



New York Times Discovers States' Rights for Marijuana Laws

The editorial board of the *New York Times*, which generally favors the imposition of “liberal” or “progressive” reforms at the national level, has come out in favor of states’ rights on the legalization of marijuana. Under the headline [“Repeal Prohibition, Again,”](#) published online Saturday and again in its Sunday paper, the *Times* called for amending the federal Controlled Substances Act of 1970, where “Marihuana” was included in Schedule I of the banned substances, along with heroin, LSD, and other dangerous drugs.



“The federal government should repeal the ban on marijuana,” said the editorial board in the introduction to a five-part editorial dealing with various aspects of marijuana legalization. “There are no perfect answers to people’s legitimate concerns about marijuana use,” the *Times* conceded. “But neither are there such answers about tobacco or alcohol, and we believe that on every level — health effects, the impact on society and law-and-order issues — the balance falls squarely on the side of national legalization. That will put decisions on whether to allow recreational or medicinal production and use where it belongs — at the state level.

In an accompanying article, entitled “Let the States Decide,” David Firestone, one of the 18 members of the *Times* editorial board, concedes that marijuana consumption “is not a fundamental right that should be imposed on the states by the federal government” — in contrast to “rights” the *Times* believes should be imposed on the states: “abortion rights, health insurance, or the freedom to marry a partner of either sex.” Legalizing marijuana is “a choice that states should be allowed to make based on their culture and their values,” Firestone writes, “and it’s not surprising that the early adopters would be socially liberal states like Colorado and Washington, while others hang back to gauge the results.”

Indeed, that is the way our federal system is supposed to work on matters in which no powers have been delegated to the federal government by the Constitution. The same Constitution recognizes our “fundamental rights” in the Bill of Rights. The Ninth Amendment assures us that the Constitution does not “deny or disparage” other rights “retained by the people.” But neither does it confer a federal power to impose upon the states and the people abortion “rights,” a federal health insurance system, or a redefinition of marriage — all of which has come into conflict with the “culture and values” of people in their respective states. As James Madison noted in *Federalist*, No. 45: “The powers granted by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.” Under the Constitution’s division of powers, wrote Justice Louis Brandeis, “a state may, if its citizens choose, serve as a laboratory; and try social and economic experiments without risk to the rest of the country.”

The majority of our states have already opted to try such “experiments” with marijuana. So far, the



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Times pointed out, 35 states have legalized various medical uses of the plant. No fewer than 18 states and the District of Columbia have decriminalized small amounts marijuana, making it a civil offense instead of a crime. Two states — Colorado and Washington — have legalized recreational use.

Legalization can save states money they would otherwise spend on arresting, prosecuting, and jailing marijuana users. “There were 658,000 arrests for marijuana possession in 2012, according to F.B.I. figures,” said the *Times* editorial, “compared with 256,000 for cocaine, heroin and their derivatives.” And by regulating and taxing the legal sale of the product, states stand to gain a windfall of new revenue to pay for schools, roads, police and fire protection, and other state and local needs. In the first four months of this, its first year of recreational marijuana sales, Colorado collected \$11 million in taxes, along with \$7 million from sales of medical pot, the *Washington Post* [reported](#). But the *Post* also noted concerns about the sold cannabis crossing borders into states where it’s still banned.

“Really, any kid that wants it could almost walk there,” a Nebraska mom living near the Colorado line told the Washington paper about a border-area pot store.

Denver police say burglaries and robberies were down by between four and five percent in the first four months of the year, the *New York Daily News* [reported earlier this month](#), while sheriffs’ deputies in neighboring Nebraska said pot seizures near the Colorado border have increased by 400 percent in the last three years. Colorado’s southern and western neighbors, New Mexico and Wyoming, reported no significant increases.

Colorado and Washington allow possession of up to one ounce of marijuana for personal use at any one time, and limit legal possession to those 21 and older. Still, there is growing concern about the effect of the new laws on teenagers, said Gina Carbone of Smart Colorado, a non-profit aimed at informing young people about marijuana.

“They are receiving messaging that this is medicine, that this is healthy,” Carbone told the *Daily News*. “A lot of people that even voted for [legalization] are saying, ‘Gosh, I didn’t know it was going to look like this.’”

The *Times* editorial endorsed the practice of limiting sales to people over 21, citing “legitimate concerns about marijuana on the development of adolescent brains. But it dismissed the argument that marijuana is a “gateway drug,” leading to use of more dangerous substances, as a notion “as fanciful as the ‘Reefer Madness’ images of murder, rape and suicide.”

While the federal ban remains on the books and is enforced in states that have not legalized marijuana possession, the Justice Department last August issued a memo saying it would not interfere with legalization in Washington and Colorado, provided there are “sufficiently robust” enforcement efforts against selling to minors, drugged driving, and other illegal drugs.

At least two bills introduced in the U.S. House would close the door on such “prosecutorial discretion” by federal authorities. Republican Dana Rohrabacher of California, where medical marijuana has been legal since 1996, has introduced the Respect State Marijuana Laws Act, which would ban federal prosecution of anyone whose sale or possession of marijuana is in compliance with the law of the state where it occurs. The Ending Marijuana Prohibition Act, offered by Colorado Democrat Jared Polis, would remove marijuana from the Controlled Substances Act, while requiring a federal permit for growing and distributing it. It would also require that it be regulated, as alcohol is now, by the Food and Drug Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The *Times* editorial recalled that it took “13 years for the United States to come to its senses and end



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Prohibition,” while more than 40 years have passed “since Congress passed the current ban on marijuana, inflicting great harm on society just to prohibit a substance far less dangerous than alcohol.”

But there is yet another difference, one the *New York Times* might not appreciate. Both alcohol and “controlled substances” are, to be sure, in interstate commerce. But when Congress sought to ban the “manufacture, sale or transportation of intoxicating liquors,” it sought the permission of the states and people by submitting the proposal in the form of a constitutional amendment, which was duly ratified. The same process might have been followed regarding drugs. Yet Congress has banned drugs by mere statutes, and a succession of presidents have waged a failed trillion-dollar “War on Drugs,” both at home and abroad, as a matter of executive discretion. “We the People” had no say about that aggrandizement of federal power.

Prohibition was, indeed, a disaster, giving rise to crime and violence and a general disregard of the law. But at least the Congress that sent that proposal to the states in 1917 showed a greater respect for the limits of its authority under the Constitution than we have seen in our benighted time.



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