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Cannabis social clubs in Spain

A normalizing alternative underway

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Cannabis social clubs (CSC) are non-commercial organisations of users who get together to cultivate and distribute enough cannabis to meet their personal needs without having to turn to the black market. They are based on the fact that the consumption of illegal drugs has never been considered a crime under Spanish legislation. Taking advantage of this grey area, private clubs that produce cannabis for non-profit distribution solely to a closed group of adult members have existed for years.

Since their appearance in 2002, CSCs have enabled several thousand people to stop financing the black market and to know the quality and origin of what they are consuming, whilst creating jobs and tax revenue. All of this has happened without having to withdraw from existing UN drug treaties.

This article outlines the nature and functioning of these clubs. It also proposes a better route for legalisation of drugs: rejecting the creation of an open trade system, similar to that of alcohol or tobacco and opting instead for a consumer-focused, non-profit model that avoids many of the risks inherent in a market dominated by the pursuit of economic profit.



Conclusions & Recommendations

- The appearance of cannabis social clubs (CSC) in Spain in 2002 has enabled thousands of people to legally grow their own marijuana supply for personal consumption and ensure that it is good quality.
- Clubs began to appear throughout the country, due to a grey area in Spanish legislation, and through a legal registry system for groups of users those who collectively cultivate marijuana.
- The CSC boom occurred after various Supreme Court decisions that stated that cultivation for personal use is not a crime as it is not destined for trafficking.
- It is time for the debate on drug policies to move on from a simplified discussion of legalisation or prohibition and instead considers alternative ways to deal with drugs.

HISTORICAL AND LEGAL PRECEDENTS

Spain signed the UN's Single Convention on Narcotic Drugs in 1966. The following year, this resulted in the approval of Law 17/1967 on Narcotic drugs establishing that the possession of illegal drugs would only be allowed for medical or scientific use. However, the law only stipulated the confiscation of prohibited substances and did not designate any other sanctions.

In 1973 the crime of drug trafficking in its present form was incorporated into criminal law. The following year the Supreme Court made the first judgement establishing that drug consumption and possession for consumption are not criminal offences. This created a jurisprudence that was strengthened by subsequent decisions, establishing that shared consumption, giving drugs for compassionate reasons, and joint purchase by a group of addicts - as long as it did not involve profit-seeking - were not crimes either.

However, this decriminalisation did not lead to clear regulations on production and possession for personal consumption. In terms of cannabis there are Public Prosecutor guidelines on the quantity of cannabis that users may have in order for possession not to be considered a crime. With regard to plants, which may be cultivated for personal consumption, there are no guidelines, which mean that interventions vary greatly depending on the region and on the personal and ideological attitude of the police or judges involved. This causes considerable legal insecurity, which results in many police interventions for small cultivations that nearly always end up with the files being closed or the perpetrators acquitted.

At present cannabis trafficking is punished with prison sentences of between one and three years. A first offence does not normally result in imprisonment, as Spanish legislation holds that sentences of up to two years of prison are suspended when a

person has no previous criminal record. However, if there is a second prison sentence then the sentences are added together, which means that there are thousands of people in prison in Spain for cannabis trafficking. Serious cases (organised trafficking, large quantities, selling to minors, etc.) get between three and nine years. In both instances large fines are also imposed. These are calculated on the basis of the market price of the confiscated goods.

With regard to possession and consumption, these are still theoretically sanctioned with confiscation when drugs are found in private residences. In practice this usually results in impunity as private residences are inviolable, except under court orders or in the case of being caught in action. In public places, pathways and establishments, in addition to confiscation of the substance, there are also sanctions of between 300 and 30,000 Euros, since the 1992 Law on the Protection of Citizens' Security was passed. The sanctions can be suspended if a person agrees to undergo a detoxification treatment. This artificially increases the statistics for care given for cannabis-related problems as an estimated 75 percent of treatment requests are a result of sanction suspension.²

THE BIRTH OF A MOVEMENT ASSOCIATING CANNABIS USERS AND THE FIRST COLLECTIVE CULTIVATIONS

To make a stand against the prohibition of consumption in public places was one of the initial objectives of the *cannabis* movement, which emerged in 1993 through the *Asociación Ramón Santos de Estudios Sobre el Cannabis* (ARSEC) group in Barcelona. Another objective was to put an end to the juridical insecurity regarding cultivation, finding a legal way to be self-sufficient. ARSEC sent a letter to the anti-drug public prosecutor asking whether it would be considered a crime to grow cannabis for use by a group of adult users. The reply was

that in principle this was not criminal behaviour, which resulted in a cultivation experiment destined for around 100 people, that was broadcast by the media. The crop was confiscated, but the provincial court acquitted those involved, although the case was later taken to the Supreme Court.

Meanwhile, other groups emerged that followed in the footsteps of ARSEC. The first to do so was the Kalamudia association from Bilbao, which produced a crop of around 600 plants for the use of 200 people, including some members of the regional parliament and a few town councillors from various political parties, as well as artists, trade unionists, doctors, etc. The legal case was closed soon after being opened and the crop harvested without legal obstacles.

However the ARSEC case, which was pending conclusion for two years, was settled a few days later with a minimum prison sentence (which was suspended) and fines against the directors of the association. The Supreme Court stated, that although it was clear that ARSEC did not intend to traffic drugs, the cultivation of cannabis was dangerous *per se* and therefore should be punished. As a result, in principle they closed the doors to drug cultivation associations.

Nevertheless, in 1999, the Kalamudia association decided to challenge the law and repeat their public and collective marijuana plantation. The public prosecutor did not intervene. The crop was once again harvested without incident and in the presence of television cameras. In 2000 the third crop was produced, and again provoked no legal action. In the face of this lack of opposition the associations decided to seek some institutional and legal stability for their cultivations.

THE CANNABIS CLUB MODEL IS BORN

Meanwhile, the regional government of Andalusia commissioned a juridical report

on the possibility of setting up establishments where people would be able to obtain cannabis whilst respecting the legal framework. The authors Juan Muñoz and Susana Soto, after fully analysing the jurisprudence on cannabis and other illegal substances, reached the conclusion that these establishments should be “*Centres that are not open to an indiscriminate public, but where access is restricted to hashish or marijuana smokers. As a method of controlling access, people would have to be regular users. These would be places of private consumption amongst regular users, where they would be able to obtain and consume quantities that would not exceed the fixed consumption limit.*”

The report was never officially published, although it did appear in a prestigious legal journal.³ And even though it was a simple, non-binding, technical report, several institutions seem to have taken its conclusions into account. Little by little, associations began to formalise their set-up: from being registered as “cannabis research” associations they went on to become “cannabis users” associations and included the creation of private spaces for consumption and social cultivation in their statutes. The pioneer was the Barcelona Catadores Cannabis Club (CCCCB), in 2001.

Meanwhile the Supreme Court, in decisions passed between October 1, 2001, and July 9, 2003, contradicted the initial ARSEC judgement, establishing that possession of cannabis, including large quantities, is not a crime if there is no clear intention of trafficking. In subsequent years, the report by Muñoz and Soto and the above Supreme Court decisions would serve as a basis for various judicial resolutions that considered the cultivations of various cannabis clubs legal.

Amongst these cases, the most talked about was the one that took place in 2005 against the Pannagh association. Four members of the group were detained and the association's cultivations confiscated. This led to a

parliamentary question to the European Commission from the Italian Euro MP Giusto Catania. In it she asked why it is that in a country in which consumption is decriminalised and people can legally join a club of users, it is also possible to prosecute one of these clubs through the criminal justice system for carrying out preparatory activities to consumption.

The commission replied two months later, through the European commissioner for Justice Franco Frattini, saying that the European Union is not responsible for the regulation of conduct related to possession and consumption. In accordance with a Framework Decision by the European Union,⁴ *“the member States guarantee that cultivation of cannabis plants, when carried out illegally, is a punishable offence.”* But this obligation disappears in the case of cultivation for personal consumption because, in the words of commissioner Frattini, *“article 2.2 excludes cultivation of cannabis for personal consumption from the Council’s Framework Decision as it is defined by national legislation.”*

Almost immediately the case was closed and, in an unprecedented decision, it was decided that the marijuana confiscated (over 17 kg.) be returned to the members of Pannagh, an event that was much publicized and was probably the trigger of a genuine *boom* of new associations trying to launch their own cannabis production.

HOW A CANNABIS CLUB WORKS

Because of the lack of clear regulation, associations have had to improvise and invent solutions in order to standardize their activities. The main pioneering groups came together in 2003 as the Federation of Cannabis Clubs (FAC), which initially included 21 clubs. The federation has been developing a legal and management model over recent years known as Cannabis Social Clubs, to try to find a way of fitting the growing number of clubs and their increasing complexity, into current legislation.

There are currently an indeterminate number of clubs in Spain, that from available statistics could be anywhere between 100 and 300. These are spread out unevenly throughout various regions, with the highest concentration in Catalonia and the Basque country where there is a higher level of social tolerance. In fact, the demand for information on creating new clubs has been so great that the FAC has had to draw up a guide on how to create a cannabis social club.⁵

The typical evolution of a cannabis social club starts with it being founded and recorded in the registry of associations. Next, the members who wish to approve a collective agreement on cultivation do so. The club rents or buys land, buildings, equipment and all that is necessary to cultivate and later distribute the harvest. The calculation of how much is cultivated is done on the basis of a prediction of each member’s consumption.

The care of the plants, according to the formula chosen in each club, is carried out by voluntary members, staff hired directly by the club, or professional cultivators (who are usually also members) who are paid for the land rental and the hours worked after producing the relevant invoices. The accounts are kept very thoroughly in case there is an investigation.

Distribution is done on the club’s premises, which are normally in commercial buildings or offices and only club members and accompanying adults can attend. It is distributed in small quantities, for more or less immediate consumption. Most CSC also have a consumption area for members, although they often allow small quantities to be taken away for consumption over the following few days, so members don’t have to attend on a daily basis. There is a maximum consumption limit, which is usually 2 or 3 gr/day, and this can only be exceeded in the case of users with medical needs that require higher doses.

The clubs produce and distribute mainly marijuana, from either exterior or interior cultivation, although they sometimes make hashish and increasingly more often, other products such as alcohol, cream, oils, tinctures, sweets, etc. so as to promote alternative consumption methods to smoking. Some clubs also loan out vaporizers.

Those who participate in cultivation pay membership fees proportionate to their consumption, used to cover production costs, storage and management. Being non-profit organisations, any economic profit is reinvested in the association. A part of the profit is used for various social activities such as courses and conferences, legal and medical consultancy, protests and political lobbying activities to promote normalization of cannabis use, or to support the Cannabis Cup (a celebration of marijuana which awards prizes for the highest quality marijuana production by CSCs).

Administration is democratic and uses various models, horizontal or hierarchical, but the ultimate decision making body is always the general assembly of members. To join a club, one must be invited by one or two of the members, who can also guarantee that the person wishing to join really is a cannabis consumer; alternatively they must present a medical report that confirms they are suffering from an illness for which cannabis use is recommended.

Despite their existence in a legal grey area, the administrative situation of many clubs is almost normalised. Quite a few of them have contract staff who are in the social security system and pay various rates and taxes, such as income tax, corporation tax, and in some places even VAT, which taxes 18 percent on the distribution of CSC products. However, there are still many unresolved questions and the clubs are permanently at risk from various legal problems, especially during cultivation and transportation.

In order to avoid this situation, proposals have been drawn up within the FAC to regulate the activities of the CSC so that these may be overseen by public institutions and therefore avoid police and judicial interventions which can cause unnecessary damage. Several associations from the Basque country recently presented a proposal in parliament - still awaiting a vote - to create a specific registry for associations of this kind, in which their economic activity is overseen in order to check that they really are non-profit organisations. This would be combined with a police and administrative protocol that would include a list of places of cultivation, inspections of these places, taxation of production and supervised transportation. All this would bring an end to the current juridical insecurity and without a need to reform the criminal code or withdraw from international treaties.

Cannabis social clubs provide a viable alternative to the dominant illegal market, one which is compatible with upholding treaties on drugs that currently appear untouchable. This model makes it difficult for minors to access the substance, limits so-called “psychoactive tourism” and weakens the black market by removing potential clients from it. What is more, members of a CSC are able to control the origin, quality and composition of what they are consuming, whilst generating legal economic activity and tax collection.

REGULATION TO HELP THE CRISIS

For a recent hearing in the European Parliament, in December 2010, when the CSC model was presented to the heads of the Anti-Drugs Unit of the European Commission,⁶ we carried out a calculation of the revenue that would be generated for the Treasury if the clubs were extended to Europe. In order to make this calculation, we used as a reference the jobs, taxes and social security contributions generated by the 2009 cultivation activity of the Pannagh

association, of which I am founder and president. Around 200 members participated in this cultivation, with a relatively modest average consumption of less than 0.5 gr/day.

If in Spain one million people (or 60 % of people who consume cannabis on a daily basis in Spain and 30 % of frequent users) were to get their supply through clubs identical to Pannagh, some 7,500 direct jobs would be created and around 30,000 indirect jobs, not taking into account the activity generated in economic sectors which provide services, equipment and supplies to the clubs, such as fertilizers, cultivation material, greenhouses, transport, legal consultancy etc.

These jobs would create around 155 million Euros in social security contributions. Around 54 million Euros of income tax would be collected and around 100 million Euros of VAT, that is a total of 367 million Euros of direct income for the government. If we apply this figure to the 23 million people who are thought to use cannabis regularly in the European Union, the figure rises to 8.4 billion Euros.

SHOULD CANNABIS BE “NORMALISED ” LIKE ALCOHOL AND TOBACCO?

When CSCs were first being developed, from a pro-legalisation point of view we considered that the ultimate objective was to arrive at a cannabis market that was similar to the alcohol market or, in some ways, to the tobacco market.⁷ The clubs were conceived as a transition model, a bridge to the ideal model, where not only consumption and production but also trading are completely legal. However, as the CSC have been establishing themselves, a debate has begun at the heart of the associations about whether the open market system is really better than that of users' clubs, and whether we should continue to demand that cannabis be put on a level with legal drugs.

The most commonly consumed psycho-active substances, such as alcohol, tobacco and caffeine are guided by a market dominated by large companies and commercial channels with low prices for producers and the abusive predominance of middlemen. The constant quest for profit has brought about underhand practices, increase in health risks (such as the carcinogenic additives used in many brands of cigarettes), and reduced consumers to a passive role where their only possible decision is to buy or not to buy.

In a CSC, on the other hand, members have greater rights and decision-making capacity about their consumption than they would in a commercial relationship. They approve the accounts, administration, budgets, etc. and have fairly direct control over production as the entire process, from sowing to the finished product, is carried out within the structure of the club. What is more, the fact that there is contact between producers and consumers makes it easier to find a balance between dignified salaries and reasonable prices. Instead of competing amongst themselves, the various agents who participate in the process cooperate with each other to obtain the maximum mutual profit.

In short, our daily experience has shown us that the limits imposed by the current legal framework, in particular the obligation to produce and distribute within a closed circle and, above all, the absence of profit, create a framework of relations that is different and, for us, fairer and more balanced. And so our vision of our long-term goal has changed.

As we have succeeded to obtain our supply directly and under better conditions, why would we fight for a capitalist market for cannabis, where the power of decision is once again in the hands of a few people and where we no longer control how substances we consume are produced.

A PROTECTIONIST MARKET TO DEFEND CONSUMERS

By some strange legal fate, the global prohibition of drugs applied by the Spanish courts with the view that its goal is to protect consumers from the risks of drugs has given place to a strange protectionist market for cannabis, where there is economic activity but no profit, entrepreneurs but not businessmen, and cooperative of consumers who are associated with small scale cultivators, that function separately from the major distribution outlets and the economy. In a society such as Spain, facing a deep economic and social crisis after years of speculation, extreme consumerism and easy money, this parallel economy seems now more of an advantage than a disadvantage.

There are many possible alternatives for the legal regulation of drugs. However, when legalisation is talked about one tends to think of a capitalist open market. That is logical for people who argue that this is their ideal economic model, like Thomas Szasz, who I heard say, wants “*heroin to be sold like Coca Cola*.” But when critical sectors within the dominant economic model argue about drugs policies proposing total prohibition and almost total liberalization as the only alternatives, it seems they have not stopped to think that there are other ways of doing things.

Rather than changing the current panorama of repression and criminal mafias for a different scenario of adulterated and unecological marijuana, packaged by multinationals in seductive and shiny wrappers, we would prefer to imagine a world in which psychoactive plants such as cannabis are obtained through a network of democratic groups who want to improve the quality of life of many, instead of making a few people richer.

Perhaps this seems a somewhat utopian proposal, but it is based on an up and

running live experiment that appears to be doing very well. After all surely it is about time that utopia had a place in the debate on drug policies?

NOTES

1. Martín Barriuso Alonso is the President of the Federation of Cannabis Associations (FAC).

2. Calculated by the author based on statistics published in the annual report of the National Drug Plan.

3. Muñoz, J. y Soto, S. (2001). “El uso terapéutico de cannabis y la creación de establecimientos para su adquisición y consumo”, *Revista de Derecho Penal y Criminología*, 7, 49-94.

4. Council Framework Decision, 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking

5. The guide is available at <http://bit.ly/FAC-GuiaDeClubes> (in Spanish).

6. Public Hearing “Drug reform and cannabis regulation, a way out of the crisis?”. December 8 2010, European Parliament, Brussels. Further information at: <http://www.encode.org/info/EU-READY-TO-END-DRUG-PROHIBITION.html>

7. Barriuso, M. (2005) “Propuesta de modelo legal para el cannabis en el estado español”, *Eguzkilore, Revista del Instituto Vasco de Criminología*, nº 19, pág. 151-167; available in Spanish at <http://www.druglawreform.info/en/issues/regulation/item/656-propuesta-de-modelo-legal-para-el-cannabis-en-el-estado-espanol>

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Drug Law Reform Project

The project aims to promote more humane, balanced, and effective drug laws. Decades of repressive drug policies have not reduced the scale of drug markets and have led instead to human rights violations, a crisis in the judicial and penitentiary systems, the consolidation of organized crime, and the marginalization of vulnerable drug users, drug couriers and growers of illicit crops. It is time for an honest discussion on effective drug policy that considers changes in both legislation and implementation.

This project aims to stimulate the debate around legislative reforms by highlighting good practices and lessons learned in areas such as decriminalization, proportionality of sentences, specific harm reduction measures, alternatives to incarceration, and scheduling criteria for different substances. It also aims to encourage a constructive dialogue amongst policy makers, multi-lateral agencies and civil society in order to shape policies that are grounded in the principles of human rights, public health and harm reduction.



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