

**Common Sense on Cannabis:
The Conservative Case for Change**

The Rt. Hon. Peter Lilley MP

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**Common Sense on Cannabis:
The Conservative Case for Change**

The Rt. Hon. Peter Lilley MP

**The Social Market Foundation
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Peter Lilley is the author of several publications including: Do You Sincerely Want to Win? -Defeating Terrorism in Ulster, (1972); Lessons for Power, (1974); Delusions of Income Policy (co-written with Samuel Brittan), (1977); The Mais Lecture Benefits and Costs: Securing the Future of the Social Security and Patient Power (2000).

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EXECUTIVE SUMMARY

Introduction

- The present law is unenforceable and indefensible when we permit consumption of alcohol and tobacco.
- Defenders of the status quo wilfully confuse immorality with illegality and hard drugs with soft, but will be in a very weak position when reform, which is inevitable comes about.
- Those of conservative disposition should take the lead in reforming the cannabis laws to better preserve respect for the law and encourage moral responsibility.
- Legalising cannabis is the key to protecting huge numbers of young people from exposure to hard drugs and criminal elements.

Where we are and how we got here

- 43% of those aged 16 to 24 say they have tried cannabis.
- Penalties just for possessing cannabis for own use are a fine of up to £2,500 and/or 3 months in prison if tried by a magistrate and up to 5 years in a Crown Court.
- Police and courts are becoming less willing to enforce the law.
- The UK is bound by the 1961 UN Convention to *control* trade in cannabis but this does not require us to make its sale a criminal offence.

Arguments for criminalising cannabis

- None of the following arguments furnish sufficient grounds for criminalizing cannabis.
- **Cannabis is addictive:** cannabis is less addictive than alcohol or tobacco, the habit is easier to break and unlike heroin does not lead to crime to sustain the habit.
- **Health risks:** a thorough and definitive Lancet review of the medical literature concluded that “moderate indulgence in cannabis has little ill effect on health... decisions to ban or legalise [it] should be based on other considerations”.
- **Changes behaviour:** cannabis can undermine motivation and drive while users are under its influence but it has no lasting behavioural effects.
- **Link to hard drugs:** the vast majority of cannabis users never move on to hard drugs. There is no chemical effect predisposing them to do so. However, discovering that cannabis has few of the claimed ill effects may lead users to think the risks of heroin are also exaggerated. Moreover prohibition drives soft drug users into the arms of hard drug pushers making progression more likely.
- **Morally wrong:** Moral disapproval often leads to exaggeration of health and other risks. But large majorities in all age groups accept that cannabis is less harmful than alcohol or tobacco. Many things that are morally wrong are not crimes. However, in legalising cannabis society should not endorse abuse.

Experience of reform abroad

- The Netherlands have permitted sale of cannabis for personal use via licensed outlets for over a quarter of a century.
- The Dutch have fewer cannabis users and substantially fewer hard drug addicts than the UK.
- Drug related crime and enforcement costs are significantly lower in the Netherlands than in the UK or US.

Arguments and options for reforming cannabis laws

- The four main arguments for reforming the cannabis laws are:
 - to break the link between soft and hard drugs
 - to restore respect for the law
 - to focus resources on tackling hard drugs
 - to encourage freedom and personal responsibility
- **Option 1: Reduce or remove penalties**
This approach has been advocated by the Runciman Commission (and is piloted in Lambeth), and holds that cannabis possession and cultivation for own use should cease to be imprisonable offences, only exceptionally prosecuted, and normally result in a caution which should no longer constitute a criminal record. But non-enforcement would undermine respect for law by the law-abiding majority and still leave cannabis supply in criminal hands. Reducing penalties or decriminalisation of cannabis use would not achieve the prime objective of taking cannabis supply out of the hands of criminals who also supply hard drugs.
- **Option 2: Provide legal outlets**
Effective reform could only be achieved by licensing some retail outlets. A minimal scheme which insulates users against criminal elements comprises the following: off-licences could be issued by licensing justices to retail outlets with a strict ban on sales of alcohol and other drugs. Sales to minors, marketing, and consumption in a public place would be prohibited. Cannabis could be taxed and any health risks prominently displayed on packaging.
- **Option 3: Legalise cultivation**
Cultivation for own use would cease to be an offence if possession were decriminalised. Cultivation could also be permitted to supply licensed outlets.

- **Option 4: Total liberalisation**

This is not recommended. A cautious step by step approach is wiser. Even alcohol and tobacco are heavily regulated. Strict controls would signify that society does not endorse use still less abuse, of cannabis.

Conclusion

- The Conservative party needs bold new thinking on social issues, to change negative perceptions of itself and reach out to voters.
- The Conservative belief in freedom and responsibility, together with its hard-headed realism should lead it to address issues that other parties ignore.
- All parties are out of touch with young voters on this issue—a principled and sensible approach would change their perception of the Conservative party
- Conservatives should take the lead on this issue, wrongfoot the other parties and re-establish themselves as the party of freedom and moral responsibility.

INTRODUCTION

The decriminalisation of cannabis is inevitable. Indeed, it is happening already. In many parts of the country the police no longer prosecute cannabis users. The problem is not simply that the current law is unenforceable - it is also indefensible. The arguments for criminalisation of cannabis that we hear so often crumble on analysis. Laws that can neither be enforced nor defended cannot survive. The issue is no longer whether the law should be changed but how.

This is not to say that cannabis use is inconsequential. Like alcohol, cannabis can be abused. But the fact of abuse does not furnish a sufficient reason for prohibiting all consumption of either substance. If the present legal status of cannabis use is unsustainable and undesirable one must then confront the daunting question of how we move to a more sensible situation without appearing to confer public approval on cannabis use and abuse. One is tempted to echo the Irishman who, when asked the way, said - "well, I wouldn't start from here".

The current situation is characterised by the wilful confusion between the immoral and the illegal, between use and abuse, and between soft and hard drugs often made by defenders of the status quo. As a result, legalisation of cannabis use is often misrepresented as a softening of moral attitudes and policy on not simply the consumption of cannabis but hard drugs as well. That is why the issue is such a political hot potato, and why few prominent politicians have been willing to speak out publicly in favour of change. Nonetheless, from the unfavourable reaction to Ann Widdecombe's proposal to impose an automatic criminal sentence for soft and hard drug users alike, it is clear that even those members of the public most likely to oppose drug-taking - the adult and conservative - recognise a difference between using cannabis and hard drugs.

Those who take a fundamentally conservative attitude to drugs have two options. They can say, 'whether or not we should have started from here, we cannot risk giving public approval to any form of drug use. So any change to the present legal position will be made over our dead bodies.' As any military historian knows, the problem with that strategy is that if you throw all your strength in to defending your weakest position you risk losing everything when it falls. The more stridently defenders of the legal status quo proclaim that morality and legality are co-terminous, that there is no distinction between cannabis and other forms of drug use and abuse, the harder it will be to defend any laws against hard drugs when reform finally happens.

The field will then be left clear for the advocates of a libertine drug culture; the heirs to 1960s hippiedom, who, as in the Bob Dylan lyric urge that "everybody must get stoned". For them, the liberalisation of drugs laws is part of the general attack on traditional moral values. If it is left to them to be the godfathers of this change then reform will be seen, not as the restoration of personal responsibility, but as the endorsement of irresponsibility.

Those of a conservative disposition could and should make a tactical withdrawal to a much more defensible position which states that removal of legal penalties does not imply public approval of cannabis use, still less of abuse. Rather, it is for the individual to exercise personal responsibility in the use of cannabis as of alcohol. And it is for parents, teachers and pastors to teach what is right in this area, not for the law, or for politicians to curtail our freedom to act responsibly.

Above all we should recognise that penalisation of cannabis use, far from preventing people sliding down a slippery slope from soft drugs to hard drugs, actually makes that descent more likely. This is because it brings the soft drug user into contact with the hard drug pusher since both types of drug are forced through the same illegal channels. The most important objective of changing the law on cannabis must be to break this link.

That is why I am taking up this issue. I have no desire to promote the drug culture - quite the contrary. I am not an ageing hippy trying to relive or legitimise some youthful folly. Unlike many of my generation I was never tempted to try cannabis and have no intention of doing so now. Neither am I an extreme libertarian who believes that society should never step in to help and, if need be restrain, those whose choices lead them into degradation, ill health or poverty.

I simply want to prevent the demonisation of cannabis use from undermining respect for the law and traditional moral values and to protect people from exposure to criminality and hard drugs. I also believe that individual freedom is threatened if the state is seen as the prime source of moral values and the sole enforcer of moral behaviour. The more people are free to exercise responsibility for their own lives, the more responsibly they are likely to lead them. Freedom should be curtailed only where there are overwhelming reasons for doing so. It comes much more naturally to Conservatives to set people free rather than to lock them up.

It is time for those of a conservative disposition to bring common sense into the laws on cannabis.

WHERE WE ARE AND HOW WE GOT HERE

Cannabis usage

Cannabis is by far the most widely used illegal drug, particularly among the young. Some 17 per cent of young people aged between 16 and 24 claim to have taken cannabis within the last month and 43 per cent of this age group say they have tried cannabis at some stage in their life. Usage among the over 30s drops off rapidly so that the proportion of all those aged between 16 and 60 who have taken cannabis in the last month is five per cent and around a quarter claim to have done so at some time in their life. That means that some 1.25 million people in the UK claim to have taken cannabis in the last month.

This level of usage is substantially greater than the level of usage of all other controlled drugs combined. It totally dwarfs usage of hard drugs. For every person using heroin there may be some one hundred people who use cannabis. However, cannabis usage is still well below that of legal "drugs" like alcohol and tobacco. Over a quarter of people aged 16 and above smoke cigarettes and over half drink alcohol once or more a week.

The current law

Over 40 per cent of young people have defied the law by taking cannabis despite the existence of fairly severe penalties. The *Misuse of Drugs Act 1971* creates three classes of controlled drugs:

- Class A comprises the hard drugs like heroin and cocaine as well as hallucinogens like LSD and ecstasy.
- Class B comprises cannabis along with amphetamines and barbiturates.
- Class C includes tranquillisers and mild opioid analgesics.

Offences involving class A drugs involve the highest penalties ranging up to life sentences and/or unlimited fines for trafficking. Offences involving class B drugs also carry severe penalties. Cultivation, production, supplying, being responsible for a property used for any of these activities and possession with intent to supply carry maximum penalties of 14 years or a fine or both if tried in a Crown Court. In a Magistrates Court the maximum sentences for these offences are six months or a £5,000 fine or both. Possession for own use can carry a potential punishment of up to five years and/or a fine if tried in a Crown Court. More typically such offences are dealt with by a Magistrates Court in which the maximum sentence would be three months or a £2,500 fine or both.

Enforcement

These penalties have not prevented widespread use of cannabis with the result that increasing numbers of people have fallen foul of the drugs laws. The number of people arrested for offences involving cannabis nearly quadrupled from 26,000 to 97,000 in the ten-year period from 1988 to 1998.

However, the police and the courts are enforcing the laws against cannabis with diminishing enthusiasm. As the number of arrests has grown the proportion of people let off with a caution has risen from under a third in 1988 to over half in recent years. And the proportion of those who are found guilty by the courts has declined from nearly two-thirds to under half. A survey carried out for a Panorama programme broadcast in November 1999 found that two-thirds of police officers would no longer prosecute someone for having a few cannabis plants. Indeed, most police officers surveyed believed cannabis to be far less harmful or addictive than alcohol or tobacco.

The recent decision by the Police Commander for Lambeth not to pursue minor cannabis offences so as to release officers to tackle more important crimes shows how *de facto* de-penalisation is gathering pace.

History of UK policy on cannabis

In the nineteenth century cannabis was not an issue within the UK. The first British interest in cannabis use was in India over a century ago. Concern had been expressed in Parliament about native use of Indian hemp - the local form of cannabis. So the Indian authorities set up the Indian Hemp Drugs Commission that reported in 1894. Although the first study ever carried out it was one of the most thorough.

The report concluded "that the excessive use (of hemp) is comparatively exceptional" and that "moderate use produces practically no ill effects." The Indian government accepted the report's recommendations that Indian hemp use should be controlled by taxes rather than prohibited, concluding that "imposing as high a rate of duty as can be levied without inducing illicit practices ... (is) the best way to restrict the consumption of drugs".

Perhaps Victorian values have been misrepresented!

Laws controlling hard drugs were only introduced in Britain following a series of international conferences early in the 20th century. The Hague Convention of 1912 bound its 34 signatories to tighten control on opiates and cocaine but did not include cannabis, deciding that a study of cannabis abuse would be required before that could be justified. So the first (peacetime) British drug law - the Dangerous Drugs Act 1920 - which belatedly implemented the convention did not cover cannabis.

However, at the second conference held in Geneva in 1924 the Egyptian government insisted that cannabis be added to the list of drugs subject to international control. This was duly done and for the first time cannabis became a controlled drug in the UK under the Dangerous Drugs Act 1925. There appears to have been no debate about this in the House of Commons and I can find no contemporary press reports.

A third international convention - the 1961 Single Convention On Narcotic Drugs hosted by the United Nations - consolidated and strengthened international agreements on drugs control and was ratified by the UK in 1964. It is still this 1961 convention that requires Britain to control trade in cannabis, along with cocaine and heroin. Control does not necessarily mean criminalisation of cultivation, sale and possession—it can mean some form of regulation of these activities. However, the Dangerous Drugs Act 1964 which gave effect to the convention's provisions duly made it an offence to cultivate cannabis or to permit premises to be used for smoking or dealing in cannabis.

ARGUMENTS FOR CRIMINALISING CANNABIS

Although cannabis was swept into the scope of our drugs laws in the slipstream of hard drugs like opium, heroin and cocaine with little serious thought, its retention is now justified by a number of arguments about the consequences of cannabis use. These are that

- Cannabis is seriously addictive
- Cannabis is hazardous to health
- Cannabis generates damaging behavioural consequences
- Cannabis leads to use of hard drugs
- Cannabis use is immoral.

These arguments may, however, have some foundation without succeeding in making the case that cannabis use should be criminalised. For almost no substance that human beings consume is entirely devoid of adverse consequences. Anyone who has studied the notice accompanying a packet of painkillers will realise that even drugs sold over-the-counter can have serious or fatal effects if taken in excess. Caffeine is a stimulant that can be addictive and may harm some people. Fatty foods eaten in excess probably shorten more people's lives than any controlled drug.

So the crucial test of these arguments for retaining the criminalisation of cannabis is: are the negative effects of its use sufficiently severe and widespread to justify prohibition, particularly in a country that permits the sale of alcohol and tobacco which also have similar consequences?

(i) "Cannabis is seriously addictive"

One of the most amusing episodes in recent years has been the string of politicians and other public figures who have admitted - some shamefully, some boastfully - to taking cannabis in their past. Yet none of them appear to have had any great problem in kicking the habit.

By contrast all too many people have escaped from addiction to heroin only after a debilitating struggle. Others have been addicted to, enslaved, driven to crime and killed by heroin and other hard drugs. It is that cruel addictive power above all which justifies strenuous action to protect people from hard drugs. Cannabis does not have the physical addictive power of heroin nor the propensity to induce dependence on the same scale as nicotine or alcohol. Serious cannabis dependency is sufficiently rare that its existence has been disputed and it appears to be a problem only among heavy and persistent users.

A recent comprehensive review of scientific research on cannabis published in the *Lancet* in 1998 concluded that "some heavy smokers of cannabis report withdrawal symptoms on the abrupt cessation of cannabis use.¹ There is evidence that a cannabis dependency syndrome occurs with heavy chronic use . . . About one in 10 of those who ever use cannabis become dependent on it at some time during their four or five years of heaviest use. This risk is more like the equivalent risk for alcohol (15 per cent) than for nicotine (32 per cent) or opioids (23 per cent)."

The numbers of people reporting to drug dependency clinics whose main drug is cannabis is sometimes used to suggest that it is a major problem. In fact those citing cannabis as their main drug constitute about 10 per cent of all referrals even though cannabis is overwhelmingly the most frequently used drug. Moreover, some of those citing cannabis may be reluctant initially to admit to dependence on other drugs that they are also taking.

(ii) "Cannabis is hazardous to health"

This government gives precedence to the alleged health risks of cannabis use to defend the current laws and leans heavily on the review of the medical literature published by the World Health Organisation in 1997.

But in defending the laws the minister failed to discuss how serious and widespread any of the risks mentioned are. The *Lancet* review in 1998 mentioned above concludes that, "on the medical evidence available, moderate indulgence in cannabis has little ill effect on health, and that decisions to ban or to legalise cannabis should be based on other considerations."

It is worth taking each point raised by the Minister to see exactly how serious these health risks are

- *"damage to people's ability to . . . carry out many tasks, including . . . driving vehicles."*

The *Lancet* review of the literature concludes that cannabis has "cognitive effects . . . that *may potentially* impair driving a motor vehicle". It says that some laboratory studies suggest cannabis could have similar effects to alcohol.

¹ The *Lancet*, Vol 352 November 14 1998

"However, studies of the effects of cannabis on driving under more realistic conditions and on roads have shown much more modest impairments, probably because cannabis users are more aware of their impairment and less inclined to take risks than alcohol users In two studies with a reasonable number of individuals (involved in actual road accidents) who had only used cannabis there was no clear evidence of increased culpability in these drivers . . . so the main effect of cannabis use on driving may be in amplifying the impairments caused by alcohol, which is often used with the drug."

However, no one proposes to remove the penalties for driving under the influence of cannabis and there is clearly a case for more severe penalties for driving after consuming both alcohol and cannabis.

- ***"the chronic effects include damage to mental functioning . . ."***

The Lancet review concludes that "the long-term heavy use of cannabis does not produce the severe or grossly debilitating impairment of memory, attention, and cognitive function that is found with chronic heavy alcohol use." However, "studies show that it may produce more subtle impairments . . . it remains unclear how important they are for everyday functioning and whether they are reversed after an extended period of abstinence."

- ***"the drug can exacerbate schizophrenia . . ."***

The Lancet review confirms that this is a plausible explanation but concludes that "cannabis is unlikely to have caused cases of schizophrenia that would not otherwise have occurred".

- ***"health risks associated with smoking . . .,"***

The Lancet review confirms this concern. Indeed there is some evidence that cannabis smoking may be even more likely than tobacco to generate bronchial ailments and to cause cancers especially if taken in conjunction with tobacco.

In short, although moderate and occasional cannabis use has few ill effects on health it can be harmful if used heavily over long periods. But unlike hard drugs "no confirmed published cases world wide of human deaths from cannabis poisoning" exist. Its acute effects are less than those of alcohol and its chronic effects are not as serious as those of tobacco. Such health risks do not add up to a convincing case for prohibition on health grounds.

Nevertheless, anyone contemplating taking cannabis should be made aware of its health risks. The Lancet authors suggest that advice should be given about

"the possibility of being involved in a motor vehicle accident if patients drive while intoxicated by cannabis; the higher risk of an accident if they drive when intoxicated by both alcohol and cannabis; the respiratory risks of long-term cannabis smoking, which are substantially increased if they also smoke tobacco; and increased risk of developing dependence if they are daily users of cannabis; and the possibility of subtle cognitive impairment if they use regularly over several years."

One of the consequences of criminalisation is that the authorities cannot ensure that such a health warning is displayed on its packaging.

(iii) "Cannabis produces permanent behavioural consequences"

As with alcohol, most people consuming or intoxicated by the drug are likely to be somewhat relaxed and demotivated. Anyone taking cannabis (or alcohol) during working hours is likely to be ineffective at their job. But there is scant evidence that cannabis use permanently reduces people's drive and work ethic.

(iv) "Cannabis leads to hard drug use"

Defenders of the current law against cannabis believe their strongest argument for it is that cannabis use leads to hard drug use. The theory is that cannabis is a "gateway drug" that leads inexorably to the use of hard drugs.

This would indeed be a compelling argument for prohibition but only if there were convincing evidence that taking cannabis does predispose people to go onto hard drugs who would not otherwise do so and that prohibition of cannabis use stops people embarking on the first stage of this slippery slope.

In fact prohibition of cannabis use in this country has not stopped nearly half of young people trying cannabis (a higher proportion than in countries like Holland where it is not penalised). In any case, only one or two in every hundred people who use cannabis go onto try heroin. Defenders of prohibition focus on the one or two who do and then rely on the "*post hoc ergo*

propter hoc” fallacy—the argument that because one thing follows another, the first thing causes the second. Because most heroin addicts took cannabis before trying heroin, they argue, the former must have caused the latter.

In fact anyone who is by personality, or because of social or other circumstances predisposed to risk taking hard drugs will more than likely have tried less powerful drugs like cannabis en route. But these soft drugs do not cause the predisposition to try hard drugs. There is no known chemical factor which would make cannabis users more predisposed to try hard drugs, as the Lancet review confirms. Keith Hellawell, the drugs Czar, has only recently announced that he no longer believes the “gateway” theory of cannabis use.

Although cannabis use of itself does not predispose people to try heroin, there are two ways in which the *attempt* to prohibit cannabis may actually increase the number of people who try hard drugs.

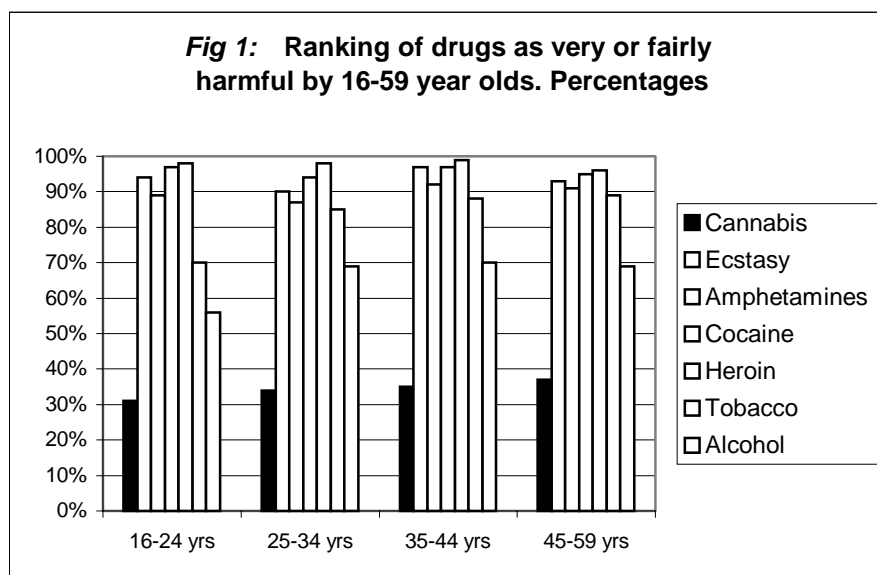
Demonising cannabis and equating it to hard drugs may have the perverse consequence of encouraging experimentation with hard drugs. Users who discover that it has few of the ill effects claimed for it may be encouraged to try hard drugs too on the assumption that their dangers are also exaggerated.

If there is a link between cannabis and hard drug use, it is more likely to do with the fact that suppliers of cannabis also tend to be suppliers of hard drugs, which they may push to susceptible cannabis users. There is ample anecdotal evidence of this happening. But it is only because cannabis is illegal that it passes through the same illegal channels as hard drugs. That legalisation could break this link provides a powerful reason in its favour.

(v) “Cannabis use is immoral”

Many people instinctively feel that even if cannabis can be taken without risking health or progressing to hard drugs it is still morally wrong. But nowadays there is no greater sin than to moralise. So instead of voicing moral disapproval people express it by exaggerating the health risks and the danger of progressing to more dangerous drugs, and by deliberately blurring the distinctions between soft and hard drugs.

But most people know that cannabis is not nearly as dangerous as hard drugs. The Runciman enquiry commissioned a survey of public attitudes which found that scarcely anyone felt that prosecution of cannabis users should be a priority for the police. They also found that there was little difference between the attitudes of different generations towards the harmfulness of cannabis. Only between 31 and 38 percent of each age cohort thought cannabis was very or fairly harmful – whereas around 90% of all age groups rate heroin, cocaine, ecstasy and amphetamines in that category. All generations rated alcohol and nicotine far more harmful than cannabis.



Reproduced from the Runciman Report, 1999

Moral disapproval may lead people to blur the differences between cannabis and hard drugs but they are perfectly aware of those differences. Ann Widdecombe discovered this to her cost when she proposed an automatic criminal penalty for soft and hard drug users alike. There was uproar, not least among Conservative parents and grandparents, who know full well that many of their children and grandchildren do occasionally smoke cannabis. They disapprove of it but are appalled at the thought of those children being classified with heroin addicts, drug dealers and criminals.

Ann Widdecombe of all people should have known better than to confuse soft and hard drugs and to equate the immoral with the criminal. The orthodox Christian approach is that inebriation (whether from alcohol or cannabis) is classified among the seven capital sins. Contrary to popular opinion those are considered fairly minor in themselves – which is one reason none of them is automatically a crime. They are called capital sins because, just as capital investment can multiply itself, so these minor sins can generate more and greater evils. In particular, inebriation can dull the conscience and so lead on to more serious wrongdoing – anger, violence, laziness, promiscuity, improvidence, lack of care for others. That is why drunkenness and inebriation are considered immoral in most societies and moral codes.

But many things that are contrary to the prevailing moral code are not crimes. Most people consider adultery to be wrong. But we do not fine or jail adulterers. It is bizarre to let people get drunk on alcohol (which is more likely than cannabis to lead to violence) but to criminalise them for smoking a single relaxing joint. A society with a better understanding of moral law and which was more willing to express its own moral concerns would be less inclined to resort to the criminal law to solve social problems.

EXPERIENCE OF REFORM ABROAD

Notwithstanding the fact that most countries are signatories of the 1961 single convention on drugs, there is a range of different approaches to tackling the drug issue. Britain tends to be at the most penal end of the spectrum as far as cannabis is concerned (although the British approach to hard drug addicts has historically been more enlightened than in many other countries). The United States - at least at the Federal level - is also one of the most punitive countries as far as cannabis is concerned. Yet both countries have among the highest levels of cannabis use.

The most frequently quoted country with a liberal approach is the Netherlands. In 1976 the Dutch decided to liberalise their law. The aim was to break the link between soft drug users and hard drug pushers, and to treat hard drug addiction as a medical rather than criminal problem. The use of cannabis and possession of cannabis for own use were no longer penalised. To prevent cannabis users coming into contact with hard drug suppliers the sale of cannabis in small quantities was permitted through licensed coffee shops. These outlets were not permitted to sell to young people under 18 or to sell alcohol or hard drugs.

The Dutch experiment

The Dutch policy of de-penalising cannabis has now been running for nearly a quarter of a century. Technically, all trade in cannabis remains an administrative offence but as a matter of declared policy the Dutch prosecutor will not prosecute for possession or sale in retail quantities or to licensed outlets.

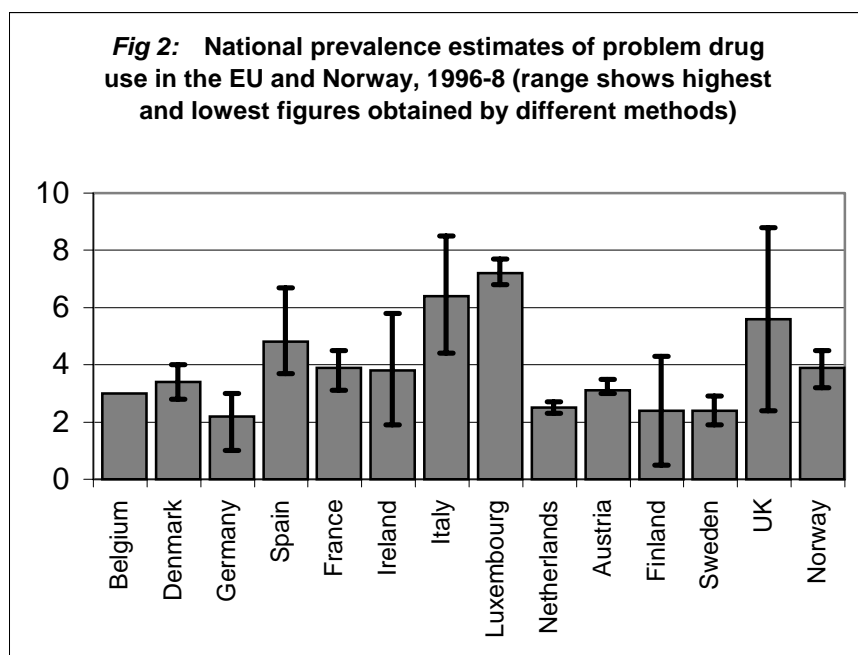
As an experiment, it has been revealing in providing concrete evidence of the consequences of de-penalisation. There are three measures of success or failure by which we can evaluate the Dutch experiment in comparison with a more criminalising approach. These are

- Has it had any impact on the levels of hard drug use?
- Has liberalisation resulted in wider use and abuse of cannabis itself?
- What is its impact on the level of drug-related and induced crimes and the efficient allocation of resources of the criminal justice system?

As we shall see, on all three measures, the Dutch policy has much to recommend it. Certainly, and contrary to expectations, the Dutch have not degenerated into being a nation of drug addicts.

Has it had any effect on the levels of hard drug use?

The main argument used by those who support prohibition of cannabis is the fear that its use will lead on to hard drugs. The main argument for the Dutch policy is that providing legal outlets for cannabis means the cannabis user is no longer forced into the arms of the hard drug pusher. The following table shows the levels of hard drug use across 14 European countries.



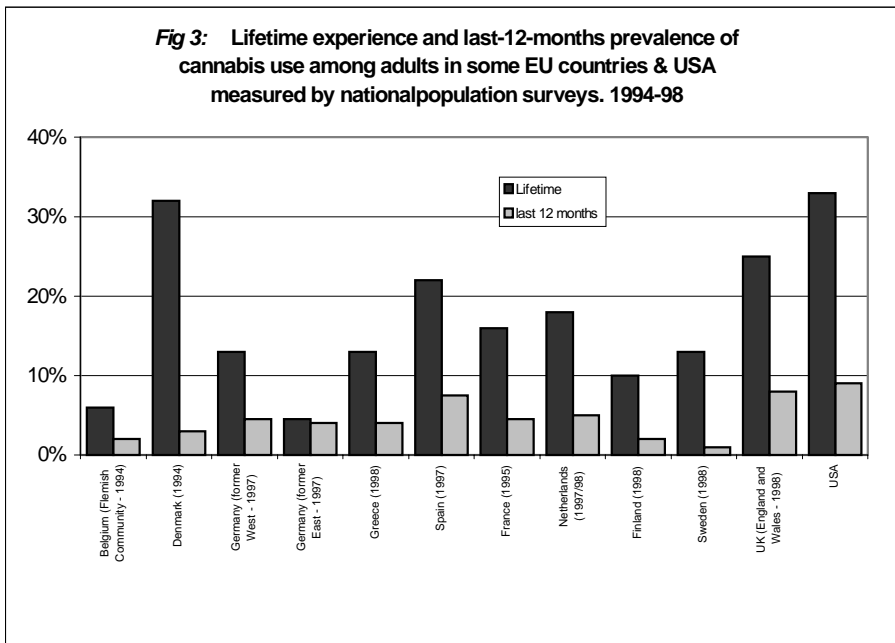
Reproduced from European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2000

‘Problem drug use’ is defined here as ‘intravenous or long-duration/regular use of opiates, cocaine and/or amphetamines’. This operational definition excludes ecstasy and cannabis.

The table provides evidence that strongly supports the Dutch strategy. Despite its cannabis policy, there are substantially fewer heroin addicts per 100,000 of population in the Netherlands (160) than in the UK (260) or the USA (430). Moreover, the average age of Dutch addicts is rising suggesting fewer young people are becoming addicted. The Dutch say that heroin addiction among teenagers is virtually unknown². Only 1.8% of young cannabis users in Holland have tried cocaine whereas in the US the comparable figure is 16%.

Has liberalisation resulted in wider use and abuse of cannabis itself?

Following liberalisation in 1976 cannabis usage did increase among Dutch youth. But usage also increased in most countries that continued to prohibit cannabis at the time. There is no evidence that cannabis use has increased due to de-penalisation. Moreover it is remarkable that despite vigorous efforts to prohibit and discourage cannabis use in the UK we have the highest per capita usage in Europe – significantly higher than in Holland. And in the US despite its ‘war against drugs’ cannabis usage is higher still.



Reproduced from EMCDDA 2000

² 'Drug Policy in the Netherlands' Netherlands Ministry of Health, 1995

The most recent figures for all major legal and illegal drugs in the USA and Holland are as follows:

Table 1: Drug use among the population aged 12 and over in the United States and the Netherlands

	Used once or Twice		Used in the past year		Used in the past month	
	US	Netherlands	US	Netherlands	US	Netherlands
Tobacco	70.5*	67.9	32.7*	38.1	29.6*	34.3
Cannabis	32.9	15.6	9.0	4.5	5.1	2.5
Volatile Substances	5.7	0.5	1.1	0.1	0.4	#
Alcohol	81.9	90.2	64.1	82.5	51.4	73.3
Heroin	0.9	0.3	0.3	0.1	#	#

* cigarettes only

no figures available

Sources:

- United States: National household Survey 1997 SAMHSA, Office of Applied Studies, Washington DC.

- Netherlands: M. Abraham, P. Cohen, M.de Winter: Licit and Illicit Drug Use in the Netherlands, University of Amsterdam/Statistics Netherlands, CEDRO.

One frequently cited consequence of Dutch policy is an alleged shift by Dutch users and suppliers to a stronger form of cannabis, with increased levels of THC (delta-nine-tetrahydro-cannibol), the active content of cannabis. But the true position is given by the respected Trimbos Institute:

“Various studies have shown that the percentages of THD in Nederweed can vary from 1.5% to 13% with peaks of up to 27%. Similar to many kinds of imported cannabis, some variations of Nederweed (skunk) may contain high concentrations of THC, but this is *not* standard. In 1997 the Forensic Laboratory found an average THC level of 8.5% in Dutch cannabis and 6% in imported hemp.”

The evidence, too, is that users smoke smaller quantities of the stronger variant.

The impact of each strategy on the level of drug related and induced crimes and the resources of the criminal justice system

It is obvious that the Dutch policy of non-penalisation results in far fewer people being arrested or imprisoned for cannabis related offences.

It has been claimed that the Dutch murder rate is disproportionately high and that this was related to drug use. The US Drug ‘Czar’, General Barry McCaffrey, gave this claim a high profile but it turned out that he was comparing the murder rate in the USA with a Dutch figure which included attempted murders. In fact the Dutch murder rate is well below the US level, with 1.8 murders committed for every 100,000 compared with 8.2 murders in the U.S.

In terms of public expenditure the Dutch drugs law enforcement policy costs each taxpayer only a fraction of the US policy.

Table 2:	<u>Holland</u>	<u>UK</u>	<u>USA</u>
Per capita expenditure on drug law enforcement.	\$7	\$47	\$110

Sources: Trimbos Institute Fact Sheet 9; from reply by John Denham to PQ by author, Hansard 25 June 2001 (expenditure on Reducing Availability plus Criminal Justice System); US Office of National Drug Control Policy ‘Drug Data Policy’ April 1999.

The liberalising approach in the ascendant

A number of other countries have moved nearly as far as the Netherlands in de-penalising cannabis use.

Following a court case which cast doubt on the constitutionality of criminalising cannabis, a number of German Länder no longer enforce the law against possession. Switzerland has recently followed suite. Spain treats possession as an administrative rather than a criminal offence. Italy classifies supply of cannabis as an administrative offence subject to fine rather than imprisonment.

A number of US States have replaced criminal penalties with small civil fines for minor cannabis possession offences. This has had no apparent effect on cannabis use vis à vis the neighbouring prohibitionist states and is popular with citizens. In 1998 the people of Oregon voted 2 to 1 against a proposal, adopted by their legislative leaders, to restore criminal sanctions.

ARGUMENTS AND OPTIONS FOR REFORMING THE CANNABIS LAWS

The main arguments for reforming the cannabis laws are clear. The prohibition of cannabis use in the U.K. is a failure. The law needs reform now.

- **Break the link between soft and hard drugs**

This is the single most compelling prize to be won by changing our cannabis laws. It depends on making sufficiently radical changes to ensure that cannabis users are no longer brought into contact with the hard drug pushers.

- **Restore respect for the law**

Because cannabis use is against the law huge numbers of people find themselves flouting the law. According to BMA estimates about 10 million people have done so - 4 million in the last year. Every year nearly 100,000 people are arrested for a cannabis related offence. Half are let off with a caution but have a criminal record as a result. All this contributes to the growing hostility to the law and its guardians across a growing swathe of society, and among the young in particular, who see in the law's differential treatment of cannabis, alcohol and nicotine a moral hypocrisy that attracts their contempt.

- **Focus resources on dealing with hard drugs**

Hard drugs are the main problem. They can kill, destroy people's lives and turn people to crime to pay for their habit. But as over 80 per cent of all drug use relates to cannabis, most of the resources committed to the war against drugs are in fact absorbed in dealing with cannabis. Two-thirds of the arrests for drug related offences involve cannabis. Three-quarters of all drug seizures (by weight though not by value) involve cannabis. The cannabis tail is wagging the hard drug dog.

- **Encourage freedom and responsibility**

A free society should demonstrate a bias against coercion. Conservatism should be about setting people free not locking them up. Wherever possible people should be allowed to make their own choices. People are more likely to behave responsibly the more responsibility they are allowed to exercise over their own lives.

Ultra-libertarians believe that if people choose to destroy their lives with drugs the state has no right to interfere to save them from themselves, and that hard drugs should be legalised as well. I do not take that view. I believe that there is a respectable case for the state trying to protect people from hard drugs. No such case is tenable in relation to cannabis, the criminalisation of which robs people of the freedom to act responsibly.

Options for reform

In looking at how the law should be reformed, there is one overriding objective to bear in mind and that is to break the link between cannabis users and hard drug pushers. The present law forces cannabis users into contact with serious criminal elements which supply both soft and hard drugs, with all the concomitant dangers that such contact brings.

Various options for reform exist which range from reducing the penalties for cannabis use, through decriminalisation, to total liberalisation. It is worth looking at them to see what the minimal steps are that must be taken for effective reform of the law.

(1) Reducing penalties for possession for personal consumption

The Runciman Report for the Police Foundation recommended that possession of cannabis (and cultivation for own use) should no longer be imprisonable offences. This would mean that they ceased to be arrestable offences in England and Wales (under section 24 of the Police and Criminal Evidence Act). The Report went on to recommend that prosecution of offences for possession should be the exception. The norm would be a caution which would no longer incur a criminal record.

This approach would reduce the friction between otherwise law abiding users of cannabis and the police. In particular, it would render unnecessary the greater part of the 300,000 stops and searches for drug offences (only 12% of which result in finding drugs). It would also release substantial police and court resources.

However, cannabis users would still be lawbreakers. The Lambeth pilot scheme, which de-penalises cannabis users would still mean that such users were in breach of the law. And for the first time, it would bring the law into contempt with the law-abiding majority who feel that if something is a crime it should be punished.

This approach also fails to achieve the prime purpose of reform – breaking the link between cannabis users and hard drug pushers. As long as trafficking in cannabis remains illegal it will tend to be handled by the same illegal channels that control heroin and crack.

(2) Providing legal outlets

The whole logic of de-penalisation, therefore, leads inexorably towards decriminalisation of possession for own use. That was clearly where the Runciman Commission was pointing even if it felt unable to spell it out.

Short of legalising trade in cannabis entirely, the only way to stop driving soft drug users into the arms of the criminals who push hard drugs too, is to license some legal outlets to retail cannabis.

Holland's "coffee shops" are the best example of legalised cannabis outlets but it may not be desirable to copy them exactly. Moreover, they only count for half of all cannabis consumption, the other half still coming from criminal sources. A minimally effective approach to reform would be to legalise supply through outlets along the following lines:

Regulation of trade to protect against criminal elements

- Licensing justices would be given the task of licensing any outlets
- Justices would require licensees to be of good character
- Licences would be forfeited if anyone were convicted of supplying illegal drugs from the premises or if there were reasonable grounds for suspicion of such activities
- Tax would be levied on cannabis sales, set at a level which does not drive trade underground
- Buying or selling cannabis other than through licensed premises would remain a punishable offence

Discouraging promotion of cannabis use

- Only off-licences would be granted (there is no need to go as far as the Dutch by granting on-licences for consumption in "coffee shops")
- The minimum age could be 18 (as for alcohol) rather than 16 (as is the case with tobacco)
- A maximum limit could be set on the amount sold to any individual
- Consumption of cannabis in public places could remain an offence
- Advertising and marketing should remain largely prohibited

Protection against health risks

- No alcohol could be sold from any premises licensed to sell cannabis
- Premises and products would be required to display full health warnings

(3) Legalising cultivation of cannabis

The third step in liberalisation would be to legalise cultivation of cannabis in the UK for personal use and for wholesale trade. If possession for own use were no longer a crime, it would be natural to permit cultivation for own use. Once legal outlets are licensed they will need a steady source of supplies. To go further and permit cultivation to supply licensed outlets would have the benefit of creating an entirely legal supply chain. To the extent that supplies become available, UK licensed outlets would then not need to obtain supplies from the international criminal gangs who often handle hard drugs as well.

(4) Full legalisation

The series of options outlined so far still falls far short of the full legalisation advocated by some on libertarian grounds. There is much to be said for a cautious step by step approach here as in most areas of social policy. Moreover, the intention of reform is not to endorse cannabis use still less to encourage its abuse. A strict regulatory regime will reflect public concern that if people use cannabis at all they should do so responsibly.

A workable alternative framework

The sort of framework outlined by options 1, 2 and 3 above may be as effective as prohibition in discouraging cannabis use. It is the minimal coherent strategy that can be adopted which actually fulfils the purpose of insulating cannabis users from peddlers of hard drugs and other criminal elements. It would re-establish respect for the law while preserving individuals' freedom and responsibility and leave governments in a better position to tackle the problems of hard drug use and serious crime.

Legislation establishing this form of legalisation would be consistent with the UK's international treaty obligations. The 1961 UN Single Convention on Narcotic Drugs is somewhat ambiguous in its wording. It requires signatories to control rather than prohibit trade in cannabis. It is likely that the reforms envisaged above are compatible with the Convention.

CONCLUSION

I reached these conclusions before the Conservative party suffered its recent disastrous election defeat. The campaign and its outcome have only reinforced my belief in the importance of Conservatives looking anew at Britain's cannabis laws.

All five candidates for the Conservative leadership have recognised the need for the party to do three things—to undertake some bold new thinking, particularly on social issues; to change the widespread negative perceptions of our party and to reach out to the two thirds of voters who did not support us.

New policy thinking:

It would be wrong to adopt policies in which we do not believe, and which are not in accord with our principles. But no principle is more central to Conservatism than a belief in freedom and personal responsibility. No policy could be more in tune with that principle than the restoration of personal freedom in this sphere. Next to freedom Conservatives stand for hard-headed realism. And in having the courage to face up to the self-evident failure of cannabis prohibition Conservatives will be addressing realities that other parties ignore.

Changing perceptions:

One of the biggest handicaps the Conservative party faced was the perception that its policies were negative and punitive. On crime and asylum seekers as well as drugs, conservatism seemed to be about locking people up. It ought to be about setting people free. Nothing could more vividly dramatise a change to a more liberal attitude than to move clearly in favour of liberalising the law on cannabis.

Reaching out

The section of the electorate where Conservative support was lowest was first time and young voters. On no issue more than cannabis were young people's views and experience more out of tune with the policy consensus endorsed up to now by both major parties. A principled and sensible approach to this issue would make young people look at the Conservative party in a new light. Moreover, it would reassure their parents that we have no intention of giving their children a criminal record for smoking the occasional joint.

I repeat - these factors should count for nothing if the policy options I suggest are not desirable in themselves. But they are right in principle, workable in practice and inevitable in the long run. Conservatives will be doing the nation as well as themselves a favour by taking them on board.

Of course, if we do so there will be a brouhaha stirred up by some of the tabloids and some of our supporters who have uncritically accepted the myths which have been used to justify the current laws. But the rumpus will be milder than it would have been a few years ago. Attitudes are changing steadily in all age groups and among those of all party allegiances.

Depending on what his focus groups say, Mr. Blair may seize the opportunity to outflank us as the defender of punitive policies against cannabis. I doubt if he will. But if he does he will live to regret it because facts and principles are on the side of legalisation. And ultimately facts and principles have more influence on public opinion than spin doctors and spurious propaganda.

The Liberals too would be somewhat wrong-footed. They have sniffed at the issue but not inhaled. Instead of going openly for legalisation they have called for a Royal Commission in an attempt to hide their liberalism in the long grass.

The field is wide open for Conservatives to take the lead.