

Understanding Drug Policy in the United States: Sub-national Trends

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In November 2012, two states in the United States, Washington and Colorado, legalized marijuana for recreational purposes. On November 8, 2016, voters in four states, Massachusetts, Maine, Nevada, and California, decided to follow suit. Moreover, 28 out of the 50 states in the United States have legalized medical marijuana. This is despite the fact that marijuana usage is illegal at the federal level. This article examines the recent trends in marijuana

legalization in the U.S., highlighting the complex relationship between the states and the federal government in the U.S. For a variety of reasons, states have decided to legalize marijuana, albeit in various forms. Many advocates of legalizing marijuana in the U.S. argue that this would help reduce drug trafficking and drug-related violence in producing and transit countries. The article begins with a discussion of the U.S. drug war and the consequences of such policies. It then discusses the increasing number of people incarcerated in the U.S. as a result of the drug laws, followed by a discussion about the legalization debate and another on the power of

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the states and states' rights issues. Before a brief conclusion, I discuss the role of states as a model for public policy.

THE U.S.-LED DRUG WAR

The U.S. has seen an evolution in the number of laws designed to combat drug consumption, production, and trafficking. For instance, in 1937, the U.S. Congress passed the Marijuana Tax Act, which, as the name implies, made marijuana illegal at the federal level through taxes. The 1952 Boggs Acts and the 1956 Narcotics Control Act created mandatory sentences for individuals violating drug laws. In fact, people found guilty of violating the marijuana laws for the first time faced between two and ten years in prison.¹

Former U.S. President Richard Nixon launched the "war on drugs" in 1971. While Nixon maintained the need to combat the supply of drugs, he also understood the necessity of investing resources to reduce the demand for them. The argument is that drug traffickers will continue to traffic drugs and other illicit commodities as long as the demand for such products exists. However, other scholars contend that the U.S.-led drug war really began over 100 years ago with the passage of the Harrison Act of 1914, which taxes individuals who import, produce, manufacture, or traffic coca and opium.²

The U.S. has spent billions of dollars on counter-narcotics initiatives with the goal of combatting the supply of drugs. For example, Washington allocated US\$10 billion to Plan Colombia from 2000 to 2015, with the initial goal of reducing drug cultivation, production, and trafficking by 50 percent. In addition, the U.S. has spent US\$2.5 billion on the Mérida Initiative to combat drug trafficking and organized crime in Mexico. Critics of such supply-side strategies have contended that countries in Latin America would not have problems with drug trafficking if such high levels of demand did not exist in the U.S., the number-one drug-consuming country in the world. Thus, the argument is that drug trafficking should not only be viewed as a security issue, but rather a public health problem.³

Moreover, critics of the drug war and supply-side strategies have maintained that such policies have resulted in high levels of violence.⁴ Mexico, for example, witnessed extreme levels of drug-related violence during the Felipe Calderón administration (2006-2012), as more than 100 000 people died during this period. Drug traffickers fight among each other for control of routes and territory. In addition, the Mex-

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ican governments' campaign to combat drug traffickers resulted in a war between the states and these illicit actors, which led to high levels of violence and bloodshed.

The U.S. government has sought to combat drug usage by incarcerating drug users. As a result, the prison population has multiplied over time. For instance, the number of individuals incarcerated for non-violent drug offenses spiked to 400 000 in 1997 from 50 000 in 1980.⁵ The prison population has increased by more than 500 percent over the past 40 years. Today, 2.2 million people are in jails or prisons in the U.S., which means that the U.S. incarcerates more people than any other country in the world.⁶ Moreover, over half the people in federal prisons are there for drug-related crimes. In 2015, law enforcement officials arrested 643 121 people for breaking marijuana laws.⁷

THE LEGALIZATION DEBATE

The legalization of drugs has been a matter for intense debate. While there are those in favor of the complete legalization of all drugs, the legalization of harder drugs such as heroin and cocaine has been a more difficult sell and a controversial issue, as they are very dangerous and viewed as suicidal drugs. However, the U.S. has seen public opinion change over time with regard to the legalization of marijuana. In 1969, for example, 12 percent of the population favored marijuana legalization, compared to 36 percent in 2005. By 2009, 44 percent favored legalization. As of October 2015, 58 percent of the U.S. public believed that this substance should be legal. A Pew Research poll found that 57 percent of people favored the legalization of marijuana in the U.S. in 2016, compared to the 37 percent of individuals who did not approve.⁸

Several arguments are made for legalization for recreational usage, while other individuals contend that marijuana should only be legal for medical purposes. Marijuana has some positive medical benefits. For instance, it is often given to individuals with glaucoma to reduce ocular pressure, and it is

known to reduce pain levels in people with cancer. Furthermore, some argue that more people die from other legal substances, such as alcohol, yet marijuana remains illegal. Thus, some contend that it is hypocritical for marijuana to be illegal while cigarettes and alcohol are legal. Other people argue that the legalization of marijuana would lead to lower profits for criminal organizations, such as the Mexican drug cartels, who traffic this substance. In addition, some people, particularly Libertarians, believe that everyone should have the individual liberty to consume whatever they want. Libertarians contend that the government should play a limited role in individuals' decisions. Others, however, believe that the government should regulate and tax the distribution of marijuana. Currently, eight states tax and regulate marijuana in the U.S.: Washington, Oregon, Nevada, Massachusetts, Maine, Colorado, California, and Alaska.⁹

However, opponents of marijuana legalization argue that it could result in individuals using other harder substances (i.e., marijuana is a gateway drug). Critics also contend that marijuana can have negative health repercussions, such as memory loss, and, therefore, could impact the performance of students. Moreover, some individuals argue that marijuana could result in increased criminal activity as well as accidents (i.e., driving while intoxicated).

THE FEDERAL SYSTEM AND STATES' RIGHTS

The U.S. is a federal system comprised of states that have their own constitutions, laws, and governments. The states in the U.S. have tremendous power compared to the federal government. In other countries with federal political systems, such as Mexico, power is concentrated in the federal government. Moreover, the 50 states in the U.S. are quite different: New York and California, for example, are more liberal than Texas and Nebraska. Individuals and leaders in these states often fight for states' rights issues. The legalization of marijuana in some states has created various challenges since it violates federal laws outlawing marijuana. Furthermore, this

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is complicated by the fact that the U.S. pushed hard for and signed various international treaties that prohibit drug legalization (for example, the Single Convention on Narcotic Drugs of 1961).

Some individuals, such as Ethan Nadelmann of the Drug Policy Alliance, have argued that the movement to legalize marijuana has similarities to the legalization of gay marriage. In June 2015, the United States Supreme Court ruled gay marriage to be legal at the federal level. Thus, states refusing to recognize gay marriage were in violation of the law. This Supreme Court ruling did not happen overnight, but resulted rather from grassroots social movements and years of litigation. In 2003, Massachusetts began to allow gay couples to marry, followed by Connecticut in 2008 and Iowa in 2009. Thus, the decisions of the states to legalize same-sex marriage led to lawsuits that eventually changed the federal law after a ruling by the highest court. Similar to the gay rights movement, more states will likely continue to legalize marijuana, which could eventually result in a Supreme Court case.

As of January 2017, marijuana remains illegal at the federal level, which presents various challenges for states that have legalized it. For example, an individual can enter a medical marijuana dispensary in Colorado and purchase various forms of marijuana from liquids and edible snacks to cannabis that can be smoked. However, businesses cannot deposit their cash earnings in banks because they are insured by the Federal Deposit Insurance Corporation (FDIC), and banks cannot accept cash from clients who earn money from illicit endeavors. This creates various problems for businesses since they could be more likely to be robbed for having such large amounts of cash on hand.

STATES AS EXPERIMENTS

A unique thing about the federal system in the U.S. is that states can function as experiments. In other words, a state can implement a certain policy and the results can be studied to determine its consequences. New policies in certain states can serve as a trial. Such incremental changes have several advantages, since designing a policy based on theory could present various challenges. Often, policies that are intended to be carried out in a particular manner face obstacles during implementation. A gradual approach allows practitioners to make changes to enhance the policy's efficiency. Thus, les-

sons can be learned about what elements of a particular law, policy, or activity work efficiently and what aspects could be improved. Thorough analysis of the results allows practitioners to apply the lessons learned in other states. Moreover, the implementation of a policy in one state will not have major consequences if it is not effective. Occasionally, some initiatives that look great on paper end up failing. However, a failure in several states will have less of an impact than if a particular initiative was implemented in all 50 states.

The big fear for opponents of the legalization of marijuana is that crime and accidents could increase. Furthermore, some worry that substance abuse will spike. The legalization of marijuana for recreational use is a relatively recent phenomenon, which means that in-depth studies over significant periods of time are not yet possible. More research must be conducted in the future to determine the impact of legalization on crime, accidents, and addiction in the states where marijuana is legal. However, a study by the CATO Institute found that the legalization of marijuana in Colorado has not led to large increases in marijuana usage.¹⁰

CONCLUSION

The U.S. has seen a breakdown—or at least a “partial breakdown”—of the prohibition regime over the past few years. The recent trends in the U.S. with regard to the legalization of marijuana show that public opinion about marijuana laws has shifted over time. The changes in drug laws are in part due to grassroots movements in the U.S. that have pushed for their modification for a variety of reasons. Thus, neither the states nor the U.S. government promoted changes to these laws, but, rather, people mobilized and placed these issues on the agenda at the ballot box. Advocacy organizations, NGOs, and other leaders have been instrumental in helping shape the legalization discourse. Some academics and researchers have played important roles in studying drug policies and advocating for alternatives based on sound scientific research and policy analysis.

Many proponents of the legalization of marijuana believe that the benefits outweigh the costs. Some highlight the large number of people who are arrested and incarcerated for violating drug laws. Others contend that the legalization of marijuana in the U.S. will reduce the profits of organized crime groups operating in places like Mexico, which could help decrease levels of drug-related violence.

The legalization of marijuana in the U.S. also demonstrates the role and power of the states. The lesson of marijuana legalization for medical and recreational purposes is that many states do not agree with current U.S. federal drug laws. Thus, people in a variety of cases have acted in an effort to voice their dissatisfaction. As previously mentioned, many states are currently in violation of U.S. federal laws. If more states continue to legalize marijuana, it is likely that the Supreme Court will receive cases about this issue. However, it is not possible to determine how the court will rule. ■■

NOTES

¹ Thanks to Marten Brienen for his helpful comments. For more see Angela Dills, Sietse Goffard, and Jeffrey Miron, “Dose of Reality: The Effect of State Marijuana Legalizations,” *Policy Analysis* no. 799, CATO Institute, September 16, 2016.

² Bruce Michael Bagley, “The New Hundred Years War? US National Security and the War on Drugs in Latin America,” *Journal of Interamerican Studies and World Affairs* vol. 30, no. 1 (1988), pp. 161-182; Ted Galen Carpenter, *Bad Neighbor Policy: Washington’s Futile War on Drugs in Latin America* (New York: Palgrave Macmillan, 2003).

³ Connie Veillette, *Plan Colombia: A Progress Report* (Washington, D. C.: Congressional Research Service, 2005); Ted Galen Carpenter, *The Fire Next Door: Mexico’s Drug Violence and the Danger to America* (Washington, D. C.: Cato Institute, 2012); Bruce Bagley, *Drug Trafficking and Organized Crime in the Americas: Major Trends in the Twenty-First Century* (Washington, D. C.: Woodrow Wilson International Center for Scholars, 2012).

⁴ Ted Galen Carpenter, “Drug Prohibition Is a Global Folly,” *CNN*, October 4, 2013.

⁵ “A Brief History of the Drug War,” *Drug Policy Alliance*, <http://www.drugpolicy.org/facts/new-solutions-drug-policy/brief-history-drug-war-0>, accessed December 28, 2016.

⁶ “Incarceration,” The Sentencing Project, <http://www.sentencingproject.org/issues/incarceration/>, accessed December 28, 2016.

⁷ “Drug War Statistics,” *Drug Policy Alliance*, <http://www.drugpolicy.org/drug-war-statistics>, accessed December 28, 2016.

⁸ Jeffrey M. Jones, “In U.S., 58% Back Legal Marijuana Use,” *Gallup*, October 21, 2015, <http://www.gallup.com/poll/186260/back-legal-marijuana.aspx>, accessed December 28, 2016; Abigail Geiger, “Support for Marijuana Legalization Continues to Rise,” *Pew Research Center*, October 12, 2016, <http://www.pewresearch.org/fact-tank/2016/10/12/support-for-marijuana-legalization-continues-to-rise/>, accessed December 28, 2016.

⁹ For more on the legalization debate, see Jonathan P. Caulkins, Angela Hawken, Beau Kilmer, and Mark A.R. Kleiman, *Marijuana Legalization: What Everyone Needs to Know* (New York: Oxford University Press, 2012); Alain Joffe and W. Samuel Yancy, “Legalization of Marijuana: Potential Impact on Youth,” *Pediatrics* vol. 113, no. 6 (2004): e632-e638; Andrew A. Monte, Richard D. Zane, and Kennon J. Heard, “The Implications of Marijuana Legalization in Colorado,” *Journal of the American Medical Association (JAMA)* vol. 313, no. 3 (2015), pp. 241-242.

¹⁰ Angela Dills, Sietse Goffard, and Jeffrey Miron, “Dose of Reality: The Effect of State Marijuana Legalizations,” CATO Institute, September 16, 2016, <https://www.cato.org/publications/policy-analysis/dose-reality-effect-state-marijuana-legalizations>.