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## REFORMS TO CANNABIS POLICY IN THE USA

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*“There has been a dramatic decrease in arrests in all other areas but no-one is out of a job because marijuana arrests are dramatically increasing.”*

Tamar Todd

Tamar Todd discussed 3 points: First, the place of cannabis in the context of the ‘War on Drugs’ in the United States, and public support around the issue of legalisation; secondly, what some of the individual US states have done regarding cannabis policy, creating legal medical markets under state law; and finally, the Federal Government’s response to those changes and their current position on the issue.

### THE ROLE OF CANNABIS IN THE WAR ON DRUGS CONTEXT

Cannabis plays a central role in the US ‘War on Drugs’ context, as it is still the driving force behind overall drug prohibition and policies. Marijuana arrests total over half of all drug arrests in the entire US: 46% of all arrests are for marijuana possession alone. Therefore, if we removed marijuana from the equation, the prohibition framework would to some extent collapse and radically alter the law enforcement landscape. The number of arrests has been increasing over time, and dramatically so in the last 20 years. While the public discourse and public opinion have moved in the other direction, there is a serious investment in law enforcement, and an institutional investment in the prohibition policies that exist in this structure. This pattern is consistent among the individual states, and it is happening at a time when arrests for most other offences and most violent crime have dramatically dropped.

There are also overwhelming racial disparities in who is arrested in the US for marijuana offences. Research has shown that the focus of arrests are young people, black people, and Latinos. In New York City, 85% of all 2010 marijuana possession arrests were black and Latino people, even though they make up 50% of the population in New York City, even though rates of use are in fact higher among white people than among blacks and Latinos.

The injustice of these facts is shocking, and it is also important to understand another impediment to a change of US law, namely that the affluent segment of society has

more power to change the law. Marijuana laws are essentially unenforced against those groups; the enforcement happens in communities with a high level of policing and more disenfranchisement. This makes efforts to change the law ineffective.

At the same time, public support for legalisation is on the rise. The latest poll came out last month, and for the first time since the beginning of the poll, 50% of Americans supported the concept of legalisation. That support drops a bit once you get into the details of how, what market, where, and what it looks like. But nonetheless, 50% of people agree on the general concept that the current path is not working, and that we need to change course and legalise. Support for the legalisation of medical marijuana has been high for a very long time with polls at about 70-80% in favour, and that has been consistent over the past 10 years or so.

## US STATES AND CANNABIS POLICY: SOME POSSIBLE MODELS

A number of US states, including California, Colorado, and Washington, have a mechanism in place by which voters can place an initiative on the ballot through signature-gathering and directly vote on it, bypassing the legislature. That was the beginning of medical marijuana legalisation in California in 1996. In the last election in 2010, we saw Proposition 19 on the ballot, which would have legalised personal use and cultivation of marijuana, and would also have allowed localities the ability to create a legal market for the production and distribution through licensing. It did not pass, but got about 46.5% of the vote, which is nevertheless successful in moving the discussion forward and normalising the concept. Although it is not certain whether there will be another initiative on the California ballots in 2012, we are likely to see similar initiatives in Colorado and Washington State.

Over the past 30 years, many states have taken steps to liberalise marijuana laws, either through the ballot, the direct-vote referendum, or the legislature. This is significant, because 99% of marijuana arrests are made by state and local police. A state's decision to liberalise its own law would therefore have a dramatic impact on the actual number of arrests.

To date, there are 14 states that have decriminalised marijuana (i.e., removed jail as a sanction, although some only moved it from a felony to a misdemeanour with no jail time, or from a misdemeanour to a criminal or civil infraction). This has been successful in some regards: Individuals have spent less time incarcerated, and it has freed up judicial and law-enforcement resources by reducing penalties and court costs. However, there are some shortcomings of simple decriminalisation vs. full legalisation: First, it does not deal with the racial disparities, and secondly, it does not deal with the very serious collateral consequences, such as the ability to rent an apartment, get a job, get future employment, etc. Many people, even with only a criminal misdemeanour or criminal infraction on their record for a drug offence, are branded for life, and hindered in their ability to get employment. They may think they are just getting a ticket on the street when they have a short interaction with law-enforcement but are not formally arrested, but they actually end up with a criminal record that lives to haunt them.

In addition, in a number of states there has actually been a net increase in people who are brought into the criminal justice system when penalties are reduced. From the

law-enforcement's point of view, they no longer have to deal with the ordeal of bringing someone down to the station, booking them, and going through a court procedure; they can simply give a ticket. This also raises extra revenue. So for states like New York, which decriminalised marijuana in the 1970s, in New York City alone there were 50,000 arrests in 2010. In California, which in theory decriminalised marijuana in the 1970s, last year there were over 60,000 arrests. In the United States as a whole there were 850,000 arrests for possession in 2010, and those trends appear in the states that have decriminalised. Decriminalisation therefore has not effectively reduced the law-enforcement interaction with the individual.

To date, 16 states and the District of Colombia have gone a step further with medical marijuana: rather than merely decriminalise it, they have legalised it, i.e., given people a legal right, if they meet certain conditions, to obtain and use marijuana for medicinal purposes. Some states have even created a legal, regulated market for marijuana. Seventeen more states have considered or are currently considering adopting a similar measure. There are 90 million Americans – 30% of the population – who live in one of these states, and it is estimated that about a million qualify as patients. The estimates are rough because some states require registering with the state, giving an exact number of patients, while other states like California do not require registration, so it is an estimated number.

Most of the states (although California is in a category of its own) have created a fairly tightly-regulated system for obtaining cannabis that is run through the Department of Health. In defence of California, it is important to remember that the states that endeavoured to create this market and to legalise medical marijuana did so in the context of severe Federal prohibition and threat. They were not able to sit down and devise the ideal regulatory model to serve patients and protect the community. They did it in a way that entailed a delicate balance between avoiding infringing on Federal law, protecting the privacy of patients, and trying to protect the providers from Federal law enforcement. Therefore, the market model may be effective, but the regulation and controls would be different in a system free of a federalist structure and a Federal government with certain requirements.

One way in which this is borne out is that patients are not required to get a prescription from their doctor, as this would create a conflict with Federal law; instead, they simply have to get a recommendation. The conditions under which patients are allowed to get a recommendation vary from state to state. In some states, it is a very short restrictive list, consisting of cancer, HIV, epilepsy, and a few others, with perhaps a process to petition the Department of Health to add more conditions. In California, the list is more expansive, and a provision states that if a doctor recommends it to help with a serious health problem, it can be legally obtained.

Nine states to date have developed a system of state-licensed and -controlled production and distribution. One example is New Mexico, where a form available on the Department of Health website can be filled out for a personal marijuana production license. Any patient can obtain one of these licenses and legally grow marijuana under New Mexico law. In addition, there are similar licenses for commercial producers. The State of New Mexico has licensed 25 producers and distributors, although the law requires them to be fairly small-scale.

In contrast, Colorado has also adopted a state-wide system of licensing and regulating, but they have licensed about 800 dispensaries. Dispensaries can be for-profit, and currently employ 8,000 unionised workers in the medical marijuana distribution system.

Other states have not opted for state licensing, but simply require registration with the state and a doctor's recommendation to grow marijuana for personal use (up to a certain number of plants, or anywhere from 1 ounce up to 24 ounces).

As regards California, its model is unique. It was the first state to adopt medical marijuana, and therefore in some sense had no other state to look to for a model. Its original initiative was very simple, but it has now grown into an industry, along with legislation allowing collectives and co-operatives to exist. These are regulated on a local level, which has led to a wide variety of approaches that localities have taken. Some localities do not want to deal with the dispensary boom and big economy, and are now trying to backtrack and shut them down. Other localities, like Oakland and San Francisco, immediately spearheaded detailed regulations. Oakland decided to license a small number of dispensaries, and to regulate, inspect, and collect taxes from them. These models have spawned some of the industry leaders, providing a model of how it can be done well.

In terms of the market, which in California as a whole is fairly large, an estimated \$1 billion were earned last year in legal medical marijuana sales under state law. California collects sales tax on these sales, amounting to ca. \$100 million in sales revenue. Some localities also collect additional local sales tax (e.g., the City of Oakland has a 5% tax), while others, such as San Francisco, take the position that it is a medicine and therefore should not be taxed. The City of Berkeley has imposed a standard business tax on property, and in fact, the Berkeley dispensary generates more tax revenue for its size than any other business in the city. In some ways, the localities and local governments are becoming dependent on the industry and therefore work to protect it, as the revenue comes at a time when they desperately need it.

In the case of Mendocino County, the main industry – both legal and illegal – is based on marijuana cultivation, largely for dispensaries. Here, the Sheriff of Mendocino County stepped in, as determining who was growing legally and who was not had become problematic. As a solution, he devised his own programme, where anyone could pay a fee in exchange for the ability to grow 99 plants or less, as long as they agreed to comply with all the regulations and agreed to property inspections. Zip ties provided by the Sheriff had to be affixed to each plant, indicating to the local law enforcement which plants were legal, which were not, and which were in compliance. Unfortunately, farms have still been raided by the Federal Government and torn to bits, despite the fact that they were in full compliance with the local law enforcement regulations and fees.

One dispensary in Oakland – Harborside Health Centre – is probably the largest dispensary in the country (most certainly the largest in California). It employs about 120 people and has tens of thousands of patients. They have been an industry leader in taking on self-regulation, monitoring, and testing quality and THC content, and have worked very closely with the City of Oakland to comply with the city's demands and meet their zoning and tax regulations.

Another example is a display case from the San Francisco Patient Resource Centre, showing one of their licensed dispensaries. In the display case that patients see, there is differentiation based on strain, THC content, whether or not organic, etc., so that the consumer can make an informed purchase. This dispensary, too, has self-imposed testing and labelling regulations, so that consumers have a good idea of the purchase – and if a strain worked well, the ability to go back and get a similar strain.

## CANNABIS POLICY AND THE US FEDERAL GOVERNMENT RESPONSE

Returning to the conflicts between local laws and the Federal government, it is regrettable that despite all the innovation on the local level and the broad public support, the Federal government remains hostile to all marijuana liberalisation, medical or otherwise.

When President Obama first came into office, there was hope that he would back off those who were in compliance with their state laws and regulations. However, that does not seem to be the case now. In the past year, his policies seem to have shifted, and he is attacking the state medical marijuana programmes in a number of ways. First through raids, and secondly, through letters to local officials, intimidating and dissuading them from adopting similar medical marijuana ordinances. The Federal government has also threatened banks that do business with dispensaries, causing them to withdraw their accounts, and large tax bills have been sent to many of the dispensaries (including Harborside), making no allowance for standard business expenses (e.g., payroll expenses, rent) other businesses can deduct – essentially making it impossible for them to operate. Landlords who rent property have been threatened with asset forfeiture and property seizure unless they evict medical marijuana dispensaries, and the Federal government continues to block research into medical marijuana by making it impossible for researchers to obtain marijuana or approval for studies. This is causing much fear and uncertainty among those who had operated under the assumption that they had a safe harbour with the Obama administration, and that by complying with state law they would be fine – which now appears not to be the case.