



Regulating Cannabis

A Global Review and Future Directions

Toby Seddon · William Floodgate

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“There remain a number of important questions about what drives efforts to control the market for cannabis products in modern societies. Seddon and Floodgate’s new book is crucial reading for all those seeking to answer them.”

—James Mills, Professor, *History, University of Strathclyde, UK*

“This book is a timely contribution to how we, as a society, should regulate cannabis. With more jurisdictions regulating cannabis, or moving towards regulation, we have some evidence of what works, but a full exploration of issues such as environmental sustainability, fair trade and labour standards have not featured in the debate. The authors challenge us to think about these issues and, ultimately, the right way to regulate cannabis.”

—Niamh Eastwood, Executive Director, *Release, UK*

“The “war on drugs” has been a failure, and global cannabis prohibition appears to be crumbling. This book seeks to understand what is happening now. Seddon and Floodgate offer an excellent contribution to the current debates about how we might shape a future post-prohibition world. This welcome addition to the literature is a must read for those who seek new insights about the past, present and future of cannabis regulation.”

—Tom Decorte, Professor, *Criminology, Ghent University, Belgium.*

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PREFACE

Cannabis law reform has been a subject of public discourse for at least the last 50 years, but for much of that time actual change seemed a distant and unlikely prospect. Although, as we will see, the roots of change lie much further back than is usually thought, nevertheless, it has only been in the last decade that significant reform has started to develop in multiple places. The pace of change in the last few years, in particular, has been very striking. It seemed to us that something potentially very significant was unfolding before our eyes and that this was worth capturing.

Our initial plan was for a long paper, reviewing the global state of play with reform and suggesting some ways forward. As we started working on it, it very quickly became apparent that there was much more to say than could be contained in a paper, and we began to think of this as potentially a book project. The traditional book format, however, also seemed not quite the right fit, as the picture was moving so quickly. And so the idea of writing in the Palgrave Pivot series came.

We first started work on the project in spring 2018, pausing work in the autumn. The project picked up again at the start of 2019, focused on presenting our work in progress in Paris in May at the ISSDP conference, pausing again over the summer. A concentrated six-month period of research and writing between October 2019 and March 2020 brought the

work to conclusion. We hope the book will make a contribution to our understanding of this pivotal moment in the modern history of cannabis control.

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The very first seed for this book was sown when the first author attended the ISSDP Regional Meeting on Cannabis Policy in the Americas held in New York City in 2016. Jonathan Caulkins' keynote at that meeting, in particular, sparked some key ideas. The project began properly in spring 2018 when the second author started researching much of the material that has ended up in Chap. 2. By the end of that year, we decided that the project needed a longer treatment, for which the Pivot format seemed ideal. We would like to thank all those with whom we have shared and discussed our ideas over the last few years. In particular, we presented an overview of the book at the annual ISSDP conference in Paris in 2019, and we thank all participants for their feedback and questions. The wider international research community on cannabis regulation has proved a vibrant scholarly community to be part of. Both authors would like to thank, above all, our families for their support, especially during the final stages of completing the manuscript.

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CHAPTER 1

Introduction: The Cannabis Challenge

Abstract This chapter introduces the topic of cannabis regulation. It begins with brief histories of human engagement with cannabis (which date back several millennia) and of attempts to control its use (which date back a couple of centuries). More recent trends in cannabis production, distribution, consumption and regulation are then summarised. The failures of the global cannabis prohibition regime are described, including the failure to control supply or demand and its damaging impact on social and racial justice. It is then argued that in preparing for a post-prohibition world, greater attention needs to be paid to regulatory design and that this can best be done by drawing on the inter-disciplinary field of regulation studies. Lastly, the structure of the book's central argument is presented.

Keywords Cannabis • History • Trends • Prohibition • Regulation • Capitalism

INTRODUCTION

Accounts of cannabis, and the meanings they give rise to, are remarkable for their variety. Cannabis is a spiritual or religious sacrament. Cannabis is a source of vice and immorality. Cannabis is a medicine. Cannabis is a dangerous illegal drug. Cannabis is a plant. Cannabis is a pleasure-giving intoxicant. Taking the long view, it is clear that these competing claims or understandings have varied significantly in human history across time and

place. In the twenty-first century, arguably one of the central characteristics of cannabis is that in many societies *all* of these perceptions can now be found. Cannabis has become a deeply complex socio-cultural phenomenon.

Set against the millennia of human engagement with the cannabis plant, the idea that it might need to be controlled or regulated is a relatively recent notion, perhaps not much more than 200 years old. Early efforts at control in the nineteenth century were often in the context of the pursuit of colonial interests or for the social control of minority groups. The current international regulatory regime—in shorthand, ‘cannabis prohibition’—is still not yet a century old, but in recent years, it has come under increasing strain as local experiments with alternative approaches have been emerging at what seems like an accelerating rate. A major landmark occurred in Uruguay in 2013 when it became the first country since the advent of prohibition to legalise fully the entire cannabis supply chain, from production to consumption. The proliferation of regulatory experiments with cannabis has continued at a pace and there are now reform initiatives in Europe, North and South America, Africa, Australia and elsewhere.

The overarching purpose of this book is to make sense of our present: a point in time when global cannabis prohibition appears to be crumbling but where the shape of the future regulatory landscape is not yet fully visible. It seeks to take stock of and understand what is happening now by presenting a global state-of-the-art review of cannabis law reform initiatives. It then aims to make an original contribution to debates about *how* we might shape a future post-prohibition world by drawing lessons from approaches to regulating other plants or agricultural products that have global consumer markets.

In this short introductory chapter, we provide a concise overview of some of the background and context for the rest of the book by:

- Outlining the history of human engagement with cannabis, from cultivation and use in ancient China through to its international prohibition just under a century ago.
- Presenting contemporary trends and patterns in global cannabis production, distribution, consumption and regulation.
- Summarising the problems with the prohibition paradigm, including its impact on social and racial justice.

- Outlining the key aspects of the ‘cannabis challenge’ for those designing post-prohibition models for regulating cannabis.

A SHORT HISTORY OF CANNABIS AND CANNABIS CONTROL

Precisely where cannabis originated is not known. It seems likely that it evolved in central Asia, most probably in what are known today as Tajikistan, Kyrgyzstan and the Xinjiang region in Western China, but perhaps also in parts of Mongolia and Kazakhstan (Russo 2007). We also do not know exactly when humans first took an interest in this wild plant, although this interest clearly runs back into ‘deep history’ long before written records began. Indeed, Abel (1980) argues that cannabis is one of the oldest crops cultivated by humans, citing archaeological evidence from the island of Taiwan off mainland China in 10,000 BCE, where clay pottery was found impressed with decorative hemp cord. Excavations dating back to 5000 BCE in sites in the Yellow River basin, the birthplace of ancient Chinese civilization, have also shown evidence of extensive use of hemp fibres in cloth (Booth 2003: 36). Somewhat surprisingly given its long history, the taxonomy of cannabis remains controversial amongst botanists—specifically, the question of whether it is one species with variants or multiple species. There is a longstanding technical literature on this, although it is of limited significance for regulatory questions (for an accessible introduction to the debate, see Chouvy 2019: 2–4). For our purposes, we will generally refer to cannabis as a term to cover all forms of the plant.

A highly versatile and durable plant, the first uses of cannabis were probably for its fibrous stem, and it became commonly used for garments, cloth and twine. The nutritional value of its seeds was also likely an early discovery and they were one of the staple grains in ancient China. The psychoactive properties of the plant’s resin, leaves and flowers may have been found a little later but can be identified at least as far back as 2500 BCE in Xinjiang and parts of Siberia, and quite probably were discovered earlier than that (Warf 2014: 419). According to Russo (2004), there is evidence for the medicinal use of cannabis in ancient China from 4000 BCE, and in Egypt and Mesopotamia from 1700 BCE (Russo 2007: 1621–22).

Geographer Barney Warf (2014) has traced what he terms the ‘historical geography’ of cannabis. This is the story of how, over a period of several thousand years, cannabis spread from these origins in central Asia to

all the corners of the world. From Warf's detailed and insightful account, we can simplify this story into two phases. The first *pre-modern* phase developed slowly and over a period of millennia, as cannabis spread along ancient trading routes like the Silk Roads and was carried through various conquests and invasions, and later on by patterns of migration of peoples. It moved in all directions, and by the medieval period, it was well established across the Muslim world and had come to form an important part of religious and cultural tradition in India. It had even reached as far to the West as Britain and down into Ethiopia and other parts of East Africa. Nevertheless, there were still many regions where cannabis was scarcely present, notably the Americas. The second *colonial capitalist* phase unfolded at a much sharper pace with the rise of the world capitalist system, beginning in the sixteenth century but then rapidly accelerating at the turn of the nineteenth century. For European colonial powers, including Britain (see Mills 2003), cannabis was often an important part of their imperial projects, as it would also become for the United States at the turn of the twentieth century, by which point cannabis was circulating worldwide and had become a global commodity.

It was in the second phase, at the start of the nineteenth century, that controls on cannabis first began to emerge. The earliest instance of this new impulse is often cited as Napoleon's short-lived attempt at the banning of cannabis in Egypt in 1800, after the French invasion in 1798. As Bewley-Taylor et al. (2014: 8–11) describe, there were a series of localised prohibitions over the following decades, including bans in Rio de Janeiro in Brazil in 1830, in Egypt in 1868, in South Africa in 1870 and Greece in 1890. Serious discussion at international level about prohibiting cannabis did not happen until 1911 when it was discussed at the Opium Convention at The Hague, at the request of the Italian delegation who were concerned about cannabis smuggling in its newly-acquired North African colonies, Tripolitania and Cyrenaica (part of present-day Libya) (Bewley-Taylor et al. 2014: 13).

Further international discussion was largely halted by the outbreak of the First World War, but even from 1919, as the League of Nations took on the supervision of controls for what were now being termed 'dangerous drugs', the focus remained initially on opium, morphine and cocaine. In late 1923, South Africa pressed for cannabis to be included on the agenda again, and when the next Opium Conference convened the following year in Geneva, the Egyptian delegate forcefully made the case for non-medical cannabis use to be prohibited (Bewley-Taylor et al. 2014:

14). The eventual inclusion of cannabis in the 1925 Geneva Opium Convention marked a major turning point. Although it introduced relatively limited controls on transnational trade and did not require signatories to prohibit or restrict domestic production and consumption (Kendell 2003), it was from this point that countries began to introduce national-level cannabis controls. In Britain, for example, these were introduced in the Dangerous Drugs Act 1928. Interestingly, the United States initially did not follow suit—it was not a member of the League of Nations and had walked out of the Geneva Conference—but federal cannabis prohibition did eventually come in 1937 with the enactment of the Marihuana Tax Act. It was only after the Second World War, with the United States now the dominant world power that they began to take the lead in ratcheting up the intensity of international controls, culminating in the 1961 United Nations Single Convention on Narcotic Drugs, which consolidated and extended the global prohibition of cannabis (Bayer and Ghodse 1999: 8–10).

TRENDS IN CONSUMPTION, PRODUCTION, DISTRIBUTION AND REGULATION

Cannabis is currently the most widely used ‘prohibited’ drug in the world. It is estimated that nearly 200 million adults used cannabis in 2017, representing 4 per cent of the global adult population (UNODC 2019). It is used in all regions of the world, although rates of use do vary—broadly speaking, being higher in high-income countries in Europe, North America and Oceania. If we look at the post-1945 period, the general trend in consumption has been upwards, taking off in the 1960s, although rates of increase have varied in different periods. Over the last couple of decades, increases have been modest but steady: at the start of this century, the global consumption estimate was closer to 150 million, indicating there has been an approximate 30 per cent increase over 20 years (UNODC 2019). This has mainly been driven by rises in the United States and Canada, whilst numbers of users in Europe and Oceania have been more static. The demographics of cannabis use vary nationally and regionally but, in very broad terms, consumption is concentrated more amongst teenagers and younger adults (up to mid-30s) and is more common amongst males than females (UNODC 2019). For readers interested in prevalence data, the best source remains the annual UNODC *World Drug*