Commentary

Realistically furthering the goals of public health by cannabis legalization with strict regulation: Response to Kalant

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ABSTRACT

Cannabis Policy Framework respond to select issues from Kalant's Commentary (in this issue).

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Introduction

We welcome our esteemed colleague Prof. Kalant's commentary (Kalant, 2016) on the Cannabis Policy Framework ('CPF') and its summary editorial (Centre for Addiction and Mental Health (CAMH), 2014; Crépault, Rehm, & Fischer, 2016), and the opportunity to selectively respond to some of the main issues raised. In essence, Kalant's principal arguments are: that legalization may be an imperfect approach as a policy to handle cannabis and related risks or problems; that the evidence for it to provide the improved policy outcomes on which its promotion is footed largely does not exist; and that – even if such evidence existed – good policy-making still involves decisions on grounds of higher principles towards what is the 'right' thing to do. Cannabis legalization definitely will not be a miracle but certainly an imperfect solution. It constitutes (and has been concretely put forward as such by the CPF's authors) the policy option which, on net account of current evidence or reasonable evidence-based assumptions from various fields, promises to yield the overall highest public health benefits for Canada in the present situation (Rehm & Fischer, 2015). Such perspectives and weightings, even when considering the same facts, of course, involve "value judgments" – as Kalant correctly observes – and hence cannot be derived by way of universally objective knowledges or even 'truth claims' but depend on normative stances, interpretations and priorities. This, then, means that even when all the same available facts and data are considered, different observers may still arrive at different conclusions for best policy choices (Babor, Caetano, Casswell, Edwards, & Giesbrecht, 2010; Babor, Caulkins, et al., 2010). Yet let us concretely address some of the points and issues raised by Kalant.

The failure/success of cannabis policy as measured by use

Kalant suggests that cannabis prohibition may have been a success by curbing cannabis use levels, and that 'legalization' may be a failure because it may result in higher use. While the former suggestion is speculative, most systems which have undergone liberalizations of their cannabis control policies away from prohibition did not experience major changes in use levels directly attributable to the policy change (Hughes & Stevens, 2010; Room, Fischer, Hall, Lenton, & Reuter, 2010). Similarly, there is no

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convincing evidence that liberalizations through medical cannabis laws in US states actually caused increases in cannabis use levels (Hasin et al., 2015; Wall et al., 2016). At the same time, there were several phases (e.g., 1995–2005) in Canada where, under prohibition, cannabis use prevalence – among both adults and young people – starkly increased yet proponents of prohibition did not see this as an evident reason for the need to modify policy.

We openly point to the possibility that – at least based on initial 'straw fire' or curiosity effects leading to experimentation among previous abstainers – cannabis use levels may even somewhat increase under 'legalization' in Canada (recent survey data suggest this possibility; Forum Research Inc, 2015) from the already existent high levels. Importantly, however, overall incidence or prevalence are not primary concerns from a public health perspective for cannabis policy. Rather, what matters – just as it does principally in public health- oriented frameworks for alcohol or other psychoactive substances – is whether the extent of health and social harms associated with use (including the collateral impacts primarily to be attributed to policy choices) will be reduced (Fischer, Rehm, & Hall, 2009; Fischer, Burnett, & Rehm, 2015; Rehm et al., 2013; Room, Babor, & Rehm, 2005). Concretely, this means: Will the number of people with risky/problematic use (including dependence or other health problems) change? Will there be more cannabis-related injuries? Will fewer people buy cannabis illegally and will fewer criminal justice resources be expended on cannabis incidents than under the current prohibition regime? This is a conceptually and practically relevant differentiation especially in the cannabis area, where the majority of cannabis use episodes or trajectories are free of major harms, and main risks/harm outcomes are largely concentrated in a sub-group of 25–30% of users who experience acute and/or long-term problem consequences (e.g., injury, mental disorders including but not limited to dependence, decrease in socio-educational functioning, yet also social harms including criminalization or stigmatization, etc.; Fischer et al., 2011; Hall & Degenhardt, 2009; Volkow, Baler, Compton, & Weiss, 2014).

For these primary harm outcomes, those additional people who decide to experiment with cannabis use in the context of legalization will be quite irrelevant (as long as they do not engage in acute simultaneous risk-taking, e.g. driving a car); what will matter more under a prospective regime of legalization with a principal focus on public health is what proportion of cannabis users end up experiencing any of the major health or social harms mentioned, and how different that proportion – and the harm burden incurred – is compared to the previous control regime. In essence, the failure or success of policy reform will be measured on whether it achieves a reduction of the overall harms and costs associated with cannabis use upon society and its health and safety.

The severity and enforcement of criminal cannabis law

Kalant puts forward the argument that the severity of criminal cannabis control is overstated by a focus on maximum penalties, as well as insufficient recognition of the fact that only a minority of those charged with cannabis use related offenses are actually convicted. While surely symbolic to some extent and rarely (if ever) imposed in practice, the maximum penalties for cannabis possession (currently $1000/6 months imprisonment for 1st offense) express the severity Canadian society attributes to the 'crime' of cannabis use and how this violation of criminal law should be punished (Roach, 2015). Current cannabis control law thus signals that personal possession of cannabis is valued as a considerably more severe violation of societal norms than running a red light with a car, selling cigarettes to a minor or trash dumping. Based on repeated survey data, most Canadians categorically disagree with such a valuation; in fact, close to half

disagree with the notion that it should be viewed as a violation of norms stipulated by law at all (Forum Research Inc, 2015).

However, the essential point is missed here. While it is proposed that the limited actual conviction rates for cannabis possession documented by several studies decisively soften the blow of cannabis law in reality, the details of this reality actually constitute an essential problem of arbitrary and discretionary criminal justice practice characterizing present cannabis law enforcement (Cotter, Greenland, & Karam, 2015; Pauls, Plecas, Cohen, & Haarhoff, 2012). To illustrate: in Canada, no more than about 2% of the estimated total of 2–2.5 million current cannabis users – i.e., individuals who mostly commit the criminal act of cannabis possession for use at least occasionally, many even regularly – are subject to actual law enforcement (total of ∼59,000 enforced cannabis possession offenses in 2013) (Cotter et al., 2015). While enforcement patterns and rates vary greatly between jurisdictions, they involve a disproportionate number of youth and young adults (Cotter et al., 2015). Moreover, domestic and international data document that the chances of arrest for cannabis offenses are starkly stratified by race and other socio-demographic characteristics of suspects, and so contribute to realities of systemic discrimination in drug law enforcement. In addition, arrests for suspected cannabis violations are commonly used as a discretionary yet convenient tool by law enforcement personnel for access to 'suspicious populations' for criminal investigation purposes (Golub, Johnson, & Dunlap, 2007; Wortley & Owusu-Bempah, 2012).

Across Canada in 2013/14, four in ten (41%) of police-processed cannabis offenses were 'cleared' by 'discretion' at the hands of law enforcement (i.e. "by giving a warning, caution or referral to a community-based program rather than a charge"), and as such these discretionary law enforcement practices are commonly influenced by above factors (Carrington & Schulenberg, 2003; Cotter et al., 2015; Schulenberg, 2015). Yet even among the – comparably small – number of cannabis possession charges completed in court, only 43% result in a successful conviction (i.e., a guilty verdict); instead, most are stayed or withdrawn, which in most instances means the use of "alternative measures of justice", e.g. community service, treatment or probation orders (Cotter et al., 2015). So while many cannabis possession offenders processed within the Canadian criminal justice system will not end up with a formal conviction, dispositions like conditional sentences or even discharges entail the consequence of a 'criminal record' for the offender – a primary source of criminal labelling and other severe obstacles to key personal, or professional opportunities usually for decades to come (Canadian Civil Liberties Association, 2014; John Howard Society of Ontario, 2014b; Powell & Winsa, 2008).

As seminal socio-legal scholars (e.g., Malcolm Feeley for the criminal processing of lower level offenses in general, Howard Becker more specifically related to drug use (Becker, 1974; Feeley, 1979); have enlightened us decades ago, the main punitive impact of criminal processing commonly is not the punishment per se, but the wider social markings, labels or stigma imposed by the process, and consequential real-life burdens, it brings primarily for young people in the specific case of cannabis use. Concretely, a merely temporary criminal detention for a suspected cannabis violation under current law results in records in police databases which may identify the person as a 'suspected offender' at future encounters with police, and hence may feed the dynamics of 'secondary deviance' (Canadian Civil Liberties Association, 2012; Cribb & Rankin, 2014; John Howard Society of Ontario, 2014a).

In sum, also given that both general and specific deterrence effects remain un-evidenced (Erickson & Hyshka, 2010; Lenton, 2000; MacCoun, Pacula, Chriqui, Harris, & Reuter, 2009), the above-described collateral harms of criminalization of personal recreational cannabis use – especially as they relate to the discretionary