

Legalising cannabis

A Proposal

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Introduction

1 The arguments for and against the legalisation of cannabis are part of a broader debate on how the supply of recreational drugs should best be managed in the United Kingdom. The role of such drugs in society is a complex one, and six areas of discussion can be identified: health; economic cost/benefit; crime; morality; human rights; international relations. These domains are not always distinguished and advocates for prohibition making an argument on health grounds can confront advocates for liberalisation making an argument on human rights grounds. Debates so based make little progress.

2 In a brief pamphlet it is possible to do no more than mention the main strands of this debate. The general debate has most of the same elements as the narrower debate about the legalisation of cannabis. The view presented here is that the arguments in favour of legalisation of cannabis outweigh those in favour of the status quo. As the Police Foundation Report put it “the present law on cannabis produces more harm than it prevents”.¹

3 The purpose of this note is to consider how the legalisation of cannabis would work in practice in the UK: how the production, supply and use of cannabis could be regulated. In other European countries, most of which have at government level more relaxed attitudes to cannabis use, its supply is part of a black economy, emerging into the grey economy in the Netherlands. One might compare this situation in other countries with the legalisation of off-course betting and of casinos in the UK forty years ago. They went on before they were legal and were tolerated by the authorities, mainly the police, within limits. But the comparison is not an adequate one because the UK, like other European states, is signatory to the UN Conventions by which all countries have agreed that the use of certain scheduled drugs, including cannabis, would be controlled in their domestic laws. An international agreement makes good sense in relation to a business which is global, where drugs produced in one country are consumed in another. But it can create difficulties for the introduction of local variation, particularly variation in a field where global policing is led by the USA, where the government has an uncompromising anti-drugs dogma. This international Convention obligation is a brake on what might otherwise have been the natural development of domestic law.

4 Two alternative approaches to legalisation will therefore be considered. One reflects the ‘grey’ permissiveness adopted in a number of European countries in varied ways, the other is more black and white.

¹ Report of the Independent Inquiry into the Misuse of Drugs Act 1971 *Drugs and the Law* Police Foundation, 2000 p7

Domains of Debate²

5 The six domains of health, economic cost/benefit, crime, morality, human rights and international relations are not tidily separate. For example law enforcement costs money, human rights are international and we have individual duties to society. These natural links can make debates both confrontational and unsatisfying. The arguments must be kept separate at least to begin with. In terms of quantity of published material the health debate is by far the largest, with many books and hundreds if not thousands of journal articles. Here as elsewhere in the drugs debate there is a plethora of statistics.

Health

6 Any recreational drug can be abused. It can be taken in excess, can lead to dependency, can absorb a high proportion of an individual's income, can cause accidents under its influence and can cause illness, as smoking tobacco causes bronchitis. The World Health Organisation considers tobacco use to be the single most important risk factor for ill health in the European Region, and notes that in Europe between 40% and 60% of all deaths from intentional and unintentional injury are attributable to alcohol consumption.³ The NHS gives a figure of £200m for its annual expenditure on drink-related illnesses. Cannabis does not cause such significant problems. *The Lancet* has concluded "that on the medical evidence available, moderate indulgence in cannabis has little effect on health, and that decisions to ban or to legalise cannabis should be based on other considerations".⁴ On the other hand, some forms of enforcement drive users of addictive, particularly injected drugs away from official sources of healthcare, and so increase ill health. Noting increases of drug abuse deaths between 1980 and 1993 of 129% (whites) and 326% (blacks) Drucker concludes that "the greater the intensity of criminal penalties, the greater the public health danger of drugs".⁵

Cost/benefit

7 Cannabis has little impact on healthcare costs. On the other hand it has a considerable impact on the costs of law enforcement. There were a million stops in the street for possession of drugs in England and Wales over the last four years. In 1998 64% of drug offences and 75% of the quantity of drugs seized in the UK related to cannabis, while drugs law enforcement expenditure was £1.05bn.⁶ In the USA in the same year the costs of drug law enforcement were \$110 billion and 93% of drug offences related to cannabis.⁷ In the Netherlands the costs a couple of years earlier were 2 billion Guilders (£600m) and cannabis comprised 83% of the drugs used.⁸ These percentages cannot be translated directly into cash proportions of the total, as effort is concentrated more on the harder drugs. In relation to criminal justice costs as a whole the impact of cannabis on costs is lessened by the widespread use of police cautioning for possession.

² In relation to health see John Strang, John Witton and Wayne Hall *BMJ* Vol 320 8 January 2000 p108
'Improving the quality of the cannabis debate: defining the different domains'

³ *Health 21: The health for all policy framework for the WHO European Region* WHO 1999 p89-90

⁴ Volume 352, November 1998, p1565

⁵ 'Drug Prohibition' *Public Health Reports* Vol 114 p14 at p26 (Jan/Feb 1999)

⁶ Office of National Statistics *Social Trends* 29, 1999

⁷ *The National Drug Control Strategy, 1998* Washington ONDCP 1998

⁸ *Drug Control Through Legalisation* Dutch Drug Policy Foundation 1996

So it is difficult to say with any exactness the savings to law enforcement that will result from taking cannabis out of the picture, but these figures give an idea of the large scale of potential savings. On the credit side of the balance sheet, cannabis is currently untaxed while tobacco provides more than £1 billion in duty annually to the UK Exchequer and sales of alcoholic drink generate £8.7 billion. Home Office figures indicate six million casual or regular users of cannabis⁹ whose substantial expenditure generates income principally for organised crime. The evidence shows per capita use of cannabis in the UK to be higher than in any other country in the European Union.¹⁰

Crime

8 Crime is the third area of debate. The effects of cannabis do not induce crime any more than the effects of tobacco do. It is suggested that the use of cannabis is linked to psychological disorders such as precipitating a relapse of schizophrenia, but any link to crime is indirect and rare. People are, it appears, no more likely to steal to buy cannabis than they are to buy tobacco – that is to say not at all unless they are in the habit of stealing. Moderate to heavy use of cannabis costs only £10 a day. No, it is in relation to its supply that crime is a problem. Illegal drugs are a global business of impressive size: in the USA alone it has been estimated at \$500 billion p.a. In Britain, and probably globally, there is hardly a professional criminal who is not involved in the drugs business in some way. Second to domestic violence, drug-related violence is the largest category of killings in the UK. In this respect cannabis is no different from the more potent drugs – it is a question of protecting one's business. A gun-carrying sub-culture has grown up. In unstable poor countries and regions, like the Andes and Afghanistan, the drugs business dominates the local economy and government. Drug possession and supply are victimless crimes, no-one involved has an ordinary victim's interest in bringing them to the notice of the authorities. When this is combined with the large sums of money involved, it is an inevitable focus of corruption. Legalising cannabis does not entirely remove the ill effects of the drugs business, which supplies other drugs too, but it does take away a major power base.

Morality

9 One of the problems of the 'war on drugs' publicity in the UK and the USA is that it is discredited by including cannabis. The hypocrisy of governments regulating the supply of nicotine (more addictive) and alcohol (socially far more damaging) while banning cannabis is clear to any reasonably well-informed adolescent. If cannabis were not bracketed with cocaine and heroin the 'just say no' message for those other drugs would be more persuasive. The morality of banning cannabis only stands up when all recreational drugs, including nicotine and alcohol, are at least disapproved of. But no public voice is heard to support that view. On the contrary, the UK Government is seeking ways to further liberalise the supply of alcohol, having already extended drinking hours. Such measures undermine any moral argument for the prohibition of cannabis. A more pragmatic line of 'we've got enough problems with alcohol and nicotine, we don't

⁹ Calculated from population data and results of the British Crime Survey in *Drug Misuse Declared in 1998* Home Office Research Study 197, 1999

¹⁰ *Annual report on the state of the drugs problem in the European Union, 1999* European Monitoring Centre for Drugs and Drug Addiction, p17.

want another set of problems' is more defensible and – though not publicly heard – a plausible line for Government thinking.

Human rights

10 With the introduction of the Human Rights Act in October 2000 there is a fresh opportunity to focus on the human rights issues of cannabis prohibition. Article 8 of the European Convention on Human Rights, which the Act adopts into UK law, contains a list of allowable governmental interference in the right to respect for private and family life. Such interference has to be “necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. In the light of the discussion so far none of these reasons looks as if it provides a strong reason for a legal prohibition on cannabis use. Indeed some of them could provide the basis of a case for legalisation. One of the grounds of decisions in the European Court of Human Rights (ECtHR) is proportionality: that there is an appropriate balancing of means and ends and the least restrictive alternative is applied. So legal controls on cannabis should be proportionate to the harm it causes. Article 8 shows how difficult it is to defend the current regime for cannabis in the light of the regimes for alcohol and tobacco.¹¹

International relations

11 The European Convention on Human Rights is an appropriate means of challenging the current law because it applies across Europe. It is not however as extensive in its influence as the United Nations Conventions¹² on drugs which require laws to be passed in each UN member state making it a criminal offence to deal in or possess cannabis, as well as many other drugs, other than as prescribed by law. The 1988 Vienna Convention associates sentences of imprisonment with illegal dealing, but leaves the punishment (if any) for possession as a matter for individual states. There is a good deal of variety across Western Europe in the laws on the possession of cannabis: it is an administrative not a criminal offence in Spain and Italy and there are non-prosecution policies in the Netherlands and in some German Länder. The UK has considerable scope to soften its approach to possession and by so doing to achieve greater harmonisation with other Western European countries.

12 It should be noted that the UN Conventions do not require the supply of scheduled drugs to be made illegal within each signatory state, but require their supply to be controlled by governments. So, for example, heroin and cocaine can be legally supplied for medical purposes under UK law. The therapeutic use of cannabis can be, and on a trial basis is being, controlled in the same way. Legalising supply more generally can be achieved within the Convention, and this will be returned to below. Before looking in more detail at how other European countries are managing the supply

¹¹ ‘The response of the law is disproportionate to the drug’s harm’ Police Foundation Report, (note 1 above), p104

¹² The Single Convention on Narcotic Drugs 1953, The Convention on Psychotropic Drugs 1971, The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (The Vienna Convention)

and consumption of cannabis, it is instructive to consider how the UK Government justifies its line on the drug.

The Government's View

13 What sort of case does the Government make for the continuation of its prohibitory regime? On 20 June this year the Action Against Drugs Unit at the Home Office wrote to *cc:news*¹³ with its case. It is in four parts.

1. 'The Government has seen no evidence which would persuade it that it is safe to legalise cannabis for recreational use.' (But also 'Safety studies in human volunteers have been accomplished and the clinical trials will commence shortly.')
2. 'The World Health Organisation Report "Cannabis: a health perspective and research agenda" . . . shows that cannabis has not only acute but chronic effects on health.'
3. 'The harm done by cannabis use affects others (babies of mothers who are heavy users are less healthy; road users are put in jeopardy by stoned drivers).'
4. 'People who waste educational opportunities because of drug use damage their own life prospects, but also diminish the contribution they can make to society.'

It seems reasonable to assume that if the Government had stronger or better arguments than these, then they would have been included in the letter. These points will be dealt with in turn.

14 'The Government has seen no evidence which would persuade it that it is safe to legalise cannabis for recreational use.' As those who have to deal with risk assessments know, this requirement for evidence of safety is impossible to satisfy completely. Are cigarettes safe for recreational use? They are apparently safe enough to be authorised for sale over the counter, although they have serious, even fatal effects in some cases. Are cars safe for recreational use? The brakes can fail, drivers can suffer sudden illness or be inattentive, people are killed on the roads every day. Are shotguns safe for recreational use? Hardly, yet obtaining a licence and buying a shotgun is a straightforward and routine procedure. Safety is not an absolute but a comparative matter. The only meaningful way to put the question is 'Is cannabis safe *enough* for recreational use?' The answer to that question involves an assessment of risks and benefits across the domains of debate mentioned – not only health – and is hardly different from 'Should cannabis be legalised for recreational use?' In any case it is too general for separate consideration.

15 'The World Health Organisation Report "Cannabis: a health perspective and research agenda" . . . shows that cannabis has not only acute but chronic effects on health.' The Report, published in 1997, provides a review and summary of medical knowledge about cannabis use and its health effects. The abstract of its findings lists the types of negative effects: 'Cannabis acutely impairs cognitive development and psychomotor performance, which increases the risk of motor vehicle accidents among those who drive intoxicated by cannabis' and 'chronic effects of cannabis on the

¹³ A newsletter on issues relating to cannabis, July 19, 2000, p6

respiratory system and on various types of cells in the body's immune system. Chronically, there are selective impairments of genetic functioning, and a dependence syndrome may develop.' The Report also mentions a number of therapeutic benefits of cannabis, for example in reducing nausea and vomiting for cancer and AIDS sufferers, in glaucoma, as an analgesic and in treating multiple sclerosis. One might also include as therapeutic the fact that people who use cannabis enjoy its effects.

16 Where does a summary of health effects, or indeed a detailed examination of the copious medical literature as undertaken in this Report, lead? As has been mentioned, smoking cannabis is bad for you physically, but its acute effects are less than those of alcohol and, according to the WHO, its chronic effects less than those of tobacco. The issue is not, thank goodness, the abstract one of whether the world would be a better place without these substances, but the best way of regulating their supply. It is the question asked of any drug proposed for medical use. Consider aspirin: the dangers of serious and possibly even fatal side effects of taking it, listed on its information leaflet, are not considered sufficient, or not sufficiently common, to prevent it being sold over the counter. This balance between benefit and harm is a purely medical one in relation to aspirin, a balance which is used in the licensing of any new drug. Where a substance is for recreational rather than medical use, the same balancing of benefit and harm needs to be undertaken, but extended beyond the medical domain. As *The Lancet* says, the effects of cannabis on health are not great enough to justify its prohibition – the decision should be made after consideration of other grounds.

17 'The harm done by cannabis use affects others (babies of mothers who are heavy users are less healthy; road users are put in jeopardy by stoned drivers).' The effects on intra-uterine and post-natal development are odd examples to choose since the evidence in the Report is inconclusive. It quotes well-controlled animal studies as having found no evidence of 'neurobehavioural deficits' in offspring. Inevitably less well controlled human studies suggest that smoking cannabis, like smoking tobacco, can reduce the oxygen supply to the foetus and thus reduce birth weight, but there is no effect by age 6. A large study cited in the Report 'suggests that any long-term consequences of prenatal exposure to the child are very subtle' (p25). Tobacco-smoking mothers are strongly advised to stop smoking while pregnant, and if that is the proportionate response in relation to tobacco, it should be also in relation to cannabis. As to drugged (or drunken) drivers, the law on the subject is well known and considered proportionate to the potential harm of the drinking driver. This provides no reason for cannabis to be treated differently even if it were as dangerous as alcohol in this respect. Actually the evidence as to whether cannabis impairs driving and increases the risk of road accidents is inconclusive.¹⁴

18 'People who waste educational opportunities because of drug use damage their own life prospects, but also diminish the contribution they can make to society.' This argument applies with greater force to alcohol use than to cannabis use, so does not provide a basis for prohibition in a society which allows alcohol. It also has illiberal

¹⁴ See note 2 above, p28.

overtones – ‘you will work hard, you will do your best, or the State will intervene’ – on which the reader will have his or her own views.

19 On the basis of the Home Office letter, the Government’s rationale for prohibiting cannabis is primarily a medical one. The balance of benefit and harm in legalising or prohibiting cannabis is however only clearly seen once the debate is broadened to encompass crime, human rights, international law and economic effects, which are together a good deal more decisive than the medical evidence. Indeed, if this letter presents the basis of the Government’s case for prohibition then it is a shamefully weak one. A feature of this subject is that those who have examined it closely and carefully over many years are quite accustomed to the irrationality of the case for prohibition. Richard J Bonnie, Professor of Law at the University of Virginia, was a member of President Nixon’s Commission on Marihuana and Drug Abuse in 1971. He has recently described US public policy on cannabis as ‘a subject that has been marked for decades by irrationality’. US and UK policies do not differ in their principles. The unprecedented current scale of cannabis use ought not to allow anyone any longer just to accept this state of affairs.

Grey Regimes

20 Considering that they are all signatories to the same UN Conventions on drugs there are wide divergences among the drugs control regimes in the major Western European states. These divergences reflect cultural, legal and historical differences between the states.¹⁵ There is first the human rights approach to the UN Convention obligations. This approach is most obvious in Italy and Germany, both of which countries have been signatories to the European Convention on Human Rights (ECHR) from the outset. The UK originally declined to incorporate the ECHR into English law on the basis that the rights contained in the Convention were embodied in English law already. Those countries which had recently had or suffered directly under more totalitarian regimes saw a clearer need for the embodiment of human rights in national and international law. These rights have since guided legal principles in those countries.

21 The **Italians** accept the principle that actions which do not directly or indirectly infringe the rights of others are not punishable. That is taken to be in accordance with both the national constitution and the right to respect for private life in Article 8 of the ECHR. Accordingly in Italy there are no criminal penalties for the possession, use or supply of drugs. This statement, however, can be misleading in a UK context, where the only offences are criminal offences. In Italy (and other European countries) there is a distinction between criminal offences and administrative offences, the latter sometimes carry heavy fines but not imprisonment. Administrative offences do not have the taint of a criminal conviction nor are they enforced so vigorously, but they can still be meaningful for those dealt with under them.

¹⁵ An overview of the legal differences is in *Room for Manoeuvre* Nicholas Dorn and Alison Jamieson, DrugScope, 2000, itself based on the work of an international team

22 In **Germany** the legality of criminalising cannabis has been challenged on constitutional grounds. The Constitutional Court passed the buck, saying that the controls on cannabis use are not necessarily disproportionate to the risks it poses (which would have made them unconstitutional) leaving the individual Länder to ensure that the law is enforced in a way proportionate to the social harm cannabis causes. The Länder have reacted in different ways to this judgment, so that in some the law against possession of cannabis is no longer enforced, while in others it is. This looks like an interim state of affairs. In the UK, with no codified constitution and without (before October 2000) the incorporation of the ECHR into English law, these grounds for challenge to the law on cannabis have not been available in the same way.

23 In **Spain** the failure to criminalise the use of drugs is more cultural and historical than legal. It was not until 1967, six years after the UN Convention required it, that the Spanish Penal Code made it illegal to possess or use cannabis. The Penal Code then provided for no punishment – which is not specifically required by the 1961 Convention. Since 1998 it now seems that Spanish courts will interpret possession of cannabis as capable of administrative (rather than criminal) sanction.¹⁶ It remains the case that the remedies of the criminal law are not seen in Spain as apt for use in relation to drugs.

24 The approach of the **Netherlands** is based on a continuous assessment of harm and of harm reduction as a result of their policies. The Netherlands produce detailed data about cost, addiction rates, health risks and associated crime in quantities only matched in the USA and in a balanced form not always found there. Over the last twenty-five years the Dutch have consistently concluded that their form of developing decriminalisation is preferable to prohibition.

25 In the Netherlands the ‘expediency principle’ is applied so that, while possession of cannabis remains a crime, since 1976 it has been prosecuted only when the Public Prosecution Department deems it expedient or useful to do so. Although differently based from the German proportionality principle, prosecution policies resulting from the two principles can be in practical terms identical. Both principles can and do reach the position that it is not normally justifiable to prosecute for the possession of cannabis. The Dutch of course go further than this in allowing cannabis to be sold in some 1500 coffee shops which they describe as ‘semi-legal’ distribution.¹⁷ Although not public to the same degree, the Dutch also grow cannabis (nederwiet) and distribute it in leaf and resin forms.¹⁸ The cannabis sold in the coffee shops may be home-grown or imported. The European Court of Justice found in 1999 that sales of cannabis from Dutch cafes were taxable¹⁹, a further step in bringing the drugs business there within the law. The importance of addressing the whole supply chain will be returned to later.

¹⁶ Decision of the Supreme Court, 28 September 1998, perhaps reacting to the 1988 UN Convention requirement (Art 3.2)

¹⁷ See note 7

¹⁸ See, M Paris and N Tran, ‘L’existence de Nederwiet’ *Annales Pharmaceutiques Francaises* 56(6):264-7, 1998

¹⁹ By the device of taxing the rental for the tables from which the sales take place.

- 26 Semi-legal or grey cannabis regimes in Western Europe thus include
- Legalising some part of the supply chain and not other parts (e.g. possession and use only)
 - Drug offences not classified as criminal but subject to enforcement as administrative offences
 - Drug offences remaining on the statute book but not enforced
 - Drugs nominally criminalised but actually tolerated: traded in a grey economy that is subject to a degree of regulation and taxation.

A Grey Regime for Britain?

27 Britain has not followed the semi-legal route on drugs. Something of the old ‘reefer madness’ thinking seems to cling to government attitudes to cannabis. The Prime Minister has expressed himself as ‘terrified’ of drugs in relation to his children, without distinguishing between cannabis and heroin; an approach which risks encouraging the sort of ignorance about drugs which is a recognised hazard. The British ‘drugs czar’ is committed to the Government line that all illegal drugs are bad (but the legal ones are not). This line resembles most the US Government’s line as heard from Barry McCaffrey, the Director of the Office of Drug Control Policy, that we must fight cannabis use because it is against the law.²⁰ Such a circular approach excludes debate, and opting out of debate about the comparative harm of prohibition or legalisation of drugs has characterised the approach of successive British governments.

28 Consideration of how a grey regime might work for Britain is necessarily speculative. Whether toleration of cannabis relates just to use or is extended up the supply chain, there will be impacts on cost of enforcement, level of use, health, income to the state, decriminalisation of behaviour, level of supply-associated crime, human rights and international relations. As has been mentioned, these issues interrelate and exact outcomes are not predictable. A level of risk has to be taken into account, but that risk is reduced by the twenty-five years of documented toleration of possession in the Netherlands. The uniqueness of the Dutch experience and the lack of such full data from elsewhere in Europe establish the importance of their findings in this debate.

- 29 In summary, the Dutch experience has been:
- Drug addiction has remained more or less stable. With cannabis, of 675,000 users, 2,500 are classed as ‘problematic’²¹.
 - Half the prison population are serving sentences for drug related offences. This reflects a similar proportion of criminal proceedings with substantial costs both of administration and of losses through the crimes involved.

²⁰ See, for example, his article in the San Francisco Examiner, 27 December 1996.

²¹ And compare the similar experience of decriminalisation in several states of the USA and in South Australia, where there was no evidence of increased use as a result. E. Single ‘The impact of marijuana decriminalisation: an update’ *Journal of Health Policy* (Winter, 1989) p456, and R.Ali et al *The social impact of the cannabis expiation notice scheme in South Australia* Canberra: Department of Health and Family Services 1998

- Organised crime is a major sector in the Dutch economy.
- Reported crime has shown a steady increase, particularly in crimes of violence, comparable with UK rises in the same period (i.e. 6% p.a.).

30 In other words, the tolerant Dutch approach has had little or no effect on the social harm resulting from consumption, but the fact that organised crime has largely remained in control of supply has meant that the rest of the problems associated with the drugs business have grown in the Netherlands as they have in the UK and elsewhere in the same period. Permitting possession and use has allowed the criminal business of supplying drugs to continue more or less as before. The Dutch Drug Policy Foundation concludes that ‘The goldmine and driving force of crime is the ban on drugs’.²² What the toleration of drug use in the Netherlands *has* achieved, by making heroin use legal, is improved care of heroin users who are now a declining and ageing population. By contrast in Britain heroin users are younger and more numerous. This paper is not about the problems of managing heroin use, but the improved understanding of drug use generally which would come with cannabis legalisation should contribute to similar outcomes.

31 On the basis of the Dutch experience the decriminalisation of the use and possession of cannabis has limited benefits. The current perceived hypocrisy of prohibiting cannabis while allowing the supply of alcohol and nicotine goes, but to be replaced by the ethically dubious position of possession and use and some retail supply of cannabis being allowed while wholesale supply and production are not.²³ It is sometimes argued that a pragmatic approach should be taken: that in the light of the UN Conventions, the lack of precedent elsewhere in the world, and the likely opposition to going further than other countries (at least formally), allowing possession and use is the most that can be expected, is a good first step that would put us in line with other European countries and from which we could move on. Perhaps so, but that does not make it a defensible final objective.

Legalisation

32 To be practical and ethical, legalisation must cover not merely possession and use, but the production and supply chain, both wholesale and retail. As the Dutch experience has shown, the legalisation of possession and use alone will do little or nothing to reduce the organised crime of supply, its associated violence and the corruption of businesses and individuals. All attempts to put a stop to the drugs business, all attempts in the world to enforce a regime of prohibition have been ineffective. Cannabis is available as freely and cheaply as ever. Its control can only be achieved by regulation, for which we have the models of the supply of alcohol and nicotine. The models of the supply of glue and of pharmaceuticals are also available, but it will be argued that they fit the requirement less well.

²² Op cit p7

²³ The Independent Inquiry Report (see note 1) says simply ‘We see no inconsistency in this’ (p8). The Report does not however tackle the ethical and practical inconsistencies mentioned here.

33 For the supply chain for cannabis to become mainly legal, like the supply chains for alcohol and tobacco, several conditions need to be met. There needs to be an adequate quantity available to the legal dealers to supply the whole of the market, preferably without involving illegal activity in any country. Cannabis will need to be supplied not only in quantities sufficient to meet demand but also at a price that will undercut the illegal market. It will need to be sufficiently widely available for the legal outlets to be as convenient as the illegal ones, if not more so. And it will need, at least at the start, the protection of the law from predators to a greater extent than most businesses, since drugs gangs are accustomed to using violence against competition.

34 One way of looking at the practical problems of legalisation is to envisage the ideal end situation, where cannabis is supplied only legally. It would be grown in the UK and imported from other countries where its cultivation and export were also legal, and supplied from those sources in quantities adequate to meet the needs of the whole market. The importation and supply would be subject to duty as alcohol and tobacco are, at a level initially low enough to drive out the criminal market. A temporary subsidy might be helpful to maintain a low price in the interest of driving crime out of the business, any subsidy being phased out as the criminal supply chain withered. Supply would be as widespread and convenient as the supplies of alcohol and tobacco now are, involving thousands of outlets throughout the UK. The four elements of the supply chain – cultivation, importation, wholesale and retail supply – suggest four different sorts of problem and of solution.

Cultivation

35 The cultivation of cannabis is not required to be prohibited under the 1961 UN Convention. Article 22 reads:

Whenever the prevailing conditions in a country or a territory of a Party render the prohibition of the cultivation of . . . the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit the cultivation.

The corollary of this, as the Convention recognises, is that if a country believes that those same objectives are best served by permitting cultivation, it may do so.

36 Article 28 imposes a requirement on governments that permit the cultivation of cannabis to set up a national agency with responsibility to designate where cannabis may be grown, and to “have the exclusive right of importing, exporting, wholesale, trading and maintaining stocks . . .”. A national agency would be expected to make detailed rules governing, for example, the delegation of its functions for wholesale and trading purposes should it wish to do so. This would be consistent with such an agency’s exclusive right under Article 28. It would be the means of bringing the whole chain of supply within the law and within the UN Conventions. It would be in accordance with Article 22 of the 1961 Convention in particular.

37 Exactly which hectares of whitewashed Dutch greenhouses contain hemp is not publicised, but the end product of ‘nederwiet’ or ‘super skunk’ is widely known, not just in the Netherlands but through export. The Dutch Government taxes those who supply cannabis in coffee shops and it would be surprising if they did not also receive tax income from producers and wholesalers under a discreet vegetable produce category. There seems to be no agricultural reason why this should not be done on a similar scale in at least the southern part of the UK. The growing of cannabis in England is already taking place under government licence with a view to medical trials.

38 Many British users of cannabis currently cultivate their personal supplies; home greenhouse and window box cultivation is not uncommon. This scale of cultivation does not and could not satisfy the home market, which relies mainly on imports. In the medium term domestic, that is to say British commercially grown cannabis could replace imports. Some co-ordination will be needed in synchronising the availability of a legally-grown product with the legalisation of supply and consumption. In theory, at least, there could be an expansion of legalisation by region to match increasing production, but a little thought suggests that the variable application of the criminal law across the country and the commuting that would result would make this unacceptable. There are two other more practical alternatives.

39 The British product could be supplemented by imported cannabis, to a decreasing extent as the British product grows in volume. This would require the sort of international agreement discussed under ‘Importation’ below. Importantly it would recognise that an isolationist cannabis policy would fail. Dutch-grown cannabis is not sold just in the Netherlands, and it would be a natural development of domestic cannabis cultivation for there to be some mutual and legal imports and exports between the UK and the Netherlands. Other producing countries might also become legal suppliers to the UK market. Article 28 explicitly provides for the legal import and export of cannabis.

40 The other alternative is that UK cultivation should not be legalised and that the whole market should be supplied from imports. Of course that is largely what happens at present, so there is no doubt of the ability of the world market to supply the UK’s needs. But the logic of making cultivation illegal while supply and consumption are not is impossible to justify. It would prevent UK producers from competing in a domestic market and would probably be contrary to the EU’s laws of free trade between member states. It might be argued in its favour that it would reduce the supervision of the cannabis business that would be required, but experience suggests that prevention would require as much as or more supervision than regulation. And a decision would be needed on cannabis grown privately at home. Would there be rules (like those in Sweden on distilling) about the maximum amount that could be grown at home? This option seems more difficult both to make work and to justify. The preferred option in the previous paragraph of a combination of commercial cultivation and importation will be returned to below.

Importation

41 It is with importation that a difficulty lies which it is not entirely within the power of the UK government to deal. Legalisation of cultivation, distribution and retail supply within the UK are matters for domestic governance which would offer, it is argued, substantial net benefits. Importation involves other countries (members of the UN) and, at present, international organised crime. The Dutch experience has shown that allowing the supply of cannabis when it is grown domestically does not remove the problem of importation because of the international flow of cannabis, which continues largely unaffected.

42 There are limitations to this Dutch comparison because more than half their cannabis – they estimate – is sold other than through licensed coffee shops. Control of the supply chain as proposed here would allow prices which would undercut the illegal trade and so drive it out. There will always be those who want the variety of a more exotic product with mildly different effects, but they might become a small minority. Their needs might be sufficiently met by an arrangement with the Netherlands to import Dutch cannabis.

43 To establish agriculture on the required scale would in any case take several years and meanwhile the demand for imported cannabis will continue. Parallel businesses, one legal and one illegal, both selling to users whose use is permitted is, of course, the Dutch system. They are the first to recognise that it fails to tackle the problem of crime associated with the drugs business. It is necessary to consider how the UK should best try to deal with the importation of cannabis consistently with a regime which makes domestic cultivation, supply and consumption legal.

44 It is unrealistic to expect the UK to speak up at the UN as a lone voice for the amendment of the Conventions on drugs. On the other hand it is at the global level that appreciation of the need for change is required. If the UK would be a lone voice, the European Union is not, and the number of European nations signatory to the European Convention on Human Rights (ECHR) is larger again. As seen earlier, the prohibition of the supply and consumption of cannabis is already considered by some European states to be disproportionate to the objectives to be achieved and to be contrary to the right to respect for private life guaranteed by Article 8 of the ECHR. If the European Court of Human Rights (ECtHR) were to take this view then the number of countries in favour of the legalisation of cannabis within national regulatory frameworks would be substantial. At the UN it might be only the USA that would fight for prohibitory regimes. A less desirable alternative would be that the European nations withdraw from those Conventions – which the Conventions do allow for. But this is really unnecessary as the Conventions provide scope for each country to regulate its own cultivation, supply and consumption.

45 There are several ‘ifs’ in this scenario. First a case has to be taken to the ECtHR. In the light of the recent case in Germany and the policy of the Netherlands, and also the implementation of the ECHR in the UK, it is reasonable to suppose that a suitable case will be taken to the ECtHR before long. Second, any change is dependent on the ECtHR

finding the prohibition of cannabis contrary to the ECHR. It may find the sort of ‘fudge’ the German Constitutional Court found, leaving it to individual states to apply the prohibition in a proportionate way. None of this can be predicted with any confidence, nor indeed how long it might take. But the raising of the subject at the ECtHR will necessitate a comprehensive assembly of the relevant arguments. That in itself should help to accelerate the drive to international legalisation as the balance of argument is shown to a wider audience to be in favour of that outcome.

46 Pending any such legal resolution the problem of domestic legalisation in an environment of global prohibition will remain. A shorter-term solution is favoured. If a cannabis producing country – some of which are half-hearted about prohibition – would agree to legalise exports to the UK then that may be the easiest way to achieve thorough UK legalisation of cannabis which will drive out crime from the business and achieve the other benefits mentioned. Such imports would not need to involve illegality anywhere in the supply chain and a characteristically British and above-board solution would have been found.

Wholesale

47 Regulated supply in the UK cannot tolerate organised crime supplying to licensed outlets, whatever the Dutch may do. The supply network has to be regulated to exclude organised crime as far as it is within the UK government’s power to do so; and this certainly includes wholesale supply. There are several reasons why those currently involved in illegal supply will resist regulation:

- It is competition
- The illegal suppliers may be people whose antecedents would make them ineligible for a place in the regulated business
- They currently supply other drugs illegally which they will continue to supply, and the loss of cannabis from supply chains would make those links more fragile.

48 Regulation needs to take this into account. It needs to set a pricing system which just undercuts the illegal market. Duty on cannabis will need to be carefully imposed. Recent experience with tobacco and alcohol shows that levels of duty that raise costs above those elsewhere in Europe can lead to substantial illegal markets. With cannabis the illegal market is already there, and it will not be displaced if it provides a cheaper product.

49 Some illegal dealers will be ready to use violence to protect their businesses. Retail outlets will need to be comparatively secure, as off-licences are, but may be targeted by criminals used to using force against competition. The legal outlets will need a degree of security and police protection, and the security of warehouses and stock in transit will also need attention. A Government agency will be needed with responsibility for licensing policy, inspection and security standards, to give advice on levels of duty and to provide a link with national criminal intelligence. It would consult with local authorities about local licensing policy. Articles 22 and 28 of the 1961 UN Single Convention on Narcotic Drugs encourage the establishment of such an agency.

Retail

50 How would retail supply of cannabis best work in the UK? The 1500 licensed coffee shops in the Netherlands have no direct equivalent in the UK. Retail supplies of alcohol are quite heavily regulated. Magistrates sitting in a specialist role as licensing justices grant licences, licensees must be of good character and have personal responsibility for the orderliness of their premises including the behaviour of their staff. Licensed premises are specifically designated, whether for sale for consumption on or off the premises, standard hours of sale of alcoholic drink are specified with variations for certain types of premises and children may use only certain parts of licensed premises. The conduct of licensed premises is subject to legal controls in relation to the minimum age for the sale and supply of alcoholic drink, the prevention of drunkenness and disorder, and there are specific rights of entry for the police to keep order and to assist a licensee. Liquor licensing legislation has grown up over a couple of centuries. It is from time to time adapted to changing social conditions and remains a substantial controlling body of law.

51 In addition to the Licensing Acts there are administrative checks on what is actually being sold (the size of measures and alcoholic strength), planning controls on new or extended licensed premises, and the usual taxation regime applied to businesses by way of VAT and so on.

52 The comprehensiveness of this regulatory framework makes it attractive to try to apply it to the supply of cannabis. It needs to be borne in mind that the consumption of alcohol leads notoriously to disorder and incapability in ways requiring the intervention of the law. Cannabis does not have these effects. This aspect of liquor licensing law thus provides for controls unnecessary for cannabis users. The consumption of cannabis is more similar to the consumption of tobacco – both are normally smoked – so in terms of effects one might look to the supply of tobacco as a closer parallel. But tobacco sales are not subject to as comprehensive a regulatory regime as sales of alcohol. The Licensing Acts provide a fuller range of controls from which to select, together with a public system of local supervision.

53 Pharmacies are subject to stricter control than is provided by licences to sell alcoholic drink. Pharmacists must have a professional qualification, can supply on and off prescription, some of the latter as well as the former requiring the pharmacist's personal attention. The premises must be secure and registers kept recording the receipt and supply of drugs, and both are subject to official inspections. Cannabis is primarily a recreational drug rather than for therapeutic use and pharmacies do not sell substances for recreational purposes, which can indeed be harmful to health, inconsistent with the health promotion aspect of pharmacy. These factors suggest that pharmacies are inappropriate places from which to supply cannabis, other than in preparations for medical use.

54 Tobacco sellers do not provide premises for smoking tobacco as on-licensed premises do for drinking alcohol. This raises the question whether the public smoking of cannabis is to be legalised. Smoking tobacco in public is legal in general, although

illegal in certain places such as public transport, and not allowed in many privately run places that are open to the public (museums, public offices, parts of restaurants). There is a trend towards the discouragement if not prohibition of smoking tobacco other than in private houses, outside, or in public houses, cafes and restaurants. The smoking of cannabis would be prohibited where the smoking of tobacco is prohibited, but should its public use be banned altogether? This comes down to whether the smoking of cannabis should be allowed outside (in the street, in a park) and/or in public houses, cafes and restaurants. It is suggested that, initially at least, there is no reason to allow the public smoking of cannabis, which would continue to be dealt with by the criminal law when necessary.

55 In Spain a distinction is made between possession and use in private, to which no sanction has traditionally been attached, and public possession which is not criminal but a 'serious administrative offence' under the Spanish administrative/criminal division of offences. Such a regime begs the question of how a user legally gets the cannabis home, since both possession in a public place and cultivation are administrative offences. This is one of numerous inconsistencies found in European cannabis laws. Nonetheless it would be perfectly consistent to make possession legal while consumption in the street or parks is not – several English local authorities have taken this step in relation to alcohol where there have been problems as a result of public consumption in town centres.

56 The remaining issue is whether prohibition of consumption should apply to public houses, etc. Public houses sell tobacco and could be allowed to sell cannabis. It is considered that a regime allowing tobacco, cannabis and alcohol to be sold in public houses, while allowing only two of the three to be consumed there would be unenforceable and would soon be ignored. On the other hand, to legalise the smoking of cannabis in public houses would be likely to increase the number of users through social pressures. The minimalist or cautious approach is to licence the sale of cannabis through off licensed premises only. This would provide the thorough regime of liquor licensing law while separating supply from consumption. Public houses are also generally licensed to sell alcoholic drink for consumption off the premises (on- and off-licence). The rule would be that premises with off-licences only could be licensed to sell cannabis.

57 An age-limit will need to be set for the purchasing of cannabis. Off-licences can legally sell tobacco to over-16s and alcohol to over-18s. Using an age already recognised for off-licence supply is likely to make any rule more workable and effective. In terms of comparative health and social ill-effects the lower age is more logical, but a cautious approach suggests using the higher age of 18 to start with.

58 This minimalist liberalisation of the present position might, after a period of experience, lead to a consensus that the sale and consumption of cannabis in public and in public houses should be allowed, or that the age of sale should be lowered to 16. Close monitoring of the early working of the legislation would be necessary, and progress reports would be needed with a link to a facility for amending regulations.

59 What would the off-licences be selling? Cannabis is sold in two forms: leaf (dried and shredded like tobacco leaf) and resin (in blocks). In the Netherlands consumers may be left to perform the final stages of preparation themselves, by rolling the leaf in a cigarette paper or by adding the resin to a tobacco roll-up, or they are sold individual ready-made cigarettes. The grey legalisation in the Netherlands has not led to the commercial production of tailor-made cannabis cigarettes, but that might well follow the sort of legalisation considered here for the UK. Off-licences would then sell cannabis cigarettes, cannabis in shredded leaf form (packets as for rolling tobacco) and cannabis resin. It might be a requirement that all sales be pre-packaged.

Conclusions

60 There is extensive evidence that shows as conclusively as one could ask for that the harm caused to society by the illegal supply of cannabis cannot be removed by prohibition. During prohibition the size of the illegal trade has in fact grown many times over. Only regulating the supply can reduce the harm caused by the illegal cannabis market.

61 The following mechanism is suggested for regulating the supply of cannabis in the UK.

1. Cannabis should be authorised to be sold from off-licensed premises approved for the purpose by local licensing authorities, in accordance with guidelines provided by a national drug agency.
2. A minimalist approach suggests that public consumption (smoking) of cannabis should be illegal and this should include consumption in licensed premises.
3. It should be an offence for any person to sell or buy cannabis other than through a licensed outlet.
4. It should be an offence for any person to sell cannabis from a licensed outlet to someone under the age of 18. The licensee should be vicariously liable. Sales staff should be over 18.
5. The whole of the cannabis supply chain in the UK should be brought within the law under the control of the national drug agency, in accordance with Article 28 of the 1961 UN Single Convention on Narcotic Drugs.
6. The national drug agency should work closely with the police to ensure that crime is excluded from the business of cannabis supply.
7. The national drug agency should ensure that cannabis is priced to balance the benefits of taxation against the need to drive out the illegal market.
8. Cannabis (hemp) should be grown in the UK under regulation.
9. Efforts should be made to obtain a supply of cannabis by bilateral agreements with one or more producing countries.
10. An opportunity should be taken to use Article 8 of the ECHR in proceedings to both publicise the arguments in favour of the legalisation of cannabis, and to develop a European view to that effect. Amendments to the UN Conventions on drugs could follow, but the above proposals would be within the present Conventions.

62 Ideally any replacement for the current prohibition regime in the UK needs: to protect (or at least not harm) health; to cost less and earn more; to reduce crime; to be morally consistent; to be consistent with human rights legislation; to be consistent with international policies and Conventions. All this follows from what has already been said, but in addition any replacement regime needs to work, needs to be practical, and needs to actually reduce the illegal drugs business. If there is a will to implement such a solution then, it is suggested, those objectives can be achieved.

63 The prohibition of cannabis has never made sense in a country that permits alcohol and nicotine. When it was the recreation of a small minority the illogicality and impracticality of prohibiting it could be ignored. But now that it is the widely used mainstay of a worldwide criminal industry its legalisation ought not to be delayed further. Indeed it is hard to find anyone who has made an examination of the issues involved who does not come to the same conclusion. Such consideration leads to replacing the question of whether to legalise cannabis with that of how it should best be done. I hope that this paper may contribute to finding the answer to that question.

FURTHER READING

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