A BRIEF HISTORY OF CANNABIS POLICIES IN SPAIN (1968-2003)

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Spain was one of the first countries in Europe to decriminalize drug use and one of the last to embrace harm reduction. As such, Spain’s drug policies often appear to be rather contradictory. In this paper we will review the current status of drug laws and the major drug policies that have been implemented in Spain over the last 25 years concerning cannabis; their demographic, political, and economic contexts; and their apparent consequences. We will follow a chronological approach that outlines every major change that occurred during that period while trying to provide some sociopolitical background. We have divided the period under study into four major phases. Each phase addresses a major political change or shift in the social response to drug-related problems. In this account, we will apply to cannabis policies the conceptual distinctions introduced by MacCoun and Reuter in their recent revision of alternative drug policies (2001), especially their tripartite division between punitive, depenalizing, and legalizing regimes and the associated processes of promotion and commercialization. One essential question that concerns the Spanish case is the relationship between legal changes, their implementation, and long-term oscillations in consumption rates.

INTRODUCTION

As one of the first countries in Europe to decriminalize drug use, and one of the last to embrace harm reduction, Spain’s drug policies often appear to be rather contradictory. Some of these inconsistencies disappear when legal and political measures are seen in a processual and historical light, as in the last decades Spain has undergone a major sociopolitical transformation. But there are crucial aspects

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of drug control where contradictions remain pointing to conflicts among powers of the state, regional and national governments, and different sectors of civil society that support disparate views of illegal drug use and its consequences. Today, cannabis policies embody many of these conflicts during a critical time when the use of this drug is reaching record levels, and the world supply for cannabis has established some of its central entropist in Spain (see European Monitoring Centre for Drugs and Drug Addiction [EMCDDA], 2003).

Now, as is also true in other Western countries, measures concerning hashish and marijuana are the most “active policy battlefront” in the drug policy debate (MacCoun & Reuter, 2001, p. 6). Although for more than a century there was a traditional consumption of marijuana related to the Spanish colonies in Northern Africa, the recent expansion of cannabis is an offshoot of the “drug revolution” of the late 1960s. Since the mid 1970s, cannabis derivatives have become the illicit drugs most often traded and consumed in Spain. After a decrease in the late 1980s, the consumption of cannabis in the last decade has grown continuously among teenagers and young adults (Observatorio Español sobre Drogas [OED], 2002b, 2003). By 2001, over 1.7 million people were using cannabis regularly, a portion of them daily (OED, 2003). In the new adolescent cohorts, those who have tried cannabis are becoming a majority (OED, 2002a). Therefore, three generations of Spaniards have smoked cannabis, and this drug is the center of a huge illegal market and a meaningful modern tradition (Gamella & Jiménez Rodrigo, 2003).

Moreover, cannabis is currently the cause of a social divide and a symbolic and political confrontation (Elzo et al., 1999; Megías, Comas, Elzo, Navarro, & Romani, 2000). Supporters of the present prohibitionist regime (and of an even more punitive one) see marijuana and its resin as dangerous drugs, harmful to physical and mental health, and the necessary gateway for the use of “harder” drugs such as cocaine, amphetamines, or heroin. Prohibitionists oppose any leniency in respect to cannabis dealers or those indulging in home cultivation, seed sales, and even consumption.

Among its defenders, marijuana is seen as safer, purer, and more natural than alcohol or tobacco: a nonaddictive, benign, and even therapeutic “green” drug. The notion that its use somehow leads to the abuse of more dangerous drugs is derided or judged as exaggerated by the majority of experienced cannabis users (Gamella & Jiménez Rodríguez, 2003; Mendiola & Becoña, 2003). In particular, cannabis has a positive image among teenagers who grew up during the expansion of “drug education” and prevention programs of the late 1980s and 1990s (see OED, 2003).

Besides, as we will see, the tightening of regulations since 1992 has given a rebellious meaning to cannabis use during this period of maximum use and social acceptance (see OED, 2000, 2003). This apparent inconsistency has worked well
Spanish Cannabis Policies

for a new social movement that seeks cannabis legalization, a movement that has become increasingly vocal, articulate, and popular. Moreover, the spread of cannabis home cultivation is increasingly used as a grass-roots method of circumventing prohibition by tens of thousands of users who see cannabis controls and penalties as discriminatory, hypocritical, and counterproductive (Gamella & Jiménez-Rodrigo, 2003).

Cannabis-related policies are also contentious issues in international relations. European countries have often been accused of leniency regarding cannabis use and possession, as occurred in the meeting of the United Nations Commission on Narcotic Drugs (UNCND) held in May 2002. Spanish control policies may have international repercussions as well, for this country plays a crucial role in the massive importation of Moroccan hashish into Europe (EMCDDA, 2000). In fact, the Madrid bombings of March 11, 2004, were funded by money from the hashish trade, and this unexpected turn of events seems to have reinforced the beliefs of those who support more liberal approaches to cannabis control, as well as those calling for more punitive measures.

Thus, in the current international debate on drug control policies, the Spanish case has evolved in such a peculiar way that it deserves some special attention. In Spain, drug use per se has never been a crime, and in the last two decades, it has been formally depenalized. However, Spanish police have seized two thirds of all the cannabis apprehended in the 16 countries of the European Union, and over a third of all cocaine (see EMCDDA, 2003, pp. 38-41). The population in jail for drug-related offenses has grown continuously since 1976, and during the last five years more than 50,000 people were denounced and fined each year for possession of small amounts of cannabis and/or other drugs (OED, 2003). These data suggest that Spanish law enforcement may be working harder in its drug control efforts than any other policing system in Western Europe.

On the demand side – following the massive growth of intravenous heroin use between 1978-1992 and the related spread of HIV infection and AIDS among drug users (see Gamella, 1994, 1997) – over 80,000 persons are now enrolled in methadone programs, and the incidence of AIDS has decreased continuously since 1996 (Secretaría del Plan Nacional sobre el SIDA, 2002). Today, adolescent consumption of alcohol, tobacco, and cannabis is widespread, following patterns that have little historical precedent (OED, 2002b, 2003); ecstasy and amphetamine-type drugs have become popular in dance settings, and cocaine has remained attractive for social use while its problematic use has grown in the last decades.

The market for illegal drugs, especially cannabis, cocaine, and ecstasy seems consolidated in Spain (EMCDDA, 2000, 2003; Barrio, de la Fuente, Royuela, Díaz,
& Rodríguez-Artalejo, 2000; Gamella & Álvarez Roldán, 1999; Díaz, Barruti, & Doncel, 1992).

In this paper we will review the current status of drug laws and the major public policies that have been implemented in Spain over the last 25 years; their demographic, political, and economic contexts; and their apparent consequences. We will follow a chronological approach that outlines every major change that occurred during that period while trying to provide some sociopolitical background. We have divided the period under study into four major phases. Each phase addresses a major political change or shift in the social response to drug-related problems.

In this account, we will apply to cannabis policies the conceptual distinctions introduced by MacCoun and Reuter in their recent revision of alternative drug policies (2001), especially their tripartite division between punitive, depenalizing, and legalizing regimes, and the associated processes of promotion and commercialization. One essential question that concerns the Spanish case is the relationship that exists between legal changes, their implementation, and periodic oscillations in consumption rates.

**First Phase 1968-1977: Joints as a Badge of Cultural and Political Rebellion**

As in other Western countries, illegal drug use in Spain appeared as a pressing issue with the expansion of the youth counterculture of the late 1960s and early 1970s. At this time, new patterns of illicit drug consumption mainly concerned cannabis, and, to a lesser extent, hallucinogens such as LSD, and drugs obtained in pharmacies (for example, barbiturates, benzodiazepines, and amphetamines). Most of these new forms of drug experimentation were imported fads. Spain was already a tourist destination for millions of foreigners, and Ibiza and other Mediterranean enclaves figured prominently in hippies’ and beachcombers’ usual routes.

But in Spain there was an autochthonous tradition of cannabis consumption, derived from over a century of colonial adventures in Northern Africa. In the 1940s and 1950s, Moroccan marijuana was smoked in many cities, especially in Madrid, Barcelona, and other locations that maintained stronger links with the Spanish Protectorate, such as Algeciras, Malaga, Cadiz, Valencia, and Las Palmas (González Duro, 1978, p. 71). This practice was largely ignored by police and courts, which saw it as befitting “degenerated, undesirable, marginal people... such as ex-legionnaires, pimps, cheap prostitutes, drunks, and petty thieves....” Smokers were known as “grifos,” a term derived from “grifo,” which is low grade Moroccan marijuana (González Duro, p. 73). The main traders in this commodity were soldiers who had served in Africa. “It was rare the soldier who had not tried grifo or kiffi at least occasionally after being stationed in the Spanish Protectorate in Morocco” (González Duro, p. 72).
SPANISH CANNABIS POLICIES

In the late 1960s, the old tradition of cannabis consumption was fused with the emerging cosmopolitan, countercultural scenes (Romani, 1983, 1986). At that time, drug experimentation also became associated with the opposition to the dictatorship, and smoking joints ("porros") became a badge for most young leftist militants and even for many democrats (Comas, 1985).

Data about the actual extent of consumption during this phase remains incomplete. The surveys done at the time among Barcelona students show a clear increase in cannabis consumption during the 1970s. Thus, occasional users comprised 9% of these students between 1973 and 1975, 22% between 1977 and 1978, and 21% between 1983 and 1984 (Barrio, de la Fuente, & Camí, 1993, p. 347).

Again, the proximity of Morocco, where cannabis is a traditional product, facilitated the supply of hashish and marijuana for the Spanish market. "Bajarse al moro," a trip to the Spanish enclaves of Ceuta and Melilla in Northern Africa or to Tangier or Tetuan to import small amounts of hashish within one's own body, became a sort of rite of passage for many apprentices of the new drug revolution. A theatrical comedy of this title and subsequent film were formidable commercial successes.

LEGAL TREATMENT

International conventions provided a crucial stimulus for the development of contemporary drug laws in Spain. After hard years of isolation following the Second World War, Spain was gradually integrated in international agencies and treaties. In 1966, Spain ratified the UN Single Convention of 1961. The international lists of controlled substances were incorporated into Spanish law in 1967. A "narcotics" police brigade was created in 1968 and began operating the following year.

The emerging drug fad helped to induce legal changes, such as those included in the Law of Social Risk of 1970 (Law of Social Danger), a reenactment of the old law of "vagos y maleantes" (law against "vagrants and crooks") that had been in force since 1933. The law was a naked instrument of social control intended to criminalize any form of deviation from the dominant patriarchal, Catholic morality and established a common ground of "social dangerousness" for homosexuality, pornography, nomadism, begging, prostitution, and even some forms of mental disease. One of its explicit goals was to deal harshly with the new trends of drug experimentation associated with psychedelics, hippies, and alternative lifestyles. Even the new dress codes and hairstyles of rockers, mods, or hippies became suspect.

In the same vein, in 1973 there was a change in the penal code making drug possession, even for personal consumption, a penal offense. In the following months, however, the Supreme Court determined that possession for self-
consumption should not be prosecuted (Herrero, 2000, p. 319). Thus, in Spain, strictly speaking, drug use per se was not a crime even during Franco’s dictatorship. Law enforcers, however, developed alternative means of harassing, searching, and punishing drug users. In consequence, most people believed that smoking hashish was illegal, and, from a legal perspective, dangerous behavior.

**SECOND PHASE 1977-1982: THE EMERGENCE OF DRUG USE AS A SOCIAL PROBLEM**

During this period, drug use surfaced as a social problem of alarming dimensions and coincided with a major political transition, when the country transformed itself from a one-party dictatorship to a quasi-federal parliamentary democracy. The drug problem took the form of a heroin epidemic. This was no longer a vague menace or a moral panic associated with rebellious youths choosing alternative lifestyles. It was a very destructive pattern of drug use of epidemic proportions and a major social concern affecting public order and crime rates.

The first signs of locally initiated heroin use began to emerge in 1977 and 1978. By the end of 1979, thousands of adolescents and young adults were using heroin regularly by intravenous and intranasal routes, and many were addicts. In 1981, the heroin “epidemic” had become full blown (Gamella, 1994; Cami & Barrio, 1993; Sistema Estatal de Información de Toxicomanías [SEIT], 1988, 1989; Comas, 1985). While concentrated in a specific population, this rapid expansion of heroin use was unprecedented and provoked what may be called a “drug crisis,” the most important shift in illicit drug use in contemporary Spain (Gamella, 1997).

Similar “epidemics” of heroin dependence were experienced at that time in other European nations such as Ireland, Italy, and the United Kingdom. Even in the countries where heroin addiction was already endemic (for example, Britain), the heroin problem that emerged in the late 1970s and 1980s was “an essentially novel phenomenon” (Pearson, 1987, p. 1), distinct from the previous spread of heroin use that occurred in the late 1960s in the U.S. Heroin dependence spread into new and larger populations, such as working-class youngsters, into new areas, and it involved new patterns of consumption (see Parker, Bakx, & Newcombe, 1988).

In Spain, the focus of the drug crisis was a new social type that became feared and despised: the “yorqui,” or intravenous user of drugs. In fact, heroin addicts were polydrug users who combined different drugs in complex sequences of daily consumption including benzodiazepines, alcohol, cocaine, amphetamines, and cannabis. Usually they considered heroin their axial drug of dependence.

The rise in heroin addiction was related to a considerable increase in property crime that began somewhat earlier but reached its apex in the mid 1980s. For example, in 1974 there were 100 bank robberies in Spain, while in 1984, following a constant escalation, there were 6,239 – a world record (Comisaría General de
Spanish Cannabis Policies

Policía Judicial, 1986). Similar increases occurred in other forms of armed robbery as well as in muggings and burglaries. The growth in these forms of acquisitive crime stimulated the emerging drug economy. This crime wave happened during a period of economic recession with high inflation and increasing unemployment. Both the heroin crisis and the crime wave primarily affected the “boom” generation that had been born between 1956 and 1970, people who were 15 to 29 years of age between 1980 and 1985. There were thus clear cohort effects in heroin dependence, juvenile delinquency, the associated surge in incarceration, and HIV infection and AIDS (de la Fuente, Barrio, Vicente, Bravo, & Santacreu, 1995; Gamella, 1997, Castilla, Pollán, & López-Abente 1997). As noted, this all happened in the midst of a deep economic stagnation, coupled with high inflation (over 26% in 1977), a terrible deterioration of labor market conditions, and increases in long-term unemployment and underemployment, mostly affecting the young (Organization for Economic Cooperation and Development [OECD], 1985, 1986). There were multiple repercussions as a result of the rise in acquisitive crime and the spread of heroin addiction, both being influenced in complex ways by the economic slump and the rise in youth unemployment (Gamella, 1994).

The policy response to those events was slow and inappropriate. The first interministerial commission to deal with the new drug problem was appointed in 1978, although no results may be attributed to its functioning. In fact, no coordinated answer was articulated until 1985. Different treatments were offered to heroin addicts, and these remained experimental and inadequate.

During this period cannabis was widely used, both by heroin addicts and by a much wider population. The conception of cannabis and its risks may have changed during this period, as drugs were increasingly perceived as the source of a major social problem (see Centro de Investigaciones Sociológicas, 1986), although it is difficult to know how the heroin epidemic affected cannabis consumption.

Third Phase 1983-1992: Depenalizing Drug Use in the Midst of a Drug Crisis

Between 1982 and 1987 the prevalence of heroin dependence reached its apex, and the demand for assistance and treatment increased concomitantly, as did the extent of property crime and the sense of collective insecurity it generated. These processes coincided with the peak of the economic crisis that had engulfed the country since 1974. From 1978 to 1985, the adjustments to control inflation provoked a huge deterioration of the labor market. By 1985, there were three million unemployed, over 21% of a relatively small active population (Gil Martin, 2002).

The growth of acquisitive crime predated the spread of heroin use, but eventually these trends became interconnected and fueled each other (see Gamella, 1991, 1994; Funes, 1984; Comas, 1985). Both processes culminated between 1983 and
1987 and resulted in a fourfold increase in the incarcerated population as well as a manifold rise in young people with crime records and crime experience. Both the crime wave and the heroin crisis were easy to manipulate and amplify, given the political transition taking place at the time. Thus, as had occurred in the U.S. a decade before, heroin addiction became a major cause of "social unrest, crime, and public hysteria" in Spain (Zinberg, 1984, p. x). At this time, public opinion, especially in conservative circles, associated the evils of drug use with the freedoms of democracy. Increasingly the "insecurity" crisis and the drug problem were attributed to the first leftist governments to hold power in Spain in half a century.

In October 1982, a socialist government led by Felipe Gonzalez was elected after a landslide victory in parliamentary elections. It was a social-democratic government that sustained Spain’s commitments to NATO and sought Spain’s membership in the European Union. The new Cabinet took drastic measures, accepted by most of the electorate as necessary due to the stagnant economy and the need to develop constitutional mandates. Several of these measures affected drug policy. Most crucially, the penal code articles dealing with illegal drugs were amended in two important aspects. First, possession of drugs for self-consumption was deleted from the list of criminal behaviors. This measure formally decriminalized the use of illegal drugs. The second change established a legal distinction between "more harmful drugs," such as heroin, cocaine and LSD, and those that "cause less health harm," such as cannabis (but also methadone, flunitrazepam, and alprazolam). The result was a two-tiered system of law enforcement that considered cannabis trafficking a less serious offense. The distinction between "soft" and "hard" drugs was now established in jurisprudence (Herrero, 1995).

These amendments were consistent with a decade of penal doctrine in Spain and were supported by several rulings of the Supreme Court. However, in the political and social climate of the time, they generated an uproar. Much of the national and international media criticized the measures on moral, legal, and political grounds. The socialists were blamed for the increase in drug trafficking and drug abuse, even though these processes had started years before. Pressure, both international and local, contributed to the hardening of the implementation of the law. A special attorney for the repression of drug trafficking was named in 1984. According to him, the government had realized that "trafficking of drugs had reached such a level that it had become a real emergency" (Jiménez Villarejo, 1985, p. 154). In the following months, a national program against drugs, designed to coordinate the fight against the drug trade and drug consumption, was launched. International pressure abated somehow. The International Narcotic Control Board (INCB) of the United Nations, a body that had maintained a serious "dialogue with
SPANISH CANNABIS POLICIES

Spain," welcomed "the comprehensive action taken under and envisaged by Spain's new National Drug Control Plan, which comprises the strengthening of laws, the increasing of penalties for drug offenses, and the establishment of treatment and rehabilitation facilities" (INCB, 1985, p. 33).

In fact, it can be argued that in Spain this was a period of increasing control of the licit and illicit supply of drugs. Beginning in 1983, the provision of psychoactive drugs was restricted both in pharmacies and in the prescription options open to physicians by law and by strict monitoring programs of the health department. Spanish pharmacies had become paradises for dope fiends, and heroin users often maintained themselves with opiates and tranquilizers obtained in these facilities (Soler Insa, 1981; Gamella, 1994; Santos & Pérez, 2002). The huge rise in the thefts and robberies of pharmacies (five pharmacies were robbed in 1975, compared to almost two thousand in 1979) was a visible part of the crime wave. Pharmacies were robbed mostly for drugs, but also for money (Comisaría General de Policía Judiciál, 1986; Gamella, 1994). In response to these trends, government policies restricted the availability of pharmaceuticals with potential for drug abuse. Amphetamine-type stimulants, for instance, widely available as diet pills, increasingly disappeared from prescriptions and as over-the-counter medications. Methadone maintenance programs were also curtailed between 1983 and 1991 (San, 1991; Santos & Pérez, 2002, pp. 418-21).

INTERNAL FRONT: A MAJOR CRISIS OF HEROIN ADDICTION AND PROPERTY CRIME

By 1985, there were tens of thousands of heroin users in Spain, most of whom injected their favorite drug daily and resorted to crime, prostitution, family, pharmacy thefts, and, to a lesser extent, jobs to pay for their habits. Their treatment and health demands and their presence in hospital emergency rooms rose dramatically (see SEIT, 1989).

It took years to design and implement an articulated institutional response to the heroin crisis. The public health system was not prepared to meet the challenge; mental health care was especially inadequate. Heroin addicts ("yonquis") were not easy patients. Many psychiatrists saw them as criminal, marginal, and intractable. Moreover, in these years the entire public health system was being transformed and decentralized as a national effort was launched to make free health care accessible to the whole population.

The favored treatment option for heroin addicts during this period was detoxification followed by total abstinence. One major development was the spread of the so-called therapeutic communities. Inspired by American models such as Synanon, Phoenix House, or Daytop Village, the first one opened in 1979, and by 1983, 40 therapeutic communities were operating throughout the country. These

SUMMER 2004
facilities were directed by professionals, ex-addicts, and religious organizations (Polo & Zelaya, 1985). By 1986 an exhaustive survey found 81 therapeutic communities in Spain offering about 2,900 placements for drug dependency. A year later, the same author found that 23 new ones had opened (Comas, 1988, pp. 58-60).

The key element in the therapeutic community approach was to separate the addict from the daily context of the barrio where injection and addiction had been generated and supported. These institutions tended to be located in the countryside. In fact, they were popularly referred to as “granjas” (“farms”). In many cases they developed a sect-like quality, in agreement with a particular religious or cult affiliation. For patients (or inmates), return to their home environment was often traumatic, and relapse was common.

The therapeutic communities mandated total abstinence from illegal drugs and often ardently rejected methadone dispensation as well. In fact, methadone substitution programs almost disappeared in Spain between 1983 and 1991. These programs were not popular then, even among professional therapists working with heroin addicts, or among the most active, vocal, and organized of the parents of heroin addicts. Still, in 1990 a survey found that 40% of respondents opposed the dispensation of methadone, while 49% favored it (Martí, 1999). AIDS did not become a priority in the treatment of heroin addicts until about 1989-1990.

In the 1990s therapeutic communities remained a treatment option, although they were much controlled, regulated, and professionalized. Slowly, diverse types of outpatient treatments were developed in primary health units.

INSTITUTIONALIZATION OF THE WAR ON DRUGS

By the late 1980s the National Plan on Drugs was being implemented at full speed. It was first and foremost a plan to confront the heroin crisis. Dozens of epidemiologists, psychiatrists, psychologists, and administrative personnel were coordinating the “official response” to the heroin crisis. In the following years, every regional and sizable municipal government developed its own “plan on drugs” with its leading political appointees, coordinating committees, technicians, social workers, and administrative support. A number of NGOs were developed throughout the country to deal with the “problem of drugs,” most of them supported by public funds. In the first five years of its implementation (between 1986 and 1991), the National Plan on Drugs spent over $500 million, an amount funded both by the Central Government and the Autonomous Communities (Delegación del Gobierno para el Plan Nacional Sobre Drogas [DGPND], 1992, p. 33).

Thus, the institutional response to the heroin crisis was slow to develop. A decade passed between the beginning of the “epidemic” and the rigorous monitoring of its extent and its consequences. The immediate professional response was to
Spanish Cannabis Policies

collect information in the form of surveys using closed questionnaires. From 1980 to 1990, over 300 such surveys were completed at the local, regional or national level, with different sampling procedures, questionnaires, and forms of analysis. Given these restrictions, results were largely not comparable. In fact, when the first full report of the main system of data collection was released in 1988, the incidence of heroin use was already found to be decreasing (see SEIT, 1988, p. 43). By the mid 1980s, however, the institutional response to the drug crisis induced a professional transformation. A whole new range of occupational opportunities were opened in the emerging “industry” of drug prevention, treatment, administration and in the plethora of programs that were developed in respect to every drug that achieved popularity. This was especially relevant for some professions, such as psychology or social work, given the increased number of university graduates in the 1980s and 1990s, in parallel with the expansion of college education in Spain. New types of experts claimed authority over a larger range of fields, as they formalized and institutionalized their authority. New professional associations, official roles and training programs were developed to train experts in “drug treatment,” “drug prevention,” “occupational therapies,” and so forth. Today there are tens of thousands of professionals working in the drug abuse field. For a period, the heroin crisis was their main source of patients and funds, although other concerns have increasingly been perceived and constructed, both related to alcohol and drug consumption and to other emerging issues. The heroin crisis thus contributed greatly to the medicalization and professionalization of social problems in Spain.

Media Institutions

A consequence of the drug scare was that media attention concentrated on the problem. Drug-related news became a daily issue, even in provincial newspapers. The same themes and frameworks were repeated and elaborated until they became typical of the “problem” of drugs as perceived by the public.

By 1980, few Spaniards were able to distinguish between different illicit drugs or the properties associated with most of them. In a national survey completed in January 1980, people over 18 were questioned about drugs frequently used in Spain, which they were asked to name spontaneously. Among those interviewed, 47.3% were unable to name any particular drug. Among women, that proportion increased to 55.2%. In the highest risk age group (18 to 35), only 9.6% named an opiate (Centro de Investigaciones Sociológicas [CIS], 1980). In December 1985, a similar survey showed that 90% of adults without regard to age recognized cocaine and heroin as drugs widely used in Spain (Centro de Investigaciones Sociológicas, 1985).
1986). The “problem of drugs” had become an institution in the daily life of Spaniards.

**THE SUDDEN DISCOVERY: AIDS AMONG DRUG USERS**

AIDS and HIV were unexpected consequences of the spread of intravenous drug use in Spain. Less than a hundred drug users had been diagnosed by June 1986 (Secretaría del Plan Nacional sobre SIDA, 2003). But in the following years, the rate of new cases accelerated, and the connection between sharing injecting paraphernalia and the spread of AIDS became undeniably evident. By 1991, Spain had the highest incidence of AIDS in Europe, and intravenous drug use became the key aspect of the spread of the pandemic. Amazingly, this seems to have surprised much of the health care system and the specific agencies that were dealing with drug use. In the mass media, the connection between drugs and AIDS began to gain ground in 1988. Some experts had alerted officials that AIDS affected “the population of intravenous drug users (IDUs) in a different way than in other European countries, except Italy” (Camprubi, 1986, p. 11). Around 1990, the situation had assumed alarming proportions. Conservative estimates indicated that more than 100,000 people were infected (Downs, Heisterkamp, Brunet, & Hamers, 1997; Castilla et al., 1997), and, depending on the area, most samples showed a presence of the HIV virus in 40% to 80% of IDUs (Hernández-Aguado, Aviñó, & Pérez-Hoyos, 1999). Moreover, it was mainly in connection with injecting drug use that AIDS was being transmitted to newborn children and to partners of IDUs. Spain was confronting a major health crisis. Despite the urgency of the situation, once again crucial years passed before more appropriate drug policies were implemented. These lost years may have been very costly in terms of people infected and lives lost.

**DECREASE IN CANNABIS CONSUMPTION**

The use of hashish and marijuana seems to have decreased in the second half of the 1980s. In 1993, a major review of illicit drug use in Spain concluded that cannabis “was the illegal drug most often used, and more available, but in the 1980s, the prevalence of its consumption diminished among the general population, among those admitted for treatment for drug dependence, and perhaps among high school students.” (Barrio, de la Fuente et al., 1993, p. 348). Accordingly, demands of treatment for cannabis-related problems remained very low, between 1% to 2% of all those related to illicit drugs (Barrio, de la Fuente et al.), and many of these referrals might have been made by poly-drug users or by parents alarmed by the smoking habits of their offspring, rather than by the users themselves (Gamella & Jiménez Rodrigo, 2003). The image of hashish and marijuana may have been tainted...
SPANISH CANNABIS POLICIES

by the ongoing heroin crisis. During this period, an increasing proportion of the public shied away from drugs and accepted that the consumption of hashish or marijuana was a likely precedent to harder drug use and addiction (Equipo de Investigación Sociológica [EDIS], 1985; DGPND, 1992).

Nevertheless the market for cannabis seemed to have grown during these years, based on the massive importation of hashish from Northern Morocco. The influx of new supplies resulted in lower prices in real terms, and the number of those who were arrested continued to grow, as did seizures (see OED 2003 p. 129). A large portion of the cannabis that crossed Spanish territory was intended for other European markets. By 1991, seizures of cannabis products exceeded 100 tons and began to increase sharply (OED 2003 p. 127).

FOURTH PHASE: HARM REDUCTION AND TOUGHER LAW ENFORCEMENT, 1992-2004

Between 1992 and 2003, AIDS became the crucial drug-related problem, and, after some initial hesitation, harm reduction programs expanded massively. Heroin was still being used by tens of thousands of addicts but was widely rejected by other young people – even when other drug fads (such as those of dance drugs) spread. Drug use retained a legally ambiguous status, and new controls and sanctions were introduced that affected hundreds of thousands of users. Cannabis consumption increased almost continuously throughout this period, and the market for cannabis soared. Importation of somewhat standardized Moroccan hashish reached huge proportions, and home growing became increasingly popular (OED, 2000, 2001, 2003; Gamella & Jiménez Rodrigo, 2001).

THE PUBLIC SECURITY LAW OF 1992

In 1992, the drug laws were toughened with the enactment of the Public Security Act, known as “Corcuera’s Law,” named after the home secretary that drafted it. In addition to measures designed to fight drug trafficking, this law established administrative penalties (fines) for drug consumption in public places and also for the owners of public facilities that tolerated drug consumption on their premises. The law allowed for the suspension of penalties if the offender agreed to enter a treatment program for drug dependence. In 1991, Corcuera’s Law was hotly contested in parliament and in the progressive media. The constitutional court ruled against some of its articles, and these were to be modified. Its rationale was to facilitate police work by fighting the “insecurity” associated with drug trafficking and use, among other dangerous activities.

With regard to public consumption, the law tried to reduce its visibility and impact on noninvolved parties. At that time, drug use, even by injection, had become peculiarly public and visible. It was relatively common to see dozens of heroin
users jabbing their veins in close proximity to fountains or sources of water in parks, streets, or roads. It was also common to see emaciated addicts driving or walking to their suppliers of cocaine or heroin. The most visible outlets for heroin and cocaine, serving mostly deteriorated heroin addicts, had consolidated in slums and broken neighborhoods on the outskirts of cities; many of these were occupied then by Gitanos – Spanish Gypsies. The new drug trade became a source of renewed prejudice and discrimination against this minority (see Gamella, 2002).

These public behaviors provoked much alarm and were used to criticize the government. In October 1989, the socialist party had won its third absolute majority in national elections (following another victory in 1986), but many of its liberalizing and privatizing policies were contested by trade unions. A general strike had paralyzed the country some months before; corruption scandals began to accumulate, and the traditional power base of the socialists was eroded.

The hardening of national drug regulations seemed to coincide with popular demands. In 1991, a social movement against drug dealers and junkies swept through Madrid, Valencia, and other major cities. Demonstrations, protests, riots, and long-term collective occupation of places to avoid the establishment of Gypsy tenements were important news in the fall of 1991. The movement had a populist character and often fostered prejudiced and even racist overtones. The media devoted much space and time to the vigilante patrols that harassed emaciated heroin addicts near the ramshackle tenements where drugs were dealt (López Varas & Fresnillo, 1996; Gamella, 2002).

Amazingly, both the socialist and the conservative (“popular”) governments that followed them in 1996 have actively enforced the articles of the law (Article 25, among others) concerning drug consumption and possession in public settings. Peculiarly, this part of the law has been applied more to occasional users than to addicts, and especially to those who prefer cannabis, the most common consumers of illegal drugs (OED, 2000, pp. 71-72; OED, 2003, pp. 137-38).

THE REDUCTION OF THE HEROIN CRISIS AND THE AIDS EPIDEMIC

Throughout the 1990s, harm-reduction measures and programs were increasingly accepted and expanded. Thus, after some trials from 1988 to 1991, needle-exchange programs became common in all regions. Pharmacies also became actively involved in the harm-reduction efforts. After a drastic change of regulations in 1990, methadone provision was extended, especially after 1994. By 2000, there were 80,000 people on subsidized methadone programs all over Spain (OED, 2001). Resistance to these harm reduction initiatives abated. Needle-exchange programs in jails, however, are still forbidden in some regions. Also, there have been conflicts between regional and local governments concerning some innovative programs,
Spanish Cannabis Policies

such as the establishment of safe injection rooms in Madrid in 2001. Conflicts have been stronger and more protracted, however, between the central government and autonomous regional governments, mainly when dominated by different political parties. An example was the central government opposition to the heroin-maintenance trial designed by Andalusian authorities in Southern Spain. In May 2003, it finally began after more than six years of confrontation with central-government officials.

By the “mid-nineties, the AIDS epidemic reached its peak in terms of morbidity and mortality, with more than 7,000 new AIDS diagnoses and more than 5,000 deaths annually” (Secretaría del Plan Nacional sobre el SIDA, 2002, p. 3). In 1996 and 1997, highly active retroviral therapies were introduced, and in the following years there was a “considerable improvement in the immune status and prognosis of HIV-infected persons.” This resulted in “a rapid reduction of AIDS incidence of over 60% in the next four years, and a decline in mortality of 67% in just two years” (SPNS, p. 3). The declining number of new heroin addicts and the rejection of intravenous administration by a majority of opiate users also contributed to a decrease in HIV infection and reinfection among drug users (de la Fuente, Bravo, & Lew, 1999; Hernández-Aguado, Aviño, & Pérez-Hoyos, 1999).

The New Penal Code of 1995

Throughout this period, the legal status of drugs did not change substantially. The new Spanish Penal Code of 1995 still considered it a crime (against public health) to grow, manufacture, or trade illegal drugs, as well as “those actions by which drug use could be promoted or facilitated” (Article 368), a rather lax definition. It also increased the punishments for drug trafficking, but the amounts for personal consumption and those considered of “notorious importance” (defined later) remained the same. Penalties for trading in “hard” drugs, such as heroin, cocaine, and, increasingly, amphetamine-type derivatives ranged from three to nine years of imprisonment, as well as large fines and disqualification from serving in a public office. If drugs were of the “less harmful” type, such as cannabis, prison terms ranged from one to three years. The penalties were increased by degree in cases involving quantities of “notorious importance.” Thus, in case of large quantities of heroin or cocaine, the penalties were increased from nine to 13 years in prison; if the drug involved was cannabis, it increased from three to four and a half years. If the crimes were especially serious, or if the offenders were members of organized criminal networks, the maximum penalties rose from 13 to 20 years of prison in the case of “hard” drugs and from four and a half years to six years and nine months in the case of “softer” drugs.
Another 1995 law made the laundering of money from drug trafficking a serious criminal offense. Domestic measures for preventing the diversion of precursors were also implemented following EU regulations. This has been especially important concerning “lab drugs” such as amphetamine, methamphetamine, and ecstasy.

**Daily Legal Practice**

In respect to illegal drugs, the Spanish penal code is a “blank” or open law (Herrero, 1995, 2000). That is, supplementary regulations and jurisprudence are needed to provide concrete meaning to some of its basic terms. For example, it is necessary to determine the exact substances it refers to and their risks for health or social order. In the Spanish case, the distinction between more or less harmful drugs could be an empirical question to be contested in court. Cannabis has been repeatedly considered a “less harmful” drug by supreme court jurisprudence, as opposed to heroin, cocaine, LSD, and, after some contention, amphetamine-type drugs, including MDA and MDMA.

How the courts will determine if an amount apprehended from a suspect was intended for self-consumption or trade is still an issue, however (Herrero, 1995, p. 82). The Supreme Court established in several rulings (two similar verdicts determine jurisprudence) that any amount that “exceeds what the user consumes in three, four or five days” makes possession a crime (ruling of the Supreme Court, May 4, 1990; in Herrero, 1995, p. 83). In the case of hashish, 50 grams was established as the theoretical limit for self-consumption, yet people apprehended with larger amounts have been acquitted. For instance, in November 1991, a defendant who had been arrested with 133 grams was acquitted, and in June 1993, another person who carried 98 grams was cleared. In both cases the tribunal determined that there was “no indication that the drug was for distribution” of any kind (Herrero, 2000, p. 321).

Thus, beyond amounts seized, tribunals must “evaluate carefully” the circumstances of each case. For instance, they are to determine if the defendant is a known drug user, the place where the drug was found, or the form in which it was stored (in small doses, within envelopes, bags, and vials, etc.). Other relevant factors include the possession of cash that cannot be explained, the existence of accounting notes or registrations, the movement of people on the premises where the defendant had the drug, and the presence of instruments to divide and weigh the substances. Often, defendants themselves are required to provide the proof that their consumption of the drugs confiscated was for their own personal use. Participation in a drug dependency program, for example, would be considered supportive of such a claim.
SPANISH CANABIS POLICIES

All of these concerns are important for many users, few of whom know much about the details of law enforcement. Perhaps this explains the success of new sources of information on cannabis, such as the journal Cañamo. Writing in one of its issues, Rafael Ramos, a lawyer, gave legal counseling to aficionados:

...to the question: How much cannabis can I carry without risking being accused of trafficking? The answer would be: You can carry amounts under 50 grams, better in one lump piece, showing that you are a consumer, and without other drugs or elements that could indicate that you plan to sell the drug ... (2002, p. 17).

AMOUNTS OF NOTORIOUS IMPORTANCE

As noted above, the penal code also establishes a crucial distinction in drug trafficking crimes when they concern amounts of “notorious importance.” For more than a decade, the juridical practice established such limits as one kilo of hashish and five kilos of marijuana.13 In October of 2001, the Supreme Court, after considering changes in dominant attitudes, established a new limit of 2.5 kilos for hashish and 10 kg for marijuana. Any person arrested with quantities larger than these risked three to four years in jail. The participation in criminal networks is considered especially grave (Herrero, 2000, p. 328), and any person found guilty in this case would get prison terms of four and a half years to six years and nine months. This is the highest penalty for cannabis trafficking in the Spanish criminal code (Herrero, 2000). In these cases, the limit has usually been established at 100 kg of hashish, but courts insist that the drug weight should not be the only factor considered, and less severe sentences have been imposed on defendants apprehended with as much as 1,550 kg of hashish. (Supreme Court ruling of October 5, 1999, quoted in Herrero, 2000, p. 328).

These penalty structures demonstrate that one of the goals of the Spanish criminal code is to distinguish among possession for self-consumption, retailing, and trafficking and to punish more severely those involved in organized crime and large-scale trade. In order to make these determinations, the courts must complete an analysis of the defendant’s intentions and goals. But the difficulties in proving the accuracy of these assumptions are manifold, and, sometimes, different courts reach opposite conclusions. For example, in 1998 the Supreme Court had to rule in a case of possession of cannabis, where two lower courts had come to contradictory decisions. The case concerned a terminally ill woman charged with possession of 60 grams of hashish. The first court fined her $2,800, while the Regional Supreme Court had dismissed the case; the Supreme Court overruled the acquittal and upheld the fine (Herrero, 2000).

SUPP. 2004

639

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NEW DRUG FADS, NEW COHORTS, NEW PROBLEMS

Although relatively few people initiated opiate use after 1992, other forms of drug use have gained salience among the youth population. The main polydrug patterns included the occasional social sniffing of cocaine, public drinking in weekend street alcohol binges ("El botellón"), and the spread of new "lab" or "synthetic drugs" such as ecstasy and amphetamine in powder form ("speed"). This has produced new drug-related problems affecting a more affluent generation of Spaniards (see Gamella & Alvarez, 1999, Diaz, Barruti, & Doncel, 1992). As noted earlier, the consumption of cannabis, cocaine, and ecstasy in Spain is among the highest reported in the EU (see EMCDDA, 2003).

The occasional and social use of cocaine has retained its popularity. Problem use has been concentrated among heroin addicts who injected, and increasingly smoked the drug in free-base form (Barrio, Vicente, Bravo, & de la Fuente, 1993; Barrio et al., 2000). There is also a sizable population of "pure" cocaine problem users, and their treatment demands increased rapidly in the late 1990s. In 2002, there were more demands for treatment associated with cocaine than with heroin (OED, 2003). Finally, there is increasing evidence of the use of free-base varieties, mostly in combination with heroin (Barrio et al., 2000).

THE GROWTH AND NORMALIZATION OF CANNABIS CONSUMPTION

The use of cannabis escalated in the second half of the 1990s (see Table 1). This trend was in line with developments in the rest of Europe, North America, and Australia. The increase was especially significant among teenagers. The national system of biannual surveys of high school students (14 to 18 years old) has revealed a continuous increase in the percentage of youths that have tried cannabis and continued using it since the first survey was taken in 1994 (see Table 2).

In the last school survey on drug use, administered in 2002, the mean age of initiation for smoking hash or marijuana was 14.7 years of age, and 22% of high school students said they had smoked cannabis during the last 30 days, compared to 28% that had smoked tobacco. Those who had tried cannabis before reaching adult status (18 years of age) were a majority. About 60% of students who had tried cannabis continued using it. Male cannabis users consume more often than females, although these differences are smaller than those for other illegal substances, such as cocaine or amphetamine. Cannabis users tend to consume tobacco and alcohol as well. However, there is a growing portion, close to 30%, of "pure" users of cannabis who do not smoke tobacco (OED, 2002a).

Officials from the National Plan on Drugs are concerned about the increase in cannabis consumption and the precocity of initiation to this drug (OED, 2000, p. 22; OED, 2003). These developments seem to belie their strategy of "prevention"
## Spanish Cannabis Policies

### Table 1

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no para el Plan Nacional sobre Drogas (DGPND). Observatorio Español sobre
Drogas (OED) 2003, p. 32.

### Table 2

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<td>40.3</td>
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Source: High school surveys, DGPND (Delegación del Gobier

**Issues**

Summer 2004
through school-based drug education. In fact, most high school students (86% in 2002) feel they are well informed about drugs, drug effects and drug-related problems. But the perception of risk associated with the regular use of cannabis is decreasing, and cannabis is not seen as being more dangerous than tobacco, even when used regularly (OED, 2002a). A large portion (47%) of those who smoke cannabis regularly say they have suffered some problems associated with that consumption, such as loss of memory, sadness, apathy, and difficulties in studying (OED, 2002a). Perception of risk decreases with age and is minimal at eighteen years of age, that is, in the group that supposedly has received more information about the drug. The perception of risk associated with tobacco use remains relatively constant (OED, 2002a). Thus, the perception of cannabis as a less dangerous drug is not mainly based on a lack of experience or drug education.

The proportion of those trying cannabis and tobacco seem to be converging, although tobacco remains inexpensive and widely available. Among males, cannabis may be more popular today than tobacco, which is considered more damaging for health and more addictive. In fact, daily use of tobacco seems to correlate more to the use of cocaine and amphetamine than does occasional use of cannabis. Thus, we could speculate that tobacco is becoming a “gateway” drug for Spanish male teenagers more often than cannabis (see OED, 2002a, 2002b, 2003).

The Growth of the Hashish Market

The supply of hashish coming from Moroccan fields grew enormously in the 1990s, especially in the second half of that decade (Gamella & Jiménez Rodrigo, 2001). This influx may explain the reduction in real prices of this product during the period. Spain is now a crucial base for the international hashish market that serves consumers in most European countries. To a large extent, the same could be said of the European cocaine market.

Hashish confiscations increased fivefold during the 1990s and now include more than a half million kilograms every year (OED, 2003, p. 127). Over time, the hashish market has developed economics of scale. It offers readily available, cheap, and increasingly standardized products, such as the “apaleao” type of hashish that sophisticated users find unappealing (Gamella & Jiménez Rodrigo, 2001). The number of people arrested for trafficking cannabis, which does not include those fined for public possession of small amounts for self-consumption, has grown rapidly in the last decade (OED, 2003, p. 137-39). Thus the growth of the hashish market in Spain is not only important in terms of quantities imported, but also in the number of people involved.

Prices of hashish have remained stable for over 15 years, although decreasing in real terms. By May 2004, prices ranged from $3 to $5 per gram, or $1 per joint.

642

JOURNAL OF DRUG ISSUES

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Spanish Cannabis Policies

The average dose consumed by experienced users is 66 joints per month (Gamella & Jiménez Rodrigo, 2003, p. 83), although there is great variation in personal dosage. This means that the average user would consume 15 to 20 grams at a cost of $45 to $100 per month, less than what many smokers of tobacco would spend in cigarettes.

The Rise in Home Cultivation of Cannabis

As noted above, since 1983, possession of small amounts of illegal drugs intended for self-consumption is not prosecuted. Since 1992, however, if the drug is carried in public one runs the risk of being searched and fined. This rule has been applied to hundreds of thousands of regular and occasional drug users, mostly of cannabis. Between 1997 and 2002, proceedings were initiated against over 400,000 drug users, three quarters of whom were then fined (OED, 2003, pp. 137-138). These proceedings consume a considerable amount of police time, as they involve over 50,000 cases per year and the numbers have increased constantly. Most cases affected cannabis users, who are a majority of those using illegal drugs.

It is now legitimate to ask how someone can smoke cannabis without risking a fine. Privately growing one’s own marijuana would suffice. This might explain why home cultivation of marijuana has boomed in Spain during the last decade. Many youngsters and adults cultivate hemp plants. They often get their seeds, implements, and knowledge from an increasing number of “grow shops” and “smart shops” that have been opened throughout the country. In the summer of 2002, a review of web pages and cannabis journals resulted in the identification of 197 such shops in over 40 Spanish cities. The average cultivator grows a few plants on his balcony or patio, but there are an increasing number of people who cultivate gardens and larger plots, and some who use advanced equipment and cultivate in closets using artificial lightning and even hydroponic techniques. The bulk of marijuana cultivation in Spain occurs out of sight, and growers are fairly discreet in their practice of this hobby.

Home cultivation is perceived to be an alternative to prohibition. The production of quality types of marijuana adapted to personal tastes is also a persistent motive. This method may also be an option to an illegal market that has increasingly been dominated by low quality hashish (Gamella & Jiménez Rodrigo, 2001).

The penal status of cannabis cultivation remains ambiguous. In principle, cultivation for self-consumption will not lead to prosecution. However, the press has identified cases of people arrested for growing a few plants. For instance, last summer in a few days we found several cases in the press. In one, a man was arrested in a village in Valencia’s province when five cannabis plants were found in his garden. They weighed 2.5 kilograms (ABC, August 22, 2003). Several days

Summer 2004

643

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earlier, a 76-year-old man was arrested when seven hemp plants were found in his garden, weighing more than 8 kilograms (ABC, August 20, 2003). In other instances, however, the scale of cultivation indicates use that would exceed that required for self-consumption. Thus, in the fall of 2002, a 26-year-old Englishman and his 19-year-old Swedish girlfriend were arrested in a village in the Alpujarra, in Granada province, for producing 120 cannabis plants in their plot. (El País, September 24, 2002).

In 1993, in a test of the limits of the law concerning collective cultivation, activists of a pro-cannabis association grew, collected, and smoked some cannabis plants in Tarragona, Catalonia. The press was invited, and the event was reported in the newspapers. The four representatives of the association were then prosecuted. In 1996, the provincial Audiencia, the first level court, acquitted them. In late 1997, however, the Supreme Court, in a debated ruling that made headlines in all major newspapers, overruled the acquittal and condemned the defendants to fines and nominal prison terms. The high court issued the warning that cannabis cultivation was in fact a crime, and those who believed otherwise needed to be made aware of it. Interestingly, the case provided a surge in publicity for the growing sector supporting home cannabis cultivation. But the legal strategy of legitimizing collective cultivation for self-consumption seemed to have failed, and the growers must hide what they are doing. But a different group living in the Basque country has also tried collective consumption of cannabis in 2002, and the local attorney has not pressed charges against them.

If arrested, the grower has to demonstrate that his or her plants were intended for self-consumption. As some cannabis activists advise, it is crucial to be able to show that one is a consumer (see, for instance http://www.arsec.info). It is also recommended that the grower declare a preference to produce his own rather than to go to the black market and enrich criminals. They are also advised that it is important to declare that the entire weight of the plant is not to be used for consumption, which only involves the dried flowers of the female plants. Given that hemp is an annual plant, the harvested amount would be consumed throughout the year. Any surplus in production may be difficult to explain and opens the door to prosecution. Thus, some have advised that belonging to an antiprohibitionist association is an element that helps prove that cannabis cultivation is for self-consumption. They point out "the classic drug trafficker shies away from publicity and looks for anonymity" (Ramos, 2002, p. 15). This in turn may be read as a promotion for the pro-cannabis associations.

**Ideological Support: The Pro-Cannabis Movement**

In the 1990s, a social movement developed that promoted the defense of the right to consume cannabis. The formal side of the movement is made up of
Spanish Cannabis Policies

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associations that organize meetings, protests, and other collective events such as festivals or “cups” to choose the best homegrown plants and products. The first major association for the “study” of cannabis (ARSEC) was founded in Barcelona in 1991; in 1999, that group had over 3,000 members. Between 1994 and 1999 other pro-cannabis associations have proliferated throughout Spain. In 1995, a special issue of an alternative journal listed 10 such organizations (Ajoblanco, special issue, summer 1995). In August 2003, the authors found 39 such associations on the web. These groups are increasingly coordinated and claim an expanding and varied membership. But the support for cannabis is found well beyond pro-cannabis associations and can be induced from the success of specialized journals, books, and shops, which provide a crucial space where different actors on the “culture” of cannabis converge and reinforce their values and beliefs (Mendiola & Becoña, 2003). Moreover, the “cannábio” movement is entering mainstream politics. A political party for normalization and legalization of cannabis ran in the European elections of June 2004, and obtained near 54,000 votes, a surprising result considering the high level of abstention.

Supporters of this social movement share a diffuse ideology that sees marijuana and hashish as natural and benign drugs and their use as legitimate. They support legalization of cannabis and oppose the “prohibitionist” status quo. Therapeutic benefits are claimed for cannabis and they feel this too may be used to justify the use of this drug. The findings of the potential benefits of cannabinoids for some forms of tumor therapy have been celebrated as confirmation of the beneficial use of the drug, even for recreational purposes. Potential risks, such as the carcinogenic properties of the smoke or the potential cognitive problems experienced by excessive users (Iversen, 2001; Hall & Solowij, 1998) are usually minimized or plainly rejected as biased exaggerations (Mendiola & Becoña, 2003; Gamella & Jiménez Rodrigo, 2003).

Publications and “grow shops” (as they are known in Spanish) provide knowledge, support, and advice as well as seeds, fertilizers, and tools. In these ads, English terms are used, reflecting the origin of the supplies (mostly the Netherlands) and revealing the international character of the ideology, the music, the attitudes, and the wish for a shared identity.

One crucial factor that helps to explain the spread of “antiprohibitionist” activism has been the enforcement of Corcuera’s Law, with its searching and sanctioning of thousands of cannabis users. Opponents have denounced the law as arbitrary, discriminatory, and contrary to civil rights. The provisional legal advice in these cases is one important aspect of the work of pro-cannabis associations and publications. For instance, they suggest that their followers, in order to evade fines, ought to apply for treatment of drug dependency. “If you do not mind enlarging the peculiar statistic of those supposedly diseased and drug addicts.”15 Once in a
treatment program, physicians and psychologists usually provide the needed certificate after a few sessions. However, almost all smokers who go through this exercise do not feel addicted nor feel that they need help, and find the mandated procedure time consuming and often humiliating.

The Threat of a Government Backlash

In the last three years, there has been a clear preoccupation in the national government with the increase in cannabis consumption, especially among adolescents, who seem to downplay the risks of these drugs. Authorities connected with the National Plan on Drugs claim the increase is a consequence of misinformation being distributed by pro-cannabis groups that have commercial interests in the promotion of their products. A critical study of the “cultura cannábica” (the cannabis “culture” and movement) denounced the incoherence of many of the elements of its ideology and the vested interests involved (Calafat et al., 2000). According to its authors, the goals of this movement are to legitimate and legalize cannabis consumption by portraying it in a benign light. In the movement, they found people playing roles comparable to those of “prophets, priests, technicians, organizers, and consumers.” Together they are “creating a culturally and socially dense multidisciplinary network” of self-appointed experts who portray the drug as benign, positive, “appropriating ideals of ecologists, the return to nature, health, social justice, interculturality and even religion” (Calafat et al., p. 231). Their main goal is to spread “a socially positive image of cannabis” that, according to these authors, has many mythical elements (Calafat et al., p. 234). Moreover, this report claims that the pro-cannabis movement hides the commercial interests of some middle-aged entrepreneurs who have invested in shops, publications, and Internet trade, and who are trying to influence adolescents and young people.

After recent surveys confirmed the renewed growth of cannabis consumption, a new committee was urgentley assembled to study the cannabis situation and to propose measures to stop its further expansion. There was a growing fear that the Aznar government might harden the administrative and penal treatment of cannabis shops and related journals, that might have been accused of promoting illegal drug use. The terrorist crimes of Madrid in March 11, 2004, and the electoral shift three days later, have dampened the level of antagonism in the cannabis front. The new government seems less hostile to the pro-cannabis faction, and it appears unlikely that grow shops and cannabis journals will be closed. But it remains to be seen if the new government really departs from the drug policy of its predecessors in significant ways. At the present time, these concerns are not a government priority. 17

646

Journal of Drug Issues
SPANISH CANNABIS POLICIES

DISCUSSION

DEPenALIZATION

In the last 20 years, Spanish drug policy has followed the lines of what MacCoun and Reuter call “depenalization,” a strategy characterized by “a substantial reduction of penalties for possession of modest quantities of prohibited psychotropic drugs (e.g., civil monetary fines),” while “the sale and manufacture of these drugs remains illegal and that prohibition is aggressively prosecuted at current levels” (2001, p. 74). In 1983, changes in the penal code formally decriminalized the use of all drugs and established a two-tiered penal treatment of the production and distribution of illegal substances, based on the distinction between more and less harmful drugs. Since cannabis has remained in the “softer drug” tier, depenalization has mostly affected cannabis products.

As discussed earlier, this reduction in penalties for use was widely perceived as a leftist, liberal set of changes, largely irresponsible and ignorant of the pressing issues, as they coincided with a major heroin “epidemic” and the spread of IV drug use. Despite protests by conservative circles and the media, such measures were largely within Spain’s jurisprudential tradition and were coherent with an effort to regulate and systematize the state’s response to drug consumption. While drug use per se had never been a crime in Spain, even during Franco’s dictatorship, the police and courts had proven resourceful in harassing drug users.

Despite the conservative outcry, depenalization did not produce any perceptible increase in the use of cannabis. On the contrary, cannabis consumption decreased in Spain after 1983 for at least a decade. Heroin use also decreased, although not immediately. The case of cocaine is less clear. Cocaine use probably rose considerably in the late 1980s and early 1990s (See Barrio, de la Fuente et al., 1993; Barrio, Vicente et al., 1993; Díaz, Barruti, & Doncel, 1992). Supply seems to have increased for both internal consumption and for international distribution, as the reduction of prices and the increase in seizures indicate. These factors make the reduction of cannabis consumption in this period even more remarkable. It also seems that the cannabis market was partially dissociated from the heroin and cocaine markets, as consumers could now buy hashish without contacting heroin or cocaine sellers (Gamella & Jiménez Rodrigo, 2001, 2003).

However, the depenalization of drug use was more apparent than real, as law enforcement agencies retained legal tools to harass drug users. In fact, many users might not even have been aware that such a legal change had taken place. On the other hand, the state increased its regulation of legally manufactured drugs such as amphetamine, opiates, opioids, and, to a lesser extent, barbiturates and tranquilizers. Some of these restrictions had unintended consequences. For example, decreases in methadone maintenance programs from 1983 to 1991 may have reduced the...
chances to reduce the spread of HIV among IV drug users in that crucial period of
the AIDS epidemic.

Moreover, as depenalization occurred in the midst of a terrible heroin "crisis,"
the effects of these legal transformations were easily confounded with those of the
heroin "epidemic" itself. Drug-related problems increased dramatically in Spain
between 1979 and 1992, but these were largely independent of depenalization.
Politically, however, it was difficult for the socialist governments of the 1980s to
get rid of the smear that derived from their supposed "flirtation" with soft drug
policies. This may explain why the tougher measures implemented later by a
conservative government were introduced by socialist governments.

HARM REDUCTION IN A MORE PUNITIVE ENVIRONMENT

In the last decade over half a million people have been fined for carrying a
small amount of drugs for their own consumption (OED, 2003, p. 137-39). The
majority of them were cannabis users, who comprise a majority of users of illegal
drugs. Surprisingly, when the conservative government took over from the socialists
in 1996, there was no major change of policies, other than a stiffening of the controls
already present in the laws. Arguably, problem users, and particularly heroin addicts,
have been treated with more lenience by law-enforcement agencies and courts.
Yet, the harassment of occasional users has increased, and the prohibition of
trafficking is intensely enforced.

However, as we have shown, the tightening of policies against cannabis does
not seem to have reduced consumption. From 1994 to 2002, consumption of hashish
and marijuana increased almost continuously, especially in the new cohorts of
teenagers. Criminalization, then, in some contexts, may have a "forbidden-fruit"
effect and actually promote consumption (Usó, 1996; Escobotado, 1989). It may
also be that drug policy has enormous limitations for drastically reducing
consumption of a popular drug in a short time in a (relatively) open and democratic
society (Cohen & Hendrien, 2001).

EFFECTS OF POLICY ON DRUG MARKETS

Present law enforcement practices in Spain favor a division of labor in cannabis
control that leaves thousands of cases outside of the clogged courts. As jurisprudence
has established relatively high limits for the amounts recognized for self-
consumption, most users and perhaps most retailers never dealt with the courts,
but only with police forces. The police handle the proceedings for administrative
sanctions and fines. This lowers the risks for retailers of cannabis and may have
contributed to the reduction of prices.
Moreover, Spanish law establishes relatively low penalties for trafficking in hashish. For instance, for possession of 700 grams of cocaine, a Colombian “mule” who carried the drug in his body is serving seven years in prison. For 7,000 kilograms of hashish, however, the maximum prison term would be six years and nine months. This might partially explain the increasing role of Spain as a stopover in the European importation of Moroccan hashish, beyond sheer geographical opportunity. In any case, the market for cannabis has reached huge dimensions in Spain, where over 500 tons of hashish are apprehended every year.

An Unexpected Effect: The Militant Home Grower

Imposing fines and police records for possession of small amounts of hashish had other unintended consequences. First, it has helped fuel home cultivation, which now involves tens of thousands of users. Growing marijuana has given smoking joints a new meaning and has boosted users’ interest in all aspects of the cannabis “culture.” Thus, “home grown” is often seen by pro-cannabis militants as a radical attack on prohibition. Peculiarly, the sense of fighting a just cause against oppression and obscurantism gives cannabis cultivation a transgressive meaning, at the same time that this drug is becoming a normalized, mainstream product.

Furthermore, the increased police pressure on consumers has contributed to the growth of a faction that favors legalization of cannabis. This faction combines elements of new social movements with civil rights movements. It is also a consumers’ movement that disseminates information on improved products and better deals and that has links with a growing network of quasi-franchises of cannabis products.

Commercialization Without Legalization

In Spain, there is now a robust supply of both Moroccan hashish and homegrown marijuana of increasing variety and quality. Many growers have shown great sophistication in their operations, leading to a potent, appreciated, and relatively cheap commodity. In their important review of drug policy options, MacCoun and Reuter conclude that “the removal of criminal penalties for possession is unlikely to increase significantly the numbers who use drugs,” but “legalization is very likely to lead to commercialization of the product – lower prices, easier access, and heavy promotion” and, in this sense, commercialization “will generate higher prevalence and consumption” (MacCoun & Reuter, 2001, p. 9). Commercialization is therefore a key aspect to consider in understanding major legal changes concerning cannabis, as “the term legalization confounds two very different interventions that are in principle separable: depenalization and commercialization” (MacCoun & Reuter, 2001, p. 240).
However, Spain's cannabis policies since 1992 suggest that depenalization is compatible with a considerable degree of commercialization, at least in the case of cannabis. There has been a clear increase in the major aspects of commercialization: access, prices, promotion, and advertising. The promotion of cannabis is not comparable to the promotional activities of the alcohol and tobacco industries, although it is expanding through the actions of interested parties, but also by the free publicity provided by the mass media and the entertainment industry. Both feature cannabis prominently, usually in a favorable light.

Thus cannabis has become increasingly attractive and acceptable. A large sector of mainstream youngsters confirm in their daily experience most of the beneficial attributes attached to the drug, downplaying its harms and risks, especially those associated with long-term, intensive consumption. Many people have developed a strong attachment to the cannabis plant itself, which has become a powerful symbol. Thus, cannabis has been integrated in the daily, "normal" life of an important sector of Spanish youth, a process also documented by other European countries (see Parker, Williams, & Aldridge, 2002).

There is a complex series of feedbacks in which cannabis has become symbolically separated from "hard" drugs, especially heroin, and has moved closer to tobacco and alcohol. But its illegal status has provided the drug and its users with some of its allure as a badge of rebellion, alternative values and lifestyles, and anti-system resistance. In Spain, the apparent hypocrisy of a state "addicted" to taxes from cheap tobacco and alcohol that punishes cannabis users fuels the interest in a drug that is easily portrayed as more natural, benign, and healthier. Even if some of the claims of the "pro-cannabis" movement are preposterous, and some cannabis journals and shops are successful businesses, the good name of marijuana is not based on misinformation or deceitful propaganda.

Thus the changes in the social representation of cannabis and the increase in its consumption are mutually related and also affect its commercialization. It would be wrong to attribute too much agency to any particular group, however, be it the pro-cannabis associations, or the related journals and supporters. They thrived in the adversarial climate of the 1990s because they were largely in tune with the wishes and personal views and experiences of thousands of users. Hence, a government backlash against the "pro-cannabis" sector, including the fining or closure of shops, journals, or associations, may be counterproductive. The sense of outrage that is felt by many cannabis consumers has resulted in a more militant movement that favors cultivation and legalization. In turn, this moved some local and regional governments and nationalist parties, mostly in Catalonia and the Basque Country, to use the cannabis issue as a contested theme with the Aznar conservative government.
SPANISH CANNABIS POLICIES

In sum, several inconsistencies have developed in the legal and political treatment of cannabis in Spain in the last decades. On one side, jurisprudence has established limits in the amount allowed for self-possession, which are very high even by more liberal standards. On the other hand, police harassment of thousands of consumers for possession of small quantities of cannabis products may fuel the symbolic value of cannabis and its consumption, and its role in collective action (Melucci, 1989). Moreover, preventive efforts oriented mostly to abstinence seem to be misallocated at least with respect to cannabis.

Thus, both defenders and detractors of this drug often resort to propaganda and insult more often than to rational dialogue and compromise. Two extreme viewpoints exist, one arguing against the harms caused by cannabis, and the other arguing against the harms caused by its prohibition – creating a “diálogo de sordos,” a “deaf’s dialogue.”

The aftermath of the March 11, 2004, outrages in Madrid has shown that this is a crucial time for reevaluation of policies and for the establishment of some minimum consensus. Although it will not be easy, this is one of the areas of public policy where Europe could offer different approaches to the emerging challenges of illegal drug use that go beyond persecution, punishment and drug “wars.”

NOTES

1. As we will show, until 1983 the penal status of drug use and drug possession for use was rather contradictory. Even though the Supreme Court had ruled that it was not a crime, there were several acts that could be used to punish illicit drug users.

2. Not considering Dutch “nederwiet” plants.

3. Spain also ratified the Vienna Convention of 1971. Its appendices with the lists of controlled psychotropic substances were incorporated into the Penal Code of 1973.

4. Generalísimo Franco died in November 1975, after 36 years of autocratic rule. The following months were a tense period that prompted the first democratic elections in June 1977. The democratic political system was consolidated with the promulgation of the new Constitution in December 1978. Political uncertainty remained for years, culminating in the failed coup of February 1981, when a company of armed policemen kidnapped most members of Las Cortes, the national parliament. In the following years, a decentralization process was implemented, making Spain a quasi-federal state of 17 Autonomous Communities with their own governments and regional parliaments. Some, such as the Basque Country, have their own police force.
Gamella, Jímenez Rodrigo

Since 1979 socialists, either acting alone or in association with communists, had been in charge of the municipal governments of most of the larger cities such as Madrid, Barcelona, Seville, and Valencia.

See, for instance, the article in The Economist: "Spain: Hashish’s Eldorado," (September 10, 1984).

Available data was inadequate, and there were many debates about the extent of the heroin crisis. Using survey data, several authors arrived at very different conclusions. For instance, in a very influential book, the sociologist Domingo Comas estimated that by 1984, around 60,000 people were using heroin regularly, mostly by injection. Around 32,000 of those were in a state of deep dependency (1985, pp. 195-196). Another study, however, based on a national survey done in 1985, established the number of regular heroin users at 125,000, of whom 103,000 were using heroin one or more times daily (Equipo de Investigación Sociológica, 1985).

The System of Information on Drug Dependence (SEIT) was a national monitoring system that counted drug-related emergencies, deaths and demands for treatment. According to its first complete report in 1988, 16,481 persons began drug dependence treatment in public funded facilities; 98 percent of these persons were addicted to heroin and other opiates; 1.7% were treated for cocaine dependence. Eighty percent of patients were male, with mean ages between 24 and 25 years (SEIT, 1989, pp. 186-187). Heroin-related emergencies where almost as important as treatment demands; 12,000 emergency episodes were recorded in 1988 (SEIT, 1989, pp. 101-105). Three years later, in 1991, over 28,500 people started treatments for heroin dependence, over half of them for the first time (15,000). During the same period, fewer than 1,000 persons demanded treatment for cocaine addiction. (OED, 2000, pp. 45-47). In 1997-1998, admissions to treatment for heroin dependence remained in the range of 35,000 to 43,000. The portion of veteran addicts who had tried a number of treatments increased constantly, showing that heroin addicts in Spain mostly belong to the same generation. From 1995 onwards, however, cocaine-related demands increased constantly, and in 2002 their numbers surpassed those for heroin treatment (OED, 2000, pp. 45-47; OED, 2003, pp. 70-73).

The Constitutional Court (Tribunal Constitucional) is the interpreter of the Constitution and has the final say in settling appeals related to constitutional law.

The "gaps" are also filled with reference to other nonpenal regulations, such as the lists of the UN Conventions (Herrero, 2000, p. 317).

Courts may evaluate the evidence in disparate ways. The variation in court understanding has affected drugs such as buprenorphine and methaqualone,
SPANISH CANNABIS POLICIES

and most notoriously ecstasy type drugs (see Gamella & Álvarez Roldán, 1999, pp. 209-217).

12 This is a large amount even compared to Dutch standards and is perhaps the most permissive in Europe. The court’s rationale was not based on a detailed knowledge of cannabis consumption patterns, but on a theoretical calculation of the amount consumed by a regular user in a period of three to five days. But if, on average, three or four joints are made with a gram of hashish (see Gamella & Jiménez Rodrigo, 2003, p. 83), the present regulation sets a limit of over 20 joints a day.

13 In relation to other drugs, the limits were fixed at 60 grams of pure heroin, 120 grams of cocaine, and 200 doses of amphetamine or ecstasy-type drugs.

14 About 35% of teenagers think that using cannabis sometimes can cause many problems, and about 75.5% think that regular use of cannabis daily or weekly can cause severe problems, the same proportion that thinks that smoking tobacco daily can cause grave health problems (OED, 2003).


16 The leading article in the Cañamo issue of November 2003 was entitled, “Will the Home Office close Cañamo?” This theme was also developed in the editorial and other articles. There was a sense of concern that a government backlash was going to occur after the March 2004 elections.

17 Some central members of the Rodríguez Zapatero Cabinet, particularly the general attorney and the home office minister, have been adamant defenders of drug legalization. They both are prominent magistrates with progressive leanings. It remains to be seen how far they are going to push for these ideals now that they have more power and responsibility.

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656  *Journal of Drug Issues*
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INTRODUCTION

The relative population of the Czech Republic is small compared to other European countries. At the same time, drug use is very prevalent. These are the main reasons why specific research is needed to analyze drug use trends in the Czech Republic.

Tomáš Zdeňek Lipták

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660

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