



## June 2018 Newsletter

### Regulate Marijuana Like Alcohol in 1934 or Skip to 2018?

Marijuana advocates who call for cannabis to be regulated like alcohol are probably unaware of all of the development and trial and error that got us to where we are today with alcohol regulation. We have learned a lot about what works and what doesn't. We now have a great deal of research to help us solve problems and design systems. For example, in the past many states dropped the age limit for alcohol purchase to 18 or 19. After this change, alcohol was a factor in two-thirds of traffic deaths of 16-20 year olds. After the drinking age was raised to 21 nationwide, fatalities were cut in half. Research tells us that regular use of alcohol damages the developing adolescent brain; something we didn't know as much about before sophisticated brain imaging was developed.

Yet, rather than going slow with a very limited program of regulated sale of marijuana, advocates would have us gallop full speed ahead to full-blown commercialization. The alcohol regulation that the marijuana legalization folks want to copy comes in large part from the seminal work funded by John D. Rockefeller entitled *Toward Liquor Control* (recently reprinted by the Center for Alcohol Policy). There is no similar research work guiding marijuana regulation.

Let's look at some of the parallels and lessons learned.

#### **1. Getting rid of the black market is difficult and there is no simple roadmap.**

A primary goal for legalizing marijuana is to eliminate the black market. Many believe that if people are going to use marijuana anyway, why not tax and regulate it, so that we can decide where it's sold and to whom? Even people who aren't interested in consuming marijuana themselves are enticed by the promise of revenue for schools and needed infrastructure.

Nine states and the District of Columbia have legalized recreational use for adults, but because it is still illegal under federal law, the product cannot

legally cross state lines. So, when it was reported that Oregon growers produced 4 times more pot than stores can sell, and prices are falling, the black market is still a concern. According to a report by the Oregon State Police, marijuana from Oregon has been found in the Northeast, Southwest, Midwest, and outside of the country. As Oregon's US Attorney Billy J. Williams put it, this surplus "attracts criminal networks and generates money laundering, drug violence and environmental contamination from pesticides and draws down water supplies in rural communities."

And, now there is evidence that the black market is actually flourishing in states where recreational use is legal. The reason is pretty simple: legal sellers must comply with a lot of expensive requirements such as a building, a security system, and tracking mechanisms. And the product is taxed at fairly high rates. While sellers in the black market have some costs and the risk of arrest, they aren't subject to taxes or responsible but expensive regulatory requirements. Finally, the risk has been reduced thanks to decriminalization and changing enforcement priorities. In states where it is legal to grow, sell, and possess marijuana, some black marketeers are hiding in plain sight. Illegal growers backed by organized crime have obtained houses in upscale neighborhoods, converting suburban dwellings into full scale indoor grow operations, unbeknownst to the owners and neighbors.

Perhaps someone should have reviewed the alcohol experience after Prohibition. There was a concerted effort to get criminals out of the alcohol business. Control was tight and there were even federal agents stationed at distilleries to ensure that everything was lawful. Regulatory framers were advised to avoid setting tax rates so high that black marketers could easily undercut the legitimate market. Taxes could be raised once the criminal element was gone. Eliminating most of the black market wasn't easy; it took a long time and some states still have bootleggers operating over 80 years after Prohibition.

## 2. The promise of revenue rarely includes a comprehensive set of costs.

For the states that have legalized marijuana, a lot of revenue has been generated, but it will take time to calculate all of the costs. Among these are enforcement and compliance; running a state agency to handle licensing and seller/consumer education; emergency and long term medical care (i.e. from increased incidents of burns from cannabis extraction); water use and strain on the power grid (from indoor grow operations). It will take time to see to what extent the revenue generated is offset by these costs, and any others that weren't anticipated at the onset of legalization.

Once again, our experience with alcohol is instructive. Although alcohol revenue has been high, the costs of alcohol harm outweigh the revenue by a large margin. According to the Centers for Disease Control and Prevention excessive use of alcohol in the US costs about \$2.00 per drink consumed and range from \$592 per person in Utah to \$1,165 per person in Alaska. In 2010, Florida's total cost for excessive alcohol use was over \$35 million, \$18 million in Texas. And, as more people use (and abuse) the product, the costs of harm will only increase.

## 3. Lots of outlets are not such a good thing!

After Prohibition, access to alcohol was very tightly controlled with few outlets. Research now shows the connection between increased outlets and increased problems. The Oregon Liquor Control Commission has licensed over 500 marijuana dispensaries, which is about twice the number of state-controlled liquor stores. Washington State and Colorado also have about 500 outlets each.

How the laws are written makes a difference for access. In Oregon, communities have to opt out via ballot measure to ban marijuana shops. In Colorado, cities and towns opt-in if they want marijuana to be sold within city limits. (Greeley, for example, which was a "dry" town until 1969, decided against allowing marijuana sales.) States are grappling with the issue of whether to share revenue with local governments that don't allow sales, since about one-third don't.



Again, these states should have considered the research on alcohol outlets. The CDC has a task force that reviews credible research and recommends various policies to consider. This is what they said about alcohol outlet density:

*The Community Preventive Services Task Force (CPSTF) recommends the use of regulatory authority (e.g., through licensing and zoning) to limit alcohol outlet density on the basis of sufficient evidence of a positive association between outlet density and excessive alcohol consumption and related harms.*

When considering that about one-third of local governments have banned sales, the outlet density is much greater in the areas where it is legal...usually the large cities.

## 4. Curbing the profit motive and market domination on a potentially dangerous product.

A major concern after Prohibition was preventing market domination by large, national companies as well as the need to minimize the profit motive when dealing with the sale of a potentially dangerous product. A 3-tier system and numerous trade practice regulations were put in place to address these issues.

The experience before Prohibition was that large national companies wreaked havoc over local communities with aggressive sales practices, inducements to drink heavily, and large payments to politicians. These large companies dominated local markets in most states creating huge social problems of public disorder, crime, drunkenness, sales to children and addiction. While some states have made efforts to keep large companies out of the marijuana business, there is evidence that big businesses are moving to take over.

In Oregon, a growing number of marijuana retailers are part of a chain of pot stores. Until 2016, there were residency requirements stating that at least half of the ownership in the company needed to be in-state. But this requirement was overturned. One Oregon chain has been able to accept investments from New York and Florida, and another chain is backed by a private equity firm in Canada.

Many would-be investors are scared off by federal illegality which makes banking and other business issues difficult. If there is a change to the federal law, one could expect a "gold rush" of investors.

*"There should be no controversy about the existence of marijuana addiction. We see it every day. The controversy should be why it appears to be affecting more people."* David E. Smith, MD

## 5. Public health risks and costs.

We know that alcohol is dangerous when misused and is responsible for about 88,000 deaths per year. Regulations exist to minimize public harm. But the mantra from marijuana enthusiasts, when comparing pot to alcohol and to other Schedule I drugs, is that "no one ever died from marijuana". This might be true in terms of overdose, but when we count alcohol deaths, we count all deaths where alcohol was a significant contributing factor. These include DUI deaths, poisonings, falls, and diseases such as cancer and liver cirrhosis. We have seen more deaths, injuries, and hospitalizations in which marijuana was a factor; and states have changed laws to try to avoid the unanticipated consequences that led to harm. One example is the restrictions on packaging and labeling of edibles in reaction to accidental ingestion by kids.

Recently, the Governor of West Virginia and his wife were in a car crash involving a driver impaired by marijuana. Reports from Washington State and Colorado indicate that this problem is rising rapidly. On the first day that recreational pot was legal in Oregon, a driver struck and killed a pedestrian; witnesses say he was smoking marijuana as he drove towards the scene of the accident.

Addiction is also increasing. According to Dr. David Smith, who has been treating addiction since the 1960s, "There should be no controversy about the existence of marijuana addiction. We see it every day. The controversy should be why it appears to be affecting more people."

As more states grapple with legalizing marijuana for recreational use, they are faced with many of the same issues that alcohol regulators deal with: how to foster moderation, how to protect minors, how to prevent violence and impaired driving, how to ensure the safety of products and how to collect tax revenue. These are not short-term issues. They are ongoing and occupy regulators day after day.

Effective regulation requires actively prioritizing public health and safety over increasing revenue and accommodating business interests.

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