

Opinion: Legalizing drugs is constitutional

By Katie Kieffer

I believe states have the constitutional right to legalize drugs. For, the Constitution is silent on the federal government's ability to regulate or ban substances that adults choose to ingest at their own peril—or medical relief.

The Constitution is so silent on this matter of individual liberty (choosing to ingest or use drugs) that in order to ban the sale of alcohol during the Prohibition era, we passed the 18th Amendment. When we wised up and realized that banning alcohol doesn't work, we repealed the 18th Amendment via the 21st Amendment. I contend that federal drug laws are unconstitutional because they do not stem from a constitutional amendment.



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Since the Constitution defines our freedoms negatively, states and individuals retain all rights that are not explicitly delegated to the federal government. The 10th Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In other words, because the Constitution is silent on drugs, states alone have the constitutional power to regulate drugs.

Voters in states like California have exercised their constitutional right to legalize drugs, specifically medicinal marijuana to help cancer patients and those suffering from chronic pain due to autoimmune diseases like multiple sclerosis.

Californians aren't flower power hippies. These voters realize that if it's constitutional for individual Americans to binge on four-to-five alcoholic drinks in one sitting—drinks that incidentally do nothing to relieve chronic pain—it makes sense to legalize a far less lethal substance like marijuana with verified pain-relief benefits.

A prestigious medical study published by The Lancet in November 2010 reveals that alcohol is more lethal than heroin and crack cocaine and drastically more harmful than marijuana, ecstasy and LSD. On Jan. 6, 2012, The Lancet reaffirmed these findings with a global study revealing that: “marijuana was the world's most widely consumed illicit drug ... [and] the least likely of all illicit drugs to cause death,” as the New York Times relays.

We have not amended the Constitution to outlaw drugs. Nor did the war on drugs germinate in Congress. Instead, successive court rulings and executive orders have unconstitutionally banned drug use at the federal level—even to the point of overriding the sovereignty of states that explicitly legalize drugs.

And when the court decides to apply the Bill of Rights to state law, it winds up trampling ... on the most important safeguard of our liberties: the division of power between the federal and state governments. ... By the middle of the twentieth century the “due process” clause within the Fourteenth Amendment had come to be seen as the catchall phrase for federal intervention,’ writes author Jason Lewis in “Power Divided is Power Checked.”

Today, the Federal government, via the Department of Justice, has violated the separation of powers that the Founding Fathers wrote into the Constitution. Federal agents allege that medical marijuana dispensaries and growers violate “federal law”—ripping out medicinal cannabis plants and destroying legitimate livelihoods overnight.

The New York Times reports: “Federal law classifies the possession and sale of marijuana as a serious crime and does not grant exceptions for medical use, so the programs adopted here, in 15 other states and in the District of Columbia exist in an odd legal limbo. ... federal prosecutors have raided or threatened to seize the property of scores of growers and dispensaries in California that, in some cases, are regarded by local officials as law-abiding models. At the same time, the Internal Revenue Service has levied large, disputed tax charges against the state’s largest dispensary, threatening its ability to continue.”

The war on drugs began when President Richard Nixon bypassed Congress and declared a war on drugs on July 17, 1971. He said that drug abuse was a “national emergency” and America’s “public enemy number one.” He signed the “war” into law on January 28, 1972. By unconstitutional executive order, Nixon created the first drug czar and also created an extra-congressional agency to regulate drugs called the Drug Enforcement Agency (DEA). Successive Presidents have sustained this war.

Article I, Section 8 of the Constitution gives Congress (not the president) the “Power ... To declare war.” Federalist and framer Alexander Hamilton further explains the Constitution’s checks on executive reach in The Federalist No. 78. He says the president publicly declares and enforces the laws Congress makes and the decisions or appointments Congress approves: “The Executive not only dispenses the honors, but holds the sword of the community.”

Some might object that America's 40-year-long and over \$2.5-trillion fight against drug abuse isn't technically a "war." But that's a hard position to defend when scores of innocent Americans and Mexicans have died throughout our combat with brutal Mexican drug cartels. Since 2006 alone, when President Felipe Calderón declared his own war against drugs, between 40,000 and 50,000 people (depending on your source) have died in this conflict.

Moreover, the right to own your entire person is a fundamental human right and it is foundational to the Constitution. Unless you use wrongful force against another person or their property, you retain full ownership over your body. As John Locke points out, reason tells you that you fully own your body. No one else owns your body—not your neighbors, your family or the government.

Rep. Ron Paul explains: "All of our freedoms – the freedom of religion and assembly, the freedom of speech, the right to bear arms, the right to be free from unnecessary government searches and seizures – stem from the precept that you own yourself and are responsible for your own choices. Prohibition laws negate self-ownership and are an absolute affront to the principles of freedom. I disagree vehemently with the recreational use of drugs, but at the same time, if people are only free to make good decisions, they are not truly free. In any case, states should decide for themselves how to handle these issues and the federal government should respect their choices."

Freedom is the power to choose between good and bad options for our own private property and body; freedom is the power to opt for healthy behaviors like prayer, aerobic exercise and strength training over unhealthy behaviors like self-mutilation, chain smoking, binge drinking and inhaling pain thinner. I think the federal government needs to respect individual freedom by deferring to the states in matters like drug use where the Constitution is silent.

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