



Commentary

A critique of cannabis legalization proposals in Canada



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ABSTRACT

An editorial in this issue describes a cannabis policy framework document issued by a major Canadian research centre, calling for legalization of non-medical use under strict controls to prevent increase in use, especially by adolescents and young adults who are most vulnerable to adverse effects of cannabis. It claims that such a system would eliminate the severe personal, social and monetary costs of prohibition, diminish the illicit market, and provide more humane management of cannabis use disorders. It claims that experience with regulation of alcohol and tobacco will enable a system based on public health principles to control access of youth to cannabis without the harm caused by prohibition.

The present critique argues that the claims made against decriminalization and for legalization are unsupported, or even contradicted, by solid evidence. Early experience in other jurisdictions suggests that legalization increases use by adolescents and its attendant harms. Regulation of alcohol use does not provide a good model for cannabis controls because there is widespread alcohol use and harm among adolescents and young adults. Government monopolies of alcohol sale have been used primarily as sources of revenue rather than for guarding public health, and no reason has been offered to believe they would act differently with respect to cannabis.

Good policy decisions require extensive unbiased information about the individual and social benefits and costs of both drug use and proposed control measures, and value judgments about the benefit/harm balance of each option. Important parts of the necessary knowledge about cannabis are not yet available, so that the value judgments are not yet possible. Therefore, a better case can be made for eliminating some of the harms of prohibition by decriminalization of cannabis possession and deferring decision about legalization until the necessary knowledge has been acquired.

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Introduction

The editorial by Crépault, Rehm & Fischer (p. 1 of this issue) provides a detailed description of the origins and rationale of a CAMH document entitled Cannabis Policy Framework (Crépault, 2014), referred to below as the CPF. As described in the editorial, the CPF concluded with a recommendation for legalization of non-medical use of cannabis, with reliance on strict application of regulations to prevent access to cannabis by underage users who are most vulnerable to its adverse effects on health and social functioning. As the editorial explains, the CPF grew out of an earlier document from the Addiction Research Foundation (ARF) that called for a public health approach to cannabis policy and for decriminalization of possession for personal use (Addiction Research Foundation, 1997). This recommendation was also made in the LeDain Commission Report (Canadian Government, 1972),

and was maintained in CAMH statements that preceded the CPF. It is therefore useful to examine the reasons that led to the changed recommendation in the CPF and other recent similar publications (Haden & Emerson, 2014; Spithoff, Emerson, & Spithoff, 2015).

Among the important considerations mentioned in the editorial are the following:

- social harms caused by prohibition, and by its inequitable application,
- the relative modesty of the health harms attributable to cannabis use in the majority of users,
- costliness and ineffectiveness of prohibition, combined with its deterrence of public health measures aimed at prevention and treatment of drug-induced harm,
- superior ability of legalization to prevent harm to vulnerable groups by the use of regulatory controls that cannot be implemented under decriminalization,
- the risk that decriminalization could actually encourage the production and distribution of cannabis.

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The validity of the model proposed in the CPF and reproduced verbatim in the editorial can be assessed by examining the available evidence concerning these and some related issues.

Is prohibition ineffective or a failure?

Prohibition has indeed failed to prevent all use of the drug, but this is not a reasonable expectation. No prohibition, whether of something as minor as smoking too close to a hospital entrance, as common as exceeding speed limits, or as grave as murder, is expected to be 100% effective. All one can reasonably expect from prohibition of any undesirable behavior is that it asserts society's disapproval, and makes the disapproved behavior substantially less frequent than it would otherwise be.

Prohibition of alcohol in North America in the 1920s and early 1930s did markedly reduce consumption and public intoxication (Dills, Jacobson, & Miron, 2005) as well as the death rate from alcoholic cirrhosis (Dills & Miron, 2004). However, it also had various socially harmful consequences such as the growth of bootlegging and organized crime, corruption of police forces, loss of employment in alcohol-related industries and loss of important tax revenues (Blocker, 2006). It deprived millions of moderate drinkers of what was for most of them a harmless pleasure, and possibly of alleged health benefits of moderate consumption (Kalant & Poikolainen, 1999). Therefore, prohibition did work, but at the cost of important social harms. One must make a value judgment as to whether the costs to society outweighed the benefits, but that is not the same as saying that prohibition was ineffective.

Neither can one say that cannabis prohibition is ineffective if use is significantly less than it would be under legalization. The percentage of past-year users of cannabis among the Canadian general population in 2012 was only 10% while that of the legal drug alcohol was 78% (Health Canada, 2014). A recent study found that 10% of US high school students who had not yet used marijuana intended to use it if it became legal, and 18% of those who had already used it declared intention to use more frequently (Palamar, Ompad, & Petkova, 2014). These probably represent minimum increases, because when the more decisive users increase consumption, their attitudes and behaviors affect other members of their peer groups to act similarly (Keyes et al., 2011; Salvy, Pedersen, Miles, Tucker, & D'Amico, 2014).

Greater permissiveness in the United States has been accompanied by a doubling of rates of use and of use disorders from 2002 to 2012 (Hasin et al., 2015). American states that adopted very poorly controlled medical marijuana laws (MML) tantamount to legalization had higher rates of marijuana use, abuse and dependence than states without such laws, even among adolescents who were not eligible for medical permits (Cerdà, Wall, Keyes, Galea, & Hasin, 2012; Wall et al., 2011). "Medical" marijuana was deviated to illicit use in non-MML states (Thurstone, Lieberman, & Schmiede, 2011), a risk that also applies to legalization in Colorado (RMHIDTA, 2015). In contrast, Choo et al. (2014) did not find increased use by adolescents in states adopting MML, and Masten and Guenzburger (2014) found that some MML states experienced a significant increase in cannabis-related traffic fatalities while other MML states did not. Until the difference between the results of these studies can be explained, it is unwarranted to argue that we know how to prevent increased use after legalization.

Preliminary evidence to date indicates that in Colorado cannabis use among 12–17, 18–25, and over-26 age groups increased by between 17% and 63% in the 2 years after legalization compared to the 2 years before, while national averages for the same groups were either unchanged or lower (RMHIDTA, 2016). We will not know for some years yet whether the increases were

temporary or permanent, nor the resulting social costs in terms of school and work performance, physical and mental health, automobile accidents and deaths, etc. Without such knowledge, there is no factual basis for saying that legalization is a better policy for society than prohibition or decriminalization. Legalization is in harmony with the democratic ideal of restricting individual liberty of action only when necessary for the common good, but judging what constitutes the common good requires comprehensive knowledge of the consequences of each policy option, which we do not yet have.

Does cannabis prohibition impose serious personal harms on society that would be removed by legalization?

The editorial refers only briefly to the social harms caused by prohibition of cannabis, but the CPF states that "Around 60,000 Canadians are arrested for simple possession of cannabis every year". The figure is based on data from Statistics Canada (2014). This statement, combined with the CPF reference to only the maximum possible sentences provided for in the law, gives the impression that large numbers of Canadians suffer severe penalties every year for simple possession of cannabis under the present prohibition. However, Statistics Canada records all cannabis incident reports by the police in each province, regardless of whether cannabis possession is the principal object of the incident or only a minor accompaniment to other more serious charges, and the statistics give no indication of the outcomes.

In contrast, Pauls, Plecas, Cohen, & Haarhoff (2012), with the help of the RCMP, had access to the complete files (names removed) of all case reports in British Columbia over a 3-year period and were able to separate them into subgroups according to the nature of the charges and the outcomes. The results present a dramatically different picture from that implied by the CPF. In 2011, of 22,561 files coded for marijuana possession in British Columbia, 4,355 were dropped because of insufficient evidence. Of the 18,206 cases in which possession was demonstrated, the great majority were let off without being charged, e.g. with a warning or simply a decision not to proceed. In 4,257 cases charges were laid, but in most cases the possession charge was a minor addition to charges of more serious crimes such as trafficking, violence, impaired driving or others. Of the 249 charged only with simple possession, one-third had the charges dropped and did not come to trial. Of those that came to trial, only 42 were convicted, the others being acquitted, discharged, or directed to treatment. Finally, only seven of those convicted were sentenced to jail for 1–14 days, and these were all repeat offenders with long criminal histories. Very similar proportions of outcomes were found in each of 2009, 2010 and 2011. It is clear, therefore, that in British Columbia very few people accused only of simple possession of marijuana actually come to trial, and extremely few are convicted and fined or jailed.

Correspondingly detailed figures for Ontario and for all of Canada are not available. However, in Ontario in 2013 there were 17,641 reported incidents of cannabis possession; of these 8,045 were cleared without charges, 8,706 led to charges, and 890 were not yet cleared (CANSIM, 2013). Among detained youth, 1,281 were charged whereas 3,804 youths were released without charges. Generally, similar figures were found for Canada as a whole (Boyce, 2013). These figures are proportionally very different from those prevalent in the United States, though federal law in both countries prohibits non-medical use of cannabis. The difference demonstrates that the manner of enforcement, rather than prohibition *per se*, determines the magnitude of the social cost. The foregoing discussion does not in any way deny the seriousness of arrests and criminal records for simple possession of cannabis, but in the weighing of costs and benefits of different policy options, the size of the problem matters. There is a clear

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