of interest groups. Today, there are five big interest groups lobbying against the legalization of marijuana: police unions, private prison corporations, alcohol and beer companies, pharmaceutical corporations, and prison guard unions.²³ Each group has a vested interest in the continued criminalization of marijuana. Despite the formation of many organizations for the legalization of cannabis such as NORML,²⁴ they have little power compared to those lobbying to continue prohibition. The police and prison guard unions and the private prison corporations fear the loss of federal grants, while the alcohol and pharmaceutical companies want to avoid additional competition. The interest groups understand very well that State power is a perfect opportunity to concentrate benefits and disperse costs. Robert Taylor, a journalist for PolicyMic, says, "Contrary to public school folklore, more often than not the state protects wealthy and established interests at the expense of consumers and the little guy, wrapping it in the rhetoric of the public good."²⁵

The public good is at most a secondary or tertiary concern to interest groups when lobbying for government legislation. Police unions, for example, obtain multi-million dollar federal grants for eradicating marijuana on the street. These provide incentives for interest groups to oppose legalization via a chain effect phenomenon: the more cannabis "criminals" thrown in prison, the more federal money transferred from the State to prison owners and guards.²⁶ A notorious example of interest groups fighting for prohibition involves a Californian named John Lovell. He built an entire business based

²¹ Ibid.

²² Joy, Janet et al, Editors. "Marijuana and Medicine: Assessing the Science Base." National Academies Press. 1999. Retrieved 2013-09-18.

²³ Fang, Lee. "The Top Five Special Interest Groups Lobbying To Keep Marijuana Illegal." *The Top Five Special Interest Groups Lobbying To Keep Marijuana Illegal Comments*. Republic Report, 20 Apr. 2012. Web. 03 Apr. 2013. <<http://www.republicreport.org/2012/marijuana-lobby-illegal/>>.

²² National Organization for the Reform of Marijuana Laws.

²⁵ Taylor, Robert. "Marijuana Legalization Being Crushed By Special Interest Groups." PolicyMic. Apr. 2012. Web. 29 Apr. 2013. <<http://www.policymic.com/articles/7835/marijuana-legalization-being-crushed-by-special-interest-groups>>.

²⁶ Fang, Lee. "Exclusive: Why Can't You Smoke Pot? Because Lobbyists Are Getting Rich Off of the War on Drugs." *Republic Report*. 7 Mar. 2012. Web. 29 Apr. 2013. <<http://www.republicreport.org/2012/exclusive-why-cant-you-smoke-pot-because-lobbyists-are-getting-rich-off-of-the-war-on-drugs/>>.

on marijuana prohibition. He was paid handsomely by various policing groups to stop the passage of Proposition 19²⁷ in California. Police unions, prisons, and guards all contributed to pay Lovell for his services. This is a practice all too common in the United States.

The fundamental nature of the State did not change at the start of the 21st century. The only differences are the companies and interest groups lobbying the State and what legislation they desire. Today pharmaceutical companies favor marijuana and hemp prohibition in fear that legal cannabis would replace the majority of the drugs available at the local drug store. The most unfortunate groups that back marijuana prohibition are alcoholic breweries and distilleries. They understand the damage prohibition can produce socially and economically better than any other industries, yet they still lobby for it. From a self-interest standpoint, the prudent choice is for many businesses to support prohibition because legal marijuana has the potential of drawing customers away. With large government intrusions on what can be sold as goods, people are unable to freely trade with relatively low transaction costs. Instead, government provides a medium for companies like alcohol and pharmaceuticals to restrict alternatives from entering legal trade through lobbying. The idea of free trade is skewed by government intervention.

Another argument in favor of legalization is that the government cannot possibly win the “War on Drugs.” For, every time the State “wins” a battle, they strengthen, not weaken, the “enemy.” With that sort of result, it should occasion no surprise that the overall prospects for success from the point of view of the State are slim to none. How does this work? Suppose that the State interdicts a shipment of cocaine, and burns it.²⁸ What does this do to the price of this drug? It cannot be denied that with a shift of the supply curve to the left, ordinary supply and demand analysis indicates that the price will *rise*. But with a higher price, there are more profits to be made in this industry. And, as well known, a boost in revenues will call forth more suppliers, more product, more drugs. Namely, a *failure* of the drug prohibition occurs, which, presumably, has as its goal to lessen, not expand, the quantity available for general use. If a “war” cannot possibly be won, Catholic just war theory²⁹ suggests that it should not be undertaken in the first

²⁷ Prop 19 or the Regulate, Control & Tax Cannabis Act was a ballot initiative that would have legalized marijuana-related activities, allowed local governments to regulate such activities, permitted local governments to impose and collect marijuana-related fees and taxes, and authorized various criminal and civil penalties.

²⁸ In many cases, no burning takes place. Rather, the police seize these substances for themselves, since they are so valuable. But, *arguendo*, let us make the best case for the drug war, which abstracts from this sort of graft, and the undermining of law and order.

²⁹ McElroy, Wendy. 2011. “Can a Principled Libertarian Go to War?” July 6; <https://mises.org/daily/5431/>.

place,³⁰ or, if we find ourselves in the midst of one, we should exit from it as soon as possible.³¹

There is one argument in favor of drug legalization that we need not support: that with the end of prohibition, these substances will be commonly manufactured, sold, purchased and the government will tax them at every stage. While many commentators favor legalization on this ground, among others, we do not follow them there. Rather, we maintain that drugs should be decriminalized *in spite of* this undoubted correct prediction. We argue that the State, the source of this problem in the first place, already has far too much financial support with which to undermine freedom. The last thing it need is more funds with which to pursue its harmful practices.

V. Cracks in Marijuana Prohibition

This country has grown more tolerant and the majority of society no longer has such negative views toward ethnic groups. Government officials have grown more tolerant but the policies they promote often contradict what they actually believe. Despite marijuana being classified among the most harmful drugs with no usefulness, a federal judge in 1976 ruled that the FDA must provide marijuana for Robert Randall.³² Randall suffered from glaucoma and no other drug could effectively combat the condition.³³ The contradiction between the ruling and the law at the time forced the government to compromise. A program was created that would provide each recipient with a half pound of marijuana in the form of 300 pre-rolled joints. However, the war on drugs escalated and the program stopped accepting members in 1992. Those who are members continue to receive their medicine. Supplying citizens with medicinal marijuana while claiming it has no health benefits is a mind-numbing contradiction. Government officials say that there is no contradiction because the program is no longer accepting new patients. This flawed logic has fortunately been minimally influential, for the majority of the States (27) have decriminalized cannabis or permit it for medical use.³⁴

³⁰ Rothbard, Murray N. "Just War" in Denson, John V., ed. 1997. *The Costs of War: America's Pyrrhic Victories*. New Brunswick, N.J.: Transaction Publishers.

³¹ Vance, Laurence M. 2008. *Christianity and War and Other Essays Against the Warfare State* Vance Publications; 2nd edition.

³² Robert Randall became the first legal pot smoker in the United States since prohibition of marijuana. He also became the poster child for medical marijuana use around the country.

³³ Duara, Nigel. "4 Americans Get Pot from US Government." *Yahoo! News*. Yahoo!, 28 Sept. 2011. Web. 03 Apr. 2013. <<http://news.yahoo.com/4-americans-pot-us-government-070245907.html>>.

³⁴ On the other hand, at least two presidents (Clinton, Obama) had admitted to violating drug laws. If these were consistently applied, both would have been charged with crimes. The failure of government to obey its own laws was also witnessed during prohibition in the 1920's. The Michigan State Police "raided Detroit's Deutches Haus and found 800 people inside, including a Michigan congressman, a sheriff, and Detroit Mayor John Smith," all consuming alcohol (Teller). See also Cachanoski, 2013.

With the majority of the States already easing the laws against cannabis, it is obvious that social views of cannabis are changing. There are petitions to legalize marijuana in almost every State. Marijuana legalization is no longer something the State can ignore. More people are incarcerated for marijuana than for any other drug. This fact is evidence that people are not willing to simply stop using it because laws deem it harmful (despite the variety of medical studies showing that the cannabinoids in marijuana practically make it a miracle plant). For example, one of marijuana's most prominent uses is for pain relief. A primary fear of drug companies is that marijuana might replace the pain relievers available at many retailers.

VI. Conclusion

Prohibition is a messy business that has never been proven effective. The aftermath sometimes is more terrifying than the times before prohibition. The drug war on cannabis is as illogical as wearing shoes on your head. The studies presented to government officials that show cannabis is anything but harmful have been dismissed or ignored. One of the most prominent examples of such an event involved President Richard Nixon asking the National Commission on Marijuana and Drug Abuse to compile a study on the effects of marijuana. The Commission reported the following: "Neither the marijuana user nor the drug itself can be said to constitute a danger to public safety. Therefore, the Commission recommends ... [the] possession of marijuana for personal use no longer be an offense, [and that the] casual distribution of small amounts of marijuana for no remuneration, or insignificant remuneration no longer be an offense."³⁵ Nixon and Congress chose to ignore the commission's conclusion. Nixon went as far as pressuring the chair of the Commission to reject its findings.³⁶ The logic of continuing cannabis prohibition is as faulty as the reasons the laws were drafted in the first place. Simply put, the laws against cannabis and the chronic propaganda against cannabis are due to rational ignorance.

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³⁵ "Nixon Commission Report Advising Decriminalization of Marijuana Celebrates 30th Anniversary." *NORML: Working to Reform Marijuana Laws*. NORML, 21 Mar. 2002. Web. 8 Apr. 2013. <<http://norml.org/news/2002/03/21/nixon-commission-report-advising-decriminalization-of-marijuana-celebrates-30th-anniversary>>.

³⁶ *Ibid*.

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