

The Criminalization of the Cannabis Plant: Decolonizing the Harmful Enforcement

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Abstract

The paper examines the history and current state of cannabis-related laws and enforcement and argues for reformed policies. The history of cannabis laws has been used to control, punish, and oppress marginalized groups of people and reinforce the power structures that were established during colonial rule. The discriminatory policies have disproportionately especially hurt Black, Brown, and Indigenous people with harsh punishment for those who use the cannabis plant which has various medicinal, social, religious, cultural, and textile uses. The strict laws that criminalize cannabis harm society by enforcing an environment that empowers violent organized crime groups and pharmaceutical companies that profit off cannabis being illegal. Cannabis reform including decriminalization and legalization may be a viable option for many nations to consider as a harm reduction strategy.

Keywords: cannabis, decolonial, decriminalization

Introduction

According to the United Nations (UN), cannabis (hash, hemp, marijuana) is the most-used drug as over 180 million people use cannabis each year (UNODC, 2019). Nations throughout the world have penalized people for their cannabis use with harsh punishments. The policies have caused tremendous pain and suffering through state-sponsored violence, incarceration, and other means of social control without reducing cannabis use (Taylor, 2007). The criminalization of cannabis resulted from ideologies perpetuated by colonial histories, racism, and imperialist principles. The harsh and ineffective policies especially against cannabis-related drug laws have been an important factor for the mass incarceration problem in many countries (Graff, 2015).

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The war on cannabis that was largely supported by the West, especially the UN and the US, has infiltrated countless nations throughout the world. Indigenous peoples have often been the ones most harmed by cannabis criminalization through structural violence even when cannabis has been safely used by their ancestors for many aspects of their life including for food, medicinal healing, religious ceremonies, social activities, and clothing (Koutouki & Lofts, 2018; Owusu-Bempah, 2021). Anti-cannabis policies miss the opportunity to use the medicinal plant for tax revenue as some countries and US states have started to do like California, Canada, Colorado, Oregon, Portugal, Uruguay, The Netherlands, Spain, and Washington (Spithoff et al., 2015). Their governments, which enacted decriminalization and legalization policies, often use the tax revenue to help social programmes such as education, public safety, and drug rehabilitation while having to spend less on imprisoning cannabis users. Decolonization of cannabis and decriminalization of the plant can help disassemble the structures of power that were established during colonial times and bring about harm-reducing policies that are based on compassion, equality, and science.

History of Cannabis

Cannabis is one of the oldest cultivated plants (Ren, et al., 2019) and has been used for thousands of years in different ways including as a clothing and building material, as a food which is high in protein and fatty acids, as a medicine, and in religious ceremonies (House et al., 2010). At the beginning of British and European colonialism, cannabis was traded as the Europeans would import tobacco along with cannabis and other plants. As the British Empire spread throughout the world in the nineteenth century, drug abuse soon became a serious issue for the British elite. The use and abuse of opium caused ample fear, death, and addiction. Cannabis had gotten mixed in with harmful drugs like opium and had even become known as the “opium of the poor” (Warf, 2014).

As the former colonial empires were given powerful positions on the UN Security Council, their push for international regulation of cannabis became apparent. The 1961 UN Single Convention on Narcotic Drugs demonized cannabis (Taylor, 2007). The convention pushed to limit cannabis distribution only for medical and scientific purposes (Taylor, 2007) but left alone harmful drugs like alcohol and tobacco (Hall, 2017).



There was a common narrative that the Western governments needed to “civilize” other people in “uncivilized” places throughout the world, which led to many nations especially banning cannabis in the early twentieth century (Scheibe et al., 2020) even though generations of people in these nations had been safely using the plant for hundreds of years. With the morals on cannabis being pushed onto other nations – especially former colonies – the anti-cannabis policies have been accepted by governments through public policy and enforcement (Taylor, 2007). These governments, built on histories and structures of colonialism, use significant law enforcement resources to ensure that the power structures continue and that marginalized groups remain oppressed in the ‘post-colonial’ era by allowing cannabis to be used to impose racialized enforcement, surveillance, and punishment.

Cannabis Policies

Throughout the world – from Australia to Canada – oppressed groups, including Indigenous populations, have been treated unfairly in cannabis-related drug enforcement and oppression, which has worsened racial disparities (Koutouki & Lofts, 2018; Owusu-Bempah, 2021). Even some cultural ceremonies of Indigenous peoples have been stopped because of the criminalization of cannabis (Koutouki & Lofts, 2018). The continuous application of Western and American cannabis-related morals on Indigenous Peoples *on their land* has brought about a lot of death and imprisonment in areas that are already impoverished (MacCoun & Reuter, 2011). The harm that cannabis can cause is arguably much lower than the harms caused by drug enforcement (Ahrens, 2020). The deaths related to cannabis are not from the plant itself but from the violence used to enforce cannabis laws that lead to innocent people being killed in the crossfire, and from the ‘black’ markets that are created (Gacayan, 2020). Decriminalization has been shown to help reduce the violence of drug markets (Greenwald, 2009) which Black, Brown, and Indigenous people are disproportionality the victims of.

The South African Police have used cannabis enforcement after apartheid to continue to imprison the Black and Indigenous populations. The US specifically helped South Africa enforce these policies by training the local police and providing militarized gear to law enforcement agencies that were brutal – especially against Black citizens, were known to be corrupt, and were known for the extra-judicial killings of unarmed suspects (Bruce, 2002).

India is another example of how the influence of foreign empires led to the criminalization of cannabis. The cannabis plant was highly regarded in much of Indian history and the plant had been a holy and healing plant, especially among the Hindu communities (Morningstar, 1985). After thousands of years of cannabis use in India, the US and the UN pressured India into strict policies of enforcement and the use of imprisonment against cannabis users and dealers (Framke, 2013).

In Aotearoa New Zealand, Māori – the tāngata whenua (the people of the land) – had been disproportionately impacted by the criminalization of cannabis soon after the colonial settlers brought cannabis to Aotearoa. Aotearoa has had one of the world's highest cannabis uses in the world and was used by people from all backgrounds. Since the *Misuse of Drugs Act 1975* criminalized cannabis, the law has been used to arrest and punish people of Māori descent at higher rates than Europeans despite similar rates of usage (Rychert & Wilkins, 2021). Māori voters overwhelmingly supported cannabis reform for various reasons including to promote harm reduction in their communities and to help end racism (Rychert & Wilkins, 2021). New Zealand passed an amendment to the cannabis law in 2019 with the *Misuse of Drugs Amendment Bill* to help address the aforementioned injustices. The new policies allowed law enforcement to use discretion in deciding whether a suspected person should be charged for a cannabis violation or be referred to a health programme. However, data from the New Zealand government shows that, despite the amendment, cannabis law enforcement continued to disproportionately affect Māori.

Decriminalization

The UN has greatly influenced anti-cannabis policies and has recently moved against the harsh cannabis policies that national governments have implemented. The UN had – following the recommendation of the World Health Organization (WHO) – removed cannabis from Schedule IV of the 1961 Single Convention on Narcotic Drugs, which had listed cannabis within the same category as highly-addictive and lethal drugs such as heroin and opioids. Both the UN and WHO now recognize the medicinal properties of cannabis and the health benefits that it can offer people, and national governments have slowly started to acknowledge these as well.

Numerous governments in the twenty-first century have implemented public policies to decriminalize cannabis. Many people who have been negatively affected by the criminalization of cannabis face roadblocks in



society, such as having their parents incarcerated, having their property seized, and having to deal with brutal law enforcement agents. Some governments have taken steps to retroactively pardon previously convicted people and clear criminal histories related to low-level cannabis convictions – for example, the US states of California, Colorado, Washington, and Oregon (Ahrens, 2020). Despite these efforts, much of the harm caused by racially unjust convictions could not be erased or compensated for in this way but it is a first step to repairing the harm done (Ahrens, 2020). This helps those convicted of cannabis-related violations be better prepared/successful for/with future employers, welfare and custody battles, military service, visa applications, licensing, student aid, loans, housing, and other benefits and programmes. In Oakland, the government used police and arrest data to find the areas that were most impacted by cannabis enforcement and were suffering from poverty. Another initiative to highlight is the redistribution of taxes that come from legalized cannabis has been allocated to go directly back to the areas that were significantly impacted by the criminalization of cannabis (Adinoff & Reiman, 2019). This is an important measure to take to ensure that the inequities that occurred during criminalization are reversed. However, without acknowledging the history and making a significant effort to improve the ongoing inequities, inequalities will likely continue.

Reform

The current policies on the criminalization of cannabis have in many ways been major failures. The criminalization of cannabis leads to the criminalization of communities, a lucrative 'black' market for gangs, an increase in drug war killings, and a lack of research on the benefits and consequences of cannabis use (MacCoun & Reuter, 2011). A major reform of the current policies that many nations have in place can have a variety of benefits to our society, especially for Black and Indigenous peoples (Koutouki & Lofts, 2018). National governments can implement policies to help those that become addicted to cannabis, divert the funding, which was previously used to enforce cannabis and imprison users, into social programmes for communities that have been hurt by the anti-cannabis policies, and release those who have been incarcerated due to cannabis use.

Decriminalization can be a step toward effective cannabis reform (Spithoff, 2015). It can be a step toward comprehensive drug reform and the legalization of non-lethal drugs that have medicinal benefits like cannabis. The decriminalization of cannabis would help lessen mass incarceration and

the cost of criminal fines to users. It could bring about the improvement of poor communities that have been devastated by non-violent cannabis users being punished for the use of a medicinal plant (Kerr & Jackson, 2016). Decriminalization can help improve the health and safety of users and communities as imprisonment brings about many physical, social, and mental health issues, especially in recent times as thousands of people, who mainly belonged to marginalized and racialized groups, died in jails due to diseases like COVID-19 (Nowotny et al., 2021).

The overcrowding due to cannabis-related drug offenders in jails causes health hazards for the other inmates and workers in the prisons. Also, once people are released from incarceration, especially after extended periods, they are more likely to be involved in crime and violence than before and have various negative health consequences (Kerr & Jackson, 2016). As there has been a push for equality of all racial groups, decriminalization is an important step that governments can take to lessen the oppression of marginalized peoples, especially when indigenous plants are involved that have, for generations, been used to improve people's health and help people deal with serious traumatic events (Koutouki & Lofts, 2018).

Imprisonment is not a helpful or compassionate response to those dealing with a disease like addiction. Decolonizing cannabis would help in allowing for Indigenous healing strategies and plant-based options for people dealing with various physical and mental health disorders. It would also help provide education for cannabis users to assist them in making educated decisions for their life and health, which can be part of a compassionate response to anyone who is dealing with cannabis addiction. The resources freed via the decriminalization of cannabis can help fund social programmes such as education and public health.

Governments often spend over 100 times more on the enforcement of drugs like cannabis than they do on education, drug abuse counselling, and treatment. The US spends over three billion dollars a year on enforcing cannabis and other drug laws with Special Weapons and Tactics (SWAT), helicopters, high-speed boats, jets, drones, high-powered rifles, armoured military vehicles, and undercover officers in high schools (Taylor, 2007). Also, cannabis enforcement includes no-knock raids like the one that killed Breonna Taylor, an innocent 26-year-old woman. The decriminalization of cannabis can strengthen law enforcement's abilities to enforce the drugs that are causing serious harm and death to its users like synthetic opioids, especially fentanyl.



Indigenous peoples have been disproportionately affected by the opioid crisis with rates of overdoses up to five times higher than the general population (Lavalley et al., 2018). Decriminalization of cannabis may help to mitigate the opioid crisis as it has been associated with a reduction in opioid-related deaths (Bachhuber et al., 2014). Cannabis can reduce pain and improve sleep and mood, which has helped reduce the need and abuse of opioids and other addictive drugs like benzodiazepines (Tumati et al., 2021). There are risks associated with cannabis as well including memory disruption, and risk for suicidal ideation, but criminalization is not an effective mechanism to reduce cannabis use among youth who are most susceptible to the risks. The criminalization of the plant has deterred those who deal with negative side effects from seeking medical help, which can exacerbate the side effects (Mayo, 2021).

Conclusion

To help reduce the harmful impact of colonialism and its legacy on colonized people, the decriminalization of cannabis is an important step to help bring about social change that is much needed to repair the harm that has been done. The repressive policies have reinforced the racial hierarchies that were put in place by colonial powers and have put people in cages for using medicinal plants. Decriminalization can be a step – when done properly – to make our societies less oppressive and unequal (Miron & Partin, 2021). Policies need to give Indigenous peoples a voice in drug legislation as the UN has declared that legislative changes need to involve Indigenous people as outlined in the UN Declaration on the Rights of Indigenous Peoples (Champagne, 2013).

It is also important that efforts are made to address the injustice that has affected generations. More people are in support of the decriminalization of cannabis than ever before (Owusu-Bempah, 2021) and many experts and researchers continue to show the benefits of cannabis and the harm that is caused by law enforcement against cannabis. Racialized laws and policies have put cannabis into the category of strictly controlled substances with no medicinal uses – a category in which it does not belong (Lines, 2010) and has led to governments putting cannabis users away from their families and behind bars – where they do not belong.

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