

**CITIZENS UPROOTING RACISM IN BERMUDA
SUBMISSION TO THE
CANNABIS REFORM COLLABORATIVE**

10 March 2014

In November 2012 Citizens Uprooting Racism in Bermuda (CURB) released its Racial Justice Platform shortly before the last election. Item 9 of that Platform called for the Decriminalisation of Marijuana, stating that we (CURB) see no need to make criminals out of individuals who use small amounts of marijuana for personal use. Since that time, and with the recent formation of the Cannabis Reform Collaborative (CRC), CURB's Advocacy Working Group has carried out additional research on the decriminalisation and legalisation of cannabis. Our further research in this area has broadened our understanding and consequently, at a recent CURB Central Council meeting, a resolution was passed confirming a shift in our position to support the legalisation of cannabis in Bermuda.

This submission, which we expect to further develop into a publicly available CURB Position Paper, uses the terms cannabis and marijuana interchangeably throughout.

Worldwide

In 2011 the Global Commission on Drug Policy, including former U.N. head Kofi Annan, concluded that the "War on Drugs" had failed. The Report argues that the drug war has failed to stop organised crime, cost taxpayers billions of dollars and caused thousands of deaths, with no decrease in the number of addicts. It noted that the evidence overwhelmingly demonstrated that repressive strategies will not solve the drug problem and that, instead of punishing users "who do no harm to others", governments should end the criminalisation of drug use. The Report called for actions that would focus on health and treatment services for drug users.

Many countries have already taken steps to decriminalise drugs, e.g. the Netherlands decriminalised marijuana in 1976, followed by Mexico and Argentina in 2009; Portugal, the Czech Republic and Greece decriminalised all drugs in 2001, 2010 and 2011 respectively.

In his paper "*You Be the Judge: Comparing Relative Categories at the Beginning of the War on Drugs with those Same Categories today*" Dr. Jack Cole states that "In Portugal, where all drugs were decriminalised nine years ago [2001], an adult can use any drug he or she wants. Not only that but they can also have up to ten days supply of their personal drugs of choice on their person and not get arrested. One would think that kind of law would lead to chaos but exactly the opposite happened. Since they decriminalised, drug use among children, 13 to 15 years old, decreased by 25 percent. Drug use among young people, 16 to 18 years old, decreased by 22 percent. Because they treat heroin users as a health problem rather than a crime problem people are not afraid to go for help or take a friend for help when overdosing. Heroin overdose deaths have therefore decreased by 52 percent since decriminalisation. And HIV infections reported by drug users are down by an amazing 71 percent since decriminalisation, while HIV infections in non-drug users have remained at exactly the same level. Loosening up these repressive laws really

helps reduce the harms of drug prohibition. The only thing decriminalisation will not help with is the violence. To stop the violence you must legalise and regulate all drugs.”

Increase in Addiction: A Fallacy

In 1914 the first federal law was introduced into the US prohibiting the smoking of opium; the majority of those who smoked opium at that time were the countless Chinese who had been brought in to do the dangerous job of building the railroads. With the completion of the railroads the Chinese remained and competed with ‘real’ Americans for jobs. The prohibition of opium was done with the direct intent of controlling/criminalizing the Chinese. However, opium, in a liquid form called laudanum, was widely used by housewives during this period to ‘calm the nerves.’ This was not made illegal. Cannabis, a plant used widely for its medicinal properties, was added later to the prohibition list.

For those who would argue that the legalization of cannabis would result in people going to work or driving ‘stoned’, the same rules, policies and regulations regarding drinking and/or smoking at work or on the road would apply. Interestingly, there are still those who believe addiction would increase, however statistics shared by Dr. Jack Cole at his recent presentation in Bermuda indicate that there has been no change in rates of addiction.

In 1914 the US Government advised that, at a time when drug use was virtually unheard of, 1.3% of the population was addicted to drugs. In 1970, at the beginning of the “War on Drugs”, the US government again advised that 1.3% of the population was addicted to all forms of drugs. The term “War on Drugs” was coined by the then Presidential candidate Richard Nixon and today the term is recognized as a ruse to help him get elected.

Today, after 40 plus years of a “War on Drugs” the US government continues to advise that 1.3% of the population is addicted to drugs. The statistics show that, in the US, the billions of dollars spent on the “War on Drugs” has had no impact in reducing the percentage of the population that becomes addicted. Unfortunately the negative ramifications in other areas has been devastating - countless millions of lives have been ruined for the “victimless” crime of smoking/taking drugs, and thousands have died from drug overdoses resulting from impurities in the drugs consumed and/or a failure to reach out for medical help for fear of arrest.

Prohibition and the Criminalisation of Supply

The prohibition of alcohol in the 1920's and 1930's in the United States is one of the more famous, or infamous, policies in recent American history. Considered by many as a failed social and political experiment, the era changed the way many Americans view alcoholic beverages, enhancing the realisation that government control cannot always take the place of personal responsibility.

The intention was to reduce the consumption of alcohol by eliminating businesses that manufactured, distributed and sold it. The result was a huge increase in organised crime and gangs making millions from the illegal production, importation and sale of alcohol. Crime and murders increased enormously with rival gangs killing each other in their greed to control the huge amounts of money at stake. With the end of prohibition in 1933 this kind of crime virtually

disappeared. The US legalised alcohol and set in place regulations and strong controls to monitor its sale, distribution and use. Today, we find that young people can more easily obtain marijuana, than they can cigarettes or alcohol because the sales of both are now in such strongly regulated environments.

We see in Bermuda, and other jurisdictions where cannabis and other recreational drugs are illegal, the negative impacts of the criminalisation of supply. The illicit status of the product limits the supply and provides a potential for massive profits, which drives criminal activity, both in Bermuda and abroad. We have been advised that much of local gang activity is driven, at least in part, by the drug trade. The violence associated with gang activity in the drug trade is literally killing our young Black men.

The violence related to drug activity does not stop at our borders – any consumption of cannabis that depends on a criminalised supply contributes to global violence by organised criminal and terrorist organisations. Those interested in utilizing cannabis for recreational, religious or medical reasons are now forced to associate with a “criminal element”, presenting an opportunity to sample other drugs. The illegal status of cannabis also precludes any regulation that would prevent minors from obtaining the drug. Many in Bermuda would argue that a minor could more easily obtain marijuana than alcohol or tobacco, both of which are regulated by law and unavailable to minors. Simply decriminalizing marijuana for personal use fails to address the issues of local and global violence, the criminal element associated with supply, or the access to the drug by minors due to lack of regulation. For these reasons we support the full legalisation of marijuana accompanied by robust regulation.

Structural Racism in Bermuda’s Criminal Justice System

Bermuda’s punitive criminal justice system, inherited from the legacy of slavery and colonialism continues to be infected with and driven by stereotypes, myths and biases. Unfortunately the racial bias inherent in our criminal justice system mirrors that of the US, which is comprehensively detailed in Dr. Michelle Alexander’s book *The New Jim Crow: Mass incarceration in the age of colorblindness*. Dr. Alexander states that “decades of cognitive bias research demonstrates that both unconscious and conscious biases lead to discriminatory actions, even when an individual does not want to discriminate... Most striking, perhaps, is the overwhelming evidence that implicit bias measures are disassociated from explicit bias measures. In other words, the fact that you may honestly believe that you are not biased against a Black person, and that you may even have black friends or relatives, does not mean that you are free from unconscious bias.” This inherent bias is manifested in the severely racially skewed statistics relating to the Bermuda Police Service’s Stop and Search tactics and to the population of our prisons.

Based on statistics from the Bermuda Police Service, over 90% of individuals stopped under Section 315F Stop and Search are Black. An extraordinary and indefensible 98% of people in our prisons are Black. Those unversed in statistics might think these numbers don’t seem unreasonable in a country where the majority of Bermudians are Black. However, with the majority of our expatriate population being white, the population more closely approaches a 50/50 split racially, and it should be apparent to all how grossly disproportionate our criminal justice statistics are against Black people (and, it must be said, in favour of white people).

Studies in the US have shown that whites are at least as likely, if not more so, to use and sell drugs than Blacks, yet that is not who gets arrested and imprisoned. In the US 60% of those in state prisons on drug felonies and 81% in federal prisons are Black, this despite the fact that Blacks make up only 13.5% of the US population. Of defendants convicted of drug violations, only 33% of whites receive a prison sentence while 51% of Blacks do. Unfortunately we have not been able to access comparable statistics for Bermuda on drug use or sentencing by race. Given how disproportionate the existing criminal justice statistics are against Black people we believe that the relevant statistics in Bermuda would be as bad as or worse than our US neighbours.

Another worrying fact is that Bermuda's drug war, as in the US, has been waged primarily in overwhelmingly majority-Black areas, often poorer neighborhoods, the bias being that this is where the drugs are. However, many in our community believe that there is as much, if not more, illegal drug activity taking place in affluent white neighbourhoods than in the lower income, typically Black communities frequently targeted by police. However, in what can be seen at best as misguided and at worst as institutionally racist, Police do not descend on these affluent, typically white, neighborhoods, nor do they designate them for blanket stop and searches.

In his book *The Anatomy of Racial Inequality*, economist Glenn Loury noted that it is nearly impossible to imagine anything remotely similar to mass incarceration happening to young white men. Can we envision a system that would enforce drug laws almost exclusively among young white men and largely ignore drug crime among young black men? Can we imagine large majorities of young white men being rounded up for minor drug offenses, placed under the control of the criminal justice system... and subjected to a life of discrimination, scorn and exclusion? Glen Loury asks "What disturbs us? What is dissonant? What seems anomalous? What is contrary to expectation?" Or, as Dr. Alexander asks, "Whom do we care about?"

The Shift from Punitive to Restorative Justice

Bermuda "functions" (to use the term loosely to say the least) as an extremely punitive society. Many see imprisonment as the pinnacle of punishment, the mantra being "if you're willing to do the crime, you should be willing to do the time." People find comfort in the notion of prison as a defined period of incarceration served as punishment for a specific crime. However, for far too many, the punishment continues after their allotted time has been served, in a seemingly forever unpaid debt to society. Far too often we see discrimination in employment and housing opportunities leave former inmates unable to provide for and support their family. The ongoing exclusion, contempt, and scorn further contribute to feelings of shame and inferiority. Hurt and depression may follow, giving way to anger as the individuals continue to see themselves as targets. The stigma of being an ex-offender extends beyond the individual, encompassing their family, friends and even their communities. Entire neighbourhoods may become stigmatised, which we see all too clearly playing itself out in our community. This punitive environment and its resulting impacts essentially prevents a re-entry into society for the ex-offender and, with no other way to survive, channels them into (or back into) a life of crime.

In Bermuda our rate of incarceration is approximately 457 per 100,000 of population, one of the higher rates in the world. This compares to an incarceration rate in the US of 1,009 per 100,000 and 68 to 148 per 100,000 in Western European countries. Beyond just numbers our rate of incarceration translates to hundreds of families, dozens of communities, and thousands of people, our Bermudian brothers and sisters, traumatised and stigmatised, further exacerbating already racially disparate life outcomes.

As Dr. Jack Cole stated, when we start treating drug abuse as a health problem instead of a crime problem, we can save countless numbers of our young people from being sacrificed on the altar of the drug war through being criminalised and imprisoned – these are our children, our parents, ourselves. Arrest and imprisonment for cannabis use destroys not only the lives of individuals by denying them future job opportunities and education, but also the lives of their children and families. These punitive measures expose our young people (who may have simply been pushing boundaries as all young people tend to do) to hardened criminals once they enter our criminal justice system.

We continue to advocate for the introduction of Restorative Justice Practices throughout Bermuda's Criminal Justice System. Restorative Justice is nothing new, having been practiced for thousands of years, if not more, by Indigenous people globally. Restorative Justice is not about excusing crime or letting people off the hook, nor is it about forcing forgiveness (or even about forgiveness at all per se). Restorative Justice is not about removing important safety considerations from our communities; it asks who has been harmed and seeks to repair that harm appropriately. Restorative Justice views crime as a violation of people and relationships and understands that these violations create obligations. Restorative Justice involves, as much as possible and where there is will, victims, offenders, community members, as well as representatives from the operating Law Enforcement and/or Corrections systems.

Where We Stand

CURB believes we have an opportunity to interrupt this system of inequality and take truly transformative collective action to correct the unjust imbalances in our criminal justice system and our society. It will take a fundamental shift in public understanding and consciousness, and the legalisation of cannabis is just the beginning of this process.

CURB supports changes to Bermuda's laws and policies that would replace cannabis prohibition with a comprehensive licensing and regulatory oversight system to not only regulate the production, distribution and sale of marijuana locally, but also the complete and free acceptance of cannabis use for medical purposes, as well as the removal of criminal penalties for personal use of cannabis.

CURB recognizes that historically our legislation, based on an environment of slavery, segregation and post-segregation discrimination, was inherently racist. As a society with such a legacy we must be hyper-vigilant when it comes to introducing new legislation to ensure it does not discriminate against one group of people over another (e.g. the passing of Section 315F 2005 Amendment to the Criminal Code, allowing Stop & Searches to be carried out WITHOUT probable cause, has impacted our Black community to a far greater extent than the white community). As such, we urge Government to ensure that any legislation and regulation around

cannabis legalisation (and indeed any existing and future legislation) must be subjected to an Equality Impact Assessment. We must ensure that existing disparities in wealth are not further exacerbated by discriminatory legislation, and ensure that opportunities for cultivation and distribution are open to all, and that monopoly access to cannabis supply and distribution is not concentrated in the hands of whites or a select few.

CURB believes in the efficacy of medical cannabis, understanding that societies around the world have used the cannabis plant for medicinal purposes for over 5,000 years. The evidence is overwhelming that cannabis can help a multitude of ailments, and is often less toxic than many of the drugs physician prescribe every day.

CURB believes in the immediate decriminalisation of cannabis, followed by the legalisation of cannabis becoming a reality in 2016 after studies as to how best to regulate in our community.

CURB calls for the repealing of Section 315F of the Criminal Code, which allows for Stop & Searches to be carried out without probable cause, and which is proving to be a major factor in our young people (particularly young Black males) entering our criminal justice system due to drug possession. Subsequently they are criminalised for a youthful mistake (which many of us have been guilty of) and end up for the rest of their lives with difficulties finding work or traveling overseas to school or university due to the US Stop List. *N.B. CURB supports the 2006 PACE Act which also allows Stop & Search, however WITH probable cause.*

CURB calls for the establishment of a Racial Equity Index and the gathering of other relevant data by race to help measure and track life outcomes in a variety of areas (e.g. progress in education, access to health and economic opportunity) as well as to inform government and private sector policies that will encourage and enhance racial equity.

Potential Advantages of Legalizing Cannabis

We see a number of potential advantages associated with the legalisation of cannabis, including but not limited to the following:

1. Money and time currently used by the Police to arrest drug users can be redirected towards solving more serious crimes.
2. Allow Police to get back to doing what they do best—protecting people from each other by preventing and solving major crimes such as robbery, murder, abuse and rape, rather than trying to protect every adult from his/herself by deciding for them what they are allowed to put in their own bodies.
3. Removing resentment due to perceived police harassment and racial profiling, especially from our young, Black males (i.e. Stop and Search for no probable cause);
4. Removing violence as the controlling influence within the criminal distribution system;
5. Removing the organised criminal element (gangs) from supply;
6. Through decriminalisation/legalisation, free users from the potential threat to employment, housing and educational prospects;

7. Reducing exposure of cannabis users to hardened criminals, i.e. removing the 'real gateway' to hard drugs;
8. Ability to control quality and purity and have proper consumer protection;
9. Regulation control of marketing activity of suppliers;
10. Through regulation achieve reduced access for minors and reduction in use;
11. The creation of revenue through taxes to control retail price;
12. Improved distribution of revenue - away from organised crime to growers, legitimate traders and, through taxation, to the public sector.
13. Research supports a statistical decrease in drug use by teens following legalization and supports the fact that there is no real link between an increase of use in cannabis and the legalisation/decriminalisation of cannabis.
14. Decriminalisation/Legalisation should lead to those currently in prison for cannabis possession being released, hopefully with their records wiped clean, immediately saving tax payers hundreds of thousands of dollars annually (at a rate of \$81,000 p.a. per inmate) now and into the future.
15. With estimated police and prison savings and increased revenue through taxation, rehabilitation centers can be built and instead of destroying lives through arrest and imprisonment, we can save lives through rehabilitation.

Sources

N.B. Due to time constraints these have not been put in order or itemised within the text above. Some of these sources may not have been explicitly outlined in our submission but formed part of our research and may be of interest to the CRC.

http://www.huffingtonpost.com/2014/01/14/marijuana-prohibition-racist_n_4590190.html?ncid=edlinkusaolp00000003

Global Commission on Drug Policy

1.3 percent of U.S. population was addicted to drugs in 1914. By 1890 there was a maximum of 0.46 percent of the United States was addicted to opiates, “thereafter the rate began a sustained decline.” In 1914, the addiction rate for opiates was ranged from 0.32 percent estimated from “statistical evidence upon which objective estimates can be based,” to 1.3 percent by government sources whose “authors manipulated or even fabricated data in order to sway public opinion and achieve political ends,” by applying estimates of more than a million drug addicts in the United States to the 1910 U.S. Census figure of a population of 91,641,195 people.

Source: Courtwright, David T. *Dark Paradise: A History of Opiate Addiction in America*. Harvard University Press: Cambridge, Massachusetts, 2001. p. 9. and the U.S. Government Decennial Census Information for 1910, <http://fisher.lib.virginia.edu/cgi-local/censusbin/census/cen.pl>.

Source: “Policy is not a Synonym for Justice,” by John L. Kane (U.S. District Court Judge for Colorado) *The New Prohibition: Voices of Dissent Challenge the Drug War*, Edited by Sheriff Bill Masters, St. Louis: Accurate Press, 2004, Chapter 5, p. 45.

1.3 percent of U.S. population is addicted to drugs today.

According to the Office of National Drug Control Policy (ONDCP) there were “3.6 million people who met diagnostic criteria for dependence on illegal drugs in 1999” [which would be 1.32 percent of the population of 272,690,813 in the U.S. that year].

Source: Robinson, Matthew B. and Renee G. Scherlen, *Lies, Damned Lies, and Drug War Statistics: A Critical Analysis of Claims Made by the Office of national Drug Control Policy*, State University of New York Press, 2007, p. 94. Chapter 5 Endnote 3: ONDCP (2000) President’s national drug control strategy, P-4.

Source: U.S. Census Bureau, “Historical National Population Estimates: July 1, 1900 to July 1, 1999,” <http://www.census.gov/popest/archives/1990s/popclockest.txt>.

Cole, Jack A. “*You Be the Judge: Comparing Relative Categories at the Beginning of the War on Drugs with those Same Categories today*” as presented at the 31st International Symposium on Economic Crime, Jesus College, Cambridge, England September 2013.

Portugal

http://www.cato.org/pubs/wtpapers/greenwald_whitepaper.pdf

Switzerland

<http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/ille-e/library-e/collin1-e.htm#1990-2000%20SUMMARY>

3rd Largest economy

<http://www.independent.co.uk/news/drugs-trade-the-third-largest-economy-1072489.html>

<http://guyanachronicle.com/at-turkeyen-lecture/>

Drug Policy Alliance Network

<http://www.drugpolicy.org/global/drugpolicyby/westerneurop/switzerland/>

<http://bermudasun.bm/Content/NEWS/Human-Interest/Article/Activists-campaign-for-medical-marijuana-referendum/24/896/65626>

<http://www.youtube.com/watch?v=1SGNR4cb7jc>

<http://www.royalgazette.com/article/20130916/NEWS/130919788>

http://www.youtube.com/watch?v=JZt8R3J45gQ&desktop_uri=%2Fwatch%3Fv%3DJZt8R3J45gQ&app=desktop

<http://www.youtube.com/watch?v=yI9Jnbuke9A>

<http://archive.org/details/CannabinoidSystemInNeuroprotection-RaphaelMechoulam>

<http://www.prweb.com/releases/cannabis/directory/prweb11495264.htm>

<http://www.medicaljane.com/2014/01/10/first-week-of-retail-sales-set-legal-cannabis-industry-in-motion/?vsmaid=1>

<http://www.royalgazette.com/article/20131112/NEWS/131119968>

http://bernews.com/2014/03/jamaica-looking-at-decriminalising-marijuana/?utm_medium=email&utm_campaign=2c239f95d4-RSS_EMAIL_CAMPAIGN&utm_source=Bernews+Morning+Edition&utm_term=0_0e23d2ce3e-2c239f95d4-30841917

<http://medicalmarijuana.procon.org/view.timeline.php?timelineID=000026>

http://www.huffingtonpost.com/molly-rowan-leach/restorative-justice-is-on_b_3612022.html

http://www.iirp.edu/16th-iirp-world-conference.php?utm_source=Come+to+Bethlehem+2013+Conference&utm_campaign=Recharge+++At+the+16th+IIRP+World+Conference&utm_medium=email