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Institute of Licensing

The future of cannabis licensing for recreational use

Should cannabis use be legalised in the UK, and if so, how should it be regulated? **Gary Grant** points the way forward

Given that demand for cannabis pre-dates civilisation,¹ should its supply today be placed in the hands of a responsible State-run licensing regime or continue to be left to organised crime?

That is the ultimate question policy-makers face when considering whether the United Kingdom should follow the likes of Canada and eleven states in the USA, in legalising and licensing the use and supply of recreational cannabis. A fundamental factor in this judgement-call must be whether the potential harm resulting from recreational cannabis use is likely to be increased or decreased by its legalisation and regulation.

This article concludes that, on balance, the undoubted harms that flow from recreational cannabis use are more likely to be reduced if it were to be legalised and well-regulated. That can be achieved through a licensing regime similar to the one we are already familiar with in the UK and which controls our nation's favourite drug of all - alcohol.

Cannabis usage – worldwide and UK

Cannabis is the most widely produced, trafficked, and consumed illicit drug in the world. In a 2019 report, the United Nations estimated there were some 188 million users globally.²

The Home Office's Crime Survey for England and Wales 2018/19³ assessed that 7.6% per cent of adults aged 16 to 59 used cannabis in the past year, equating to around 2.6 million people. Cannabis was also the most commonly used drug by young adults aged 16 to 24, with 17.3% having used it in the last year (around 1.1 million young adults). Of particular concern is that cannabis was found to be the most commonly used drug among 11 to 15-year olds, with 8.1% reporting that they had used it in the last year.

Startlingly, when the UK Crime Survey's respondents were asked about their drug use beyond just the past year, around one in three adults (30.2%) aged 16 to 59 admitted to using cannabis at some point in their lifetime. That statistic is worthy of repetition: one in three adults in England and Wales has admitted to using cannabis, a drug prohibited by the criminal law for nearly 100 years.

Cannabis is designated as a Class B drug in the UK under the Misuse of Drugs Act 1971. Simple possession of the drug can therefore carry a maximum penalty of five years imprisonment and a supplier of cannabis faces up to 14 years' imprisonment. Whilst, in reality, a prison sentence is unlikely for a first offence of simple possession of cannabis for personal use, with a police warning or caution more likely, many prosecutions do still take place. In 2017 over 15,000 individuals were prosecuted in the criminal courts of England and Wales for simple possession of cannabis.⁴ Even a financial penalty for an offender can destroy an individual's future and opportunities in life (though one notable exception is Lord Ken MacDonald QC, the former Director of Public Prosecutions, who was convicted and fined for supplying a small amount of cannabis by post as an Oxford undergraduate). When a third of adults in England and Wales admit to having used cannabis - despite the criminal sanctions - then one is forced to ask: has criminalising its use actually worked in reducing the potential harms associated with cannabis use? The statistics suggest that the decades long "war on drugs", a term first coined by President Richard Nixon in 1971 as an attempt to cast society's response to drug use as a moral battle between good and evil instead of a public health issue, has been well and truly lost. Both the demand for, and supply of, opiates, cocaine and cannabis have all gone up significantly since 1971. As have the resulting harms, including increased levels of drug-related violence and crime (Al Qaeda is principally financed by opiates and cannabis production).⁵ War by other means may now be worthy of consideration or even, perhaps, the pursuit of a more effective strategy of peace, reconciliation and State-control of the market place to better ensure that the harms

1 Evidence of cannabis use has been found at an archaeological site in the Oki Islands near Japan dated to at least 8,000BC. See Tengwen Long et al (March 2017) "Cannabis in Eurasia: origin of human use and Bronze Age transcontinental connections", *Vegetation History and Archaeobotany*, 26(2): 245-258.

2 https://wdr.unodc.org/wdr2019/prelaunch/WDR19_Booklet_2_DRUG_DEMAND.pdf.

3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832533/drug-misuse-2019-hosb2119.pdf.

4 Ministry of Justice data at: <http://qna.files.parliament.uk/qna-attachments/931411/original/PQ%20157684%20Tables.xlsx>.

5 See Professor David Nutt, *Drugs Without The Hot Air - Making Sense of Legal and Illegal Drugs* (2020. UIT Cambridge), Chapter 17.

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of drug use can be reduced.

When such a significant section of our population is disregarding the criminal law as it applies to cannabis, then its continued criminalisation risks calling the law into disrepute more generally. If everyone else is disobeying the law, why on earth should I obey it or, indeed, any other law?

In 2000, an enquiry led by Viscountess Runciman (a former Chair of the UK Mental Health Act Commission) produced a report on behalf of The Police Foundation into the policing of drugs in the UK, with a particular focus on cannabis. She concluded:⁶

There can be no doubt that, in implementing the law, the present concentration on cannabis weakens respect for the law... It gives large numbers of otherwise law abiding people a criminal record. It inordinately penalises and marginalises young people for what might be little more than youthful experimentation. It bears most heavily on young people in the streets in cities who are also more likely to be poor and members of ethnic communities. The evidence strongly indicates that the current law and its operation creates more harm than the drug itself.

Of course, that argument in itself is not conclusive. Just because many people drive over the speed limit on the motorway it does not follow that all legal speed restrictions should be abandoned. But the fundamental difference between cannabis use and speeding is this: cannabis, on the whole, may well harm an individual user but poses little risk of significant harm to others. In contrast, speeding on a motorway creates a risk of harm to the individual speeding driver *as well as* to other road users. Because of the serious risk of harm to *others*, speeding is rightly criminalised so as to protect others from an individual's poor choices. In a modern liberal democracy that is the highest, perhaps only proper, justification for a legal prohibition on the behaviour of a consenting adult. However, the justification for criminalising behaviour that does *not* create a serious and disproportionate risk of harm to others is more elusive, yet that is the position with our current legal approach to cannabis.

A related point is that when consumers of cannabis hear their Government speak of the great evils of illicit drugs, all drugs, in absolutist terms, yet their own experiences suggest otherwise, the voice of Government is diminished – even when they may be making an entirely valid point in relation to more potent drugs like heroin or crack cocaine. The boy who cried wolf is rarely a persuasive role model.

⁶ <http://www.police-foundation.org.uk/publication/inquiry-into-drugs-and-the-law/>

When considering the pros and cons of legalisation we need to look at the potential harms of cannabis and the reasons why people wish to consume it. Before doing so, it is helpful to consider cannabis and its role in society. This article gratefully acknowledges the work of Professor David Nutt, Professor of Neuropsychopharmacology at Imperial College, London, (and the author of *Drugs Without the Hot Air: making sense of legal and illegal drugs*)⁷ but perhaps best known as the scientist sacked by the Home Secretary as Chair of the Advisory Committee on the Misuse of Drugs Act, for comparing the harms of horse-riding to ecstasy.⁸ His comparison was statistically true but was frowned upon by certain parts of the media. The impact of contrived media outrage led to this exchange in the House of Commons on 13 July 2011:

Tom Brake MP: *Does the Prime Minister believe that once a healthier relationship is established between politicians and the media, it will be easier for Governments to adopt evidence-based policy in relation to, for example, tackling drugs...*

Prime Minister David Cameron: *That is a lovely idea...*

A short history of cannabis

The cannabis or marijuana plant originated in Asia. It has been used by humans for thousands of years for three main purposes: as a fibre, as a medicine and as a recreational drug for pleasure. The stem of the plant is used to make hemp, a fibre widely used for making ropes, netting and fabrics. So important was its use that Henry VIII legislated to mandate farmers to grow it (the decree stipulated that for every 60 acres of arable land a farmer owned, a quarter acre was to be sown with hemp).⁹ The buds and resin of the female plant contain numerous ingredients, including tetrahydrocannabinol (THC). This is the psychoactive ingredient that makes recreational users feel “stoned” or “high” (ie, chilled out, talkative, giggly and sociable). The solid brown resin is generally known as “hash”, the buds as “weed” or “grass”. It can be ingested by eating (eg, in hash-cakes), smoking (eg, mixed with tobacco in rolled-up “joints” or “spliffs” or through a water-pipe), or, more recently, vaped in liquid-oil form in vaporisers and vape-pens, much like an e-cigarette. A more potent form of weed, known as “skunk” (due to its strong smell) has been developed in the past few decades by selective breeding techniques. The THC content in skunk is two to three times higher than in unmodified plants.

Other ingredients of the plant include cannabidiol (“CBD”).

⁷ UIT Cambridge 2nd edition (2020).

⁸ See in particular Nutt, *Drugs Without The Hot Air*.

⁹ “Marijuana – the first 12,000 years”, Ernest Able, Plenum Press, 1980, cited in Nutt (ibid).

CBD (among other elements in the plant) is widely claimed to have medicinal uses for the relief of pain and anxiety, to reduce epileptic fits and the symptoms of Parkinson's and multiple sclerosis among other ailments. CBD has no mood-altering effects. CBD itself, in isolated form, is not a prohibited drug and is now widely marketed as a "well-being" supplement in health food stores and pharmacies (though care must be taken not to make any unproven medicinal claims).

Cannabis is probably the world's oldest medicine. Although known to medicine since the middle-ages, cannabis was more widely used in the UK from the 1840s. During the British Raj, British doctors witnessed its use in traditional Indian medicine (where it was known as "bhang") and brought it back to the UK as a painkiller. Queen Victoria was regularly prescribed cannabis to aid her menstrual pain and after childbirth (she had nine children). Concerns about widespread cannabis use in British India led to the Indian Hemp Drugs Commission Report in 1894. It concluded that the drug was not harmful and should not be controlled.

During the First World War, soldiers in an effort to escape the hideous reality and trauma of war, used a significant amount of illicit drugs including cannabis, morphine and cocaine. Harrods even sold gift packs containing heroin and cocaine with the tag-line "a welcome present for our friends at the front".¹⁰ During the Vietnam War around two-thirds of American soldiers used cannabis regularly. Depending on the drug involved, stoned soldiers are probably less effective fighting units than sober ones. That said, several armed forces have prescribed various forms of amphetamine as a stimulant to help their soldiers, sailors and pilots stay alert for long periods without sleep (during World War 2, the British armed forces used 70 million amphetamine tablets whilst their German counterparts were dosed up on methamphetamine)¹¹. When these soldiers returned to civilian life the authorities were, not unreasonably, concerned that these drug-addicted men turned workers would be less productive if they turned up to work stoned or avoided work altogether, preferring to exist in a drug-haze. Between 1916-1928 a series of laws controlled the supply and use of cannabis and other drugs in the UK but cannabis remained lawful to medically prescribe until 1971. Global efforts to outlaw drugs led to the 1961 United Nations Single Convention of Drugs, and in 1971 the United Nations Convention on Psychotropic Substances. The latter convention led to the Misuse of Drugs Act 1971, the UK law which is still the principal legislative control over cannabis and other drugs. Unlike heroin and cocaine (which have proven medicinal uses and can still be lawfully used under medical supervision), cannabis was thought to have no medicinal benefits at the time. The 1971

Act therefore made it unlawful to possess or supply cannabis even for medicinal purposes (although there were some very limited exceptions introduced in November 2018 if prescribed by a registered specialist doctor).

Why do humans take mind-altering drugs?

Deliberately creating an altered state of consciousness is a human universal. That altered state can be provoked or created in a myriad of ways - by listening to sublime music, by dancing like no one is watching, musing over a poem, meditation or prayer, being engrossed in a dramatic movie, riding a roller-coaster, bungee jumping and skiing, exploding in joy at your football team's late winner or being hugged by a much loved child, by drinking coffee and tea, eating chocolate and sugar-coated sweets, by taking Diazepam or tobacco or alcohol. For exactly the same reasons some people also enjoy using cannabis and other mind-altering drugs - legal or illegal. All of these human activities that impact on our minds are lawful, with the single exception of cannabis use.

Different societies throughout history have used mind-altering drugs. By way of example, Figure 1 is a map of the world showing the main drugs in use 1,000 years ago.¹²

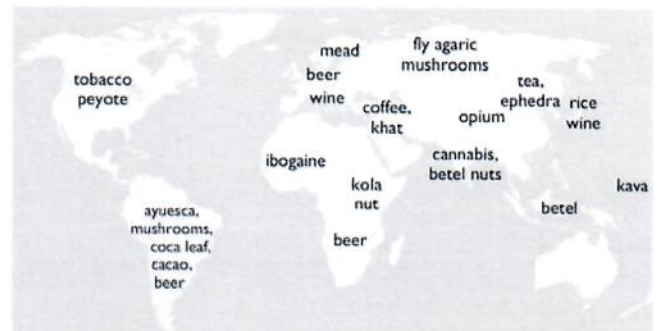


Figure 1: Main drugs in use 1,000 years ago.

In many cases the consumption of mind-altering drugs has been a part of religious, spiritual and social rituals for tens of thousands of years. From Native Americans ingesting cactus-derived peyote, to Peruvian Shamans drinking an ayahuasca brew, to the wine drunk at Catholic sacrament or during a Jewish Sabbath meal. A music festival-goer smoking a spliff is a modern day iteration on the same spectrum.

Nor are humans the only animals to seek out mind-altering drugs. Hornets fly haphazardly, if at all, after feasting on fermenting plums (and often return for more), elephants have been observed tumbling around after consuming ripened Marula fruit that has fallen to the ground, Canadian moose have been photographed slumped over tree branches after eating apples fermenting on the ground.

Academics have suggested there may be an evolutionary

¹⁰ Nutt, *Drugs Without the Hot Air*, Ch17.

¹¹ *Ibid*, Ch 17.

¹² Map from Nutt, *Drugs Without The Hot Air*.

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basis to this behaviour.¹³ Plants develop drugs that avert predators by interfering with their brains. Some animals learn to overcome this aversion and turn it to a liking. Those animals best adapted to enjoying the drug are then able to enjoy more life-sustaining food and their offspring, in turn, are more likely to have the same adaptation. These offspring will soon outnumber and replace other animals without a predilection to the plant-based drugs. Now, it is unlikely that a full-proof “evolutionary defence” will be available to a clubber caught with some Ecstasy on a Friday night in the West End of London, but it may provide, at the very least, an explanation.

Potential harms of cannabis

Having considered why humans take mind-altering drugs, it is necessary to consider the potential harms of cannabis use specifically. Nothing in this article should be taken as encouragement for anyone to take illicit drugs. *South Park*'s Mr Mackey is undoubtedly right when he summarised the scientific learning in this area with his admonition that “Drugs are Bad”.

The potential harms of cannabis use include the following:

- Lethargy and de-motivation – which can impact on education, work & relationships
- Temporary memory loss
- It impairs the ability to drive, use heavy machinery etc. safely
- It is associated with schizophrenia and psychotic illnesses – particularly in young, susceptible individuals who are heavy users of high potency varieties of cannabis. There is an ongoing academic controversy as to whether the link is merely “correlation” (ie, people with psychotic tendencies are attracted to cannabis as it helps their ailments) or “causation” (ie, the cannabis use has caused or accelerated the psychosis in people with a genetic pre-disposition to those symptoms).¹⁴
- The well-known health harms from using tobacco still exist when it is mixed with cannabis to make rolled-up joints.

According to the NHS some 10% of regular users become dependent on it.¹⁵ Withdrawal can cause insomnia, mood

swings, irritability and restlessness. In the UK some 17,000 individuals are treated for addiction per year. About one-half are under the age of 18.

So, the question is not whether cannabis has the potential to cause harm to an individual user. It clearly does. The question is whether the degree of harm is such that the State has a right to intervene by totally prohibiting its consumption by informed consenting adults.

Weighing the risks

There are plenty of drugs, both old and new, which have the potential to cause really serious harm to an individual as well as to others. Professor Nutt has identified one particularly dangerous drug, known colloquially as “Wiz”. He describes it as follows with an urgent call to our politicians to do something:¹⁶

A terrifying new “legal high” has hit our streets. Methyl-carbonol, known by the street name “Wiz,” is a clear liquid that causes cancers, liver problems, and brain disease, and is more toxic than ecstasy and cocaine. Addiction can occur after just one drink, and addicts will go to any lengths to get their next fix – even letting their kids go hungry or beating up their partners to obtain money. Casual users can go into blind rages when they’re high, and police have reported a huge increase in crime where the drug is being used. Worst of all, drinks companies are adding “Wiz” to fizzy drinks and advertising them to kids like they’re plain Coca-Cola. Two or three teenagers die from it every week overdosing on a binge, and another 10 from having accidents caused by reckless driving. “Wiz” is a public menace – when will the Home Secretary think of the children and make this dangerous substance Class A?

For those readers who haven’t already guessed, the drug “Wiz” is otherwise known as “alcohol”. Given the harm it causes, should alcohol consumption be wholly banned and regulated through the imposition of criminal sanctions against those who dare to have a sip of sherry after a tough day at work? If not, then why should we do so in the case of cannabis?

For those who, in the interests of consistency, are prepared to concede that alcohol should indeed be outlawed (at least for others), one need only turn to the Prohibition experiment in the United States between 1920-1933. It was a wholesale failure. The demand for alcohol in the US did not vanish, but its supply was handed from the regulated producers and licensed bars to the likes of Al Capone and the unlicensed Speakeasies. The quality and safety of the now unregulated

13 Nutt, *Drugs Without The Hot Air*.

14 See for example:

[https://www.thelancet.com/article/S2215-0366\(19\)30086-0/fulltext](https://www.thelancet.com/article/S2215-0366(19)30086-0/fulltext); and <https://www.drugabuse.gov/publications/research-reports/marijuana/there-link-between-marijuana-use-psychiatric-disorders>; and <https://www.nhs.uk/news/genetics-and-stem-cells/cannabis-use-genetically-linked-to-schizophrenia/>. For a useful summary of the current state of academic research, see also Nutt, *Drugs Without The Hot Air*, Ch.5.

15 <https://www.nhs.uk/live-well/healthy-body/cannabis-the-facts/>.

16 Nutt, *Drugs Without The Hot Air*, Ch.7.

illicit alcohol (“Moonshine”) in Prohibition-era America deteriorated to the point that paint-stripper and industrial alcohol were often consumed as the only available alternative and with predictably fatal effects.

In a fascinating study published in *The Lancet*,¹⁷ Professor Nutt and a team of experts forming the Independent Scientific Committee on Drugs carried out a survey of the 20 most popular drugs – legal and illegal – in the UK. The researchers gave a weighted score of harm based on a number of criteria. This “harm-score” was divided into harm to the user (eg, a heroin addict overdosing) and harm to others (eg, the mugging of an old-lady’s purse in order to purchase the alcohol, and treatment costs by the NHS). The overall score was the aggregate of both types of harm. Their results are set out in Figure 2 (below). By far the most harmful drug in

As a crude comparison, according to the NHS there are some 5,843 “alcohol-specific” deaths per year.¹⁸ The Office of National Statistics suggests that the annual figure for cannabis-related deaths in England and Wales between 2001- 2017 (ie, where cannabis was mentioned on the death certificate without other drugs or alcohol) ranges from zero to a maximum of four (a similar risk to being killed by a lightning strike).¹⁹ Globally, there is not a single confirmed death where the undisputed cause was an overdose of cannabis.²⁰

Having identified the potential harms of cannabis use there is a temptation to lazily conclude that anything harmful should remain prohibited and illegal. Yet, as we have seen with alcohol, there are many perfectly lawful pursuits which carry a serious risk of harm, yet few seriously

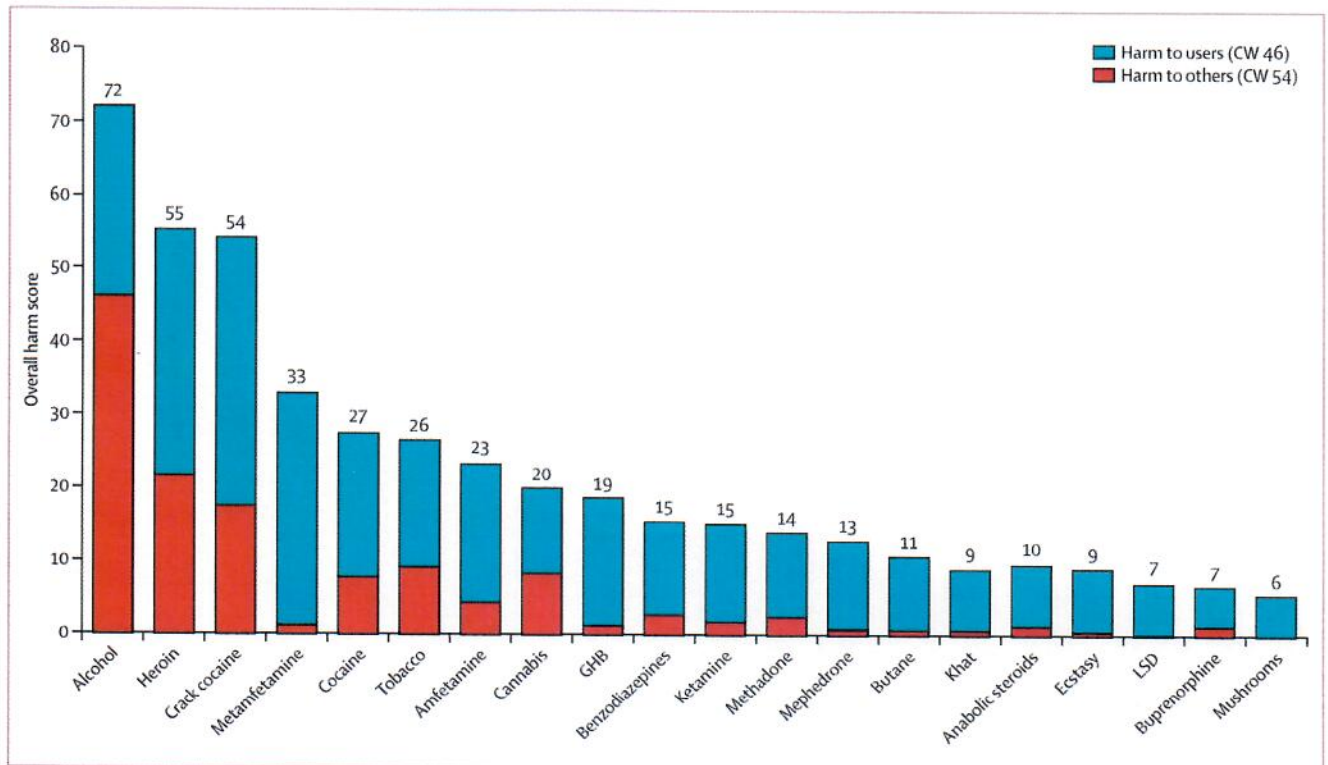


Figure 2: Most harmful drugs, ranked.

our society is the one we know as “alcohol”, the nation’s favourite, and still lawful, drug. Moving down the table from alcohol, in second and third places are the – relatively - less harmful heroin and crack cocaine (both Class A prohibited drugs). Tobacco comes in at number six. Cannabis appears as the eighth most harmful drug consumed in the UK.

So, when we consider the harms of cannabis use, we need to look at “relative harm”. Relatively, cannabis is less harmful than alcohol or tobacco – both of which are legal substances.

suggests they should be outlawed for consenting adults. The famous example that led to Professor Nutt’s departure as a senior Government Advisor on drugs, namely that Ecstasy use poses a similar risk to human health as horse-riding, is a prime example. Should we criminalise and prohibit horse-

¹⁷ *The Lancet*, 6.11.2010: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(10\)61462-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(10)61462-6/fulltext).

¹⁸ 5,843 alcohol specific deaths in 2017, see: <https://digital.nhs.uk/data-and-information/publications/statistical/statistics-on-alcohol/2019/part-2>.

¹⁹ See <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/adhocs/008866drugrelateddeathswherecannabiswasmentionedwithouthersubstancesbycontributorycausesofdeath2001-2017>

²⁰ In a 2019 case a New Orleans’ coroner concluded that vaping cannabis oil may have been the cause of a woman’s death from respiratory failure. Drug experts have cast serious doubt on that finding: <https://www.newsweek.com/thc-overdose-death-marijuana-exposure-united-states-1442742>.

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riding – generally an activity now pursued for no greater objective than human pleasure? The dangers of playing rugby, downhill skiing, boxing, motor-racing, or even just driving your children to school each morning far exceed the dangers of cannabis use in terms of the risk of a resulting fatality. We all take numerous risks every day. We do so because we are prepared to weigh those risks against the resulting benefits. Human pleasure is one such benefit. From cannabis use (if that is your thing), to drinking a fine single malt whisky (which ought to be everyone's thing), ingesting drugs for pleasure may justify a certain level of risk for some. An individual who takes no risks in life is, as a general rule, likely to be very dull indeed. The question therefore is one of weighing up the risks of harm by legalisation against the potential benefits. That is also the answer to the common question: but aren't the arguments for legalising cannabis the same as those for legalising heroin and crack cocaine, so if we legalise cannabis we must also legalise the more dangerous drugs? Since the question is, or should be, one of weighing up the risks for and against a certain course of action, when the risks of harm are exponentially higher (as with heroin and crack cocaine use compared to cannabis) the scales may well fall the other way and demand the continued prohibition of those more dangerous drugs. In other words, the legalisation of cannabis does not inevitably lead to the legalisation of more potent drugs.

We have already considered the potential harms of cannabis use and how they compare to other risky lawful activities. What are the potential benefits of legalising it?

Potential benefits of legalisation

The first benefit of legalisation is a basic one - individual liberty. If an informed adult wishes to smoke a joint, doing no harm to anyone else in the process, then why on earth should the State intervene in that pleasure-seeking activity?

The second benefit is to remove organised crime as the sole controller of recreational cannabis production and supply in the UK. Legalisation is unlikely to remove all criminal involvement in the cannabis trade. Criminals still produce counterfeit tobacco and alcohol products despite their legal status. But most people will prefer to buy safer, higher-quality cannabis products from a legal dispensary than buy illegal black-market products supplied by criminal gangs on street-corners. Therefore, the criminal hold on the cannabis trade is likely to be overwhelmingly diminished as a result of legalisation. The removal, or at least reduction, of criminality in the trade is likely to lead to a reduction in the vicious drug turf wars playing out on British streets in the shape of the well-publicised stabbings and shootings that increasingly scar our society. Closely connected to this point is that under-resourced police forces will then be able free-up the

time and resources currently taken up by issuing warnings, cautions, and prosecuting cannabis users and suppliers in order to focus on those other crimes that damage Society as a whole even more. The current costs of policing, prosecuting and imprisoning cannabis offenders in the UK have been estimated at £500 million per year with police spending an average of 1 million-hours each year enforcing the cannabis ban.²¹ This money and time can surely be put to better use.

In a criminal-led market, standards and quality control tend to be lower than in a legal and regulated market. After all, it is unlikely that a cannabis user will readily report a sub-standard purchase of some illegal hash to his local trading standards officer. In contrast, in a well-regulated, legal market, the State can impose age-restrictions on cannabis purchasers to ensure that young, susceptible brains are deterred from using cannabis. The maximum legal levels of THC (the psychoactive element) in cannabis products can be capped so that the super-strength skunk varieties (ie, those mostly associated with triggering psychotic episodes in young, developing susceptible brains) can be eliminated from the market. The standards of production can be improved. Certain criminal producers of cannabis have been known to use harmful chemicals such as pesticides or solvents in the production process. These dangerous illicit practices can be outlawed in a regulated system so the legal product will be cleaner, safer and more predictable in its potency than that found on the black-market.

The “gateway argument” is often employed by those who wish to retain the status-quo of total prohibition. This argument suggests that if a user starts with cannabis he will inevitably end up taking heroin or crack cocaine. But the criminalisation of cannabis means that an individual is forced to buy the drug from a dealer who may also be keen to push his heroin or crack cocaine products on the user too. Whilst it is true that most heroin and crack cocaine users have also taken cannabis, it is also true that most heroin and crack cocaine users have used alcohol and tobacco. Should they also be banned as gateway drugs? It is not that a cannabis user will inevitably move on to stronger Class A drugs, but rather that a person with a predisposition to using Class A drugs is more likely to be open to trying any drug he can get his hands on, legal or illegal. Moreover, the vast majority of cannabis users never go on to try heroin or cocaine.²² In light of the gateway argument, legalisation provides this additional benefit: people who are able to buy cannabis from a licensed store face no such gateway, because they

21 See “Potential savings from the legalisation of cannabis”, Ben Ramanauskas (May 2018): https://d3n8a8pro7vvhmx.cloudfront.net/taxpayersalliance/pages/9387/attachments/original/1526051770/Cannabis_Legalisation.pdf?1526051770.

22 Nutt, *Drugs Without The Hot Air*, Ch 17.

will not have automatic access to the harder drugs, unlike in the criminal black-market. (The Dutch experiment with decriminalising cannabis use in their now famous “coffee shops” was largely designed to allow cannabis users to purchase cannabis without coming into contact with criminal dealers who would push harder (and more profitable) drugs on them. The result is that Holland now has some of the lowest levels of heroin use in Europe).²³

If, as this article suggests, the supply of cannabis should only be through licensed dispensaries, then a fit and proper person test can be introduced to ensure that those involved in the manufacture and supply of cannabis are responsible individuals detached from criminality.

Hundreds of thousands of otherwise law-abiding individuals, who happen to enjoy an occasional spliff, will no longer be stigmatised as criminals or have to associate with criminals who currently have total control of the supply of cannabis in the UK. This does not help either the individual or Society as a whole. Similarly, individuals who have health or addiction issues associated with cannabis use can more freely access healthcare without the fear of outing themselves as criminals.

Then there is the money. The illegal UK market in cannabis has been estimated at some £2.5 billion per year (based on the estimated sale of 255 tonnes of cannabis in 2016/17 to about 3 million UK users).²⁴ All of this money currently goes into the hands of criminals who are prepared to murder, maim and steal to protect their profits. Would it not be better for legal cannabis sales to be taxed so that the money raised benefits the public as a whole rather than the interests of organised crime?

The Institute of Economic Affairs (IEA) has estimated that if legal cannabis sales made up 95% of the market, it would produce annual tax revenues of £495 million (with VAT plus a 10 per cent tax), £557 million (VAT plus a 20 per cent tax) or £690 million (VAT plus a 30 per cent tax). Further, savings to the NHS and other public services would amount to at least £300 million per annum. In a report published in 2018, the IEA concludes:²⁵

When these savings are added to excise tax revenues of £690 million plus new streams of income tax, business tax and VAT created by the legal industry, claims about

cannabis legalisation providing a £1 billion windfall to the Treasury seem pessimistic. It is likely that tax revenues alone would exceed this. Meanwhile, lower prices would leave cannabis consumers with more money in their pocket, allowing hundreds of millions of pounds to flow into other areas of the economy.

In our brave new world outside the EU, UK governments will be searching for new revenue streams and new industries that create employment opportunities (the US cannabis industry employs 211,000 full-time workers).²⁶ In a legal, regulated cannabis market, they have one ready and waiting to be exploited with the revenue used for the public good (including expenditure on the care and treatment of cannabis abusers who require medical intervention).

A further benefit is that if the legalisation of cannabis increases its availability then it is likely that some people who would previously have drunk alcohol on a night out would, instead, choose to take the relatively less harmful mood-enhancer - cannabis. An individual drunk on alcohol is far more likely to resort to violence and anti-social behaviour than a stoned, soporific cannabis user. The more cannabis replaces alcohol as our recreational drug of choice, the more peaceful our town and city centres are likely to become.

Although it is assumed that the legalisation of cannabis will lead to an increase in its consumption, somewhat counter-intuitively the experience in Portugal since it decriminalised all illicit drugs in 2001 was that the overall levels of drug abuse halved within a decade (primarily because the most problematic users were treated as a health issue rather than locked up in prison cells).²⁷

The global trend towards legalisation

Given the harm / benefit ratio in the debate on legalisation, there is now a clear global trend towards the legalisation of cannabis for recreational use. By the beginning of 2020 these countries have now legalised cannabis for recreational use: Canada, South Africa,²⁸ Uruguay, and Georgia. In the United States, 11 states have followed suit (despite prohibition at Federal level): California, Illinois, Maine, Washington, Colorado, Massachusetts, Michigan, Nevada, Oregon, Alaska, Vermont as well as Washington DC (and a total of 33 states have legalised cannabis for medical use). In Australia, the Australian Capital Territory (ACT) which covers the capital Canberra, legalised recreational cannabis use from 31

23 Nutt, *Drugs Without The Hot Air*, Ch.17. Prof Nutt opines that a far more effective gateway to Class A drug-use is the criminalisation and imprisonment of cannabis offenders.

24 https://iea.org.uk/wp-content/uploads/2018/06/DP90_Legalising-cannabis_web-1.pdf.

25 *Ibid.*

26 <https://www.forbes.com/sites/kevinmurphy/2019/05/20/cannabis-is-becoming-a-huge-job-creator/>.

27 <https://www.forbes.com/sites/erikkain/2011/07/05/ten-years-after-decriminalization-drug-abuse-down-by-half-in-portugal/#38bebc133001>.

28 In September 2018, the South African Constitutional Court legalised the use of cannabis by adults in private places despite the Government's objections.

The future of cannabis licensing

January 2020. In addition to full legalisation, a further 45 countries have effectively “decriminalised” recreational cannabis use, in the sense that there is a recognised policy that the police will take no action in relation to possession and, in some cases, the supply of cannabis for personal use. These countries include the Netherlands, Belgium, Italy, Spain, Portugal, and Israel as well as a further 15 states of the USA. Although many police forces in the UK have indicated that cannabis possession is a low policing priority we have not quite reached the stage of decriminalisation yet.

UK support for legalisation

In 2002 an ambitious young Conservative MP, David Cameron, observed in a debate in the House of Commons that “drugs policy has been failing for decades” and called for the United Nations to consider legalising and regulating all drugs.²⁹ However, upon his elevation to the Prime Ministership, eight years later, he did little to modify these failing policies.

In the 2019 General Election, and for the first time in history, one of the main UK political parties (the Liberal Democrats) pledged to legalise cannabis for personal use in its manifesto:³⁰

The prohibitionist attitude to drug use of both Labour and Conservative Governments over decades has been driven by fear rather than evidence and has failed to tackle the social and medical problems that misuse of drugs can cause to individuals and their communities. Liberal Democrats will take a different approach, and reform access to cannabis through a regulated cannabis market in UK, with a robust approach to licensing, drawing on emerging evidence on models from the US and Canada.

In June 2018 the Chief Constable of Durham Police, Mike Barton, called for legalisation with this reasoning (as reported in *The Guardian*):³¹

The status quo is not tenable. It's getting worse. Drugs are getting cheaper, stronger, more readily available and more dangerous. I have come reluctantly over the years to the conclusion that we need to regulate the market.

The former leader of the Conservative Party, Lord William

Hague, made a similar plea for legalisation in a *Daily Telegraph* article in June 2019 when he wrote:³²

The UK's drug policy is “inappropriate, ineffective and utterly out of date... The battle is effectively over”. Issuing orders to the police to stop people smoking cannabis “were about as up to date and relevant as asking the army to recover the Empire.

When *The Guardian* and *Daily Telegraph* are both carrying pleas for legalisation of cannabis then the objective observer needs, at the very least, to sit up and take notice. In a frenzy of admissions during the 2019 Conservative leadership contest, several candidates fell over themselves to admit using illicit drugs in their student days and beyond. There is an appalling hypocrisy in play when politicians who have themselves used illicit drugs still wish to criminalise others for doing the same.

How can recreational cannabis be licensed: a Californian model?

For UK-based licensing practitioners the control of legal cannabis in California provides a familiar regulatory framework for the UK to follow. California itself is of roughly comparable size to the UK with a population of 40 million (the UK's is 66 million). The state covers 163,696 square miles (UK - 93,600 square miles). California, if it were an individual nation, would be the fifth largest economy in the world with a GDP of \$2,747 billion in 2018 (ahead of India and the UK and just behind Germany). The Californian experience is therefore worth considering because reasonable parallels can be drawn to the UK's circumstances. In 1996 California legalised cannabis for medicinal use and some 2,000 non-profit licensed dispensaries were established. Twenty years later, in 2016, the state held a referendum and Californians approved the legalisation of cannabis for recreational use by a majority of 57% to 43% (“Proposition 64”). This led to the *Adult Use of Marijuana Act 2016*.³³

The law permits adults to grow, use, give away or transport marijuana for personal use in the entire state of California. In a system with echoes of our own sex entertainment licensing regime, local governments (city and county) can elect whether or not to licence or prohibit commercial cannabis activities, including growing, testing or selling cannabis (eg, in licensed cannabis stores / dispensaries) in their districts.³⁴

29 <https://www.independent.co.uk/news/uk/politics/tory-contender-calls-for-more-liberal-drug-laws-505824.html>.

30 <https://www.libdems.org.uk/plan>.

31 <https://www.theguardian.com/society/2018/jun/24/durham-police-chief-mike-barton-for-legalisation-cannabis-uk>.

32 <https://www.telegraph.co.uk/news/2018/06/18/war-cannabis-has-failed-utterly-tories-should-consider-new-approach/>.

33 <https://static.cdfr.ca.gov/MCCP/document/Comprehensive%20Adult%20Use%20of%20Marijuana%20Act.pdf>. See also the revised Medicinal and Adult-Use Cannabis Regulation and Safety Act: https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=BPC&division=10.&title=&part=&chapter=&article.

34 Although deliveries cannot be prohibited.

As would be expected there are very strict controls in place. Only persons over the age of 21 are permitted to use or buy cannabis. Individuals may only lawfully possess up to 1oz (25.5g of dry cannabis) for personal use and may cultivate up to six live cannabis plants only for personal use.

The Californian law imposes a number of restrictions on where cannabis may be used. These include bans on smoking where tobacco smoking is currently prohibited (eg, bars, offices etc), smoking or vaping in a public place (eg, a park) or within 1,000 feet of day care centres, schools, or youth centres while children are present (except in private homes), or whilst driving or riding in motor vehicles, boats or planes.³⁵

Restrictions are in place to control store-front and billboard advertising. “Special event” licences (similar to our Temporary Event Notices) can be granted to cover, for example “Weed Festivals”.

A licence is required for all phases of the cannabis industry including cultivation, testing, manufacture, distribution, transport and retail sales. All cannabis products must be tested by a state-licensed lab and pass through the hands of State-licensed distributors, who also collect taxes on cultivation and retail sales.³⁶

At the time of writing about 20% of California’s 482 municipalities have now adopted the legislation permitting commercial cannabis activities. There are some 187 licensed retail outlets in the City of Los Angeles itself and 873 in the whole State of California.³⁷ There are 208 fully licensed commercial growers of cannabis in California and a further 1,532 growers who are still operating on provisional permits as they go through the application process which requires extensive paperwork, proof that the applicant is a fit and

proper person and can introduce appropriate security measures.³⁸ Failures to abide by licence conditions can result in the revocation of the licence.

The cannabis market is heavily taxed. Retail purchases attract a 15% excise tax. Commercial growers pay taxes / duties of \$9.25/oz per flower or \$2.75/oz leaf. In 2018, tax revenues reached \$345m on a turnover of \$2.5 billion. The money raised goes into the California Marijuana Tax Fund which distributes 60% of its income to youth programs, 20% to environmental damage clean-up and 20% to public safety. These recipients of legal cannabis revenues are, it may be thought, considerably more worthy than the pocket of your average criminal drug-dealer in the UK who currently profits from its prohibition.

Conclusion

In an ideal world, nobody would take mind-altering drugs which carry a risk of harm to themselves or others. But we do not live in such a world. When a third of the UK’s population admit to using cannabis in their lifetime, and when criminal prohibition as part of the “War on Drugs” has led to an increase in both the demand for and supply of cannabis since it began in 1971, then it is time to take an adult and pragmatic approach to the legalisation of cannabis for recreational use in the UK. The harms associated with cannabis use are likely to be reduced if its supply is removed from criminals and handed over to a legal licensed regulated market run by local authorities. Those addicted to cannabis should be treated as a public health priority, not criminalised. The Californian model provides a useful framework meriting close attention in the UK if we genuinely wish to reduce the harms caused by cannabis, as opposed to pandering to hysterical media reports and certain policy-makers posturing as puritans.

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³⁵ There is an exception for commercial vehicles specifically licensed for such purposes without children present.

³⁶ For a helpful summary of the Californian cannabis licensing regime, see: <https://www.canorml.org/california-laws/california-cannabis-laws/>.

³⁷ As of September 2019.

³⁸ As of July 2019.



Save the Dates
Taxi Conference
15 July 2020 (Nottingham)
&
8 October 2020 (Bristol)

