



Better to Ask Forgiveness Than Permission: Spain's Sub-national Approach to Drug Policy

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KEY POINTS

- Spain is an example of a country with innovative drug policies which, with the exception of cannabis social clubs, are little-discussed beyond its own borders.
- The Spanish approach to drug policy is best described as certain sub-national autonomous communities exercising their regional powers to pursue drug policy based on harm reduction principles and a rejection of the prohibitionist approach.
- Over the years certain autonomous communities in Spain have been able to push the boundaries of drug policy reform, at times in the face of opposition to the central Madrid-based government, or at times without its express approval; a sub-national approach that can be characterized as 'better to ask forgiveness than permission'.
- While not every autonomous community has taken an approach that deviates from national level policy, and not every innovative reform has been rejected by Madrid, communities like Catalonia, the Basque Country and Andalusia have engaged in processes of bottom up policy development.
- In addition to cannabis social clubs, other sub-national interventions include safe consumption spaces, Heroin-Assisted Treatment, take-home methadone, opioid substitution and syringe programmes in prison, mobile methadone clinics and drug checking.
- Policy development in Spain can only be understood within the context of complex multi-level political dynamics, including what can be seen as *decrim-lite* rather than true decriminalization and the more recent shift of cannabis social clubs from examples of sub-national innovation to a state of legal limbo.
- Unlike many parts of the world, discussion of regulated markets for recreational cannabis in Spain preceded that relating to medical cannabis, although medical users could access the drug through cannabis social clubs.
- At the international level Spain generally reserves comment on policy shifts in other nations and has been criticized by the International Narcotics Control Board for some innovative policies of its own.
- Despite being little-discussed, and sometimes being difficult to understand due to the complex political and legal landscape, lessons can be learned from Spain's subnational approach to drug policy reform, especially for countries like the U.S. who have a similar history of states pursuing reforms without the approval of the federal government.

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INTRODUCTION

In recent years, the international debate on drug policy reform has intensified, and with it has come a productive exchange of information between academics, activists and advocates on the diverse models and approaches in different countries. Portugal's decriminalization model is the subject of numerous reports and articles, the legalization of cannabis in a number of U.S. states and Uruguay is heavily studied. Heroin-Assisted Treatment (HAT) in Switzerland is often discussed, and the Czech Republic's progressive drug policy has been much heralded. On the outside looking in is Spain, a country with a curious mix of cannabis clubs, decriminalization of drug possession for personal use, innovative harm reduction policies, drug checking, and more. It also occupies an interesting geographical position as a transit hub for drugs entering Europe from the Americas and North Africa. Yet in mainstream drug policy discussions, little is known of the Spanish approach to drug policy, with the possible exception of cannabis clubs.

This policy brief intends to help change that, by shedding light on the Spanish approach. We will begin by describing what the Spanish approach is, before hypothesizing on why it is so much lesser known than its neighbour - Portugal. We will then look at the history of drug policy in Spain and how this approach developed, before analyzing some of the current drug policy challenges Spain faces. Finally, we will look at what impact Spanish drug policy has had on other countries, and how Spain is viewed both by other countries and by the United Nations' drug policy bodies.

The largely unexplored nature of Spanish drug policy by international experts is in many ways understandable. The approach is complicated, and not easy to put in a box like that of Portugal. Nevertheless, it is important to understand the innovative approaches undertaken by Spain. The political system of the country - with a central government and autonomous communities - has lessons for drug

policy reformers globally, particularly in places where local, state, or regional governments have broad decision-making power over issues like health. In particular, as we discuss, there are a lot of similarities between the Spanish and U.S. systems and how they have reformed their drug laws, with autonomous communities and states, respectively, taking the lead, often in the face of opposition from the central/federal government.

Certain autonomous communities in Spain have been able to push the boundaries of drug policy reform, at times in the face of opposition to the central Madrid-based government, or at times without its express approval. We characterize this sub-national approach as 'better to ask forgiveness than permission'.

Much of the work in this paper builds on a March 2015 Open Society Foundation report on drug policy reform in Catalonia, written by our colleagues Oscar Pares and Jose Carlos Bouso.¹ This paper intends to complement and update that work, which is well worth reading in conjunction with this.

As for Spain, it may not be able to export its drug policy approach as easily as it exports flamenco, sangria or tortilla, but that does not mean that it does not hold valuable lessons for reform advocates around the world.

SPAIN'S SUB-NATIONAL APPROACH

The Spanish approach to drug policy is best described as certain autonomous communities exercising their regional powers (powers that are discussed in detail below) to pursue an innovative drug policy based on harm reduction principles and a rejection of a prohibitionist approach. It is also characterized by some autonomous communities taking action at the sub-national level on drug policy not necessarily with the express approval of the central Madrid government, and therefore, at times, operating in a legal grey area.² The attitude of 'better to ask forgiveness than

permission' is often a part of the Spanish sub-national approach, whereby public officials and advocates feel emboldened to pursue a legally risky policy that may later be blocked by the Madrid government or the courts, rather than ask permission and be rejected up front.

Not every autonomous community has taken the approach of pursuing a separate drug policy from the national one, and not every innovative reform has been rejected by Madrid, but this dynamic has appeared in communities like Catalonia, the Basque Country, Andalusia, and elsewhere, and on a number of different drug policy issues.

The most famous example is cannabis social clubs (CSC)³, which exploit legal loopholes to allow the use and distribution of cannabis in certain circumstances, despite its prohibition by the central government.

Other interesting interventions have occurred at the sub-national level. There are many safe consumption spaces (SCS) in autonomous communities, starting in Madrid but proliferating in communities like Catalonia.⁴ Such spaces provide drug users with a place to consume drugs with sterile equipment and under medical supervision. They have demonstrated their ability to reduce overdose deaths.⁵ Users can consume heroin and are given sterile syringes and cooking equipment, and there are also spaces to smoke crack with pipes provided (something not provided by every SCS around the world). Unlike other reforms, the central government has supported this approach.

Andalusia and Catalonia have performed trials for Heroin-Assisted Treatment, using injectable heroin in Andalusia⁶, and using orally-administered heroin in Catalonia.⁷ In other parts of Spain there is a take-home model for methadone, where heroin users are encouraged to take methadone home with them, rather than consume on the same property as the methadone is dispensed, as is the case in many countries that allow methadone.⁸ Spain

is also one of only twenty countries that allow opioid substitution treatments like methadone for its prison population, and it is only one of seven countries that allow syringe programmes in prison.⁹ There are also mobile methadone clinics and outpatient substance use programs, accessible without primary care referral.¹⁰

Autonomous communities have also pioneered risk reduction and drug checking for drug users. Energy Control - founded in Barcelona in 1997 and now providing services in Catalonia, Madrid, Andalucía and the Balearic Islands - is an NGO that allows individuals to send samples of drugs to their organization for the purposes of testing them and reporting on their content to the individual who sent the sample.¹¹ Ai Laket!, Hegoak and Consumo ConCiencia - based in the Basque Region, Navarra and Zaragoza, respectively - perform similar work.¹²

To be clear, not all these innovative approaches to drug policy have been shunned by the central government; on the contrary, some have been endorsed, and even defended at the United Nations, as this brief will explain. Nonetheless, much of Spanish drug policy reform happens at the sub-national level first, and is often done without the express support of the central government, certainly not at the beginning of the reform process and often not at all.

These innovative approaches beg the question: why is the case of Spain so unknown beyond Spanish borders, especially when such interesting drug policy developments are happening here? Leaving aside considerations such as language or the relatively recent democratization and internationalization of Spanish society (Spain was under a dictatorship till the late 1970s), the lack of awareness is mainly due to two reasons.

The first is that although the Spanish approach to decriminalization could be compared to the much-heralded Portuguese one (although Portugal's legal change was coupled with the full package of support services), it is an

approach that can be described as *decriminalite*. It is true that drug use and possession for personal use do not generate criminal penalties. Indeed, this has been the case for decades - even during the Franco dictatorship. Consequently, Spain never experienced a process of decriminalization coming from a political decision: drug use and possession of small amounts have always been free of criminal penalties, and therefore Spain has a policy of decriminalization in the strict sense of the word. However, since 1992, drug use and possession in public spaces are met with severe administrative sanctions, which have hardened since 2015, making consumption and transportation in public spaces risky. Therefore, it is a watered-down version of decriminalization, or *decriminal-lite*.

The second reason why the Spanish case is so unknown is that, as referenced above, many of the innovations in the field of drug policy have occurred against the will or without the support of the central government, not because of it, and often only in a sub-national context, with a few regions leading the way, following concerted efforts by local or civil society actors. While Portugal's decriminalization was a top-down process led by the central government, in Spain the autonomous communities have led the way in innovative drug policy. Catalonia and the Basque Country are the clearest examples of this. Consequently, many of the developments take place at the sub-national level where the autonomous communities are pushing the boundaries regarding what is legal and acceptable by the central government in Madrid, and under the Constitution. The bottom-up process involving local and/or regional authorities and reform-minded civil society actors might also be a reason why the reform process is relatively unknown and difficult to follow for people outside Spain.

This is not to say that what has happened in Spain at the sub-national level is unique. Rather, bottom-up development has happened in other European countries and the U.S.

Many harm reduction services in Europe were initially pioneered in cities, despite the central government not backing them.¹³ The same is true for the Dutch coffee-shop model. Many of these policies have later been endorsed by national governments. Syringe programmes have existed in German cities since 1984, but were only legalized in 1992. In the U.S., medical cannabis was first legalized in 1996 in California, but it took till 2014 for Congress to vote to allow states to implement their medical cannabis laws without federal interference.¹⁴

The most pioneering drug policy developments have to be contextualized not only by this legal limbo but also within the historical power tension between these two levels of government. It is no surprise that the autonomous communities that have pushed the envelope the most on drug policy are the regions that are the most independent-minded. In other words, the fact that the Basque Region and Catalonia challenge the government on drug policy must be viewed through the lens of the near-constant battles between the central government and these autonomous communities on a variety of issues. See for example, the legal battle over the independence referendum in Catalonia in October 2017.¹⁵ This also explains why the approach has not been 'exported' in the same way the Portugal model has been, with the exception of cannabis clubs - discussed below. Spain's international representatives are part of the central government and are not always keen to extol the virtues of what the autonomous communities are doing.

THE POLITICS OF DRUGS IN SPAIN

Understanding drug policy in Spain necessarily involves understanding the Spanish political system and which issues concern each level of government. Spain is a decentralized state, where governments of different sub-national entities (officially called autonomous communities) have gained increasing autonomy and decision-making capacities

since the transition to democracy in late 1970s. This is also the case for several drug-related policy areas, notably, public health and social welfare issues.¹⁶

However, the central government retains the core decision-making capacity on criminal legislation, the justice system and public security (notwithstanding the establishment of regional police forces). This includes the capacity to reform the criminal code, which deals with controlled substance activities. Also, legislation relating to pharmaceutical products is a competency of the central government (including those pertaining to narcotic and psychotropic substances).¹⁷

This distribution of competences means that drug policy issues can be the object of agreement or tension depending on the ideological sentiment of each level of government, and their position with respect to the different subjects. Also, the issue of drugs can be seen through the lens of a more general friction between the central and regional governments for the exercise of specific competences.

Traditionally, the two main political parties (the Popular Party and the Socialist Party) have highlighted their consensus on drug policy at the national level. It is true that both parties have maintained a similar policy line, at least from 1988 onwards, and nuances between their drug policies have been minimal; both have encouraged or tolerated drug consumption rooms, opioid substitution treatments and syringe exchange programmes.¹⁸ They also have seemed to agree not to open the Pandora's box of cannabis regulation.

Criticism and demand for reform coming from civil society have been uneven. Of course, civil society exists in many forms and, as is the case in many other contexts, in Spain we find official and unofficial, prohibitionist and reform-minded civil society organizations. The more established treatment organizations

have been traditionally reluctant to promote drug policy reform and are often not critical of the central government strategy. This could be partly due to the fact that most organizations working in prevention and harm reduction are funded by the government and have been cautious in challenging 'the hand that feeds' them. However, many other reform-minded organizations, as discussed below, have played a crucial role in promoting policy changes and much of drug policy reform in Spain is also due to the participation of an active civil society.

This political and social consensus is not so evident anymore, and civil society is increasingly critical and demanding change. There has been a breakdown of the two-party system in Spain (which began with the civil movement known as the 'indignants' and 15-M). There are now new political groups such as Podemos and Ciudadanos, which have millions of voters and take more liberal positions on drug use and proposals for the regulation of drug markets. For example, Podemos supports legalizing cannabis and Ciudadanos has proposed holding a debate in Congress on medical cannabis. Consequently, the two traditional parties are under more scrutiny and their 'drug policy consensus' is being questioned for the first time since the eighties.

In power since 2011, the conservative government (Partido Popular) is led by President Mariano Rajoy, and has Dr Francisco Babín at the head of the PNSD (National Plan on Drugs, the central government drug policy body). Babín has been extremely reluctant to introduce any kind of reform and has frequently balked at any type of discussion regarding different policy options. Moreover, the judiciary, including the Constitutional Court and the Supreme Court (the highest of the judicial power hierarchy), has modified their positions regarding cannabis social clubs, now taking more restrictive views. Because the central government retains the power of foreign policy and representation at the

international drug control bodies, it is easy to infer that the drug policy narrative that Spanish delegates bring with them is always the one put forward by the central government and the PNSD.

Current debates on drug policy reform are taking place mainly in the context of the legislative assemblies, both in the autonomous parliaments and in the national Congress in Madrid. The government, through the PNSD chaired by Dr. Babín, has permanently ignored these debates, accusing some in civil society of being a ‘cannabis lobby’ funded by obscure cannabis industry forces.¹⁹ The government has continued to essentially fund and support initiatives, organizations and events that solely correspond to a prohibitionist political vision.²⁰ There has been a denial of the scientific evidence on the therapeutic potential of cannabis, on one side, and of the potential benefits of political reform, on the other (whether it is in the form of a regulatory framework for cannabis associations or a more comprehensive regulation of cannabis markets).

THE EVOLUTION OF THE SUB-NATIONAL APPROACH

Drug issues acquired greater importance in the public sphere during the 1980s, mostly due to the social alarm generated by the increase in heroin use and drug-related crime.²¹ Despite its unique domestic approach to drug use, Spanish drug policies have not avoided the homogenization that has occurred since the beginning of the international drug control system, especially with the signing of the 1961 UN Single Convention on Narcotic Drugs.

Spain is a state party to the three international drug control conventions,²² in whose negotiations it took part, and it ratified the conventions shortly after they were definitively adopted. The domestic structure on drugs began to take shape at the end of the 1960s²³, when the laws required to comply with the international obligations of the 1961 and 1971

conventions were passed: the Law of Narcotics 17/1967 and the Royal Decree 2829/1977 on the Control of Psychotropics²⁴.

However, the biggest step for the creation of the institutional infrastructure on drugs took place in 1984, when the socialist government led by Felipe González accepted a Congressional proposal to establish the National Plan on Drugs.²⁵ Formally established in 1985, the PNSD was conceived as an entity based both in the central government administration and in the autonomous communities, and under the control of the Ministry of Health or the Ministry of the Interior, depending on the approach prevailing at any given moment.²⁶

Since then, the government delegation for the PNSD has coordinated and led all areas of drug policy in Spain, although, given its integration in the Ministry of Health, it focuses mainly on demand reduction policies, prevention, treatment, rehabilitation and harm reduction programmes. Supply reduction programmes correspond to the ‘war on drugs’ operational bodies, mainly under the Ministry of the Interior, although agencies under other ministries also participate.²⁷

The implementation of the PNSD marked the beginning of a coordinated national strategy for the intervention in social and health issues related to drug use, which until then had been scarce and dispersed.²⁸ The scenario in which it took shape was characterized by an increase in drug trafficking - particularly heroin and cocaine - the lack of reliable statistical data on drug use and drug users, and the centrality of heroin as the substance generating the greatest health and social impact, strongly linked to an increase in injection drug use and HIV rates. In this way, the approach to drugs adopted at this first stage has been described as heroin-centric, a trait that would persist for a long time, and would dominate the way Spanish society and its political class think and respond to drug policy issues.²⁹

With the evolution of drug consumption patterns in Spain, which fundamentally implied a decrease in intravenous heroin consumption and an expansion of synthetic drug use in nightlife contexts, policies focused on demand control also evolved. Within this evolution, a greater transfer of competencies from the central government to the autonomous communities has been an important trend. This meant that drug policy interventions varied markedly from one community to another.³⁰ Article 148 of the Spanish Constitution establishes that the autonomous communities may assume powers in matters of health, hygiene and social assistance, within which prevention, treatment and reintegration of drug users interventions fall.³¹ The power of the central government (Ministry of Health) was then limited to prevention campaigns, health advertising or measures to be applied in the educational and workplace fields.

DECRIM-LITE AND THE CONTRADICTIONS OF SPANISH DRUG POLICY

Spanish criminal legislation bans a wide range of behaviors related to illicit drug use, but neither the mere consumption nor the possession of drugs for personal use constitute a criminal offense. In this sense, the Spanish legislation stands out from the obligation contained in Article 3.2 of the 1988 UN Convention, with Spain making use of a clause in the conventions that allows a certain level of discretion for States 'subject to its constitutional principles and the basic concepts of its legal system' when it comes to the criminalization of possession, purchase or cultivation of controlled substances for personal consumption.³² In Spain there has never been a process of decriminalization of personal use because, as noted, it has never been criminalized, not even during the period of Franco dictatorship.

The reform of the penal code introduced in 1971 did not make clear whether consumption and possession for personal consumption were

penalized. In 1975, the Supreme Court tackled the issue, concluding that only possession intended for trafficking was criminally punishable. Given that this situation was criticized by experts for not respecting the principles of legality and legal security, the Organic Law 8/1983, which reformed the Criminal Code, clearly did not make possession for personal use a crime. The newly elected socialist government was widely criticized for this law by both the opposition and the international community. A new reform of the criminal code in 1988 was formulated following the drafts of the 1988 UN Convention against illicit trafficking, and toughened penalties and created new sentencing enhancements. But consumption and possession for personal consumption remained free of criminal sanctions.³³

This liberal approach at the criminal level contrasts with an administrative regulation structure that is applied often and at high economic cost to the individual caught, meaning that Spain's decriminalization is not as clear-cut as Portugal's, with Spain's approach being more *decrim-lite* than true drug decriminalization. The approval in the early nineties of Law 1/1992 on Citizen Security established harsh administrative infractions for drug use taking place in public spaces such as streets, squares, parks or bars, as well as possession (in these spaces), even if it was not intended for trafficking, as long as they do not constitute a criminal offense. These actions were punished with fines between 300 and 30,000 euros and the seizure of drugs and drug paraphernalia. However, sanctioned individuals could opt to join detoxification treatment to get their fines suspended. It is worth noting again that consumption itself has never been considered a breach of law under Spanish legislation, unless it is carried out in public places.³⁴

The 1992 law was not specifically a drug law, or rather not *only* a drug law. It regulates several aspects related to public security and was mainly intended to deal with the so-called

kale borroka - a term commonly used to refer to street violence carried out by militants or sympathizers of the nationalist left and ETA (the Basque separatist group), who were mostly youth from the Basque Country and Navarra. This law had two important consequences for the future emergence of the cannabis club model. First, it made public spaces unpalatable for cannabis users, compelling them to use in private spaces. Second, it triggered the first protests against what was perceived as interference in the lives of consumers. This then became the start of the cannabis users' social movement, culminating in cannabis clubs.³⁵

The administrative sanctions became even more severe when in 2015 the conservative government of Mariano Rajoy modified the 1992 law through the approval of a law on the 'Protection of Citizen Security'. Popularly known as the 'Gag Law' (Ley Mordaza) due to the regressive approach it applies in terms of exercising fundamental rights and freedoms, the new law also introduces important modifications to administrative regulations regarding illicit drugs, making them significantly stricter. Among the measures implying a more repressive approach were the doubling of the minimum fine for drug use or possession in public spaces (from 300 to 601 euros), the removal of the possibility of substituting the fine for detoxification treatment (except for minors) and a fine for cultivation of cannabis for personal use 'in places visible to the public' (between 601 and 30,000 euros).³⁶

Some studies have shown the close connection between economic crises in Spain and an increase in sanctions, done in the interests of greater social control of the most vulnerable populations (those that consume the most in public space) and for a greater need to collect funds from the public to cover a shortfall in government funds in tough economic times.³⁷

In 2015, fines related to drugs and driving were also increased. Spain is a clear example of how drug policies can be hardened by something

tangential, such as traffic laws. The traffic law stipulates fines of 1,000 euros and a cost of 6 points - 12 merits a driving ban - on a driving license if a driver tests positive in a drug test (in the case of many drugs but especially cannabis, obtaining a positive result does not scientifically mean the person is driving under the effects of the substance).³⁸

The harsh nature of the fines has its parallel in a strict approach to drug trafficking. Sentences for selling drugs range from six months to eighteen years, with tougher sentences reserved for situations involving organized crime, violence and death.³⁹ Spain has the highest number of female prisoners in the EU, most of who are incarcerated for drug offenses.⁴⁰ Spain's general prison population has also increased by 25% since 2000.⁴¹ According to a 2016 report, Spain has 32% more prisoners than the average European country.⁴² Spain's prison population may soon worsen, as the current government is pushing a law to expand the number of crimes that could be given a life sentence.⁴³ Drug cases are not part of this recent debate but history shows us that when politicians demagogue about crime, drug offenses are never far from the agenda.

Sale of drugs effectively constitutes a criminal offense according to the Spanish Criminal Code. Nevertheless, and pursuant to the Supreme Court jurisprudence, in daily police and judicial practice the purchase and sale of small quantities of drugs intended for shared consumption are free from criminal sanctions. This assumption provided the legal protection for CSCs to exist and spread.⁴⁴

This so-called 'shared consumption doctrine' started to be developed by the Supreme Court at the early 1980s. It derives from the period of high heroin consumption rates and the related health and social crisis that hit Spain at that moment, which overwhelmed the justice system with heroin-related cases involving, for example, consumers' mothers or consumers themselves, for the purchase of small amounts

intended to be distributed among their peers or family members. Under the Spanish Criminal Code, these people had to be prosecuted for a drug trafficking offense, which resulted in a large number of people disproportionality sentenced to several years in prison. As a result, the Supreme Court started to apply this doctrine according to which no criminal offense was applied to these individuals as long as a set of conditions were met: there must be a closed, concrete group of drug users, none of the individuals involved can make a profit from the distribution, and drugs should be distributed for immediate consumption.⁴⁵

CANNABIS SOCIAL CLUBS: FROM SUB-NATIONAL INNOVATION TO LEGAL LIMBO

As mentioned above, for years the debate around drug policy in Spain was focused on heroin-related issues and harm reduction for injection drug users, but recently cannabis has virtually monopolized drug policy debates. At the beginning, cannabis as a political issue emerged due to the rapid expansion of cannabis clubs from mid-2000: to discuss cannabis was to discuss clubs. Therefore, the first discussions on regulating cannabis in Spain were made in relation to recreational use, and not medical - the opposite of what has happened in most other countries. Therapeutic users first found a space where they could obtain cannabis and learn about its medical uses through CSCs. But attempts to regulate medical cannabis outside of the club setting would not come until later, in particular thanks to the emergence of well-organized groups of therapeutic users of cannabis.

Political debates around cannabis (medical, CSC and comprehensive cannabis regulation) have since converged, not necessarily in a coordinated manner, from activist and academic domains, and led to the drafting and adoption of comprehensive regulatory proposals for cannabis, such as the 5 Pillars of Responsible Regulation,⁴⁶ or the GEPCA regulation proposal.⁴⁷ Some of these initiatives have succeeded in opening a path

to parliamentary debates, and in early 2018 a wide range of discussions at the autonomous and national Parliaments were taking place. At the same time, there is intense judicial activity that is starting to restrict cannabis club operations, notably at the spheres of the Supreme Court and Constitutional Court.

CANNABIS CLUBS AND GOVERNMENT TENSIONS

The term CSC encompasses in practice different realities in the Spanish context, even though they all share the fact of being legally constituted registered, non-profit associations of adult cannabis consumers that collectively cultivate cannabis plants to meet their personal needs.⁴⁸ CSCs are an alternative conceived by civil society to respond to current drug policies that persecute cannabis users and growers, although in the case of Spain drug use is not criminally punished and is only banned in public spaces.⁴⁹ Thus, users organize to provide themselves with cannabis without resorting to the underground market, through self-management of the complete cycle of production and distribution. These associations found legal guidance via a report that the government of Andalusia requested from a group of jurists, known as the Muñoz and Soto Report.⁵⁰ Published in 2001, this report applied the Supreme Court's jurisprudence on shared consumption to cannabis dispensation, concluding that, if a set of requirements were met, there existed margin to use and dispense cannabis without breaking the law. As mentioned above, that doctrine refers to a closed circuit of specific and previous cannabis users, none of the participants can make profit, and the amounts distributed must be for immediate consumption.

Since the end of the 2000s, in many parts of Spain, a significant portion of cannabis users have chosen this type of association as their preferred way to obtain a regular supply of cannabis.⁵¹ Although therapeutic users have also been followers of the CSC model, it is

important to emphasize that this is a model based on recreational consumption, and not on the therapeutic one. The particular development and features of the CSC throughout different autonomous communities and the varying open-mindedness of political actors with decision-making capacity has led to uneven responses at the different levels of government, as well as different judicial decisions depending on the level of the court and the period observed. What constitutes CSC public policy is the reaction of the authorities to their existence, a reaction that has fluctuated between repression, tolerance and proposals of regulation, depending on the moment and the level of government and courts considered.

But even before this, it is important to highlight the role played by the courts that developed the jurisprudence that legitimate and consolidate a sort of legal grey area that allow CSCs to prosper. During the 2000s, most clubs that were raided by law enforcement ended up being acquitted by the courts or their cases were shelved. The body of sentences that the provincial courts issued during this period established a sort of 'minor jurisprudence' because the vast majority held that CSCs did not violate the criminal code provided that certain conditions occur -notably the certainty that there is no risk of distribution of cannabis to third parties other than those who form the association and control the harvest.⁵² On the basis of this jurisprudence, CSCs began to flourish throughout the country, and estimations suggest that by the mid-2010s they came to reach more than a thousand all over Spain.⁵³ Moreover, these judicial decisions also provided the basis for regional and municipal authorities to develop regulation proposals, at least until the doctrine of the Supreme Court and the Constitutional Court began to go in another direction - as discussed below.

The political management of CSCs and the attempts at regulation at the regional level have been another element of friction

between the autonomous communities and the central government in Madrid. The tension has fluctuated between two opposite discourses: the anti-legalization *pro-status quo* approach defended by the PNSD, and the pro-regulation initiatives coming from civil society, including cannabis activism linked to CSCs and high-level groups of researchers, lawyers and academics, whose voices have been heard by certain regional and local political representatives.

Moreover, tensions emanate from the fact that CSC functioning and operations fall into the scope of power of the three levels of government. The central government retains the ability to reform the criminal code, which deals with cultivation, processing or transporting controlled substances, and even possession for certain purposes. Autonomous communities enjoy decision-making on public health and social assistance, under which a great part of drug-related interventions (including those concerning CSC) are framed. Municipal authorities are responsible for issuing the relevant permissions for opening CSC premises, and regulate the conditions for functioning in terms of location, hygiene, or opening and closing hours, among others. Probably due to the fact that lower levels of administration are the ones dealing with the daily challenges of CSC existence and lack of regulation, regional and municipal authorities have been more open to exploring a path of regulation for these spaces.

These tensions became very clear in 2013 when, at the request of the PNSD, the Attorney General's office issued the prosecution instruction 2/2013 that alerted law enforcement about the proliferation of CSCs and the need to prosecute and close them.⁵⁴ Also, this instruction ordered officials to prosecute CSCs for the crime of unlawful association, a criminal offense that must be prosecuted in first instance by the Provincial Court, and therefore in second instance by the Supreme Court. This way, it was possible to take the CSCs before the Supreme Court,

whose magistrates are in part appointed by the central government and the parliament, and as such they are usually more inclined to side with the government and those of the Attorney General's office. However, the instruction was received in different ways depending on the autonomous community and the priorities of the police in each region. Dozens of CSCs were closed and their managers sent to court.⁵⁵ Several CSC cases were appealed to the Supreme Court, which in 2015 issued a series of judgments (on the cases of Ebers, Three Monkeys and Pannagh) that reinterpreted the assumptions of shared consumption and cultivation.⁵⁶ The so-called 'Ebers doctrine' derived from the judgment of this case reflected the Supreme Court shift regarding CSCs. The decision states that cannabis clubs cannot be considered a form of self-consumption and their activities are illegal: any attempt to supply cannabis for non-authorized consumption that goes beyond production for individual use is a crime, whether for profit or not. The conclusion of the Supreme Court is that the activity of the association creates a real and tangible risk of distribution to and use by third parties.⁵⁷

However, while these jurisprudence changes were taking place, autonomous community governments took advantage of the legal grey area. Three autonomous communities have gone through serious parliamentary debates on the topic of CSC, with differences in procedure and results. The Basque Country, Catalonia and Navarra are regions with a long history of self-government and pioneers in the regulation of issues that had hitherto remained in the hands of the central government. Moreover, the Basque Country and Catalonia are the regions with the higher number of cannabis associations and have been for long periods governed by nationalist political forces (Nationalist Basque Party and the Democratic Convergence of Catalonia). Their Parliaments have publicly been favorable to CSC regulation and have looked for ways to regulate cannabis.

Nevertheless, the central government and its drug policy body PNSD are openly against the regulation of CSCs and have taken steps in the opposite direction, appealing these regional laws to the Constitutional Court for 'competence conflict', and pushing the Supreme Court to confirm their illegality.⁵⁸

The Basque Country was the first region to use the parliamentary approach to tackle the CSC phenomenon. For more than two years (2012-2014) the Parliament convened a committee, where all political groups were represented and where representatives listened to the opinion of around sixty experts on the issue from the legal, health, judicial, political fields, aiming to agree on a report for the government to assess a potential regulation of CSC activities. The report concluded that a regulatory framework offering guarantees and legal security for cannabis social clubs was necessary.⁵⁹ The Basque government took this recommendation into account, and included an Article (83) in the 2016 Regional Law on Addictions urging the adoption of regulation measures for CSC.⁶⁰ The central government appealed this specific epigraph to the Constitutional Court, which issued its decision in March 2018. The Court concluded that the article in question is in accordance with the Constitution since it does not regulate cannabis clubs and simply states that CSCs must collaborate with health authorities. Interpreted as such, the Basque law is valid as it does not infringe on the competences of the central government (such as criminal law, medicines of public safety).⁶¹

The process in the Basque country lasted for many years, while the course of action in Navarra started later but ended earlier. In Navarra, cannabis activists drove the process and involved a wide spectrum of Navarrese civil society that ended up taking the form of a proposition for a "Popular Legal Initiative" intended to regulate CSC. A political party was created (*Representación Canábica Navarra - RCN*) and it collected more than 10,000

signatures in support of the initiative. After being considered admissible and debated, in November 2014 the Navarrese Parliament approved a regional law regulating CSC - with the support and votes of all political forces, except the Popular Party.⁶² For the first time a regional law regulating cannabis association activities was approved.⁶³ Nevertheless, the joy among cannabis activists was moderate as the law lacked crucial elements for a comprehensive regulation of CSC activities - such as cannabis cultivation or transportation - even if these were not included because they fall into the sphere of central government powers. Soon after, in March 2015, the central government's lawyer filed an appeal of unconstitutionality against the totality of the regional law for reasons of conflict of competences. The law was therefore suspended awaiting the decision of the Constitutional Court, which finally arrived in December 2017. The decision said that the Navarrese parliament had exceeded their scope of competencies and declared the Regional Law 24/2014 unconstitutional and blocked.⁶⁴

This sets a very negative precedent for what may happen in the case of the Catalan law regulating cannabis users' associations, still pending the approval of the Constitutional Court. In this case, the central government of Spain agreed to make an unconstitutionality appeal to this law based on 'violation of central government competencies' and in December 2017 the Constitutional Court agreed to hear the case.⁶⁵ In 2012, the Catalan Parliament opened a space for political discussion of cannabis that involved a wide set of actors, including government bodies involved in the CSC phenomenon, such as justice, local government police officials, and the Spanish state attorney, as well as CSC representatives from the two Catalan cannabis associations (CatFAC and FEDCAC).⁶⁶ This process culminated almost three years later, in 2015, with the adoption of the Parliamentary Resolution SLT/32/2015 that provides public health guidelines and conditions for the exercise of

their activity for users' associations and clubs, as well as for Catalan city councils.⁶⁷ Despite the low legal profile of the document (it is a non-binding resolution), this was of high symbolic importance because for the first time CSCs were recognized as legitimate entities that should be given a place as interlocutors in the path towards regulation. The State lawyer appealed the Resolution and the Supreme Court of Justice of Catalonia (TSJC) finally suspended it in 2017 alleging procedural issues.

When this happened, a parallel process was already quite far advanced. The popular legislative initiative called 'La Rosa Verda' aimed to regulate cannabis users associations⁶⁸. Involving multiple groups of cannabis activists, lawyers and drug policy advocates, and under the umbrella of the Civil Observatory on Drug Policy the initiative gained 56,000 signatures of support (only in Catalonia).⁶⁹ After a healthy debate and the testimony of national and international experts, the Catalan Parliament passed the law in June 2017, with the opposition of the Popular Party and one independent politician.⁷⁰ Although mainly conceived for recreational use, the text also cited medical use as one of the reasons why individuals may decide to join a cannabis club.

The central government of Spain agreed to make an unconstitutionality appeal to this law based on 'infracton of central government competencies' and in December 2017 the Constitutional Court agreed to hear the case, suspending the law. During the 4 months the law was in force, it was the first and only law throughout Europe regulating the cultivation and transportation of recreational and medical cannabis.⁷¹ The decision of the Constitutional Court in Navarra leaves little room for optimism. But the processes at the regional level have had positive consequences - a sort of domino effect - because since then, the vast majority of autonomous parliaments have approved Non-Legislative Proposals (PNL) to study the issue of cannabis regulation.⁷²

Therefore, two basic principles have been established by Spain's highest courts regarding CSCs: their activity is considered criminal and the regional parliaments do not have the power (or competency) to regulate them.⁷³

At this point in time, the crucial question is if the legal grey area that allowed CSCs to emerge and regional government to pass regulatory proposals has now been eliminated to the extent that CSCs are now clearly illegal, or is there still room for manoeuvre? According to legal experts, any CSC that works similarly to those that have been judged could be considered illegal. However, their activities may not be considered criminal if they differ from those cases judged.⁷⁴ The saving grace is that despite these decisions, closing CSCs has not been a priority for law enforcement. Also, despite the judgments of the Constitutional and Supreme Courts, some lower courts continue to have a more liberal approach and have acquitted cannabis associations after these decisions, which seems to leave some wiggle room for CSC to operate.⁷⁵ However, this is more likely to happen in cases involving significantly different associations and of smaller volume than those judged by the highest courts.

Despite these recent developments, the judicial path for clubs appears to be fruitless, which means that clubs can only continue to operate with a relative legal certainty if the penal code is changed in relation to cannabis. This must be done by the central parliament in Madrid and a majority is needed. Thus, the political path seems now the only way to go.

MEDICAL CANNABIS - A LATE ARRIVAL MARKING ITS TERRITORY

As mentioned above, recreational cannabis legalization has come before any discussion on medical cannabis, although medical users could use CSCs to obtain cannabis. This has changed over the years with a separate push for medical cannabis. Several groups played an

important role within this process, particularly the Spanish Medical Cannabis Observatory (OECM)⁷⁶ and grassroots community-based projects such as the Patients Union for Cannabis Regulation (UPRC), an association that emerged from Cannabmed,⁷⁷ a conference on medical cannabis, and was incubated under the umbrella of the ICEERS Foundation.⁷⁸

Despite the normalization of cannabis use in Spain, and the fact that many countries where cannabis use is less tolerated socially have implemented their own medical cannabis programmes -such as Canada and the United States - so far there has not been a medical cannabis programme and not even a clear political proposal regarding medical uses in Spain. Spanish law controlling cannabis (Law 17/1967) states that 'authorized therapeutic, scientific and educational uses are in accordance' with its provisions. In this sense, what seems to be missing is not a change in the law, but rather social pressure, and political determination.

The OECM has worked with political representatives and has pushed for the introduction of legal proposals in Congress. In February 2017 the Observatory joined the parliamentary group of Ciudadanos in the presentation of a non-legislative proposal (NLP) (Proposición No de Ley, PNL) to urge the government to carry out the appropriate legal modifications in order to 'regulate and facilitate access to therapeutic treatments with cannabis and its derivatives under strict instruction and medical supervision', including cultivation, points of sale, and a system for evaluating the public health impacts, especially the quality of life of patients.⁷⁹

The outcome of this initiative was more modest however, and the final agreement was to create a subcommittee within the Congressional Health Commission that will discuss medical cannabis regulation.⁸⁰ This was approved with the votes of PP, PSOE, Unidos-Podemos and Ciudadanos.⁸¹ In principle, it seemed to be good news that the main parties with

parliamentary representation have agreed on this point regarding medicinal cannabis. A year later, however, the subcommittee had not yet started its work. Critical voices began to appear - for example, from Podemos representative Mae de la Concha - who criticized the delay in the organization of the subcommittee and claimed that an NLP 'is a pie in the sky' and that subcommittees are created 'to try not to talk about certain topics'.⁸² Other voices have questioned the usefulness of opening a debate on medical cannabis in the Health Commission, when it seemed more appropriate to join forces to initiate a general debate on cannabis regulation in the Joint Congress-Senate Commission for the Study of the Drug Problem. Again, a lack of coordination among activist groups and certain rush to be the protagonist from some politicians may have played a role in how things unfolded.

Despite the pushback from the central government on medical cannabis, it is worth noting that in 2017, the Spanish Agency of Medicines and Health Products (AEMPS) granted a license to a Spanish pharmaceutical business to export medical cannabis, despite its illegality at home.⁸³ The irony has not been lost on medical cannabis supporters.

MEDICAL CANNABIS DEVELOPMENTS IN CATALONIA

The political work of the UPRC has focused on the Catalan context, and this has been mainly done through the interaction with local and regional authorities. This work does not fall on deaf ears, because the work on therapeutic cannabis in Catalonia began two decades ago, when in 2000 the Catalan association of women affected by breast cancer (Agatha Group) promoted a debate on this issue and one year after the Catalan Parliament passed a non-legislative proposal, signed by all parliamentary groups, which urged the central government in Madrid 'to take the necessary steps to authorize the therapeutic use of the cannabis' (this never happened).⁸⁴ Within this

context, in March 2001 the Department of Health published a bulletin called *Therapeutic use of cannabis and its derivatives* produced by the Catalan Institute of Pharmacology.⁸⁵

Despite being obsolete because of contemporary scientific evidence, this is a valuable testimony of the 'pre-history' of this discussion in Catalonia, which continued the following years with the proposal of a pilot programme for the dispensation of cannabis (to be imported from the Netherlands) into Catalan pharmacies by Rafael Manzanera, then General Director of Health Resources of the Catalan Health Department. At that moment, 600 pharmacies participating in preventive methadone dispensing programs offered to be part of this plan.⁸⁶ The plan suffered several modifications and delays, due to bureaucratic obstacles and the need of authorization from the Spanish Agency of Medicines and Health Products (AEMPS). In 2005 the Catalan Health Minister Marina Geli presented a new pilot programme, this time not conceived to include herbal cannabis but an industrial derivative, Sativex, finally authorized by the AEMPS in 2010 for spasticity associated with multiple sclerosis.

At this point, the initiatives on medicinal cannabis in the Catalan context met the debate (different but much related) about the regulation of users' associations. At the time the Department of Health initiated the regulatory process for cannabis users' associations in 2012 their number reached more than 450. According to data from CSCs federations, approximately 6% of their members are 'therapeutic users'. Considering these entities have between 500 and 2,000 associated members, it can be inferred that CSCs had an important portion of the population using cannabis for therapeutic reasons, a number to which the significant amount of self-cultivating therapeutic users must be added.⁸⁷

With a burgeoning civil society movement in Catalonia, the future looks bright for medical

cannabis in the region. At the national level, the uptick in interest from parties like Ciudadanos is another positive and a sign that medical cannabis is becoming an issue in its own right, separate from the CSC debate. As always, there are legal and political obstacles to navigate, and time will tell if Spain will go in the direction of some other Western countries and embrace medical cannabis.

SPAIN'S SUB-NATIONAL APPROACH AND THE INTERNATIONAL COMMUNITY - PARALLELS AND INFLUENCES

As established, Spain's drug policy approach is not well-known outside the country. Nonetheless, it is intriguing to see firstly how Spain has reacted to other countries' reforms and how other countries view Spain.

Although Spanish civil society organizations and research centres in the field of drug policy are closely monitoring the evolution of the processes of legalization of recreational cannabis use at the national (in Uruguay) and sub-state levels (several states in the USA), the position of the Spanish government is that there is no intention to explore similar paths.⁸⁸

The Spanish political position is that domestically the production and distribution of cannabis will not be legalized but rather, according to current domestic drug legislation, it will continue to be considered a crime (or, depending on the case, an administrative infraction) and, therefore, will be prosecutable. However, the Spanish government affirms that it respects that other countries maintain different positions, although Spain will remain within the limits set by the conventions,⁸⁹ while this government is in power.

Spain has not expressed support for the Uruguayan initiative to regulate cannabis markets, including CSCs, a model imported from Spain by cannabis activists.⁹⁰ Nor does it seem to have an opinion regarding the sub-state processes of regulation within

the United States, despite the fact that a similar scenario is occurring in Spain, and is likely to grow as the demands and proposals for regulation of the CSCs advance at the regional and local level, with different levels of political support, despite the actions of the courts.⁹¹

The Spanish reluctance to criticize the U.S. for its internal cannabis policy may have something to do with the old adage that 'people in glass houses shouldn't throw stones.' Spanish officials likely see a lot of parallels between their situation and the one in the United States. In the United States, thirty states have legalized cannabis for medicinal use and nine states, and the nation's capital - Washington D.C., have legalized cannabis for adult-recreational use. All this has happened despite the fact there is a federal prohibition on cannabis. In the same way, autonomous communities like Basque Country and Catalonia have permitted cannabis clubs, even voting to regulate them, despite the fact that under national laws they are illegal.

Two key differences exist between the U.S. and Spanish experience. First, in the U.S. states began legalizing cannabis for medicinal purposes in the late 1990s, in some ways laying the groundwork for full legalization. No state has legalized for adult use without having a medical law already in place. This has made the transition to full legalization a more fluid process, in terms of existing infrastructure and the public being used to cannabis dispensaries and their products. In Spain, recreational cannabis has come before medical cannabis. Second, whereas the Spanish sub-national approach to drugs can be seen as part of a broader and explicit challenge from these regions to the central government in Madrid and a desire for more power and even independence, the states that have legalized in the United States are not necessarily doing so out of long-standing tensions between the states and the federal government or out of some desire for broader autonomy.

Despite these differences, the cannabis club model in Spain has been studied in the U.S. After Washington D.C. legalized cannabis, Congress blocked the sale of cannabis in the nation's capital. Advocates pushed for the opening of cannabis clubs that would not technically sell cannabis, pointing to the success of the model in parts of Spain. As local advocate Malik Burnett told the *Washington Post*: 'If you look at Spain, this is how it works,' Burnett said. He continued, 'Spain has these social clubs that are totally nonprofit entities. They are private, you pay to the social club a membership fee, and they cultivate, grow and allow you to consume cannabis for free as a member of the social club. There is a whole blueprint for this that is totally a real possibility for the District.'⁹² The idea was ultimately blocked by the city government.⁹³ This year, Denver is set to open its first cannabis clubs, after a voter-approved initiative in 2016.⁹⁴

Similarly, the debate over cannabis legalization in the U.S. has at times focused on a critique of the overt commercial nature of the legalization model, leading some academics and analysts to point to Spain's cannabis clubs as an alternative to full-scale commercialization. For example, Beau Kilmer of RAND has written on alternative models of legalization and says, 'In the United States much of the discussion is focused on a false dichotomy. Debates typically focus on prohibiting cannabis or establishing a for-profit commercial model. But there are a number of middle-ground options such as the home production that's being allowed in the District of Columbia or cannabis social clubs that we see in Spain and Uruguay.'⁹⁵ It is also worth noting that cannabis clubs models are a key part of Uruguay's cannabis regulation model, and there are 'informal cannabis clubs' in other Latin American countries.⁹⁶ It is also important to point out that there is a division in Spain between non-profit clubs, and commercial ones. The lack of regulation in Spain has often led to cannabis clubs being just as commercial as Dutch coffee shops. This contrasts with the Uruguay CSC model, which is fully non-profit.

RELATIONS BETWEEN SPAIN AND THE INTERNATIONAL NARCOTICS CONTROL BOARD

As the quasi-judicial entity that interprets international drug control treaties and state compliance, the International Narcotics Control Board (INCB or Board) has had frequent cause to mention Spain. The remarks made by the Board mirror the changes in the political economy of illicit drugs globally and within the Spanish context. In the 1980s, when the central INCB role was limited to regulating the licit trade in controlled substances, mentions to Spain referred to its role as a legitimate producer of opiates. At the end of that decade, greater concerns about the increase in drug trafficking through Spanish territory were raised, as well as about the expansion of heroin use and HIV among the Spanish population.

As drug policy approaches changed in Spain, especially in the 1990s, the remarks of the Board - coinciding with a more political profile adopted by the agency - came to reference not only on the volume of illicit drugs traveling through the country, but also the characteristics of the programmes and interventions applied, especially harm reduction programmes and a certain liberal tendency with respect to cannabis. This has led to a mixture of both positive and negative remarks about Spain. In general, the Board praised Spain when decisions were taken in a more punitive sense, while questioning some public health interventions when they did not have abstinence as an ultimate objective.⁹⁷

In 2001, in the context of INCB's general concern about liberal trends with regards cannabis cultivation and use in some countries, the Board remarked that Spanish policy was as an exception to the consensus 'among governments with respect to subjecting cannabis to rigorous oversight'.⁹⁸ The reason was that possession, acquisition or transport of cannabis intended for personal use was not considered a crime, but rather 'just' an administrative offense. This was a cause

of concern for the agency, together with similar situations like coffee shops in the Netherlands⁹⁹. In this regard, in 2004 INCB expressed its concern that, in Spain, the liberal perspective towards personal use was also extending to (what they considered) drug use promotion and publicity. More specifically, the Board seemed alarmed by a Supreme Court prosecutor's opinion who, in 2003, had concluded that the sale of cannabis seeds and tools for cannabis cultivation in the so-called grow-shops, as well as advertising of such activities and dissemination of information on cultivation in specialized journals, did not constitute a criminal offense in accordance with current Spanish criminal law.¹⁰⁰ From the Board's perspective, drug use promotion and cultivation were not a private sphere issue, so the exceptions for personal use contained in the treaties were not valid in those cases (specifically, Article 3.2 of the 1988 Convention, referring to the constitutional principles and fundamental concepts of each legal system)¹⁰¹.

Another important point of friction between Spain and the Board concerned harm reduction measures and, in particular, safe consumption spaces (SCS). Despite originating in autonomous communities, Spanish authorities on drug policy defend them because they consider that they were effective in containing the heroin and HIV epidemic during the 1980s and still are effective for preventing the spread of diseases. The national authorities insist on emphasizing that illicit drugs are not supplied in these rooms, but only the paraphernalia necessary so that consumption is sterile and less risky for the individual.

The Spanish authorities note that INCB not only disagrees with Spain, but with this type of intervention in any country. INCB is convinced that the consumption of illicit substances is akin to the substance being promoted. But the Spanish position emphatically rejects this: since consumption cannot be fully stopped, these spaces reduce harm and promote safety.¹⁰² The line of argument that

the Spanish authorities have maintained to persuade the INCB of the convenience and effectiveness of SCSs is that these have a place in the conventions is based on the conviction that aspiring to be a drug-free world is an aspiration that cannot always be pursued.

The official position defended by the Spanish authorities is that it is not necessary to change the conventions, although some high-ranking officials on the matter of drugs clarify that, perhaps, what should be modified slightly is the reading that certain countries have made of the conventions, because the Board has placed greater emphasis on the repressive dimension and not so much on the socio-health dimension, which is the focus of Spanish policy. The INCB has recently adapted its opinion on SCSs and is accepting them under certain conditions.¹⁰³

Spanish authorities' defense of SCS contrasts with their position on cannabis clubs before the INCB. The Board 'notes with concern the continued proliferation of "cannabis consumption clubs" in several autonomous communities in Spain', and does not consider any positive impact that may arise from this grassroots innovation, such as the separation of cannabis users from the illegal market, their potential as harm and risk reduction agents, their non-profit, character community-based and health oriented approach, or their openness to dialogue with the authorities (mainly of those organized in Federations).

INCB also consider CSCs to not be in accordance with the international drug treaties (specifically, not consistent with article 4, paragraph (c), of the 1961 Convention) and, even if they have been established 'using the regulatory framework of article 22 of the Constitution of Spain and Act No. 1/2002 of 22 March 2002, which deals with freedom of association, associations that pursue aims or use methods classified as criminal are illegal' (para. 187). The INCB has a similar opinion of legalization in the U.S. and Uruguay.

The Board's position seems to delve into the tension between the central government and autonomous communities in this area. They affirm they are engaged in an ongoing dialogue with Spanish authorities on the matter (however, the reference points of the Board are the central governments, therefore they only deliberate with the government in Madrid and PNSD authorities) and have taken note of the various measures taken by the government to stop the spread of these clubs 'in certain Autonomous communities, including through the refusal to authorize their registration on the official registry of associations and the referral of such requests to prosecutorial authorities' and 'the referral to the Constitutional Court to decide on the constitutionality of laws issued by the Autonomous communities that led to the development of those structures'¹⁰⁴. The Spanish central government has succeeded in convincing the Board of its efforts and this is reflected in the report -which can be seen as a way of the central government using the INCB to support its position vis-à-vis the autonomous communities. However, the existence of approximately one thousand CSCs in Spain makes these statements meaningless and merely a denial of the existence of this phenomenon.

CONCLUSIONS

Spain represents an important case study for drug policy reform. Many of its autonomous communities have combined innovative drug policy approaches - safe consumption spaces and drug checking - with an outright rejection of prohibitionist policies - especially in the area of cannabis. Most of these innovations have involved reform-minded civil society organizations that played a key role in the evolution of these reforms and their implementation. The role played by the courts must also be highlighted, especially since they often were the ones allowing the space for the innovative policies to operate, in the

absence of political reform undertaken by the government. Nevertheless, the fact that the approach is mostly the result of reforms made by the autonomous communities - sub-nationally - sometimes against the wishes of the central government, means that it is not an approach that is well-known outside of Spain, nor is it a model that relates to Spain as a whole. Also, the combination of local and regional authorities, civil society interventions and judicial courts shaping drug policy innovations means that this process of reform is often chaotic and difficult to follow from the outside. It is also true that Spain's drug decriminalization is particularly punitive because of the administrative sanctions that are applied. All this makes the approach difficult to truly celebrate, in a way reformers may celebrate Portugal, but it does not mean parts of the approach should not be replicated. In particular, reformers in countries that have autonomous communities with broad competencies but an intransigent central government may see the Spanish sub-national approach as a roadmap to reform. Whatever the reality, what has happened in parts of Spain - especially in cannabis reform - can already be seen as influencing global drug policy discussions.

As the failures of the so-called 'war on drugs' approach and punitive drug prohibition become more and more evident, drug policy reform looks set to grow globally and with it the need to study alternative approaches. The political changes in Spain - both nationally and in autonomous communities - mean that more reforms are likely on the horizon. Parts of Spain have demonstrated a willingness to test the boundaries of what is possible for drug policy reform. Spain may not be the first country that reformers look at, but what has gone on in the country over the last forty years merits more attention from those working on drug policy reform.

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- 47 See GEPCA, "Un Nuevo Modelo de Regulación" <https://gepca.es/cannabis-un-nuevo-modelo-de-regulacion/>
- 48 Tom Decorte, et al. (2017), *Regulating Cannabis Social Clubs, Op. Cit.* For example, there is a considerable number of CSCs that understand the model fundamentally as a form of activism to promote drug policy change. They have established federations to organize themselves and generated very sophisticated self-regulation mechanisms. Other clubs do not seem so interested in what happens beyond their premises, and are simply focused on their activity without embracing this willing of social change and civil disobedience. Others CSC are in fact profit-driven organizations, and under the legal form of a users' association seek to produce and distribute cannabis in a commercial way. These different realities have created friction between club managers and have contributed in part to a delegitimization of the model, which has been somehow reflected in judicial decisions. However, these frictions are mainly the consequence of a lack of clear regulation for these spaces.
- 49 It is worth mentioning that the emergence of cannabis associations (being the most outstanding of this first stage ARSEC in Catalonia and Kalamundia in the Basque Country) is closely linked to the approval of Law 1/1992 on Citizen Security.
- 50 Muñoz Sánchez and Soto Navarro (2001), *Op. Cit.*
- 51 Although the first cannabis associations were established in the 1990s, their popularity became to increase beyond cannabis activists by the end of 2000s. See: Martín Barriuso (2011), *Cannabis social clubs in Spain: A normalizing alternative underway*, TNI Series on Legislative Reform of Drug Policies Nr. 9, <http://www.druglawreform.info/images/stories/documents/dlr9.pdf>
- 52 Muñoz Sánchez, J. (2015). According to the author, 'More than 10 provincial hearings and many criminal courts have ruled in favor of the atypicality of this behavior, either directly, referring to a case of a club or association of cannabis users, or referred to an act of cultivation for self-consumption of one or more persons', p. 24.
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- 54 Fiscalía General del Estado (2013), "Instrucción 2/2013 sobre algunas cuestiones relativas a asociaciones promotoras del consumo de cannabis", 5th August 2013. On this process, see Òscar Parés and José Carlos Bouso (2015), p. 37.
- 55 On this process, see Del Valle and Val (2017), 'Reflexiones teóricas de los 5 pilares de la regulación integral planteados por Regulación Responsable: Análisis Crítico de los Clubes Sociales de Cannabis como revisión argumental del pilar de los CSC', <http://www.regulacionresponsable.es/ampliacion-teorica-de-los-5-pilares-de-la-regulacion-integral-planteados-por-regulacion-responsable/> The authors explain how this new instruction was applied in a much more severe way in Madrid, Alicante or Andalucía, while in the Basque Country and Catalonia the impact was less evident.
- 56 See Araceli Manjón-Cabeza Olmeda (2016), *Relevancia penal de las conductas que se realizan en los Clubes Sociales Cannábicos y de la consideración que de las mismas ha hecho el Tribunal Supremo*, Fundación Renovatio, Informe 2015-2016.
- 57 Sentencia del Tribunal Supremo 484/2015. The judgement of the Ebers case was appealed before the Constitutional Court, which, although it annulled the judgment due to a technicality, again validated the constitutionality of the 'Ebers doctrine' in its judgment of December 14, 2017. Subsequently, the Supreme Court, in its judgment of February 21, 2018, decided once again on the case and, although the defendants were acquitted based on not knowing the offense was illegal (*error de prohibición invencible*), the high court reiterated that the activity of the CSC constituted a crime against public health. During the final revision phase of this report, the Constitutional Court also decided on the Pannagh case in its judgment of April 23, 2018. The Court also grants constitutional protection to the defendants and annulled the previous Supreme Court decision. However, the team of lawyers in charge of the defense have been disappointed with this result: first, it consolidates the doctrine established by the Supreme Court in relation to the criminality of associations of cannabis users; and second, they were also expecting 'a substantive pronouncement on the cannabis associative model from a perspective of fundamental rights and as an alternative to prohibitionism'. See *Caso Pannagh: Comunicado del estudio jurídico Brotsanbert*, May 2, 2018 at <https://www.softsecrets.com/es/noticias/nacional/caso-pannagh-comunicado-del-estudio-juridico-brotsanbert/>
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- 59 Parlamento Vasco (2014). Informe de la ponencia para el análisis de una solución regulada de la actividad de los denominados clubes sociales de cannabis. Resolución conjunta PNV, PSE y Bildu. Available at http://www.legebiltzarra.eus/cm_abopvc2/DDW?W=boc_clave=%271011080000420141114018705%27
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- 61 Constitutional Court Decision 29/2018, 8th March 2018.
- 62 Diario de Navarra (2014), 'Navarra aprueba la ley que regula los colectivos de usuarios de cannabis', November 27th, http://www.diariodenavarra.es/noticias/navarra/mas_navarra/2014/11/27/navarra_aprueba_una_ley_que_regula_los_colectivos_usuarios_cannabis_185352_2061.html
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- 65 Recurso de inconstitucionalidad num. 5003-2017, contra la Ley del Parlamento de Cataluña 13/2017, de 6 de julio, de las asociaciones de consumidores de cannabis (BOE núm. 294, de 4 de diciembre de 2017).
- 66 For more details, see Òscar Parés and José Carlos Bouso (2015), p. 39.
- 67 Resolució SLT/32/2015, de 15 de gener, per la qual s'aproven criteris en matèria de salut pública per orientar les associacions cannàbiques i els seus clubs socials i les condicions de l'exercici de la seva activitat per als ajuntaments de Catalunya, <http://portaldogc.gencat.cat/utillsEADOP/PDF/6799/1402548.pdf>
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- 69 Observatorio Civil de Drogas, <http://observatoriocivil.org/en/>
- 70 Ley 13/2017, de 6 de julio, de las asociaciones de consumidores de cannabis, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-9367
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- 72 See the compilation of PNLs at <http://www.regulacionresponsable.es/recopilacion-de-los-textos-de-diferentes-iniciativas-politicas-en-el-primer-trimestre-de-2017/>
- 73 Martín Barriuso, 'Las nuevas tendencias del Tribunal Constitucional. El final de la tolerancia hacia el cannabis en España', <https://sensisecds.com/es/blog/las-nuevas-sentencias-del-tribunal-constitucional-el-final-de-la-tolerancia-hacia-el-cannabis-en-espana/>, 2018.
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- or general opinion of the chamber on a subject, or to establish the bases or principles with respect to some action of the public administrations. They can be approved both in the Congress of Deputies and in the Senate, which have specific regulations for this initiative. Boletín Oficial de las Cortes Generales. Congreso de los Diputados, XII Legislatura “Proposición no de Ley sobre la regulación del uso medicinal de los productos derivados del cannabis, para su debate en la Comisión de Sanidad y Servicios Sociales”. 7th March 2017.
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