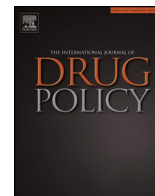




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Recognizing and regulating cannabis as a temptation good



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ABSTRACT

The U.S. appears to be on a path toward legalizing cannabis on the alcohol model, which is to say allowing for-profit corporations to produce, sell, and promote its use. Even after national legalization, it will take decades to observe the full effects on industry structure and behavior, or on use and misuse. However, we should not be surprised if after markets have matured and consumption patterns stabilized, legalization increases acute cannabis intoxication in the U.S. by 40 billion hours per year. This increase in use will be the most important cannabis-specific effect of legalization. The bulk of it will be consumption by daily and near-daily users, and it is possible that roughly half will be by people who meet the medical criteria for substance use disorder. Much resulting harms will be borne by the users, and their families, and the harms are not primarily “medical”, at least not in the narrow sense. Hence, legalization replaces the current problems of crime and black markets not so much with a medical or public health problem, but rather with a problem of potentially excessive consumption of a “temptation good” whose acute effects are performance degrading, not performance-enhancing. As legalization removes formal social controls, it might be prudent for society to develop stronger informal social norms – akin to “friends don’t let friends drive drunk” – to protect the public and more importantly the users themselves from the performance degradation of bouts of nearly perpetual intoxication.

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Introduction

This paper presumes that most U.S. states and eventually the federal government will legalize cannabis production and will do so along the alcohol model; that is the approach taken by the first eight states to act. An equally valid and perhaps more informative description would be “legalizing large-scale production, distribution, and promotion by for-profit enterprise.” After all, essentially all market activity is regulated in a modern economy and much is licensed; the mere fact that “regulate like alcohol” would involve regulations and licensing would not distinguish the purveyors of cannabis from restaurants and barbershops, or from Walmart and Philip Morris.

This is the fourth in a line of papers that raise concerns about this corporate model for legalization. The first suggested it would be preferable to allow only nonprofit organizations to produce and distribute cannabis, and that they be chartered only to meet existing demand, and so to undercut the black market, but not to promote expansion of demand (Caulkins, 2014).

The second laid out a spectrum of options ranging from extreme prohibition at one end to laissez-faire libertarianism at the other

(Caulkins et al., 2015). Legalizing home growing or cannabis clubs are only a few steps in from the prohibition end, but the alcohol model is near the far end. Jumping immediately to it flies by intermediate models that might protect against some of the downsides of the corporate approach.

The third conceded that commercial legalization was likely but argued that the corporate model’s excesses could be mitigated by choosing an aggressive regulatory agency (Caulkins, 2016a). I identified four main interest groups: (1) the industry itself, (2) the government’s interest in economic development and tax revenue, (3) the great majority of cannabis users who are happy with their use, and (4) the smaller number who have lost control of their use and are harmed by it. That last group is the primary wellspring of industry profits because they consume the bulk of the cannabis, so industry has a financial incentive to pump up the ranks of intemperate consumers who, incidentally, also tend to be less educated and less politically powerful.

The first three groups’ interests align in favoring lenient regulations, easy access, product variety, and promotion. The industry wants lower taxes and can rely on many casual users’ support in that regard. Only the fourth, smaller, and politically weaker group has contrary interests. They are the vulnerable that society needs to protect. Hence, at the moment of legalization, before the industry grows politically powerful, and in that brief

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moment when busy politicians are focused on the issue, it would be wise to stack the deck in favor of a regulatory agency that would defend this last group from exploitation.

This paper retreats one step farther. I am skeptical about depending on government regulatory agencies to protect the public welfare. They often appear more willing to cozy up to industry than to tame industry's bad impulses. I grant that the FDA combats the tobacco industry aggressively, but even it has not restricted sweetened tobacco. And when I look across banking, alcohol, pharmaceuticals, and other regulated industries I do not see great evidence of highly competent government agencies actively defending the vulnerable against corporate interests (cf., [Admati and Hellwig, 2014](#); [Babor, 2010](#); [Dukes, Braithwaite, & Moloney, 2014](#); [Goldacre, 2014](#); [Proctor, 2011](#)). And however well or badly regulators in rich countries do at protecting their own citizens, the multinationals often have an even freer hand in the global South.

This paper suggests that an alternative or supplemental brake on corporate-driven promotion of problem use could be reframing how society understands marijuana. Marijuana has been viewed through many lenses, including demon drug, symbol of peace and progressive politics, embodiment of generational conflict, and more recently as miracle cure for everything from Alzheimer's to Zika. Marijuana could equally be viewed as a "temptation good", more akin to pornography, video games, or doughnuts than to cocaine or heroin. It may be useful to view cannabis as an indulgence that is not dangerous in moderation, but whose use both moralists and medicos are correct to caution can easily get out of control. As we remove the formal barriers that have historically shielded those who wish to avoid cannabis from its temptation, we may need to promote informal social norms that protect those who would be vulnerable to excess.

The remainder of this paper builds that case by imagining the consequences of alcohol-style legalization on cannabis use and misuse.

Legalization's substantial – but delayed – effects on the industry and use

Legalization along the alcohol model does not mean policy has to be uniform everywhere. Some U.S. states restrict alcohol distribution to state stores, particularly for spirits; others do not. There is even outright prohibition in some towns and counties, and policies vary on matters such as whether one can buy spirits on Sundays and whether one can consume alcohol in public. Nevertheless, in every state any adult can buy beer—and many older teens report being able to obtain alcohol fairly easily ([Johnston, Miech, O'Malley, Bachman, & Schulenberg, 2015](#)). Even in Tennessee, which has by far the highest beer tax, the tax is only twelve cents a can ([Federation of Tax Administrators, 2016](#)).

These observations capture an essential aspect of where I think legalization along the alcohol model is likely to lead. There may be variation on things like whether dabs are sold and how edibles are regulated, but almost everywhere adults will be able to purchase basic marijuana with modest taxes and so, given the low production costs (discussed below), at very low prices. The marijuana-equivalents of micro-brews and organic lettuce may be sold at much higher prices, but anyone who wants no-name high-potency bud will be able to purchase it at prices that make the cost per hour of intoxication extremely low ([Caulkins, Kilmer, & Kleiman, 2016](#)).

Even if all agreed on this prediction concerning the market, no one knows how that will affect use and misuse because no nation has tried it yet. Many have legalized possession and the Netherlands de facto legalized retail sale, but even the Dutch have never legalized production for non-medical use. Spain,

among other nations, has legalized cannabis clubs, but those are not commercial enterprises ([Kilmer, Kruithof, Pardo, Caulkins, & Rubin, 2013](#)). Only Uruguay has legalized private production for commercial sale and non-medical use, but that will be a more tightly controlled scheme than the U.S. alcohol model and is just being rolled out in 2017. (Home growing and cannabis clubs were implemented sooner than sales through pharmacies.)

Eight U.S. states have legalized along the commercial model ([Hall & Lynskey, 2016](#)), but that falls far short of national legalization because of quirks in the tax code, lack of access to banking services, and big tobacco and alcohol companies remain on the sideline. Likewise, professional farmers are not yet competing with traditional growers, but they will after national legalization.

Furthermore, the long-run effects on the industry, consumption, and health will take decades after national legalization to emerge fully. Legalization is like a radical technological innovation that drives down production costs and hence also prices, as [Fig. 1](#) shows for (after tax) prices in Washington State. Even after the initial steep declines ended in March 2015, prices have continued to fall by a considerable 25% per year.

Such declines are to be expected; [Kilmer et al. \(2010\)](#) predicted them from California's Proposition 19 (which ultimately did not pass). [Fig. 2](#) (modified from [Caulkins et al., 2016](#)) contrasts wholesale prices for high-quality cannabis in the U.S., both midway through the various policy liberalizations that preceded state legalization (far left bar) and just before the opening of state stores in Colorado and Washington (next three bars), with projections of production costs (before fees and taxes) under various growing scenarios after national legalization, when cannabis can be farmed in the way that tomatoes are (rightmost four bars). There is also a bar for medical marijuana in the Netherlands, which is fully legal but does not achieve economies of scale and is highly regulated.

Legalization will also affect industry structure and operation, although it is hard to guess at the particulars now, just three years after the first stores opened. Imagine how difficult it would have been to make accurate predictions back in 1906, three years after Orville and Wilbur Wright's flight, about how the aviation industry would transform society. Or think about how well an observer could have predicted the course of information revolution back in 1961, three years after Jack Kilby demonstrated the first working integrated circuit.

Many industries have been transformed by technological or regulatory innovation with ensuing market expansion, including desalination by reverse osmosis, railroad deregulation in the U.S., and wind power generation, but the invention of machine-rolled cigarettes in the late 19th century offers a particularly apt analogy. Cigarettes had been around for some time, but the industry took off

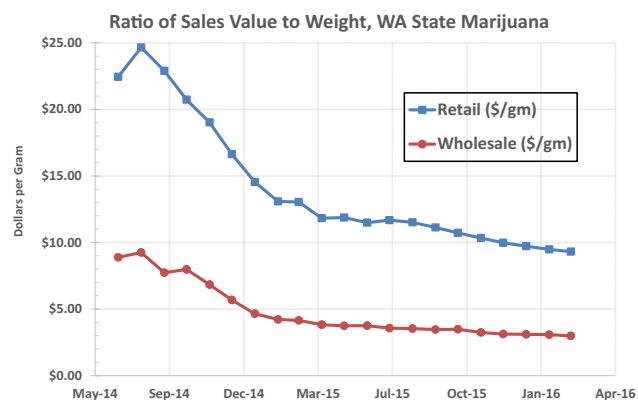


Fig. 1. Decline in retail marijuana prices in Washington State after legalization.

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