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LEGALIZE IT ALL

HOW TO WIN THE WAR ON DRUGS

BY DAN BAUM

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How to win the war on drugs

By *Dan Baum*

In 1994, John Ehrlichman, the Watergate co-conspirator, unlocked for me one of the great mysteries of modern American history: How did the United States entangle itself in a policy of drug prohibition that has yielded so much misery and so few good results? Americans have been criminalizing psychoactive substances since San Francisco's anti-opium law of 1875, but it was Ehrlichman's boss, Richard Nixon, who declared the first "war on drugs" and set the country on the wildly punitive and counterproductive path it still pursues. I'd tracked Ehrlichman, who had been Nixon's domestic-policy adviser, to an engineering firm in Atlanta, where he was working on minority recruitment. I barely recognized him. He was much heavier than he'd been at the time of the Watergate scandal two decades earlier, and he wore a mountain-man beard that extended to the middle of his chest.

At the time, I was writing a book about the politics of drug prohibition. I started to ask Ehrlichman a series of earnest, wonky questions that he impatiently waved away. "You want to know what this was really all about?" he asked with the bluntness of a man who, after public disgrace and a stretch in federal prison, had little left to protect. "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either

against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."

I must have looked shocked. Ehrlichman just shrugged. Then he looked at his watch, handed me a signed copy of his steamy spy novel, *The Company*, and led me to the door.

Nixon's invention of the war on drugs as a political tool was cynical, but every president since—Democrat and Republican alike—has found it equally useful for one reason or another. Meanwhile, the growing cost of the drug war is now impossible to ignore: billions of dollars wasted, bloodshed in Latin America and on the streets of our own cities, and millions of lives destroyed by draconian punishment that doesn't end at the prison gate; one of every eight black men has been disenfranchised because of a felony conviction.

As long ago as 1949, H. L. Mencken identified in Americans "the haunting fear that someone, somewhere, may be happy," an astute articulation of our weirdly Puritan need to criminalize people's inclination to adjust how they feel. The desire for altered states of consciousness creates a market, and in suppressing that market we have

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created a class of genuine bad guys—pushers, gangbangers, smugglers, killers. Addiction is a hideous condition, but it's rare. Most of what we hate and fear about drugs—the violence, the overdoses, the criminality—derives from prohibition, not drugs. And there will be no victory in this war either; even the Drug Enforcement Administration concedes that the drugs it fights are becoming cheaper and more easily available.

Now, for the first time, we have an opportunity to change course. Experiments in alternatives to harsh prohibition are already under way both in this country and abroad. Twenty-three states, as well as the District of Columbia, allow medical marijuana,



and four—Colorado, Washington, Oregon, and Alaska—along with D.C., have legalized pot altogether. Several more states, including Arizona, California, Maine, Massachusetts, and Nevada, will likely vote in November whether to follow suit. Portugal has decriminalized not only marijuana but cocaine and heroin, as well as all other drugs. In Vermont, heroin addicts can avoid jail by committing to state-funded treatment. Canada began a pilot program in Vancouver in 2014 to allow doctors to prescribe pharmaceutical-quality heroin to addicts, Switzerland has a similar program, and the Home Affairs Committee of Britain's House of Commons has recommended that the United Kingdom do likewise. Last July, Chile began a legislative process to legalize both medicinal and recreational marijuana use and allow households to grow as many as six plants. After telling the BBC in December that “if you fight a war for forty years and don't win, you have to sit down and think about other things to do that might be more effective,”

Colombian president Juan Manuel Santos legalized medical marijuana by decree. In November, the Mexican Supreme Court elevated the debate to a new plane by ruling that the prohibition of marijuana consumption violated the Mexican Constitution by interfering with “the personal sphere,” the “right to dignity,” and the right to “personal autonomy.” The Supreme Court of Brazil is considering a similar argument.

Depending on how the issue is framed, legalization of all drugs can appeal to conservatives, who are instinctively suspicious of bloated budgets, excess government authority, and intrusions on individual liberty, as well as to liberals, who are horrified at police overreach, the brutalization of Latin America, and the criminalization of entire generations of black men. It will take some courage to move the conversation beyond marijuana to ending all drug prohibitions, but it will take less, I suspect, than most politicians believe. It's already politically permissible to criticize mandatory minimums, mass marijuana-possession arrests, police militarization, and other excesses of the drug war; even former attorney general Eric Holder and Michael Botticelli, the new drug czar—a recovering alcoholic—do so. Few in public life appear eager to defend the status quo.

This month, the General Assembly of the United Nations will be gathering for its first drug conference since 1998. The motto of the 1998 meeting was “A Drug-Free World—We Can Do It!” With all due respect, U.N., how'd that work out for you? Today the U.N. confronts a world in which those who have suffered the most have lost faith in the old strong-arm ideology. That the tide was beginning to turn was evident at the 2012 Summit of the Americas in Cartagena, Colombia, when Latin American leaders for the first time openly discussed—much to the public discomfort of President Obama—whether legalizing and regulating drugs should be the hemisphere's new approach.

When the General Assembly convenes, it also will have to contend with the startling fact that four states and the capital city of the world's most zealous drug enforcer have fully legalized marijuana. “We're confronted now with the fact that the U.S. cannot enforce domestically what it promotes elsewhere,” a member of the U.N.'s International Narcotics Control Board, which monitors international compliance with the

conference's directives, told me. Shortly before Oregon, Alaska, and the District of Columbia added themselves to the legal-marijuana list, the State Department's chief drug-control official, William Brownfield, abruptly reversed his stance. Whereas before he had said that the "drug control conventions cannot be changed," in 2014 he admitted that things had changed: "How could I, a representative of the government of the United States of America, be intolerant of a government that permits any experimentation with legalization of marijuana if two of the fifty states of the United States of America have chosen to walk down that road?" Throughout the drug-reform community, jaws dropped.

As the once-unimaginable step of ending the war on drugs shimmers into view, it's time to shift the conversation from *why* to *how*. To realize benefits from ending drug prohibition will take more than simply declaring that drugs are

It's hard to imagine people enjoying a little heroin now and then, or a hit of methamphetamine, without going off the deep end, but they do it all the time. The government's own data, from the Substance Abuse and Mental Health Services Administration, shatters the myth of "instantly addictive" drugs. Although about half of all Americans older than twelve have tried an illegal drug, only 20 percent of those have used one in the past month. In the majority of those monthly-use cases, the drug was cannabis. Only tiny percentages of people who have sampled one of the Big Four—heroin, cocaine, crack, and methamphetamine—have used that drug in the past month. (For heroin, the number is 8 percent; for cocaine, 4 percent; for crack, 3 percent; for meth, 4 percent.) It isn't even clear that using a drug once a month amounts to having a drug

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legal. The risks are tremendous. Deaths from heroin overdose in the United States rose 500 percent from 2001 to 2014, a staggering increase, and deaths from prescription drugs—which are already legal and regulated—shot up almost 300 percent, proving that where opioids are concerned, we seem to be inept not only when we prohibit but also when we regulate. A sharp increase in drug dependence or overdoses that followed the legalization of drugs would be a public-health disaster, and it could very well knock the world back into the same counterproductive prohibitionist mind-set from which we appear finally to be emerging. To minimize harm and maximize order, we'll have to design better systems than we have now for licensing, standardizing, inspecting, distributing, and taxing dangerous drugs. A million choices will arise, and we probably won't make any good decisions on the first try. Some things will get better; some things will get worse. But we do have experience on which to draw—from the end of Prohibition, in the 1930s, and from our recent history. Ending drug prohibition is a matter of imagination and management, two things on which Americans justifiably pride themselves. We can do this.

Let's start with a question that is too seldom asked: What exactly is our drug problem? It isn't simply drug use. Lots of Americans drink, but relatively few become alcoholics.

problem. The portion of lifetime alcohol drinkers who become alcoholics is about 8 percent, and we don't think of someone who drinks alcohol monthly as an alcoholic.

In other words, our real drug problem—debilitating addiction—is relatively small. One longtime drug-policy researcher, Peter Reuter of the University of Maryland, puts the number of people addicted to hard drugs at fewer than 4 million, out of a population of 319 million. Addiction is a chronic illness during which relapses or flare-ups can occur, as with diabetes, gout, and high blood pressure. And drug dependence can be as hard on friends and family as it is on the afflicted. But dealing with addiction shouldn't require spending \$40 billion a year on enforcement, incarcerating half a million, and quashing the civil liberties of everybody, whether drug user or not.

It's possible, of course, that one reason we have a relatively small number of drug addicts is precisely that the most addictive drugs are illegal. If cocaine were to be legalized, says Mark Kleiman, a professor of public policy at New York University who has been a critic of the war on drugs since the 1970s, there's no evidence indicating that the number of cocaine abusers would be less than the number of alcoholics, or about 17.6 million. Moreover, legalizing cocaine might worsen both cocaine addiction and alcoholism, Kleiman adds. "A limit to alcoholism is you fall asleep. Cocaine

fixes that. And a limit to cocaine addiction is you can't sleep. Alcohol fixes that."

Kleiman's prediction of a big increase in post-legalization addiction rates seems intuitively correct. Common sense and decency dictate that any plan for legalizing drugs ought to make provisions for a rise in dependence. Millions of addicts already go untreated in the United States. Although treatment is a bargain—the government estimates that for every dollar spent on drug treatment, seven are saved—treatment and prevention get only 45 percent of the federal drug budget while enforcement and interdiction get 55 percent, and that's not including the stupendous cost of incarcerating drug offenders. Treatment may become more available now that the Affordable Care Act requires many insurers to pay for mental-health services, including drug addiction, at parity with physical illnesses. Training effective treatment providers is time-consuming and expensive, but the billions

6.0 to 8.6 per 1,000 people over the same time span. Because addicts can now legally obtain sterile syringes in Portugal, decriminalization seems to have cut radically the number of addicts infected with H.I.V., from 907 in 2000 to 267 in 2008, while cases of full-blown AIDS among addicts fell from 506 to 108 during the same period.

The new Portuguese law has also had a striking effect on the size of the country's prison population. The number of inmates serving time for drug offenses fell by more than half, and today they make up only 21 percent of those incarcerated. A similar reduction in the United States would free 260,000 people—the equivalent of letting the entire population of Buffalo out of jail.

When applying the lessons of Portugal to the United States, it's important to note that the Portuguese didn't just throw open access to dangerous drugs without planning for people who

WE CANNOT BEGIN TO ENJOY THE BENEFITS OF MANAGING DRUGS AS A MATTER OF HEALTH AND SAFETY, INSTEAD OF AS A MATTER OF LAW ENFORCEMENT, UNTIL THE DRUGS ARE LEGALIZED AT EVERY LEVEL OF AMERICAN JURISPRUDENCE

freed up by the end of enforcement and mass incarceration could be used to help address that need.

It is also not a certainty that legalizing drugs would result in the huge spike in addiction that Kleiman predicts. In fact, some data argue against it. The Netherlands effectively decriminalized marijuana use and possession in 1976, and Australia, the Czech Republic, Italy, Germany, and New York State all followed suit. In none of these jurisdictions did marijuana then become a significant health or public-order problem. But marijuana's easy; it isn't physically addictive. So consider Portugal, which in 2001 took the radical step of decriminalizing not only pot but cocaine, heroin, and the rest of the drug spectrum. Decriminalization in Portugal means that the drugs remain technically prohibited—selling them is a major crime—but the purchase, use, and possession of up to ten days' supply are administrative offenses. No other country has gone so far, and the results have been astounding. The expected wave of drug tourists never materialized. Teenage use went up shortly before and after decriminalization, but then it settled down, perhaps as the novelty wore off. (Teenagers—particularly eighth graders—are considered harbingers of future societal drug use.)

The lifetime prevalence of adult drug use in Portugal rose slightly, but problem drug use—that is, habitual use of hard drugs—declined after Portugal decriminalized, from 7.6 to 6.8 per 1,000 people. Compare that with nearby Italy, which didn't decriminalize, where the rates rose from

couldn't handle them. Portugal poured money into drug treatment, expanding the number of addicts served by more than 50 percent. It established Commissions for the Dissuasion of Drug Addiction, each of which is composed of three people—often a doctor, a social worker, and an attorney—who are authorized to refer a drug user to treatment and in some cases impose a relatively small fine. Nor did Portugal's decriminalization experiment happen in a vacuum. The country has been increasing its spending on social services since the 1970s, and even instituted a guaranteed minimum income in the late 1990s. The rapid expansion of the welfare state may have contributed to Portugal's well-publicized economic troubles, but it can probably also share credit for the drop in problem drug use.

Decriminalization has been a success in Portugal. Nobody there argues seriously for abandoning the policy, and being identified with the law is good politics: during his successful 2009 reelection campaign, former prime minister José Sócrates boasted of his role in establishing it.

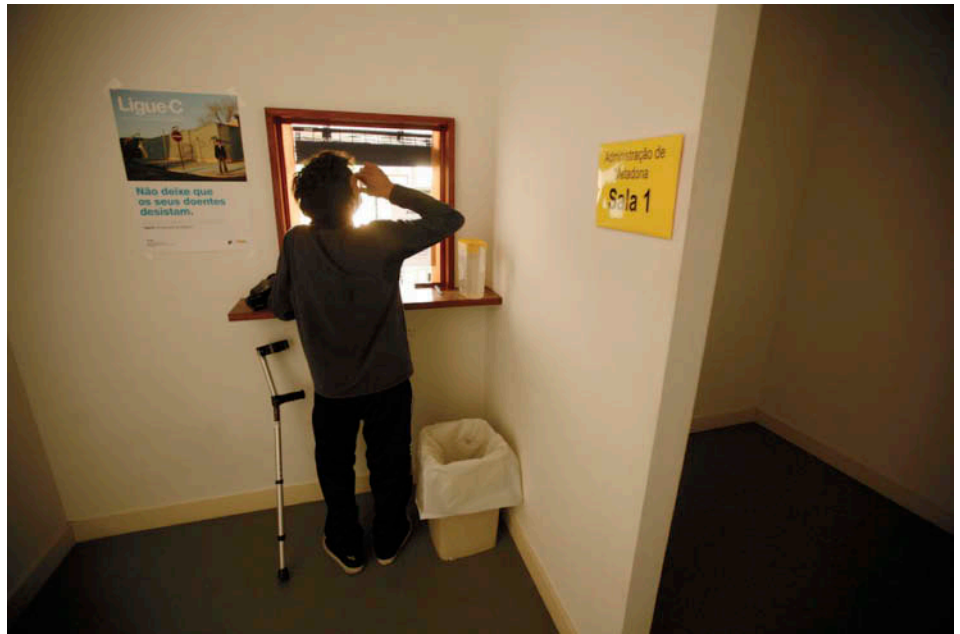
So why doesn't the United States decriminalize? It's an attractive idea: Lay off the innocent users and pitiable addicts; keep going after the really bad guys who import and push the drugs. But decriminalization doesn't do enough. As successful as Portugal's experiment has been, the Lisbon government still has no con-

trol over drug purity or dosage, and it doesn't make a dime in tax revenue from the sale of drugs. Organized crime still controls Portugal's supply and distribution, and drug-related violence, corruption, and gunned-up law enforcement continue. For these reasons, the effect of drug decriminalization on crime in Portugal is murky. Some crimes strongly associated with drug use increased after decriminalization—street robberies went up by 66 percent, auto theft by 15 percent—but others dropped. (Thefts from homes fell by 8 percent, thefts from businesses by 10 percent.) A study by the Portuguese police found an increase in opportunistic crimes and a reduction in premeditated and violent crimes, but it could not conclude that the changes were due to the decriminalization of drugs. Heavy-handed enforcement also requires favoring scare tactics over honest inquiry, experimentation, and data gathering; and scare tactics are no way to deal with substances as dangerous as heroin, cocaine, and methamphetamine.

Portuguese-style decriminalization also wouldn't work in the United States because Portugal is a small country with national laws and a national police force, whereas the United States is a patchwork of jurisdictions—thousands of overlapping law-enforcement agencies and prosecutors at the local, county, state, and federal levels. Philadelphia's city council, for example, voted to decriminalize possession of up to an ounce of marijuana in June 2014, and within a month state police had arrested 140 people for exactly that offense. "State law trumps city ordinances," Police Commissioner Charles Ramsey told the *Philadelphia Inquirer*. And while marijuana may be legal in four states and D.C., under federal law it is still as illegal as heroin or LSD—and even more tightly controlled than cocaine or pharmaceutical opioids. The Obama Administration has decided, for the moment, not to interfere with the states that have legalized marijuana, but times change and so do administrations. We cannot begin to enjoy the benefits of managing drugs as a matter of health and safety, instead of as a matter of law enforcement, until the drugs are legalized at every level of American jurisprudence, just as alcohol was re-legalized when the United States repealed the Eighteenth Amendment in 1933.

One of the evils that led to Prohibition in the first place was the system of "tied houses"—

saloons owned by alcohol producers that marketed their product aggressively. As Prohibition was ending, John D. Rockefeller commissioned a report published as *Toward Liquor Control* that advocated total government control of alcohol distribution. "Only as the profit motive is eliminated is there any hope of controlling the liquor traffic in the interests of a decent society," he said. That never happened, of course. Tied houses were banned, but Seagram, Anheuser-Busch, and other companies became gigantic from the manufacture and sale of alcohol; only eighteen states assumed any direct control over the distribution process.



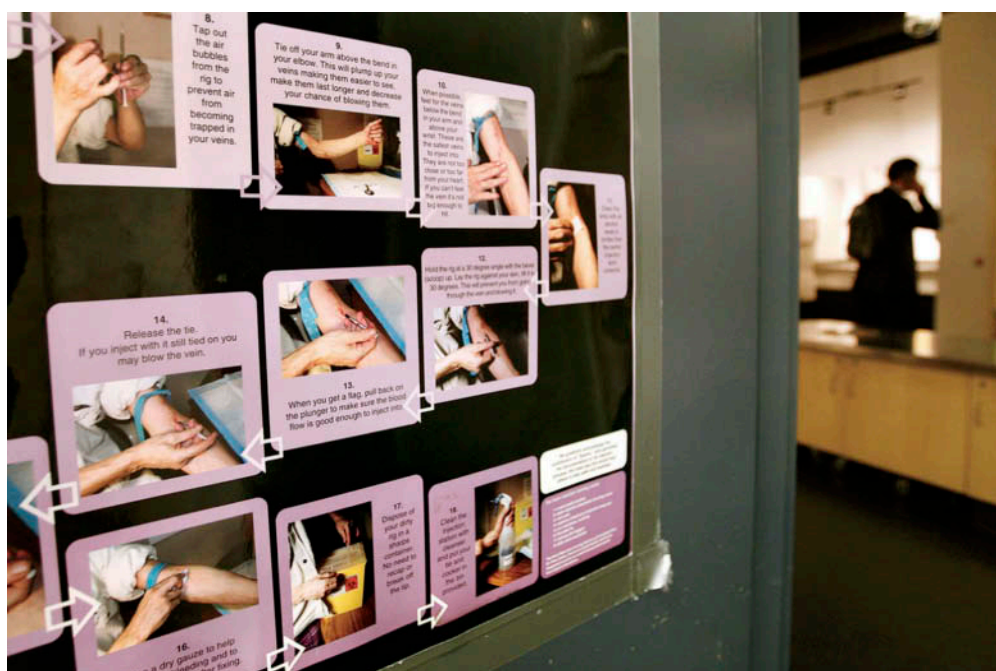
We've grown used to living with the consequences of legal alcohol, even though alcohol is undeniably costly to the nation in lives and treasure. But few would argue for a return to Prohibition, in part because the liquor industry is so lucrative and so powerful. Binge drinkers—20 percent of the drinking population—consume more than half of the alcohol sold, which means that for all the industry's pious admonitions to "drink responsibly," it depends on people doing the opposite. At the same time, Big Alcohol's clout keeps taxation low. Kleiman, of NYU, estimates alcohol taxes to be about a dime a drink; the societal cost in disease, car wrecks, and violence is about fifteen times that. Neither the binge-dependent economics of alcohol nor the industry's capture of the regulatory process is something we would want to mimic when legalizing substances such as heroin and crack cocaine. We'll have to do a better job at legalizing drugs than we did at re-legalizing alcohol if we want to

hold addiction to a minimum, keep drugs away from children, assure drug purity and consistency of dosage, and limit drugged driving. Last November, Ohio voters rejected marijuana legalization, most observers believe, precisely because the proposed initiative would have allowed only ten companies, all of which sponsored the initiative, to grow and distribute marijuana in the state.

If we can summon the political will, the opportunity to establish a state monopoly on drug distribution, just as Rockefeller urged for alcohol in 1933, is now—before the genie is out of the

we'll want to discourage consumption. This goal could be accomplished, at least in part, under a system of regulated, for-profit stores: by setting limits on advertising and promotion (or banning them altogether), by preventing marketing to children, by establishing minimum distances from schools for retail outlets, by nailing down rules about dosage and purity, and by limiting both the number of stores and their hours of operation. In a for-profit system, however, the only way government can influence price—the strongest disincentive to consumption—is by levying a tax, and getting taxes right is no small task. First, on what

basis should the tax apply? Federal taxes on alcohol are set according to potency, but keeping up with the THC content of every strain of marijuana would be impossible. Weight? The more potent the drug, the less you need to buy, so taxing by weight might end up promoting stronger drugs over weaker. Price? Post-legalization prices are likely to plummet as the “prohibition premium”—which compensates dealers for the risk of getting caught—disappears, competition sets in, and innovation increases production. To keep prices high enough to discourage use, legislators will have to monitor those prices constantly and risk their jobs



bottle. Switzerland, Germany, and the Netherlands have successfully made heroin legally available to addicts through networks of government-run dispensaries that are divorced from the profit motive. The advantages of a state monopoly over a free market—even a regulated one—are vast.

In the 1970s, the eighteen states that established government control over alcohol distribution at the end of Prohibition began to water down their systems by feeding their wholesale or retail alcohol businesses, or both, to private industry. Still, in 2013 a team of researchers at the University of Michigan found that even in “weak monopoly” states, consumption of spirits was 12 to 15 percent lower than in states with private liquor stores or grocery stores. In states that retained control over retail sales, alcohol-related traffic fatalities were about 7 to 9 percent lower than in states that did not; crime rates were lower as well.

Just about everybody who thinks seriously about the end of drug prohibition agrees that

by pushing for politically unpopular tax increases.

“It’s too hard to adjust taxes quickly enough,” said Pat Oglesby, a North Carolina tax lawyer who was chief tax counsel for the Senate Finance Committee from 1988 to 1990 and who now researches marijuana taxes. “Legislatures love lowering taxes. Getting them to raise taxes is like pulling teeth.” What’s more, if legislators overdo it and set taxes too high, they’ll risk reawakening a black market in untaxed drugs.

A government monopoly on distribution solves the problem by making the setting of prices a matter of administration, not legislation. Government officials, whether at the state or federal level, would have infinite flexibility to adjust the price—daily, if necessary—to minimize use without inspiring a black market. The production of marijuana, cocaine, and heroin could remain in private hands, and the producers could supply the government stores, just as Smirnoff, Coors, and Mondavi provide their products to state liquor stores. If the cost

of producing a drug drops because of innovation or competition, the government agency selling that drug to the public would see an increase in revenues. Likewise, it is much easier for the government to set the dosage and purity of products it sells in its own outlets than to police the dosage and purity of products that are spread throughout a free market. And the government could decide on its own to what extent it wants to permit advertising, attractive packaging, and promotions.

Finally, of course, when the government holds a monopoly, the public, not private shareholders, enjoys the profit. The states that retain control over alcohol distribution collect 82 to 90 percent more in revenue than states that license private alcohol sales collect in taxes, depending on whether they control both wholesale and retail. That the government should profit from a product it wants to discourage could be seen as hypocritical, but that's the way things stand now with tobacco, alcohol, and gambling. States generally reduce the moral sting of those profits by earmarking them for education or other popular causes. In the case of drugs, the profits could go toward treating addicts. The great thing about trying a state monopoly first is that if it doesn't work, it's politically much easier to liberalize to a regulated free market than to go the other way.

But as long as federal law in the United States maintains an absolute prohibition on marijuana, cocaine, and heroin—and stringent restrictions on methamphetamine—it's hard to imagine state drug monopolies on the model of state liquor stores. Even if the international bans on Schedule I drugs were to lift, could our legislators muster the will to legalize them, much less to expand government to distribute them? It's one thing for the chief executive to turn a blind eye to the states' experiments in licensed marijuana commerce; it's another to grind the gears and shift conservative congressional sensibilities.

This is a pity, since a government monopoly would be the least expensive and most flexible way to legalize drugs. It would generate the most revenue and—more important—it would protect public health. Until Congress reschedules marijuana, heroin, and cocaine,

and until we get over the idea that government can do nothing right, we're stuck with second best: state-size experiments that ignore the federal ban on marijuana and license private industries. Colorado is the furthest along that path, and its experience is instructive.

Colorado has allowed medical marijuana since 2000 through a system of licensed private dispensaries. The state originally required marijuana businesses to be vertically integrated; dispensaries could sell only what they grew



themselves—a replication of the old tied houses. The theory was that it was easier to regulate businesses from “seed to sale.” In November 2012, 55 percent of voters approved Amendment 64 to the Colorado constitution, which legalized recreational marijuana. (The initiative was strategically timed; having marijuana on the ballot helped draw young and progressive voters to the polls to win the state for President Obama.) After the election, Colorado chose a system of licensed businesses over state monopoly; in 2014, it dropped the requirement that recreational dispensaries be vertically integrated—one business can now grow marijuana for another to sell. As soon as Governor John Hickenlooper formalized the results, five weeks after the vote, Coloradans twenty-one years of age and older could legally possess and use marijuana. Stores and commercial cultivators were not allowed to open, though, until January 2014, fourteen months after the vote. The delay was meant to allow the state time to

expand the Marijuana Enforcement Division, within the Department of Revenue, to incorporate retail marijuana into its jurisdiction, and to allow the division to write rules concerning signage, advertising, waste disposal, video surveillance, labeling, taxes, and required distances from schools.

Already, legal marijuana in Colorado is following the grim economics of alcohol. Daily smokers make up only 23 percent of the state's pot-smoking population, but they consume 67 percent of the reefer. That may have been true too when marijuana was illegal; maybe the number of daily stoners is neither rising nor falling. We'll never know, because one problem with illegal markets is that you can't track them. But we do know that the legal, for-profit marijuana business in Colorado is already mimicking the alcohol business in its dependence on heavy users. From a public-health standpoint, that's troubling.



The effect of legalization on crime has been difficult to determine. Overall, crime fell in Denver by almost 2 percent in 2014, the first year of full marijuana legalization. And, strangely, surveys of 40,000 teenagers before and after legalization showed that although fewer now believed marijuana to be harmful—just as the opponents of legalization predicted—*fewer were smoking pot*. Were they lying? Was it a statistical anomaly? Are pot dealers harder to find now that they're competing with legal stores? Or is it possible that marijuana, once legalized, lost its cachet?

Colorado has run into glitches. The fourteen months between the vote and the opening of the stores wasn't enough time to write regulations on such variables as pesticide use in cultivation or dosages in edibles. Nor was there time to write a new training curriculum for police, who found themselves not knowing exactly what to do about the large quantities of marijuana they were encountering. People have been stringing extension cords together to make their own grow rooms—and burning down their homes. They've pumped so much water into pot cultivation that monstrous blooms of black mold have rendered their houses uninhabitable. And Denver has seen a spate of burglaries and robberies at marijuana greenhouses and stores. The law let local jurisdictions decide whether to allow retail pot stores. Only thirty-five counties did so at first, which is partly why the state received only \$12 million in new marijuana taxes in the first six months of legal pot sales—about a third of what regulators had anticipated. (“That’s changing,” said Lewis Koski, the forty-four-year-old who is the deputy senior director of Colorado’s Enforcement Division, in 2014. “Just about every week we have new jurisdictions allowing it.”) It may also be that the state set the tax on retail marijuana too high—10 percent on top of the usual sales tax. Some smokers are apparently continuing to buy on the black market, which is often cheaper. (It may be that almost everybody who wanted to buy legal pot already had a medical-marijuana I.D. card; 111,000 Coloradans—more than 2 percent of the population—hold them, and medical pot carries only the regular sales tax.) Still, in 2015, Colorado collected about \$135 million in marijuana taxes and fees, almost double what it took in the year before.

Cracking down on unlicensed growing operations and training cops has been relatively easy. What's going to be tougher is keeping big business from overwhelming the exercise and rigging the game. Even with only four states and the District of Columbia having legalized, and only twenty-three states allowing the medical use of marijuana, legitimate production is already a \$5.4 billion industry. *Forbes* has published a list of the “8 Hottest Publicly Traded Marijuana Companies.” Cannabis stocks include biotech companies, makers of spe-

cialized vending machines, and manufacturers of vaporizers that allow inhalation without tar or burning the product. The combined value of marijuana stocks rose by 50 percent in 2013 and by 150 percent in the first three weeks of 2014, before settling down to a still-impressive 38 percent gain for the year. In September 2014, MJardin, a maker of turnkey growing operations, announced that it was considering an initial public offering. Even the *Wall Street Journal* analyzes marijuana as a serious investment opportunity. These enormous bets are being placed at a time when recreational marijuana is still illegal in forty-six states and under federal law.

The citizens of the U.S. jurisdictions that legalized marijuana may have set in motion more machinery than most of them had imagined. “Without marijuana prohibition, the government can’t sustain the drug war,” Ira Glasser, who ran

have to worry, as they used to, about neighbors smelling reefer smoke wafting from their patios. Even if marijuana tax revenues—which are slated to help public schools—aren’t what we’d hoped, our state is making money from something that used to cost it money. Marijuana is *no big deal*. We look at other states that treat it as a public menace and wonder what in the world they’re thinking.

Nobody I spoke with in the United States or elsewhere envisioned stores selling heroin, cocaine, or methamphetamine as freely as Colorado stores sell marijuana or as state liquor stores sell vodka. The way most researchers imagine hard-drug distribution, short of a state monopoly, involves some kind of supervision. A network of counselors—not necessarily physicians—would monitor how a drug fits into a person’s life. When Kleiman, at NYU, allows himself to imagine legal cocaine, he pictures users setting their own dose.

NOBODY I SPOKE WITH IN THE UNITED STATES ENVISIONED STORES SELLING HEROIN, COCAINE, OR METHAMPHETAMINE AS FREELY AS COLORADO STORES SELL MARIJUANA OR AS STATE LIQUOR STORES SELL VODKA

the American Civil Liberties Union from 1978 to 2001, told me. “Without marijuana, the use of drugs is negligible, and you can’t justify the law-enforcement and prison spending on the other drugs. Their use is vanishingly small. I always thought that if you could cut the marijuana head off the beast, the drug war couldn’t be sustained.”

Even in my hometown of Boulder, which may be the most pot-friendly city in the United States, “it’s not marijuana gone wild,” as Jane Brautigam, the city manager, told officials from Colorado and Washington during a public conference call in September 2014. People were, for the most part, “feeling okay about it,” she said. Marijuana charges in Colorado were down 80 percent: only 2,000 or so Coloradans were charged for marijuana offenses in 2014, as opposed to nearly 10,000 in 2011. Brautigam has had to shut down a few marijuana businesses for violations, but no more than in other industries. “There was an implication that there would be people smoking all over the place,” she said. “That hasn’t happened.” When I checked in with her office in January, things were still going well, Patrick von Keyserling, the city communications director, told me, in large part because “it’s a very well-regulated industry.”

To the extent that we in Colorado think about legal marijuana, now that the initial excitement has worn off, we have a smug sense that we have taken the lead in doing something smart. We are as divided as any place over immigrants, guns, and climate change, but our police don’t waste their time chasing down pot smokers anymore. Adults don’t

“You can decide whether you want to raise your quota—a bureaucratic process—or see someone about your cocaine problem. This is to give your long-term self a fighting chance against your short-term self.”

Eric Sterling, the executive director of the anti-prohibition Criminal Justice Policy Foundation, envisions a similar system. “Someone might say, ‘I want cocaine because it stimulates me in my creative work,’ or, ‘I want cocaine to improve my orgasms.’ The response might be, ‘Why don’t you have enough energy? Do you exercise?’ Or, ‘What might be interfering with the current quality of your sex life?’” Those who want to try LSD or other psychedelics, Sterling suggests, might go to licensed “trip leaders,” analogous to wilderness guides—people trained, indemnified, and insured to take the uninitiated into potentially dangerous territory.

Of course, it’s easy to imagine people who enjoy cocaine, heroin, or psychedelics saying “to hell with all that” and continuing to buy on the black market. But, as Sterling points out, doing so is risky. If someone as rich and well-connected as Philip Seymour Hoffman can die from a heroin shot, nobody is safe. Also, as Sterling notes, “It’s a hassle to be an addict. Find a dealer, score, find a place to get off . . .” If a lawful, regulated system is fine-tuned—so that drugs are cheap and trustworthy, the process is not too burdensome, and the taxes on them are not too high—users will likely come to prefer it to the black market. Competition, not violence, will destroy the

criminal gangs that control illegal drug distribution. “Ultimately this is all about building the proper cultural context for using drugs,” Sterling says, a context in which “the exaggerations and the falsehoods get extinguished.”

In 2009, Britain’s Transform Drug Policy Foundation put out a 232-page report called “After the War on Drugs: Blueprint for Regulation.” The authors suggested issuing licenses for buying and using drugs, with sanctions for those who screw up—much like gun licenses in some U.S. states, or driver’s licenses. Users would have their purchases tracked by computer, so rising use would, in theory, be noticed, making intervention possible. Legal vendors would bear partial responsibility for “socially destructive incidents”—the way bartenders can be held responsible for serving an obvious drunk who later has an accident behind the wheel. For pricing, the report suggests prices high enough to “discourage misuse, and sufficiently low to ensure that under-cutting . . . is not profitable for illicit drug suppliers.” And although the British group argued for a generally more laissez-faire market than European and Canadian government-run heroin-distribution systems, it embraced a complete ban on any kind of advertising and marketing, and argued instead for plain, pharmaceutical-style packaging.

I voted for marijuana legalization even though I hadn’t smoked pot in years and wasn’t much interested in doing so. Legalization seemed a sensible political and economic measure, and a way to distinguish Colorado as a progressive beacon of the West. But one night in July, I was headed for the Cruiser Ride, Boulder’s goofy, costumed weekly bicycle parade, and I thought it might be fun to try it stoned. It was a lightbulb-over-the-head moment. A year ago, I wouldn’t have known where to find a joint. Now, I simply pedaled to the Green Room, a marijuana retail store a mile from my house. Although I wear every one of my fifty-nine years on my face, I was carded—in a reception room decorated with portraits of Jerry Garcia and Jimi Hendrix. A bud tender escorted me into the store, where I stood at a counter, separated from the customer next to me by a discreet, bank-teller-like divider. I picked up a card titled EDIBLES EDUCATION: START LOW, GO SLOW and read that if I bought any of the pot-laced artisanal goodies, I should not consume them with alcohol; I should keep them out of the reach of children; I should start with a single small serving and wait two hours before taking more. “Everybody’s metabolism is different,” it said. For a new consumer, no more than one to five milligrams of cannabis was recom-

mended; the potency of the buttery candies and cookies was listed on the labels. This was a far cry from the fibrous, foul-tasting pot brownies I used to eat before late-night college screenings of *2001: A Space Odyssey*.

A young bud tender—tattooed and achingly professional—presided over a copious array of marijuana blossoms in large glass apothecary jars. I confess I got a little lost as he discoursed, with Talmudic subtlety, on the differences between Grape Ape, Stardawg, and Bubba Kush. The joint that I bought for \$10—fat, expertly rolled, and with a little paper filter—came in a green plastic tube with a police-badge-shaped sticker reading DEPARTMENT OF REVENUE, MARIJUANA. For someone who started buying pot in alleys when Gerald Ford was president, this felt like Elysium.

I wasn’t allowed to light up in the store or outside on the street; I had to go home to smoke legally. As instructed, I started low and went slow, taking only one hit. Twenty minutes later, I was stoned in that good way I remembered: I felt perceptive and amused, with none of the sluggishness or paranoia common to the old fifteen-dollar ounces. That single joint I bought is so strong that even though I’ve taken hits from it half a dozen times since my Cruiser Ride, I still have about a third left, a treat to keep around for the right occasion.

So under legalization I have become a pot smoker again. But I don’t drive stoned or need treatment, so who cares? I drink a beer or a dram of Laphroaig most days too, and I still hit my deadline for this article.

If it is now time to start thinking creatively about legalization, we’d be wise to remember that, like carefully laid military plans, detailed drug-liberalization strategies probably won’t survive their first contact with reality. “People are thinking about the utopian endgame, but the transition will be unpredictable,” says Sterling, of the Criminal Justice Policy Foundation. “Whatever system of regulation gets set up, there will be people who exploit the edges. But that’s true for speeding, for alcohol, for guns.” Without a state-run monopoly, there will be more than one type of legal, regulated drug market, he says, and the markets won’t solve every conceivable problem. “Nobody thinks our alcohol system is a complete failure because there are after-hours sales, or because people occasionally buy alcohol for minors.” Legalizing, and then regulating, drug markets will likely be messy, at least in the short term. Still, in a technocratic, capitalist, and fundamentally free society like the United States, education, counseling, treatment, distribution, regulation, pricing, and taxation all seem to better fit our national skill set than the suppression of immense black markets and the violence and corruption that come with it. ■