

THE MEANING OF FREEDOM. TRENDS IN CANNABIS REGULATORY FRAMEWORKS

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ABSTRACT: The Meaning of Freedom. Trends in Cannabis Regulatory Frameworks.

Here are a few facts and news.

Notwithstanding all the information campaigns and public policies that have constantly warned about the risks of drug use, all the research and scientific studies that have shown the medical, psychological, economic, and social dangers of drug use, this type of behavior persists. In 2020, around 270 million people worldwide used drugs, more than a fifth increase from a decade ago. On the other hand, most European citizens see drug use as a problem that can have serious mental, physical and social health effects on those who engage in it¹.

However, in recent years, several countries have adopted legislative reforms that have relaxed the system of cannabis use. Arguments in support of the legalization of cannabis use have included the absence of legal risks for users, the perception of a high level of control over the quality of products sold on the legal market, and the certainty of the purity and strength of the product users' purchase.

Of the arguments used to keep cannabis use in the criminal area, the most representative are based on concerns about the increase in cannabis use, especially by adolescents and youth, a population for which cannabis is an exceptionally popular drug, but which also has the highest levels of vulnerability and risk owing to consumption patterns.

Within these two extremes expressed worldwide, it appears to be very challenging for countries and governments to determine which would be the fair and

1 According to *Impact of drugs on communities Report – Flash Eurobarometer 493*, (2022).

well-balanced choice to follow. Several questions are legitimate in this regard in the end. Which way would the balances shift? Is it less expensive to have cannabis legalized or more costly to maintain cannabis users in the functional area without major disorders disrupting their existence and ability to function?

In this brief review of the literature, both sides of this freedom of choice that cannabis legalization offers are highlighted: economic growth versus social and human consequences.

Keywords: *cannabis legalization, social and economic consequences.*

An introductory overview of the cannabis regulatory framework

Worldwide, certain parts or regions of the globe are renowned as important production sites for certain types of drugs. For example, Afghanistan is well known for its high production of the opium poppy - the plant used to make heroin, and Colombia is known for having the best climatic conditions for the growth and development of the Erythroxylon Coca plant - the precursor plant from which cocaine is made. In recent decades, the Cannabis plant has become a “miracle” of biology, being one of the plants that have experienced an extraordinary spread of production, adapting to several climatic zones, so that between 2009 and 2019, 151 of the world’s countries, a figure corresponding to approximately 97% of the world’s population, reported indicators relating to the cultivation and production of cannabis. In other words, cannabis is now a drug produced on a global scale in almost every country in the world². More than half (52%) of all drug seizures recorded worldwide between 2017 and 2019 are for cannabis in the form of weed, cannabis resin, whole plant, or other plant residues³.

Even though globally, information campaigns, public policies have consistently delivered warnings about the risks of drug use, despite all the research and scientific studies that have demonstrated the medical, psychological, economic, and social dangers of drug use, this type of behavior per-

2 United Nations Office of Drugs and Criminality – UNODC: *World Drug Report 2021 booklet 3, Drug Market Trends*, p.11, available at https://www.unodc.org/unodc/en/data-and-analysis/wdr-2021_booklet-3.html (accessed on 17.03.2022).

3 *Ibidem*, pp.19-20.

sists. In 2020, around 270 million people worldwide will have used drugs, 20% more than a decade ago, and the United Nations Office on Drugs and Crime estimates that the number of drug users will be at least 11% higher in 2030⁴.

In this context, it is not surprising that in the last decade there has been increasing discussion about changing the regulatory framework for cannabis, either by reducing penalties for medical or recreational use, or by removing it completely from criminal law, the so-called decriminalization process. All attempts to curb and even halt the overall demand and supply of cannabis seem to be thwarted, as indicators for both areas have been on an upward trend in recent years. Thus, cannabis-related public policies are a very frequent topic on the agenda of some government discussions⁵. In the last 10 years, significant legislative modifications related to cannabis have emerged in some cases, changes that not only concern recreational cannabis use, but also the production, marketing, and consumption of this drug for recreational purposes. These changes appear to have divided international public opinion, between strong advocates of the legalization of cannabis use and conservatives who engage in such discussions and disputes with great caution, and who consider legalization a mistake that will generate unpredictable societal, perhaps even global, consequences. The most fervent supporters of cannabis legalization often cite economic arguments⁶ while opponents of liberalization claim that states that intend to revise their legislation by implementing measures to allow the use of cannabis for medical and recreational purposes must truly ap-

4 United Nations Office of Drugs and Criminality – UNODC: *World Drug Report 2021 booklet 2, Global overview. Drug demand. Drug Supply*, p.15, available at https://www.unodc.org/unodc/en/data-and-analysis/wdr-2021_booklet-2.html (accessed on 15.03.2022);

5 Elisa Benedetti, Giuliano Resce, Paolo Brunori, Sabrina Molinaro, "Cannabis Policy Changes and Adolescent Cannabis Use: Evidence from Europe" in *International Journal of Environmental Research and Public Health*, 18, 5174, 2021, pp.1-16.

6 Some of the economic arguments that may underlie the legalization of recreational cannabis use in the United States can be found in an article published in *Forbes Magazine* in 2020 „*Cannabis legalization is key to economic recovery*” available at <https://www.forbes.com/sites/kriskrane/2020/05/26/cannabis-legalization-is-key-to-economic-recovery-much-like-ending-alcohol-prohibition-helped-us-out-of-the-great-depression/> (accessed on 21.04.2022).

preciate that such a decision will have consequences in several spheres of social life: health, crime, public safety, economy⁷.

Known and used since time immemorial, cannabis is the subject of much debate in modern times about the harmfulness of its use. The early records of the cultivation of *Cannabis Sativa* can be found in ancient China, indicating that cannabis was used for fibers as far back as around 4000 years ago. The same historical sources also suggest a medicinal use of cannabis seeds⁸.

Today there is no scientific uncertainty about the curative properties of the seeds of the *Cannabis Sativa* plant, seeds which are extremely low in the main alkaloid considered the most potent component of the plant and which also determines its drug-like character - tetrahydrocannabinol, but very high in essential acids and protein⁹.

The use of cannabis for recreational purposes is not a new issue, with several historical sources documenting that the plant was used for spiritual and recreational purposes. For this reason, in the mid-19th century, cannabis comes to the attention of several countries where this type of consumption was known, especially in the Middle and Far East, but also in South America and Africa, and the first prohibitive laws on this plant were introduced.¹⁰

At global level, the non-medical use of cannabis became a punishable offence after the adoption of the 1925 Geneva Convention. Although the 1925 International Opium Convention was more concerned with the prohibition of opium poppy production and consumption, because of the Opium Wars, delegates included on the agenda for discussion issues regarding the use of cannabis, which would be included in an expanded list

7 Beau Kilmer, "How Will Cannabis Legalization Affect Health, Safety, and Social Equity Outcomes? It largely depends on the 14 Pa" in *The American Journal of Drug and Alcohol Abuse*, 2019, pp. 1-9.

8 Antonio Waldo Zuardi, "History of cannabis as a medicine: a review" in *Revista Brasileira de Psiquiatria*, 2006, (28)2, pp. 153-157.

9 Roger Pertwee, Maria Grazia Cascio, "Known Pharmacological Actions of Delta-9-Tetrahydrocannabinol and Four Other Chemical Constituents of Cannabis that Activate Cannabinoid Receptors" in Roger Pertwee (Eds.) *Handbook of Cannabis*, Oxford University Press, 2014, p. 115.

10 David Bewley-Taylor, Tom Blickman, Martin Jelsa, *The Rise, and Decline of Cannabis Prohibition. The History of Cannabis in the UN Drug Control System and Options for Reform*, Transnational Institute, 2014, p. 16.

of plants and substances to be under international control to create an international drug control framework¹¹.

Under the 1961 Vienna Single Convention on Narcotic Drugs, the cultivation and production of cannabis, its marketing, distribution, possession, and use, even for medical purposes, were limited and prohibited¹².

In the last 20 years, although there has been much controversy about the damages of cannabis use, several countries have adopted legislative reforms that have liberalized the cannabis use system, including Australia, Canada, the Netherlands, the United States, in part, and Uruguay. The last, as well as the US states of Washington and Colorado, have recently adopted legislation on the production, distribution, and marketing practices of cannabis¹³.

At a regional scale, such as at the European Union level for example, there are certain legislation dealing with cannabis trafficking. However, amendments and reforms to cannabis legislation have focused more on possession and use for own consumption, and at European level the legislative response is the responsibility of each Member State, leading to ambiguity, divergence, and disagreement.

Directions for action on amending cannabis legislation

Various authors¹⁴ have over the past 2 years been attempting a classification of cannabis-related legal reforms that have taken place worldwide. Al-

11 *Ibidem*, pp. 2-3.

12 Yuyan Shi, Michela Lenzi, Ruopeng An, "Cannabis Liberalization and Adolescent Cannabis Use: A Cross-National Study in 38 Countries" in *PLoS ONE* 10 (11), 2015, pp. 1-15.

13 Beau Kilmer, *cit.*, pp. 1-9.

14 Recently, given the high interest in this topic, several authors have conducted studies, research and analysis on legal reforms related to cannabis use. For this paper, some references to this topic were found in the works of various authors: Wilson, S., Rhee, S.H., (2022) Causal effects of cannabis legalization on parents, parenting, and children: A systematic review, Rehm, J., Crépault, J.F., Fischer, B. (2017) The devil is in the details! On regulating cannabis use in Canada based on public health criteria: Comment on "Legalizing and regulating marijuana in Canada: review of potential economic, social, and health impacts.", Resko, S., Ellis, J., Early, T.J., Szechy, K.A., Rodriguez, B., Agius, E., (2019) Understanding Public Attitudes Toward Cannabis Legalization: Qualitative Findings From a Statewide Survey; Shi, Y., Lenzi, M., An, R., (2015) Cannabis Liberalization and Adolescent Cannabis Use. A Cross-National Study in 38 Countries.

though varying in number, all classifications are based on the penalty shape and levels of law enforcement related to the production, distribution and trade of cannabis and cannabis products.

In this article, the author has considered the classification made by Shi Y and Lenzi M., which refers to 4 main directions of action in legislative changes: total prohibition, depenalization, decriminalization, and partial prohibition. These 4 forms of amendment of cannabis legislation embrace all the international legal regulations in place that deal with cannabis.

As I mentioned before, in some countries the use of cannabis is considered a criminal act and is punishable under the criminal penal code – corresponding to total prohibition framework.

Other countries have considered economic, health and demographic aspects and while they have maintained cannabis use as an offence, the severity of the penalties is much less severe – depenalization framework.

On the same lines of reasoning, some nations have moved cannabis use out of the criminal sphere, making it a contravention for which offenders can receive civil or administrative penalties – decriminalization paradigm.

And finally, in some countries, the Netherlands being one example, legal reform has involved a partial ban on cannabis, which translates into a selective enforcement of criminal laws relating to this drug, as well as an admission of cannabis use in certain places and for certain groups of the population – partial prohibition framework¹⁵.

Although these types of regulations may exist in some countries, some regions or jurisdictions of these nations have the flexibility to apply targeted regulations, ranging from a total ban on cannabis use to the imposition of sales taxes on the cannabis trade.¹⁶

Regardless of whether countries have made legislative reforms to open the use of cannabis or, on the contrary, to make the use of this drug more punishable, the supporters of the two-side use the same arguments, differing only in their interest in its legalization or prohibition. Economic and legal arguments are mainly used by those who support the legal use

15 Yuyan Shi, Michela Lenzi, Ruopeng An, *cit.*, 2015, pp. 1-15.

16 United Nations Office of Drugs and Criminality – UNODC: *World Drug Report 2021 booklet 3, Drug Market Trends*, p. 31, available at https://www.unodc.org/unodc/en/data-and-analysis/wdr-2021_booklet-3.html (accessed on 17.03.2022).

of cannabis, while those who oppose it use health and social arguments. However, there are plenty of voices bringing up economic points that give little support to cannabis legalization or at least raise questions about issues that need attention from the governments, but there is also no lack of social reasons, particularly those related to segregation and racial discrimination, which are used to support the pro-legalization arguments. Regardless of the arguments used and the purpose for which these arguments may be used, countries considering amending cannabis regulations, either in support of legalization or tougher penalties, are recognizing that such decisions will have a long-term impact on many aspects of society, ranging from economic issues to the health and safety of community members.

Kilmer proposes analysis of no less than 14 points that require attention when considering changes to cannabis regulations. The author refers to them as the 14 P's, as they all start with the P. They address issues that deal with cannabis production, the power of the state in question to regulate the trade and the distribution, profitability incentives, methods of marketing products, penalties for regulatory violations, retail price, product potency and purity, the criminal records of retailers and distributors, and the types of products sold¹⁷.

Several debates have been raised and are still being raised on some of these aspects. It seems that one of the strongest arguments behind the adoption of the Canadian Bill C45 - The Cannabis Act - has been that due to legalization and regulation, the black market for cannabis will simply vanish¹⁸. Recent analyses, show both a trend of an increase in the number of Canadian users of cannabis, up about 5% since cannabis legalization as well as a tendency for Canadian users to replace their sources of cannabis supply by moving away from the black market and buying from legal community stores and dispensaries. The Canadian recreational cannabis market is estimated more than 1500 million Canadian dollars annually, and recent analyses show that in the third quarter of 2020, more than half of that amount was spent in licensed stores¹⁹. In fact, other Canadian eco-

17 Beau Kilmer, *cit.*, pp. 1-9.

18 Michael Amlung, Lames MacKillop, "Availability of legalized cannabis reduces demand for illegal cannabis among Canadian cannabis users: evidence from a behavioral economic substitution paradigm", in *Canadian Journal of Public Health* 110, 2019, pp. 216-221.

19 United Nations Office of Drugs and Criminality – UNODC: *World Drug Report*

conomic analyses related to the expenditure of a household in Canada, show an increase in spending on cannabis products of about 15% in the fourth quarter of 2021, compared to the same quarter of 2020²⁰.

Several studies have been carried out to analyze the arguments and motivations behind changes in legal regulations on cannabis. According to some authors²¹, more arguments exist for supporting cannabis legalization than against it. In the survey of 2608 people from Michigan USA in 2016, the main reasons for supporting cannabis legalization refer to subjects' low perception of the risks of cannabis use, medical benefits, criminal justice reform, and most importantly the possibility of increased public revenue because of taxing this cannabis trade²². Regarding the reduced perception of the risks of cannabis use, some researchers show that most respondents to a survey of people in Australia, Canada, the United Kingdom, and the United States consider cannabis use less dangerous than cigarette use²³.

As concerns the increase in public revenue due to the taxation of cannabis use, some comments have also been made in this direction. Although the introduction of the licensing system for cannabis sellers in California, USA, for instance, was based on the reasoning of facilitating access to the legal cannabis market for American farmers, an article published in 2019 in the California Agriculture Journal in fact notes their difficulties and challenges to remain competitive in the legal cannabis market. Thus, among the issues highlighted, the multitude of taxes that farmers must pay to ensure a quality standard of the cannabis products they commercialize, all of which are reflected in the final commercial price of cannabis, a price that can easily influence the balance between the legal and illegal cannabis

2021 booklet 3, *Drug Market Trends*, p. 34, fig. 30, available at https://www.unodc.org/unodc/en/data-and-analysis/wdr-2021_booklet-3.html (accessed on 17.03.2022).

20 The data are available on the <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3610010701>, visited on 26.04.2022.

21 Stacey Steigerwald, Beth Cohen, Marzieh Vali, Deborah Hasin, Magdalena Cerda, Salomeh Keyhani, "Differences in Opinions About Marijuana Use and Prevalence of Use by State Legalization" in *Journal Addiction Medicine*, vol. 14 nr. 4, 2020, pp. 337 – 344.

22 Stella Resko, Jennifer Ellis, Theresa Early, Kathryn Szechy, Brooke Rodriguez, Elizabeth Agius, "Understanding Public Attitudes Toward Cannabis Legalization: Qualitative Findings from a Statewide Survey", in *Substance Use & Misuse*, 54(8), pp. 1-13.

23 Shannon Gravely et al., "International differences in patterns of cannabis use among adult cigarette smokers: Findings from the 2018 ITC Four Country Smoking and Vaping Survey", in *International Journal of Drug Policy*, 79, 2020, pp. 1-10.

supply system²⁴. Arguments in favor of legalization for consumers on the regulated cannabis market include the perception of an elevated level of control over the quality of products sold on the legal market, the knowledge of the product's purity and intensity that users purchase, and the absence of legal risks for the users²⁵.

Among the arguments used to maintain cannabis use in the criminal area, the most representative ones are founded on mentions of the increase in cannabis use especially by adolescents, a population for whom cannabis is an exceedingly popular drug²⁶, but who also present the highest vulnerabilities and risks because of their use patterns. One of the most widely discussed hypotheses in this regard refers to increased access to cannabis by adolescents, but some research on this aspect has suggested that neither depenalization or decriminalization seems to be directly correlated with a perception of adolescents having easy access to the drug²⁷, while others have pointed out that the legalization of cannabis has so far not lead to an increase in the number of adolescent cannabis users, but to an increase in the number of adult users²⁸.

A few final findings

It is premature to consider all the aspects of social life that will be changed by a new legal cannabis regime. Primarily this is because the changes have not been in place long, and although they are well known in the

24 Hekia Bodwitch, Jennifer Carah, Kent Daane, Christy Getz, Theodore Grantham, Gordon Hickey, Houston Wilson, "Growers say cannabis legalization excludes small growers, supports illicit markets, undermines local economies", in *California Agriculture* 73(3), 2019, pp. 178 – 184.

25 Michael Amlung, Lames MacKillop, *cit.*, pp. 216-221

26 According to the *Technical Report Monitoring and evaluating changes in cannabis policies: insights from the Americas* published by the European Monitoring Centre for Drugs and Drug Addiction in 2020, one of the major concerns regarding changes in the legal framework for cannabis use is the vulnerability of adolescents and young people to initiating and maintaining cannabis use. For more see *Technical Report Monitoring and evaluating changes in cannabis policies: insights from the Americas*, (2020), Chap. 4.2 pp. 17-23.

27 Elisa Benedetti, Giuliano Resce, Paolo Brunori, Sabrina Molinaro, *cit.*, 2021, pp. 1-16.

28 Syla Wilson, Soo Hyun Rhee, "Causal effects of cannabis legalization on parents, parenting, and children: A systematic review", in *Preventive Medicine Journal*, vol. 156, 106956, pp. 1-11.

regions and countries where they have occurred, the social changes will not be delayed and will occur well after the changes that brought them upon themselves. This is because it takes time for these changes to be perceived in society. In areas where cannabis legislation has been changed to tolerate self-consumption and decriminalize cannabis possession, the first people who will notice the changes are frequent users, whose criminal records will no longer include contraventions or even offences due to cannabis use.

An interesting point to note is that so far, changes to the legal framework on cannabis have been made in the context of the operation of a general ban on the drug. Further regulations are needed and expected to establish regulated frameworks for the production, distribution, commerce, and use of cannabis with a wider impact on public health and safety policies. Regulations which, if they come, will further underline the significance of liberty of choice.

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