Drugs and decriminalisation

Rachel Lart places UK government policy in historical and European contexts.

The twentieth century saw the progressive global criminalisation of the non medical use of drugs. In particular, post second world war international policy moved from concern over the regulation of the opium trade to prohibition and control of the production, movement and supply of a wider range of drugs, and the subjection of individual users to criminal sanctions. Although never as punitive as many other countries' policies, British drugs policy has broadly followed this trend, turning what the eighteenth century saw as a bad and rather unhealthy habit, the nineteenth century a 'disease of the will' and the early twentieth century a chronic, in many cases irreversible, physical illness, into a criminal activity.

International drug policy and the policies of individual states are bounded by UN conventions. The 1961 UN *Single Convention on Narcotic Drugs* obliges signatory states to limit exclusively to medical and scientific purposes the production, distribution of, trade in, use and possession of drugs defined within the Schedules of the Convention, to eradicate all unlicensed production and traffic, and to cooperate with international actions to enforce the Convention. The 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* further requires states to make personal consumption a criminal offence under their domestic law unless to do so would be contrary to the constitutional principles and basic concepts of their legal systems. States vary in how they implement this requirement of the 1988 Convention. In practice in many states consumption or use itself is not criminal, but all necessary activities prior to use are – possession, preparation or purchase.

Flexibility and change

There is, however, what has become known as 'room for manoeuvre' (Police Foundation, 2000) in the UN Conventions, which allows states discretion over prosecution and penalties for possession, and permits medical and scientific use of proscribed drugs. The 'medical use' clause has legitimised the prescription of, for example, heroin in the treatment of addiction historically in the UK and more recently in other European states. It is the flexibility in legal procedures and penalties for possession which have provided the space in which some European states have started to depenalise and decriminalise possession for personal use of a range of drugs.

The most longstanding and well known example is the Netherlands, where the 1976 Opium Act distinguished between cannabis and other drugs. Guidelines on prosecution make it clear that, while possession of cannabis even for personal use remains a crime, in practice it will not be punished as such, and neither will the sale of small amounts by licensed 'coffee shops'. This policy is based on the hypothesis that separating the 'hard' and 'soft' drugs' markets in this way stops cannabis being a 'gateway' to other drugs and so reduces overall social harm from drug use. Dutch policy is an example of 'decriminalisation by directive or guideline' (EMCDDA, 2001) in that possession remains a criminal offence but discretion in procedure is allowed. More recently, other European states have gone further in terms of the range of drugs included in moves towards decriminalisation, and the statutory basis of those moves. These policies are examples of 'decriminalisation by law' (EMCDDA, 2001).

In Spain and Italy possession for personal use of *all* drugs has not been subject to criminal prosecution since the early 1990s. Instead cases are dealt with as 'administrative' offences for which fines or suspension of driving licence may be imposed. In Portugal, changes in the law in 2000 took the use, purchase and possession for personal use of all drugs out of the criminal law, explicitly 'decriminalising' personal use and again making it subject to fines. In all these cases, use of proscribed drugs, especially in public, remains illegal and subject to police action in the form of confiscation. But the consequences for the drug user beyond that are administrative not penal.

While there is not, and cannot be, a single European Union 'drugs policy', there are ways in which policies across member states of the EU have converged over recent years. This should not be overstated; the drugs policies of member states such as Sweden are on most points at variance with those of many other states. However, research by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) suggests that, broadly speaking, across Europe there has been a trend towards increased police activity, and more arrests for cannabis offences, but a reduction in the use of criminal proceedings following arrest where possession is clearly for personal use (ECMDDA, 2001).

The UK – the paradoxes of reclassification

In the UK, the reclassifying of cannabis within the Misuse of Drugs Act 1971, seemed to follow this pattern. It followed recommendations from the Police Foundation's Independent Inquiry into the Misuse of Drugs Act 1971 (2000) and the Home Affairs Select Committee (2002) to review

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whether the degree of harm caused by cannabis was in line with its historical classification as a Class B drug. In January 2004, cannabis was moved from Class B within the MDA to Class C, with a resulting reduction in penalties that could be imposed for possession. Possession of cannabis remained an arrestable offence, but in the absence of other, aggravating circumstances, police would from then on normally confiscate the drug and issue a warning, a course of action which had in practice already been used by many police forces. This reduction in the legal status of cannabis was not accompanied by a reduction in police reports of offences concerning cannabis. Between 2004/5 and 2006/7 there was an increase of nearly 50 per cent in police reports of possession of cannabis (from 88,263 offences to 130,406), against a rise of only 12 per cent in reports of possession of all other drugs over the same period (from 32,603 to 36,646) (Thorpe et al, 2007: Table 2.04). Proportionately, there has been a shift towards the use of formal warnings for possession of cannabis (from 37 per cent of disposals for *all* drug offences in 2005/06 to 44 per cent in 2006/07) and away from charging (35 per cent in 2005/06 to 32 per cent in 2006/07) or cautioning (24 per cent in 2005/06 to 22 per cent in 2006/07) (Thorpe et al, 2007:Table A.05). However, because of the increase in overall offences of cannabis possession, in absolute terms the increase in warnings (+ 18,414) far outweighs the decrease in charges (-392) or cautions (-163) (calculated from Thorpe et al, 2007).

The rise in cannabis offences is not due to an increase in overall use since reclassification; the long term reduction in cannabis use since 1998 identified by the British Crime Survey continued and accelerated after 2004. In particular, among 16-24 year olds, the proportion reporting cannabis use in the last year fell by about a fifth between 2003/04 and 2006/07, while those reporting use in the last month fell by a quarter (Murphy & Roe, 2007). These reported reductions in use, combined with the increase in offences recorded, raise the question of whether formal warnings are in fact replacing more informal, and officially invisible, responses by the police, and so criminalising, albeit at a low level, a larger group of people for their cannabis use.

More recently UK policy has, of course, taken yet another turn. Notwithstanding the fact that the 2004 change in classification was made on advice following extensive examination of the evidence on questions of harm, and that the Advisory Council on the Misuse of Drugs (ACMD) had looked again at this in 2005, reporting that they saw no reason to change that earlier advice (ACMD, 2008), the Home Secretary asked the ACMD to look at this question yet again in 2007. Specifically, the Council was asked to respond to 'public concern about the potential mental health effects of cannabis use, in particular the use of stronger forms of the drug, commonly known as skunk' (ACMD 2008: 3). This the Council did, reporting in 2008 that it again saw no need to change its earlier advice that the harms associated with cannabis made it more appropriately placed in Class C of the MDA (a minority of members dissented from this view). A consistent, though weak, association between cannabis use and psychotic illness has been identified in several longitudinal studies, but the nature and direction of any causation is hard to determine. It may very well be that the two share some other causal factor or factors. Overall the emphasis in the ACMD's 2008 report was on understanding cannabis use as a public health problem, and on the need to develop primary information and prevention programmes to further reduce use overall.

The government, specifically in the person of the Prime Minister, chose to ignore this recommendation to view cannabis as a public health challenge, and instead announced the return of its classification to Class B. The Home Office website currently states that the Home Secretary 'has asked the Association of Chief Police Officers to propose stronger enforcement measures for policing cannabis. These rules should make it clear that penalties for adults must be more strict, and that officers should not be prevented from arresting people for breaking the cannabis laws, even if it is their first offence.' Given the ratcheting up of the numbers of people arrested for cannabis possession following the *reduction* in classification, and the increase in formal warnings with no concomitant reduction in the numbers of charges or cautions, it remains to be seen what effect these 'stronger enforcement measures' will have in terms of the numbers of people criminalised for their cannabis use. ■

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