Cannabis policy developments in the Americas and their global implications

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Aims

- Beyond the cannabis policy experiments of the 1970s
  - Decriminalisation of personal use: states in the USA
  - De facto legalisation of retail sales in Netherlands in 1970s

- Legalisation in the USA 1990s to the present
  - Medical uses of cannabis mid-1990s-2010s
  - Adult recreational cannabis use since 2012

- Two less studied models of cannabis legalization
  - Uruguay 2013-
  - Canada 2018-

- Implications for the global cannabis policy
Cannabis use in the USA

- USA trends in cannabis use:
  - Use began during late 1960s & peaked in late 1970s
  - Declined in 1990s and stabilised at lower level
- Good survey data on cannabis use: 1975-2017
  - High school, college and household drug surveys
- Cannabis policy in the USA:
  - Decriminalisation of use in early 1970s and 1980s
  - Renewed war on cannabis in 1980s: “Just say no”
  - Medical cannabis laws late 1990s and 2000s
  - Legalisation in Colorado and Washington in 2012
Cannabis use common among youth
- Most use was occasional and transient
- Very little evidence that it harmed most users
  - Compared with alcohol or heroin, cocaine and methamphetamine

Harms from criminalization greater than use
- Criminal records for users
- Undermined respect for the law

Need to separate markets for cannabis and other illicit drugs
- To reduce the use of heroin, cocaine etc
- Most influence on policy in the Netherlands
Constraints on policy

- Little public support for liberal cannabis policies
  - seen as “soft” on drugs: <25% for legalization
  - concerns about effects of cannabis use on youth
    - use of other illicit drugs; psychosis; school failure; addiction

- International drug control treaties:
  - strong international support & criticism of policy defectors
  - Widely seen as ruling out de jure decriminalization

- Cannabis policy choice often narrowed to:
  - should we decriminalise *de facto*?
  - seen as the politically safest approach
National inquiry into cannabis policy:
  - 1972 Shaffer Commission appointed by Nixon
  - Recommended decriminalisation but Nixon said no

Presidents Ford and Carter favoured
  - Decriminalising personal possession and use
  - De facto decriminalisation a common compromise

Reagan increased enforcement of prohibition
  - “Just say no” as prevention message
  - Federal advisers opposed cannabis legalisation

Little change in Federal cannabis policy under:
  - George H. Bush, Bill Clinton or George W Bush
Medical cannabis use in the USA 1996-
Bottom up reform via ballot initiatives

- Half US states allow ballot initiatives to be passed by citizens
  - Require specified N of signatures to put issue on the ballot
  - Usually held during mid-term and Presidential elections
  - If a majority supports the proposal it must be legislated

- Introduced in the Progressive era to change policies
  - when politicians beholden to special interests e.g. alcohol
  - or reluctant to offend powerful minorities
  - used to introduce and repeal National Alcohol Prohibition
“Medical use” defined liberally in 1996 referendum:
- List of commonly cited medical indications
- Plus any symptom condoned by a doctor
- Dennis Peron: “all marijuana use is medicinal”

De facto legalisation after 2009
- Obama DoJ gave low priority to enforcing Federal law in MM States
- “Medical marijuana patient” = anyone with a doctor’s letter
- MM doctors advertised on line to write “recommendations”
- Dispensaries (for profit) later established to supply patients
Who uses medical marijuana in California?

- Medical marijuana patients in SFO 2001-2007
  - O’Connell and Bou-Matar (2007) N = 4117
  - 77% male: average age: 32 years
  - 89% used cannabis before age 19
  - 90% daily smokers using 1/8 to 1/4 oz/week

- Indications?
  - Unlikely to be AIDS, cancer or neurological diseases
  - Harm reduction for alcohol and other drug use disorders

- A marijuana maintenance program?
Medical marijuana policies in the USA

- Legal in 28 states and DC
- Most liberal: CA, CO, OR, & WA

- Marked variations in what different states allow
  - Medical necessity defence only, for limited conditions
  - Only allow cannabis products that contain CBD (11 states)
  - Any medical use at doctors and patients’ discretion (CA)
  - Allowing supply of cannabis by:
    - Self or carer who grows for patient/s
    - Commercial marijuana dispensaries
Cannabis legalisation referenda
Cannabis legalisation referenda

- **2010:**
  - California failed to pass: 46%

- **2012**
  - Colorado: passed by 54%
  - Washington State: passed by 53%

- **2014**
  - Alaska: passed by 52.3%
  - Oregon: passed by 56.1%

- **2016**
  - California: passed by: 57%
  - Maine: passed by: 50.2%
  - Massachusetts: passed by: 54%
  - Nevada: passed by: 54.4%

- 21% of US population in states where adult use is legal
Support for cannabis legalisation 1969-2018

Americans' Support for Legalizing Marijuana Continues to Rise

Do you think the use of marijuana should be made legal, or not?

% Yes, legal

GALLUP
Bipartisan support for cannabis legalisation

Republican Support for Legal Marijuana Now at Majority Level

% Yes, marijuana use should be legal

- Republicans
- Independents
- Democrats

GALLUP
Did medical cannabis facilitate legalisation?

- "Medicines" seen as safe and effective
  - Even when untested e.g. herbal medicines
  - Cannabis a "natural product" and so especially safe
  - Cannabis-based medicines widely seen as effective
- Well funded cannabis law reform movements
  - Drug legalisation (Soros)
  - Retail cannabis lobby (after Cole memorandum)
- No obvious adverse social effects of liberal MM laws
  - Retail outlets in low SES areas
  - Limited advertising and low profile initially
MM had limited effects on cannabis use

- Adolescent cannabis use in states with & without MM laws:
  - Cannabis use higher in MML states before laws passed;
  - Monitoring the Future surveys of high school students: no effect

- Limitations of these studies
  - Not all MMLs as liberal as CA and CO and only 4 years post MML

- Effects on adult cannabis use:
  - Increased regular use and delayed increased dependence in NHSDU
  - Increased treatment seeking (noncoerced) for cannabis in males
How has cannabis legalisation been implemented in the USA?

- Regulated like alcohol in most legalisation states

- Exceptions so far: Washington DC and Vermont
  - Legalised personal use & grow or gift
  - No retail sales allowed

- Are these long term stable policy options?
  - Exploitation by black market?
  - Difficulties for law enforcement?
  - Loss of state revenue?
Legalisation in Washington State

- Public health orientated alcohol policy
  - Until repealed by ballot (sponsored by CostCo) in 2012

- Public health co-sponsor of ballot proposition
  - ACLU and Roger Roffman

- Earmarked % of tax revenue for
  - Prevention
  - Treatment
  - Evaluation
Washington Regulations
Liquor and Cannabis Board

- Use legal for adults over age of 21 but 28.5 g purchase limit
- Separate licenses for producers, processors and sellers
- Taxed on sales price rather than THC
  - 37.5% at retail + 9.5% state tax
  - medical marijuana restricted
  - no home cultivation allowed
- Taxes earmarked for
  - Education and prevention
  - CBA of legalisation policy
- Impaired driving=5 nanograms/mL THC
- Legal sales began July 2014 initial shortages
Price of flower in WA State

Volume in Grams vs Retail Selling Price

- Units/Grams
- Average Retail
Sales by Product Type (%)
PINAAPPLE Hi TERP SUGAR
A TROPICAL VACATION IN A DAB
WRITER / AARON MILLER  PHOTO / TINA BALLEW

PINAAPPLE's PINEAPPLE sugar is a perfect hybrid strain for a happy-go-lucky experience that's great for a day off or some at-work relaxation. The amber wax has golden flecks throughout it that look like real chunks of pineapple and a distinct smell of citrus with a subtle fruity sweetness that lingers in the sinuses. After my first hit, the smell expanded into a full-bodied lemon pine taste that made my nose tingle for nearly five minutes. The cerebral high that followed provided a nice antianxiety effect that made the day's stress melt away and cleared the mind.
More potent cannabis products

- **Edibles:**
  - Candies, cookies, infusions
  - More ED attendances by adults
  - Accidental childhood poisonings

- **Concentrates**
  - 70-90% THC content
  - Used in vaporisers and e-cigarettes: dabs
  - Industry resistant to bans, THC ceiling, taxes or regulation
    - Claims that safer to use extracts because users titrate doses
    - More concern about pesticides, heavy metals and other contaminants
    - DIY extraction using butane: serious burns and explosions
Complaints by cannabis industry

- The tax is too high: 37% at retail sale (+ 9.5% state tax)
- Legal cannabis unable to compete with the black market
  - Minimal police enforcement against black or grey market
- Retail outlets concentrated in industrial areas
- Local government limits on location of retail outlets
  - LG has the right under law to ban retail sales in their area
- No consumption on premises or home delivery allowed
Criticisms from ACLU

- Regulatory burdens a major barrier to market entry
  - Difficult to obtain loans to purchase or rent properties
  - Difficult to negotiate regulatory processes to obtain a licence
  - A police check excludes all persons with criminal records
  - High costs of banking and Federal tax rules

- These barriers have excluded:
  - People of colour (among the intended beneficiaries of legalisation)
  - Cannabis businesses run by wealthy white business people
  - Selling cannabis where African Americans dealers used to be arrested
Cannabis is still illegal under CSA

- Producers & sellers could be charged with drug trafficking
- So could banks, accountants, lawyers, state officials
- But low enforcement priority under Obama after 2009

Constraints on businesses:

- Banking difficulties: added expense of close auditing
- IRS does not allow deduction of business expenses
  - De facto Federal tax on cannabis industry
- Difficulty dealing with contaminants and pesticides
  - Lack standards for testing laboratories
  - States cannot to use Federal expertise in EPA and DA
Conflicts between Federal and State laws
- Still federal offences to produce, use and sell cannabis

Hands off approach under Obama:
- Enforcement a low priority provided states “regulated responsibly”

No resources to enforce Fed laws in legalisation states
- Cannot force states to enforce Federal laws

Under Obama Feds would intervene if:
- States to do not rigorously enforce laws
- e.g. to prevent sales to minors; stop drug trafficking
Cannabis policy under Trump

- Attorney General Sessions and Trump
  - Trump supports medical use
  - He and Sessions oppose recreational marijuana legalisation

- Republican Party
  - Favours leaving the issue to the states to decide
  - No enforcement of Federal law in legalisation states
  - Congressional Cannabis Caucus
  - John Boehner lobbying for repeal of CSA

- Big business: finance and alcohol industries
  - Now investing in Canadian cannabis businesses
  - Plea for level playing field: legalise nationally in the USA
Cannabis policy in the rest of the USA

- Citizen-initiated referenda in ~half US states
  - A cannabis legalisation bandwagon?
    - 4 passed in 2016 & legislation under discussion
    - Appeal of tax revenue to cash-strapped states
    - Fear of lost revenue: legal states & trafficking
    - Pressure on Federal government if more legalise
      - A Cannabis Caucus formed in Congress
      - Cannabis Lobbyists on F street
  - A recriminalization bandwagon?
    - If legalisation has adverse effects
    - Unlikely given likely delay in effects
    - Legalisation will be difficult to reverse
What may happen if legalisation becomes national policy in the USA?

- Unrestrained commercialisation?
  - More efficient production: economies of scale
  - Competition, promotions, & lower prices
  - Alcohol, tobacco, beverage and biotech entry

- Reductions in price:
  - Very cheap joints for cost of a teabag
  - Tax on sales price: incentive to increase potency
  - Vertical integration will maximise efficiency
  - Taxes reduced to undermine black market

- Economics 101: if price falls, use will increase:
  - Among current users: already evidence
  - Among new users: if so, how soon, by how much?
  - How will this affect alcohol and other drug use?
Weed Costs A Lot When It’s Illegal

It's a lot more expensive to get high in the U.S. than it is in Uruguay, where the government will soon sell marijuana for just $1 a gram, or about $28 per ounce. Americans in most states still get their weed from drug dealers who can charge market price.

Source: priceofweed.com
What changes may we expect to see?

- Changes in cannabis use in youth:
  - Softening of perceived risks of use
  - More heavy use among current users
  - More users but unclear how many

- Harms that we may see in young adults:
  - More car crashes (cannabis +/- alcohol)
  - More ER attendances for adverse effects

- Heavier use in current regular cannabis users?
  - More or less help-seeking among users?
  - Cheaper prices may delay help-seeking

- Effects on alcohol use: a substitute or a complement?
  - Alcohol industry will try to ensure it is the latter by:
    - Allowing cannabis sale and use in bars
    - Promoting co-use
When may we see any effects?

- It will probably take time for large increases in use:
  - Repeal of National Prohibition in 1932:
    - It takes time to scale up production
    - Limited N of licenses to make regulation easier
    - Local option may restrict where cannabis can be sold
    - Social toleration of cannabis use may change more slowly
  - Lag between increases in use and adverse effects
    - Especially in new users but may be also in current users

- In the short term:
  - Evidence of harm will be equivocal and contested
    - Amplified by critics and debunked by supporters of legalisation
Alternative models of cannabis legalisation

- **Uruguay: 2013**
  - State control over limited market
  - Aims to reduce role of organised crime

- **Canada: 2018**
  - Public health rationale: legalise and regulate
  - Reduce role of black market and
  - Protect youth
Cannabis legalisation in Uruguay

- Top down policy change from the President
  - Announced Uruguay would legalise recreational use in 2013

- Aims of policy were to:
  - Remove organised crime from cannabis market
  - Protect public health

- Allows users only one of three ways to access cannabis
  - All require registration with the state
    - Grow your own for personal use
    - Growers’ clubs (as in Spain) for members’ use
    - Purchase cannabis produced by state from pharmacies
Cannabis legalisation in Uruguay

- Challenges in implementation
  - Change initially opposed by 2/3 of Uruguayans
- Implementation has been slow by new president
  - Grow your own legalised first (~10,000 registered)
  - Cannabis clubs next but small in number
    - 99 clubs with 2500 members
  - Pharmacy supply delayed until July 2017:
    - 12/1200 pharmacies and
    - 26,000 registered purchasers
- Uncertain how much it will reduce the black market
  - Low rates of user participation among older users
  - Supply problems
Cannabis legalisation in Canada

- Trudeau’s 2015 promise to legalise if elected
  - Federal policy rather than state initiatives
  - Promises a nationally consistent, public health oriented approach
  - Slogan: “Legalise and regulate”

- A more considered process than many US states:
  - Expert committee and public consultation process
  - Legislation debated in parliament and passed in 2017
  - Implemented on 17 October 2018

- Policy rationale aims to:
  - Eliminate black market supply of cannabis
  - Eliminate criminal penalties for use and supply
  - Protect public health and youth
Legalised production and retail sales on 17 October 2018
  - Federal licensing and regulation of cannabis producers
  - Provincial regulation of retail sales, age of purchase etc

Public health-oriented regulation:
  - No advertising allowed
  - Legal age 18 (unless a province opts for a higher one)
  - Provincial monopolies allowed as with alcohol
  - Excise taxes shared by Federal and Provincial govts
  - Product restrictions: no edibles or extracts for first year
  - Medical cannabis to continue for 5 years before review
Canadian cannabis policy and the USA

- Implications for cannabis policy in the USA:
  - An alternative to a for profit alcohol model
  - But for how long?
    - large investments by US alcohol and finance industries in Canada
    - Tobacco industry eyeing opportunities
- Potential impacts on policy in the USA
  - Shared border and increased trafficking
    - National Alcohol Prohibition revisited?
  - Pressure on Congress to address legalisation in USA
    - Hypocritical to oppose Canada legalising, if USA allows it
    - A crack down on legalisation states or national repeal?
International implications of policy experiments in the Americas

- USA a strong supporter of international treaties so cannabis legalisation in USA may:
  - Encourage more states to ignore Single Convention on cannabis
  - Following examples of Uruguay, Canada and Jamaica
  - More difficult for US to criticise any states that do so

- American exceptionalism:
  - USA ignores international opinion when it is in its national interest
  - Claims to comply with the treaties: still illegal Federally

- Challenges to international drug control system
  - Chance of major treaty revision small
  - Treaties more likely to fall into disuse because of noncompliance
  - Cross border trafficking of surplus cannabis production?
Major cannabis policy experiments underway in the Americas
  - Bottom up in USA and top down in Uruguay
  - An election promise in Canada
Implemented longest in CO and WA
  - Alcohol the usual regulatory model: public health a lower priority
  - Most US states following their example: AL, OR; CA; MA; ME; and NV
It will take time to evaluate the effects of legalisation on:
  - Rates of cannabis use and cannabis-related harm
  - Use is likely to increase among current users
  - but uncertain how much and how soon new users will increase
International effects of these policy experiments uncertain
  - Has reduced US credibility in opposing policy change elsewhere
  - Allows space for other states to experiment with legalising supply