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Is The End Of The War In Sight: An Analysis of Canada's Decriminalization of Marijuana and the Implications for the United States "War On Drugs"

Kara Godbehere Goodwin

I. Introduction

On September 5, 1989, federal agents enticed a nineteen-year-old cocaine dealer to a park across the street from the White House as the object of a narcotics sting planned to take place specifically on that particular date in that particular place. The purpose of the sting was to set the stage for President George Bush's first televised speech as president, in which he would declare that the drug epidemic had finally reached the front steps of the White House, and he was ready to drastically escalate the "war" on drugs. If the United States is waging a war, then marijuana, the most commonly used illegal drug in America, is the enemy. The majority of marijuana consumed domestically in the United States is imported from Mexico or Columbia, but Canada is rapidly becoming a source country for high-quality marijuana products. A pound of marijuana grown in British Columbia can sell for up to $6,000 in California. The amount of such marijuana seized in

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* J.D., University of Tulsa College of Law, Tulsa, Oklahoma, expected May 2005; B.A., with honors, Communication, University of Tulsa, Tulsa, Oklahoma, May 2002. The author wishes to dedicate this comment to Jason Goodwin for his unfailing support and inspiration while this paper was in progress.

2 Id.
4 Id.
attempted smuggling efforts between Canada and the United States increased almost tenfold between 1999 and 2000.\(^\text{6}\) The Canadian Royal Mounted Police estimate that their country produces over 800 tons of marijuana each year.\(^\text{7}\)

This article examines Canada's drug situation and the effects of the United States' "war" on drugs. Further, it analyzes the consequences of Canada's recent move towards decriminalization of marijuana on the United States' stringent anti-drug laws, as well as the political motivations behind their respective drug policies. Part II addresses the history of marijuana in both Canada and the United States, including the reasons for initially regulating, and later prohibiting its use. Part III analyzes what effect such prohibitions have on public health and offers an explanation of the history of Canada's move toward decriminalization of marijuana, including a discussion of their country's currently implemented system for medical marijuana use. Part IV focuses on what reforms are currently taking place in Canada, the United States' political response to such reforms, and how the Canadian move towards decriminalization could affect American drug laws. Part V concludes that the movement toward decriminalization of marijuana is rapidly becoming an unavoidable aspect of international law, and the current laws in the United States should change in response to this movement.

II. HISTORY OF MARIJUANA IN THE UNITED STATES AND CANADA

A. The United States

The first crop of marijuana was planted on American soil in 1611 in Virginia, beginning a thriving hemp industry in the new colonies.\(^\text{8}\) Hemp was heavily relied upon by the shipping business

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\(^\text{7}\) Id.

\(^\text{8}\) PATRICK ANDERSON, HIGH IN AMERICA 47 (1981).
for rope and by the colonists for clothing. By 1850 it was the nation's third largest crop, behind cotton and tobacco, and was being heavily utilized as a medical analgesic/anesthetic up until 1900. Shortly thereafter, however, the invention of the hypodermic syringe caused opiates to come into favor for pain relief purposes and marijuana's popularity declined. Facing a rising number of morphine addicts after the Civil War due to the drug's widespread use by wounded soldiers, Congress passed the Harrison Narcotic Act of 1914, which "in effect declared that drug addicts were criminals."

The first instances of recreational use of marijuana in America are evidenced by the prohibitions enacted by the state of California in 1915. The first states to enact statutes making marijuana use a felony were in the South and Southwest. It has been suggested that the motivation of the statutes was primarily racial, as a response to the influx of Mexican immigrants who during that time brought marijuana and the habit of smoking it to the United States. "The prejudices and fears that greeted peasant immigrants also extended to their traditional means of intoxication – smoking marijuana." The common belief at the time was that users of the drug, such as Mexican immigrants and the "fringes of society," including writers and musicians, were violent people. The fear was that the use of the drug was spreading among the youth of America, and that this use was causing them to become violent as well. The beginning of the "war on marijuana" by "America's first great anti-marijuana crusader," Harry Anslinger, only worsened this fear in the minds of the American people.

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9 Id.
10 Duke, supra note 1, at 44.
12 Anderson, supra note 8, at 48.
13 Duke, supra note 1, at 45.
14 See Isralowitz, supra note 11, at 97; Anderson, supra note 8, at 49.
15 Id.
16 Isralowitz, supra note 11, at 97.
17 Duke, supra note 1, at 93.
18 Id.
19 Isralowitz, supra note 11, at 97.
20 Anderson, supra note 8, at 49.
When the Federal Bureau of Narcotics was created in 1930, he was appointed head of the new bureau, and soon brought the hard line Prohibition views he was already famous for into the anti-drug arena.\textsuperscript{21} During this time the press published stories with titles like "Marijuana – Assassin of Youth," and "Marijuana – Sex-Crazy Drug Menace"\textsuperscript{22} The movie \textit{Reefer Madness} proved to be one of the ultimate propaganda cult-classics. In the movie, "casual marijuana use was shown to lead swiftly to murder, rape, prostitution, addiction, madness, and death."\textsuperscript{23}

By the end of 1936 all forty-eight states had initiated laws regulating the sale, use, and possession of marijuana, and in 1937 Congressional hearings began on the Marijuana Tax Act of 1937.\textsuperscript{24} Anslinger testified before Congress, comparing opium favorably to marijuana in that "[o]pium has all of the good of Dr. Jekyll and all of the evil of Mr. Hyde. This drug [marijuana] is entirely the monster Hyde."\textsuperscript{25} Dr. W.C. Woodward, legislative counsel for the American Medical Association, protested the Act, warning that marijuana would have possible medical uses in the future.\textsuperscript{26} Moreover, he pointed out that there had been no legitimate evidence introduced showing that marijuana increased criminal behavior.\textsuperscript{27} Woodward’s views were generally laughed at or ignored, and the Marijuana Tax Act officially became law on October 1, 1937.\textsuperscript{28}

The Act did not outlaw marijuana outright; however, it taxed the grower, distributor, seller, and buyer, and imposed administrative burdens that "made it ... almost impossible to have anything to do with [marijuana]."\textsuperscript{29} Soon after the Act was passed, most states passed laws making the use or sale of marijuana a

\textsuperscript{21} See generally Anderson, \textit{supra} note 8, at 50 (detailing Anslinger’s rise through different government agencies and his crackdown on liquor purchasers during Prohibition).
\textsuperscript{22} Isralowitz, \textit{supra} note 11, at 97.
\textsuperscript{23} Anderson, \textit{supra} note 8, at 51.
\textsuperscript{24} Isralowitz, \textit{supra} note 11, at 98.
\textsuperscript{25} Duke, \textit{supra} note 1, at 45.
\textsuperscript{26} Anderson, \textit{supra} note 8, at 51; Isralowitz, \textit{supra} note 11, at 102.
\textsuperscript{27} Anderson, \textit{supra} note 8, at 51; Isralowitz, \textit{supra} note 11, at 102.
\textsuperscript{28} Anderson, \textit{supra} note 8, at 51.
\textsuperscript{29} Isralowitz, \textit{supra} note 11, at 98.
By the early 1970's marijuana was gradually becoming a political issue. Richard Nixon, after running on a platform of "law and order" in 1968, soon began following through on his campaign promises. He publicly utilized aggressive anti-drug rhetoric, and declared a much-publicized "war" on marijuana. The Drug Reform Act of 1970, under the guidance of Democratic Representative Edward Koch of New York, created the National Commission on Marijuana and Drug Abuse (the Marijuana Commission) partly in response to a growing national awareness of the need for drug-law reform. The Act was successful for reformers as well as conservatives. Nixon, seeking to fulfill campaign promises, was pleased by the reclassification of marijuana as a dangerous drug. Reformers were satisfied by the federal penalty for possession dropping from a felony to a misdemeanor.

The federal law served as a model for many state laws, and set off a new era of reform among the states; within two years of the Act's passage, a first-time marijuana offense was reduced to a misdemeanor in almost every state. In 1972, the Marijuana Commission issued an official report, believed to be the most exhaustive study of marijuana ever conducted in the United States, revealing that moderate marijuana consumption is relatively harmless. In 1973, Oregon became the first state to decriminalize marijuana, changing the punishment for simple possession from a jail sentence to a $100 fine. By 1977, nine more states had passed similar decriminalization bills. 1980 saw the Food and Drug Administration (FDA) responding to the twenty-plus states that had approved medicinal marijuana by legalizing the use of

30 Anderson, supra note 8, at 51.
31 Id. at 56.
32 Id.
33 Id.
34 Id. at 63.
35 Anderson, supra note 8, at 63.
36 Id.
37 Id.
38 Id.
39 Id. at 91.
40 Anderson, supra note 8, at 123.
41 Id. at 202.
THC pills to regulate nausea caused by chemotherapy drugs. More recently, California in 1996 passed Proposition 215, which allows terminally ill patients to use marijuana as long as they have a legitimate medical need. Also, on September 2, 2003, Alaska legalized (for the second time in the state’s history) individual use of marijuana in private homes. Alaska Governor Frank H. Murkowski, however, reminded citizens that marijuana use, in Alaska and every other state as well, is still prohibited by federal law regardless of what the state legislature decides.

B. Canada

The introduction of marijuana to Canada followed a similar path to that in the United States. Cannabis hemp was one of the first crops sown by a European on Canadian soil. The first record of a cannabis harvest was by a French pharmacist named Louis Hebert who emigrated from Paris in 1609. During the late 1500’s a hemp shortage arose in Europe. In response, Europe turned to the New World to help provide the plant which had become important in outfitting their massive navy with the necessary sailcloth. Soon New England was growing hemp for Britain and the French Royal Warehouses promised to buy all the hemp that Canada could produce. The demand for large

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42 Id. at 306.
45 Id.
47 Id.
48 Id.
49 Id.
50 Id.
quantities of hemp dwindled somewhat in the nineteenth century due to the invention of steam power, which reduced the need for hemp-made canvas sails in the navy.\textsuperscript{51} The invention of the cotton gin also lowered the demand for hemp by allowing clothing fibers to be retrieved with less expense and labor.\textsuperscript{52}

Canada's eventual prohibition of marijuana, just as in the United States, began with suspected racists undertones.\textsuperscript{53} In 1881, after gold was discovered in British Columbia, over 17,000 Chinese were brought in from South China to construct Canada's railroad.\textsuperscript{54} When it was completed thousands of Chinese immigrants were left destitute and often homeless.\textsuperscript{55} Wanting to restrict Chinese immigration and create a way to eliminate some of the immigrants already in Canada, the government turned to legislation prohibiting the Chinese drug of choice: opium.\textsuperscript{56} The Opium Narcotic Act of 1908 prohibited the "import, manufacture and sale of opiated [sic] for non-medical purposes."\textsuperscript{57} This Act served as the basis for all further Canadian drug legislation, "despite the fact that it was created solely to eliminate and [sic] undesirable element from the labour pool."\textsuperscript{58} Problems enforcing the Act resulted in the Opium and Drug Act of 1911, which covered not only opiates but other drugs as well.\textsuperscript{59} The Opium and Drug Act also made use and possession of the prohibited drugs a criminal offense, and increased the police powers of search and seizure.\textsuperscript{60} In 1920, the Opium and Drug Branch of the government was created under the guidance of the Department of Health,\textsuperscript{61} and

\begin{footnotes}
\textsuperscript{51} Cannabis in Canada, supra note 46.
\textsuperscript{52} Id.
\textsuperscript{53} See generally Cannabis in Canada, supra note 46.
\textsuperscript{54} Cannabis in Canada, supra note 46.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{60} Cannabis in Canada, supra note 46.
\textsuperscript{61} Id.
\end{footnotes}
in 1923 the Opium and Narcotic Drug Act was passed, which included cannabis as a prohibited substance.\textsuperscript{62}

Before the 1920’s, cannabis was used in patent medicine to treat different ailments, much as it was in the United States.\textsuperscript{63} Also similar to the United States, Canada promulgated their anti-drug stance through a series of propaganda-like articles published in “Maclean’s Magazine.” These articles were written by Emily Murphy under the pen name of Janey Canuck and were later combined to create a book entitled “The Black Candle.”\textsuperscript{64} Murphy believed that Canada should be a “pure” country, comprised only of white persons.\textsuperscript{65} These beliefs reflected her membership in a religious group called the “Irish Orange Order” that also espoused such beliefs.\textsuperscript{66} Her articles were very “biased and sensationalized”\textsuperscript{67} and made statements about marijuana such as:

Persons using this narcotic smoke the dry leaves of the plant, which has the effect of driving them completely insane. The addict loses all sense of moral responsibility ... [w]hile in this condition they become raving maniacs and are liable to kill or indulge in any forms of violence to other persons, using the most savage methods of cruelty ... \textsuperscript{68}

After the release of “The Black Candle,” the Royal Canadian Mounted Police (RCMP) used this book as justification to increase their police powers and to make cannabis illegal under the name “marijuana” in the Opium and Narcotic Drug Act of 1923.\textsuperscript{69}

Rates of marijuana use climbed sharply in the 1960’s and 1970’s, even though more and more strict policies were being enforced; some penalties for possession were as high as seven
The resulting strain on the courts prompted pressure for liberalization of Canada’s drug policy. The Commission of Inquiry in the Non-Medical Use of Drugs (the LeDain Commission) was formed in 1969 to address the country’s concerns, and after four years and four million dollars worth of research, the Commission found that the social costs of marijuana prohibition did not justify the nation’s current drug policies. The recommendations of the Commission ranged from outright legalization to small fines for marijuana use. However, despite publicly expressed support from Parliament for decriminalization of marijuana, the results of the study were largely ignored by the Canadian government. The only significant change to the drug law during this time was an amendment to the Narcotic Control Act allowing prosecutors to summarily convict in possession cases, rather than proceed by indictment (a more serious offense). The LeDain Report also caused a reorganization of the government agencies responsible for drugs, culminating in the formation of the Non-Medical Use of Drugs Directorate (NMUDD) of National Health and Welfare of Canada. This shifted the focus of the drug battle from criminal sanctions to health implications. However, a new litany of problems arose due to the sudden combination of law enforcement officials with a government agency that also addressed health issues unrelated to drugs.

In 1987, feeling pressure from Reagan’s “War on Drugs” in the United States, Canada created Canada’s Drug Strategy (CDS) which brought $210 million in new funding to enforcement, treatment, and prevention programming. However, in 1997 the funding ended, causing the health budget for drugs to be cut to

70 Riley, supra note 59.
71 Id.
72 Id.
73 See Riley, supra note 59; Cannabis in Canada, supra note 46.
74 Cannabis in Canada, supra note 46.
75 Id..
76 Riley, supra note 59.
77 Id.
78 Id.
79 Id.
40% of its former amount. The Policy and Research Unit of the Canadian Centre on Substance Abuse, which had been researching alternatives to the current prohibitionist model of drug policy, was closed due to lack of funding in 1996. The Controlled Drugs and Substances Act was enacted in May of 1997, bringing the focus of drug legislation back into the criminal arena, and creating a substantial legal change in the drug scheduling system used in Canada. Marijuana is no longer a narcotic or a Schedule I drug such as heroin or cocaine, but is now a Schedule II drug, and the penalties for possession, distribution, and production have been lessened so that simple possession (for personal use) has become a summary offense (similar to an American misdemeanor). In June of 2001, the Controlled Drugs and Substances Act was amended to allow possession and purchase of marijuana for legitimate medical needs through the passage of the Marihuana Medical Access Regulations.

Even more recently, on September 16, 2003, Judge Patrick Chen, a provincial court judge in British Columbia, ruled that simple possession of marijuana is no longer illegal, forcing other judges in the province to follow his decision, for now. British Columbia is the fourth province, after Ontario, Prince Edward Island, and Nova Scotia, to overturn the law prohibiting simple possession for personal use. In July of 2000, due to confusion over the law created by an Ontario Appeal Court judge overturning

80 Id.
81 Riley, supra note 59.
82 Id.
86 Id.
the law within Ontario, Parliament was ordered to pass a new law addressing the situation within a year, but the legislation still has not been passed.  

III. EFFECTS OF PROHIBITION AND VIEWS ON DECRIMINALIZATION

A. Measurable drug use and its effects on public health

1. The United States

Marijuana is the most popular illegal drug in the United States, with 14.6 million people admitting to using it within the past month based on the National Survey on Drug Use and Health in 2002. Almost one third of these users also admitted to using the drug on twenty or more days in the past month. 40% of Americans over the age of twelve admit to having used marijuana at some point; however, only 11% of those people reported using it in the past year. Only 6% of Americans age twelve or older were currently using marijuana in 2002, meaning there were approximately 2.6 million new users in the year 2001 alone. College students and young adults reported some of the highest rates of marijuana usage in the study, with 50% of college students and 57% of those between the ages of nineteen and twenty-eight reporting marijuana usage in their lifetime. 19.7% of college students admitted using marijuana in the past thirty days, and

87 Id.
89 Id.
90 Id.
91 Id.
16.9% of adults between the ages of nineteen and twenty-eight had used marijuana within the previous thirty days as well.\textsuperscript{93}

There were 1,586,902 arrests for drug abuse violations, with 40% of those arrests being for possession of marijuana and 5.2% for marijuana sales or manufacturing, in the year 2001.\textsuperscript{94} In the 2001 fiscal year, The United States Sentencing Commission reported 7,991 Federal drug court sentences for marijuana-related offenses, mainly drug trafficking.\textsuperscript{95} According to the Arrestee Drug Abuse Monitoring Program, “a median of 41.5% of adult male arrestees and 28.4% of adult female arrestees tested positive for marijuana at the time of arrest in 2002.”\textsuperscript{96}

What do these rates of drug use and arrest mean? They mean that a large amount of American currency is being lost from the stream of commerce due to illegal purchases.\textsuperscript{97} A study tracking drug spending habits between 1988-1998 determined that Americans spend an average of $10.4 billion a year on marijuana.\textsuperscript{98} These rates mean that there are an increasing number of marijuana users suffering from the detrimental side effects of the smoking process, which are similar to those experienced by tobacco smokers.\textsuperscript{99} These include ailments such as increased respiratory infections (like bronchitis), impaired short-term memory function, and lung cancer.\textsuperscript{100} However, studies independent of the

\textsuperscript{93} Id.
\textsuperscript{94} Id (quoting the Federal Bureau of Investigation’s Crime in the United States 2001, Persons Arrested (October 2002)).
\textsuperscript{95} Id. (quoting the Drug Enforcement Administration’s Drug Trafficking in the United States (September 2001)).
\textsuperscript{96} Id. (quoting the National Institute of Justice’s Preliminary Data on Drug Use & Related Matters Among Adult Arrestees & Juvenile Detainees, 2002 (2003)).
\textsuperscript{97} See generally Marijuana Prevalence Estimates, supra note 88 (quoting the Office of National Drug Control Policy’s What America’s Users Spend on Illegal Drugs 1988-1998 (December 2000)).
\textsuperscript{98} Id.
\textsuperscript{100} Marijuana Prevalence Estimates, supra note 88 (quoting Research Report Series – Marijuana Abuse, NAT’L INST. ON DRUG ABUSE (October 2001), at
government have often found contradictory conclusions in studies of marijuana users. For example, while the National Institute on Drug Abuse (NIDA) found in a 2001 study that marijuana is addictive and causes withdrawal symptoms in test subjects, the respected Merck Manual has found that "cannabis can be used episodically without evidence of social or psychological dysfunction ... no withdrawal syndrome occurs when the drug is discontinued ... [but] high-dose smokers of marijuana develop pulmonary symptoms (episodes of acute bronchitis, wheezing, coughing, and increased phlegm) ...." While the NIDA reports that "[m]arijuana has the potential to promote cancer of the lungs ... because marijuana smoke contains 50 percent to 70 percent more carcinogenic hydrocarbons than does tobacco smoke," the Merck Manual reveals that "[e]ven daily smokers do not develop obstructive airway disease. Pulmonary carcinoma has not been reported in persons who smoke only marijuana, possibly because less smoke is inhaled than during cigarette smoking." There is much conflicting information regarding the health effects of smoking marijuana; it is clear, however, that, at the very least, lung damage is possible. The totality of the effects of this drug will probably not be completely clear until further studies occur; for now it is clear from current research that there is much uncertainty as to the factual effects of the drug.

Marijuana use is also often reported in deaths involving drug abuse, in emergency room visits, and in admissions into drug rehabilitation facilities. Marijuana was the second most frequently mentioned illegal drug after cocaine in 2002 by


See generally The Merck Manual supra note 99.

Marijuana Prevalence Estimates, supra note 88 (quoting the National Institute on Drug Abuse's Marijuana Infofax (October 2001).


NIDA Research Report Series, supra note 100.

The Merck Manual, supra note 99 (emphasis added).

See, e.g. Duke, supra note 1, at 43-54, discussing many of the contradictory and questionable beliefs prevalent in society on marijuana usage.

See, e.g. Marijuana Prevalence Estimates, supra note 88.
emergency departments. Mentions of marijuana use in emergency room admissions statistically did not change between 2001-2002, but have risen 164% since 1995. However, a side note points out that a “drug mention” only refers to a substance that was recorded during an emergency room visit, not necessarily the drug that caused the emergency room visit. According to the Merck Manual, “tests after one-time use remain positive for days or weeks after discontinuation ... the smoker may be free of drug effect by the time his urine is tested.” As a result, someone who smoked marijuana three weeks ago but then experienced complications from heroin would still register as an emergency room marijuana “drug mention,” even if he was not under the influence of marijuana at the time the emergency room visit took place.

Marijuana also ranked among the ten most common drugs reported in deaths involving drug abuse in a study which included forty-two metropolitan areas in the United States. However, the study also found that an average of 79% of those deaths also involved at least one other substance. There is no documentation to suggest that there has ever been a death from marijuana overdose. 14.8% of admissions to drug treatment facilities in 2000 were for use of marijuana as the “primary substance of abuse.” However, the Merck Manual points out

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108 Marijuana Prevalence Estimates, supra note 88 (quoting the Substance Abuse and Mental Health Service Administration’s Emergency Department Trends from the Drug Abuse Warning Network, Final Estimates 1995-2002 (July 2003)).
109 Id.
110 Id.
112 See generally The Merck Manual, supra note 99.
113 Marijuana Prevalence Estimates, supra note 88 (quoting the Substance Abuse and Mental Health Services Administration’s Mortality Data from the Drug Abuse Network, 2001 (January 2003)).
114 Id.
115 Duke, supra note 1, at 51.
116 Marijuana Prevalence Estimates, supra note 88 (quoting the Substance Abuse and Mental Health Services Administration’s Treatment Episode Data Set (TEDS) 1994-1999: National Admissions to Substance Abuse Treatment Services (November 2001)).
that "[t]he number of users who have sought treatment or counseling to help them stop may be exaggerated because persons who test positive in the workplace are often ordered to seek treatment ... ."\textsuperscript{117} So, even in "hard numbers" and statistics, the effects of marijuana on the general public health of America are still not clear. What is obvious, however, is that significant numbers of American citizens are still using the drug despite nationwide legislation prohibiting its use.\textsuperscript{118}

2. Canada

Marijuana in Canada, similar to in the United States, is the most popular illegal drug in the country.\textsuperscript{119} The Royal Canadian Mounted Police (RCMP), in their 2001 report on the drug situation in Canada, estimated that "marijuana production activities will continue to increase" in the future.\textsuperscript{120} The RCMP considered factors such as the number of actual plants seized in Canada on a yearly basis, government intelligence sources, and activity within the drug industry and its participants.\textsuperscript{121} The RCMP report focused not necessarily on the health concerns presented by Canadian citizens consuming marijuana, but rather on the public safety issues presented by the crime surrounding the production and dissemination of the product.\textsuperscript{122} For example, the RCMP states that there has been an increasing amount of foreign-based organized crime units, particularly out of Asia, producing marijuana in Canada since the mid-1990's.\textsuperscript{123} Public safety is also a concern as electricity being rerouted to indoor growing operations is more frequently leading to fires in some Canadian cities.\textsuperscript{124} The police also cite a public threat in the methods of protection utilized by the growers for their crops, such as "crop sitters" (armed "security guards," usually criminals themselves)

\textsuperscript{117} The Merck Manual, supra note 99.
\textsuperscript{118} See, e.g. Marijuana Prevalence Estimates, supra note 88.
\textsuperscript{119} RCMP, Drug Situation – 2001, supra note 5.
\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} See, e.g. RCMP, Drug Situation – 2001, supra note 5.
\textsuperscript{123} RCMP, Drug Situation – 2001, supra note 5.
\textsuperscript{124} Id.
and booby traps.\footnote{Id.\textsuperscript{12}} The booby traps are far from rudimentary; police have discovered metal doors connected to high voltage wires at the entrance to grow rooms, and even motion detectors connected to spraying systems designed to spray toxic gas into the ventilation system if an intruder is detected.\footnote{Id.} Police have also noticed trends in homicides and assaults related to drug territory skirmishes, as well as home invasions and beatings associated with stealing others' harvests, especially in British Columbia.\footnote{Id.} While police say that “violence is not a factor that Canadians readily associate with the cultivation of marijuana,” there is another disturbing criminogenic trend developing as a consequence of the increase in violent crime: police are encountering larger amounts of firearms and ammunition when conducting raids on marijuana growing operations.\footnote{Id.}

Canada's drug enforcement efforts, however, are notable: they spent approximately U.S. $350 million at the federal level in 2002 to combat illicit drug use in Canada.\footnote{Id.\textsuperscript{29}} (The following sentence should be rewritten to clarify.) The government addresses substance abuse as both a health issue and a criminal issue since the reorganization of the Canadian government following the recommendations of the LeDain Commission.\footnote{Id.\textsuperscript{30}} In contrast, the United States addresses substance abuse strictly from a prosecutorial viewpoint.\footnote{Id.\textsuperscript{31}} As a result of this health-based approach, the Canadian coordinating agency for drug strategy is Health Canada, a federal department that is in charge of all health-based national policies.\footnote{Id.\textsuperscript{32}} The Canadian Centre on Substance Abuse also plays a role in the nation's anti-drug efforts by encouraging public participation in an effort to reduce drug abuse

\footnote{Id.\textsuperscript{12}} Id.\textsuperscript{.}
\footnote{Id.} Id.
\footnote{Id.\textsuperscript{29}} Id. (home of the US $6,000 per pound marijuana mentioned, supra note 1).
\footnote{Id.\textsuperscript{30}} Id.\textsuperscript{.}
\footnote{Id.\textsuperscript{32}} Id.\textsuperscript{.}
and by providing education and information about drug-related issues. The health-centered approach also means that most treatment and rehabilitation programs are overseen by federal, provincial, or territorial jurisdiction, and that specialized training in “drug issues and appropriate responses” is available and encouraged for health care professionals. Canada also focuses its anti-drug message on the groups most at risk for the effects of drug use: youth, women, seniors, Aboriginal peoples, and driving-while-impaired offenders. Unlike the United States, which targets its law enforcement efforts at prosecuting possession, Canada’s law enforcement efforts focus on fighting the organized crime groups that “control most of the production, smuggling, and distribution of illegal drugs in Canada.”

Canada also has a different approach than the United States when it comes to drug violation sentencing procedures. The United States, in keeping with their emphasis on the criminogenic aspect of cannabis consumption, has created the following mandatory minimum sentences for marijuana offenses:

The punishment for growing 100 or more cannabis plants or possessing more than 100 kilograms of marijuana is a minimum prison sentence of 5 years for first-time offenders. The punishment for growing 1,000 or more plants or possessing 1,000 or more kilograms of marijuana is a minimum prison sentence of 10 years for first time offenders.

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133 *Id.* at 31.
134 *Id*
135 *Id*
136 *See Marijuana Prevalence Estimates, supra* note 88 (quoting the Federal Bureau of Investigation’s *Crime in the United States 2001, Persons Arrested* (October 2002) which states that 40% of arrests for drug abuse violations in America in 2001 were for possession of marijuana).
137 *US-Canada Border Assessment - Response, supra* note 130, at 31.
In contrast, Canada’s maximum punishment for cannabis cultivation (no matter what the quantity) is a maximum prison sentence of seven years. Charges of illicit cultivation generally are accompanied by charges of possession for the purpose of trafficking, which can be punished by life imprisonment; however, rarely are sentences more than four years imposed, even in large cases.

Canada’s seemingly more liberal view of drug policy is evident in their increasing push for medical marijuana. On June 9, 1999, Health Canada released the “Research Plan for Marijuana for Medicinal Purposes” which detailed a research plan for determining the safety of marijuana for medicinal purposes. Also in June of 1999, the agency “established a process enabling Canadians to apply for an exemption to possess and/or cultivate marijuana for medical purposes under Section 56 of the Controlled Drugs and Substances Act with the support of their medical practitioner.” On May 5, 2000, Health Canada issued a request for a proposal to establish a federally funded, locally grown, standardized quality source of marijuana for research purposes. On June 28, 2000, the proposal was completed and reviewed by a committee of experts. On September 14, 2000, Health Canada announced a new, more detailed regulatory approach for the medical use of marijuana. This approach clarified issues that had arisen since the original introduction of the exemption process, such as the definition of “medical necessity” and the considerations to be given when determining who should and should not be awarded the exemption. On December 21, 2000, Health Canada’s proposal for the provision of standardized quality

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139 Id.
140 Id.
142 Id.
143 Id. (emphasis added).
144 Id.
145 Id.
146 Marijuana for Medical Purposes, supra note 141.
147 Id.
marijuana for research purposes was fulfilled when the agency, along with Public Works and Government Services Canada, publicly revealed that a contract had been awarded to provide a "reliable source of quality, standardized marijuana products to meet medical and research needs in Canada." The contract was subject to stringent standards, including producing the first crop within a year of the contract award, subjecting the marijuana to laboratory testing and quality control throughout the life cycle of the plant, and conforming to the requirements of government agencies controlling food and drug quality. Finally, on July 30, 2001, the Narcotic Control Regulations were amended to state the Marihuana Medical Access Regulations. The regulations "established a compassionate framework to allow the use of marijuana by people who are suffering form serious illnesses and where the use of marijuana is expected to have some medical benefit that outweighs the risk of its use."

IV. CURRENT EFFORTS AT REFORM IN CANADA AND THE UNITED STATES RESPONSE

A. Bill C-344

1. Brief History of Canadian Government

Canada is a constitutional monarchy, meaning that executive authority is exercised by the Crown, who is actually Queen Elizabeth of Britain. The Crown is represented at the federal level by the Governor General, and at the provincial level

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148 Id.
149 Id.
151 Id.
The Crown is advised by the Prime Minister (or Premier) and his or her Cabinet, but no federal legislation can be passed without "Royal Assent" being given by the Governor General. Federal legislation is passed by the elected federal Parliament, which consists of the Queen, the Senate, and the House of Commons. The House of Commons is made up of Members who each represent one of Canada’s 301 constituencies, though the number of constituencies may change over time according to population. The leader of the party that holds the most seats in the House of Commons is usually asked by the Governor General to form a government and become Prime Minister. The party with the second largest number of seats is called the “Official Opposition” and their leader is referred to as the “Leader of the Official Opposition.” At the lower levels, Canada is made up of provinces which are governed by Lieutenant Governors. The Lieutenant Governors represent the Crown at the provincial level and must give Royal Assent for provincial legislation to become law, just as the Governor General must at the federal level.

2. Introduction of C-38

On May 27, 2003, federal legislation removing criminal penalties for possession of small amounts of marijuana and creating new, harsher penalties for large scale growers of marijuana, was introduced to the Canadian House of Commons. Martin Cauchon, Canadian Justice Minister, said Canada is a

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153 Id. at 34.
154 Id.
155 Id.
156 Id. at 37.
157 Canadian Government, supra note 152, at 37.
158 Id. at 38.
159 Id.
160 Id. at 48.
161 Id.
"different place with different values," and said that "Canadians no longer believe in imposing criminal sanctions for smoking marijuana" or possessing small amounts on their person. Under the new bill, cannabis possession and production would remain illegal; what would change would be the approach to enforcing the laws of the Controlled Drugs and Substances Act. Health Canada, in a comprehensive report addressing many concerns raised by those opposing the introduction of the bill, reported in May of 2003 that "rising rates of marijuana use and falling support for incarceration as a penalty for cannabis possession underscore the need to modernize current laws." The health department cited the stigma associated with a criminal conviction in areas such as job choices, travel, and education as one of the incentives for the bill.

The bill consists of four main changes in the enforcement of the current Controlled Drugs and Substances Act. These include replacing the current criminal penalties with alternatives for possession of fifteen grams or less of marijuana; allowing law enforcement officials the discretion to determine whether to issue only a ticket or to require the offender to appear in criminal court for possession of between fifteen and thirty grams of marijuana; providing for harsher penalties when aggravating factors are present, including "possession while committing an indictable offense, while operating a motor vehicle or while on or near school grounds;" and creating tougher penalties for grow operations, i.e. increasing the penalties in accordance with the size of the operation. The proposal doubles the maximum penalty for growing marijuana from seven to fourteen years imprisonment. The bill would amend the "Contraventions Act to allow for the designation of certain criminal offences as contraventions and to

164 Id
165 Id.
166 Id.
167 Id.
168 HEALTH CANADA, supra note 163.
169 Nickerson, supra note 162, at 2.
specify that contraventions may be prosecuted by means of either a summons or ticket ...” and the “Controlled Drugs and Substances Act to create offences with respect to the possession of small amounts of cannabis (marijuana) and the production of cannabis (marijuana).”

The proposal, as of November 6, 2003, had been considered by a Special Committee on the Non-medical Use of Drugs, and was awaiting a third reading in the House of Commons before being sent on to the Senate.

The Contraventions Act is a Canadian law that allows tickets to be issued by local law enforcement for minor federal offenses, which are then be handled by the provincial court system. Under Bill C-38, a list of new possession offenses would be added to the Contraventions Act, and allow persons charged with such offenses to receive tickets requiring only that a fine be paid, rather than the offense permanently appearing on their criminal record. Possession of fifteen grams or less of marijuana would be punishable by a fine of $150 for an adult and $100 for a youth. If aggravating factors exist, the offense would be punishable by a fine of $400 for an adult and $250 for a youth. In situations where the offender possessed between fifteen and thirty grams, the police officer would have the discretion to decide if the person should receive a ticket and a fine of $300 for an adult or $200 for a youth; or be issued a summons.

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172 HEALTH CANADA, supra note 163.

173 Bill C-38, supra note 170.

174 Id.

175 Id.
for summary conviction, which can mean a fine of up to $1,000, up to six months in prison, or both.\footnote{Id.} Martin Cauchon, the Minister of Justice who introduced the bill, stated in testimony before the House of Commons that Canada needs:

to send a strong message that marijuana is illegal and harmful, but also to ensure the punishment fits the crime. We have to ask ourselves as a society whether it makes sense that a young person who makes a bad choice in life should receive the lasting burden of a criminal conviction … [under the proposal the] fine would be higher in many cases than what offenders are receiving now. It is important to know that when a young person is facing a charge, his or her parents will be notified.\footnote{Id.}

The punishments for growing cannabis would be increased.\footnote{Id.} While production of marijuana is currently a single offense with a maximum prison sentence of seven years, the proposed bill would create four separate categories of penalties in accordance with the quantity of marijuana being grown.\footnote{Id.} Growing one to three plants would result in a summary conviction offense with a fine up to $5,000.\footnote{Id.} Cultivating four to twenty-five plants would result in a fine of up to $25,000 and/or eighteen months in jail if summarily convicted, or if indicted, “five years

\footnote{Id.} A “youth” is defined in the proposal as a “person who, at the time the offence is committed, is or, in the absence of evidence to the contrary, appears to be twelve years of age or more but under eighteen years of age, see Bill C-38, \textit{supra} note 170, Schedule 1, §9 available at http://www.parl.gc.ca/37/2/parlbus/chambus/house/bills/government/C-38/C-38_2/90229sE.html#6 (last visited April 29, 2004).


\footnote{Bill C-38, \textit{supra} note 170.}

\footnote{Id.}

\footnote{Id.}
less a day imprisonment.”

Growing twenty-six to fifty plants would be punishable by up to ten years in jail. Growing more than fifty plants would be punished by a sentence of up to fourteen years. Cauchon describes the new penalties as “taking aim at marijuana grow operations... [w]e know that criminal gangs are often behind those operations. This bill sends a clear message that we will not allow our neighborhoods to be threatened by these grow ops ... ”

The bill also sets out a number of aggravating factors which would require judicial explanation for not imposing a prison sentence. Aggravating factors include: risk to children in the building housing the operation, use of traps, explosive, or land owned by others (i.e. growers planting in secluded areas of area farm land) and creating a safety hazard in a residential area.

Opponents in the House of Commons debates have pointed out numerous problems with the bill, including the fact that it only deals with the problem of marijuana in the country and not other drugs; the amount allowed as “minor possession” is actually a quite substantial quantity of the drug (fifteen grams of marijuana, the point at which minor possession ends under the proposed bill, is actually equal to about 22-23 marijuana cigarettes); there is nothing in the bill to address what happens if the fines are not paid; and there is nothing in the bill to address whether the criminal convictions of over 600,000 Canadians for past marijuana

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181 Id.
182 Id.
183 Id.
185 Id.
186 HEALTH CANADA; See supra notes 121-126 for discussion of public safety issues.
Is The End Of The War On Drugs In Sight

possession will be cleared.\textsuperscript{188} Other problems include how to handle the likely increase in drivers under the influence of marijuana.\textsuperscript{189} While Cauchon points out that driving under the influence of alcohol or drugs is already a serious offense under the Criminal Code, he also admits that the police will have to be better trained to recognize when drivers are impaired by the drug.\textsuperscript{190} Health Canada reports that one of the proposed methods of detecting drug impairment involves asking suspicious drivers to perform coordination tests and to provide a sample of urine.\textsuperscript{191}

B. The United States Response to Canada’s Proposal

Another problem cited by Cauchon is “whether these reforms are reasonable, not only in the Canadian context, but also internationally.”\textsuperscript{192} He points out that while the United States views “active prosecution as a key element of their policy response to possession of small amounts of cannabis ... no significant difference in cannabis use was found between those jurisdictions that decriminalized cannabis use and those that did not.”\textsuperscript{193}

\begin{footnotes}


\textsuperscript{190} Id.

\textsuperscript{191} HEALTH CANADA, supra note 163.


\textsuperscript{193} Cauchon, Martin. “Contraventions Act.” In Ontario. Legislative assembly. Legislative Debates (Hansard). 37\textsuperscript{th} Parliament, 2\textsuperscript{nd} Sess. (October 9, 2003), available at http://www.parl.gc.ca/37/2/parlbus/chambus/house/debates/137_2003-10-
However, though the Minister relies on the individual states of the United States efforts to decriminalize marijuana for support of his bill, he fails to touch on the fact that the American federal government’s response to Bill C-38 has been decidedly unwelcoming.

Canada and the United States have been gradually growing apart politically in recent years.\textsuperscript{194} While the United States Government has been becoming more conservative and leaning towards the right, Canada has become more and more progressive.\textsuperscript{195} A large part of this movement may be due to the presence of a Liberal Prime Minister, Jean Chrétien.\textsuperscript{196} Chrétien, the leader of the Liberal Party, has prominently vocalized his support for Bill C-38 and introduced controversial legislation legalizing same-sex marriage.\textsuperscript{197} Polls show that many Canadians agree with him – he has estimates of support as high as 55-60%.\textsuperscript{198} On the other side of the border, however; White House officials have warned that Canada’s decriminalization efforts will result in higher rates of drug smuggling into the United States and higher rates of marijuana usage among Americans.\textsuperscript{199} John Walters, Director of the United States Office of National Drug Control Policy, otherwise known as the “drug czar,” summed up the situation by describing Canada as “an exploding source of highly-potent marijuana ... [i]t’s a multibillion-dollar industry and most of the production is headed south.”\textsuperscript{200} Law enforcement agencies estimate that some $2.5 billion dollars per year of Canada’s most powerful marijuana reaches American consumers.\textsuperscript{201} Paul Cellucci, the United States Ambassador to Canada, hinted in May that if the country passes Bill C-38, northern border checks may

\textsuperscript{195} \textit{Id}
\textsuperscript{196} \textit{Id}
\textsuperscript{197} \textit{Id}
\textsuperscript{198} \textit{Id}
\textsuperscript{199} Nickerson, \textit{supra} note 162.
\textsuperscript{200} \textit{Id}
\textsuperscript{201} \textit{Id}
become more stringent, which could cause not only travel problems but economic difficulties for Canadian exporters as well.\(^\text{202}\) Walters, in a phone interview with the Boston Globe, implied that the border might have to be militarized.\(^\text{203}\) He noted that while Mexico and Columbia are cooperating with the United States drug policies by implementing eradication procedures, “Canada seems to be going in another direction ... [w]e don’t want the border with Canada looking like the US-Mexico border.”\(^\text{204}\)

There has been media speculation that the real problem is that Canada has become “yet another troublesome democracy, like Germany, France, and Turkey, with each nation’s elected officials answering to their constituents rather than to the voice of America.”\(^\text{205}\) That certainly is a possibility in this situation; it appears that the majority of Canadians support Chrétien’s marijuana decriminalization efforts\(^\text{206}\) and that the real opposition to the legislation is coming from the United States.\(^\text{207}\) Cellucci, in another address, warned Canadians that the Americans were “disappointed and upset” over Canada’s recent refusal to support the United States Government efforts in Iraq.\(^\text{208}\) Canada, however, does not seem to be very concerned about what American government officials think about their current political proceedings.\(^\text{209}\) The Canadian media wasted no time in responding to United States “warnings” about passing Bill C-38.\(^\text{210}\) The Halifax Chronicle-Herald reported that the United States “is the only country that has ever invaded ours, and it would do so again in a wink if it thought its interests here were seriously threatened ... [w]e need no lectures from Americans about the defence of liberty.
and democracy.”

The Toronto Star stated “[f]irst we’re soft on Saddam, now we’re soft on pot,” (in response to US criticism of their refugee policy providing a haven for terrorists) then went on to describe the White House as “stuck in a time warp, taking the world back to an earlier era of Reefer Madness.” The United States, possibly thinking Canada wasn’t quite getting the message, created a punitive tariff on wheat exports soon after the introduction of Bill C-38 in May. Was this a mere coincidence, or more of a power play?

Walters does have legitimate concerns, however. Most marijuana production in Canada is controlled by organized crime units, which pose a threat to Canadian public safety and possibly to United States citizens if the importation of the drug from Canada drastically increases here. Walters recognizes this threat when he describes the marijuana situation in Canada as “out of control – hydroponic production is growing from British Columbia to Manitoba to Quebec, run by outlaw biker gangs, and most of it flowing right to the US.” He also voices concern about United States/Canada relations. “You expect your friends to stop the movement of poison toward your neighborhood ... [w]e have to be concerned about American citizens ... [w]hen you make the penalties minimal, you get more drug production, you get more drug crime.” While Canada accounts for only a small share of the marijuana smuggled into the United States, with Mexico and Columbia being at the top of the list, the use of Canadian marijuana by Americans is believed by some drug enforcement officials to have far surpassed that of either of those countries due to the high levels of THC (the active hallucinogenic compound in marijuana that creates the “high” feeling) it contains because of the sophisticated growing techniques utilized in Canada. David

211 Beam, supra note 205.
212 Nickerson, supra note 210.
213 Beam, supra note 205.
215 See Nickerson, supra note 162.
216 Nickerson, supra note 162.
217 Nickerson, supra note 210.
218 Id
219 See Nickerson, supra note 210.
Murray, special assistant to John Walters, believes that Canadian marijuana is so abnormally strong that it should be considered as a more serious drug, not a "harmless high" like some have characterized it. To compare Canadian marijuana with other countries: Canadian hydroponic (grown in a specially fortified, fertilized water rather than soil) marijuana has average THC levels of fifteen to twenty percent, with some "primo" varieties containing up to thirty-four percent THC. For comparison, the average marijuana imported from Latin American contains about six percent THC. The marijuana smoked in the sixties and seventies contained only about two percent THC. So the United States concerns are not completely unfounded; with higher and higher THC levels appearing in Canadian marijuana, and more and more of the drug being smuggled into America, it might be time to consider tightening our border. However, it is debatable as to how much decriminalization will actually increase drug trafficking between the two countries. Canadian Deputy Prime Minister John Manley described American expectations that decriminalization will result in increased trafficking "a bit of a leap."

V. THE INEVITABLE IMPACT OF CANADIAN DRUG LAW REFORM

Canada and the United States have an economic partnership unlike any other in the modern world. The two countries are each other's largest trading partners, employing more than two

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220 Nickerson, supra note 210.
221 Id
222 Id
223 Id
224 Id.
225 Nickerson, supra note 210.
226 Id
million people on each side of the border. The amount of trading between the countries has more than doubled since 1994, with $1.2 billion worth of trade crossing the Canada/United States border each day. In 2002, Canada exported 16.5 percent of the United States total imported goods and services, and purchased 19 percent of all American goods and services. These numbers mean that the United States exported nearly three times as many goods to Canada, a market of 30 million people, as we exported in 2002 to Japan, with its larger market of over 125 million people. There is currently a larger market for American exports in Canada than in all fifteen members of the combined European Union nations. America is not only the largest foreign investor in Canada, but it is the largest recipient of Canadian investment; the countries obviously enjoy reciprocal economic benefit. Some Canadians hope that such economic benefit will soon extend to the trade of marijuana, as well.

Jim Wood, the owner of a pot-friendly coffee shop in St. John, New Brunswick (just north of the Maine border), planned to begin selling pot in late September due to a loophole in Canadian medical-marijuana laws. The unhindered trade relationship between the United States and Canada is beneficial to such a plan: "[w]hat we want," he said "is Americans coming up here, spending their U.S. dollars on our pot." Wood, who already allows customers to smoke their own marijuana as long as they purchase coffee in his shop, reports that Americans stopping in ports along the route of North Atlantic cruise lines routinely visit his coffee shop. As long as marijuana remains illegal in the United States, such a market will probably remain lucrative.

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228 Id.
229 Id.
230 Id.
231 Id.
232 Canada/US Trade Relations, supra note 227.
233 Id.
235 Id.
236 Id.
237 Id.
What is to become of this "world's largest and most comprehensive trading relationship?" It seems that there can only be two answers to such a question: either the border between the United States and Canada will have to be tightened, even semi-militarized; or the United States is going to have to change its drug laws to become more in accord with its trading partners such as Canada and the various European countries that have recently begun to relax their marijuana laws as well.\textsuperscript{238}

Militarizing the border between the United States and Canada could be expensive.\textsuperscript{239} There has been media speculation that Canadian exporters would be the hardest hit, considering the billions of dollars per day they send into the United States.\textsuperscript{240} The United States Government already spends over $700 million per year for Immigration and Naturalization Services border enforcement operations.\textsuperscript{241} There are over 11,000 border patrol agents.\textsuperscript{242} The land borders between Canada, Mexico and the United States are approximately 5,500 miles in length, with the United States/Canada border being approximately 4,000 miles long and the United States/Mexico border being approximately 1,500 miles long.\textsuperscript{243} That means that the United States Government spends over $63,000 per agent on general border enforcement.\textsuperscript{244} However, when the numbers are broken down according to each country a difference begins to appear. As of Monday, November 3, 2003, there were estimated to be at least 9,500 border patrol

\begin{footnotes}
\item[238] HEALTH CANADA, supra note 163; see also supra notes 200-01.
\item[239] See infra note 247.
\item[240] See Nickerson, supra note 210.
\item[242] Id.
\item[244] See generally EXECUTIVE SUMMARY, IMMIGRATION BUDGET supra note 241; Securing our Borders, supra note 243.
\end{footnotes}
agents along the Mexico/United States border. This means the United States government spends approximately $600 million of its border enforcement budget of $700 million (or over $400,000 per US/Mexico border mile) defending the militarized border between Mexico and the United States, and utilizes approximately six agents per mile of border. A similar operation along the Canadian border could cost upwards of $1.6 billion dollars per year and require over 24,000 agents. This is a steep price to pay out of the United States coffers, in addition to the economic impact that would be suffered by both Canada and the United States if such a border crackdown were to occur.

For the sake of international trade relations, the United States Government is going to have to consider reformation of federal drug laws. Liberal decriminalization across the board is not the only option; however, that is the route many countries have chosen to take and our laws, over time, are going to have to change to accommodate those countries’ business relationships with the United States. It may seem feasible to increase our federal budget to exert more control over the flow of goods between the United States and their neighbor to the north, but it is absurd to spend federal money to more closely monitor our trade with every nation that chooses to decriminalize marijuana, especially as the numbers of such nations continue to grow. John Walters cannot threaten to reduce trade with every country going in Canada’s

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246 See, e.g. Executive Summary, Immigration Budget, *supra* note 241; Securing our Borders, *supra* note 243; *Border Patrol Failing*, *supra* note 245.


direction, especially considering the rate at which European nations are changing their drug laws.\textsuperscript{251}

There are small steps that can be taken along the way to complete decriminalization, such as changing drug-offense sentencing procedures,\textsuperscript{252} or using a regulatory/educational approach similar to the one utilized for tobacco and alcohol.\textsuperscript{253} The government may fear that by relaxing marijuana laws, they are condoning its use. However, there is an arguable point that the costs of criminalizing the drug are far higher than the benefits of the prohibition policy.\textsuperscript{254} An American bipartisan public health study found that medical treatment for drug offenders "dramatically reduces crime and is much cheaper than jail ... every dollar invested in drug treatment can save $7 in societal and medical costs."\textsuperscript{255} Drug laws should change so that they reflect not the Anslinger-influenced, "Reefer Madness"-watching society of the sixties,\textsuperscript{256} but a society with ever-increasing knowledge about marijuana use and its detrimental/beneficial effects. Such an approach, with the United States adapting to the changing world around them rather than expecting everyone else to adapt to American morals and values, could prevent worldwide breakdown between the United States, arguably one of the world's largest economic powers, and their various trading partners that have begun to relax marijuana laws, i.e. Spain, Italy, Portugal, Belgium, Luxembourg, the Netherlands, Germany, Switzerland, and Denmark, just to name a few.\textsuperscript{257}

\textsuperscript{251} See Nickerson, supra note 162; see also HEALTH CANADA, supra note 163.


\textsuperscript{253} DUKE, supra note 1, at 283.

\textsuperscript{254} See generally DUKE, supra note 1.

\textsuperscript{255} Riley, supra note 59.

\textsuperscript{256} See ISRALOWITZ, supra note 11, at 97; ANDERSON, supra note 8, at 51.

\textsuperscript{257} HEALTH CANADA, supra note 163.
A. States Changing Drug-Offense Sentencing Procedures

Apparently, some states in the United States have already begun the process of lightening their sentencing procedures for drug crimes and focusing on treatment instead. Twenty-five states have passed laws in the last year eliminating mandatory minimum sentencing laws and offering treatment rather than imprisonment for certain classes of drug offenders. While much of the change is due to budget crises across the nation, some politicians are seeing it as a way of making the criminal justice system more effective. One of the best examples of the new change is the state of Washington, where laws were passed shortening sentences for drug offenders and creating funding for drug treatment. The law allows judges to sentence offenders to treatment rather than prison, and allows the charges to be dropped upon successful completion of the treatment program. The money for the treatment fund will come from the money that will be saved by having fewer prisoners for the state to support. The new laws will save the state an estimated $45 million per year. The federal government could stand to save a lot of money (and possibly apply that money to drug treatment and education opportunities) if federal sentencing guidelines were lessened as well; or if marijuana prosecutions were reduced to mere formalities such as tickets/fines, or better yet, if marijuana was regulated under a system similar to alcohol or tobacco, which are arguably more dangerous substances to the human body.

258 Butterfield, supra note 252.
259 Id.
260 Id.
261 Id.
262 Id.
263 Id.
264 Butterfield, supra note 252.
265 See DUKE, supra note 1, at 22-42.
B. Education/Regulation Approach

Another approach towards marijuana to be considered could be the education/regulation approach utilized in the sale of both alcohol and tobacco. Alcohol and tobacco are both legal, but restricted in the sense that children do not have access to them, advertising is limited, and nationwide comprehensive educational campaigns about the dangers of both have been heavily promoted over the last decade. The rates of consumption of both of these drugs have drastically fallen in recent years despite the legality of the substances, probably due to the fact that Americans have become more health-conscious and aware that any drug can be harmful to one’s health. A similar approach could be used for marijuana. If marijuana were decriminalized, but still subject to regulation similar to that of alcohol and tobacco, children would not have access, the places it could be sold would be limited, and it could not be consumed in most public places. Education about the health effects of a drug can be a powerful deterrent, as evidenced by the success of the anti-smoking campaign led by the Surgeon General, the Health and Human Services Agency, the American Cancer Society, and others. With regard to cigarette smoking, “Americans have responded rationally to truthful data about a drug.” It is believed that Americans would respond in a similarly rational way to the truth about marijuana. Our knowledge about the effects of marijuana has come a long way since the days of the Marijuana Tax Act, Nixon, and Henry Anslinger. Drug law reform advocates have theorized that part of the drug problem in this country can be

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266 Id. at 259.
267 Id.
268 Id. at 270-71.
269 Id. at 283-88.
270 DUKE, supra note 1, at 290.
271 Id. at 259-72.
272 Id. at 283.
273 Id.
274 Id. at 259-89.
275 See generally Anderson, supra note 8, at 50; see also The Merck Manual supra note 99.
attributed to the miseducation of our youth on drug use. Compare the approach to educating teenagers about sex to educating them about drugs: while teaching teens about abstinence seems like a good idea, rising teenage pregnancy and sexually transmitted disease rates often cause schools to teach "safe sex" curriculum as well, despite fears that it may appear as encouraging participation in the activity. Exclusively focusing on abstinence would be underestimating the comprehension of our youth, especially when there is evidence that many of them are already engaging in sexual intercourse. However, when it comes to drugs "the pragmatism prominent in many schools cannot be found." Abstinence seems to be the only goal of drug education ... "[a]ny use of illicit drugs is treated as 'abuse,' and moralizing takes the place of teaching about different symptoms and severities of drug abuse or dependency."

C. Decriminalization

The option that would put the United States most in sync with the above mentioned countries that have already begun decriminalization is to begin a process of decriminalization for our own country. In a country where the courts are backlogged with drug cases and not since Prohibition have our law enforcement officials been so prone to corruption, decriminalization could become more and more attractive. In a time of increasing governmental budgetary deficits, the resources expended on prosecuting marijuana personal-possession cases (which make up the majority of federal marijuana prosecutions) may need to be

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276 DUKE, supra note 1, at 289.
277 Id.
278 Id.
279 Id.
280 Id.
281 HEALTH CANADA, supra note 163.
282 DUKE, supra note 1, at 8.
283 Butterfield, supra note 252.
reallocated for general day-to-day law enforcement activities. Proponents of marijuana law reform see the criminalization of the drug as "crippling our criminal justice system," creating a black market in which there is no legal recourse for those who are cheated, leading to murder and other violent crimes as the market participants take matters into their own hands. If the United States Government were to reform the drug law system to reflect the health needs of drug-using citizens rather than the criminality of their actions, like Canada, United States citizens would not only have a better chance of overcoming their addictions, but would also be saving the nation money as well. A ticketing system, similar to the one suggested in Canada's proposed Bill C-38, would not only reduce the amount of people in prison for personal possession therefore saving the government money on supporting said prisoners, but would bring in an additional source of revenue for law enforcement agencies, much like speeding tickets.

VI. CONCLUSION

It is obvious that the proposed decriminalization of marijuana in Canada is already having detrimental effects on the United States' relations with the country. The inference can easily be drawn that the United States may have similar conflicts with many other countries as they begin listening to their own citizens on the decriminalization issue rather than bowing down to the requests of the United States, a country in which our current drug laws are based on the misguided, prejudicial facts presented to Congress with the proposal of the Marijuana Tax Act of 1937.

285 DUKE, supra note 1, at 8.
287 Riley, supra note 59.
288 Nickerson, supra note 162.
289 Id
290 Beam, supra note 205.
291 ANDERSON, supra note 8, at 51.
Society’s knowledge on the subject of marijuana and drug use in general has increased considerably; we know now that marijuana has shown promise in treating diseases causing chronic pain,\textsuperscript{292} that the drug is not physically addictive,\textsuperscript{293} and that drug laws focusing on treatment rather than prosecution generally are successful and save the government money.\textsuperscript{294} Many of our international trading partners are currently either in the process of decriminalizing marijuana or are planning to in the near future.\textsuperscript{295} It has been said that countries with decriminalization procedures in place, and even in American states that have legalized marijuana for medical purposes, there is no increase in marijuana usage linked to the decriminalization policy.\textsuperscript{296}

Instead of desperately holding on to the misguided laws of the past that are based on untruths and prejudices, and attempting to coerce our international allies into cooperating with them through threats of punitive trade actions,\textsuperscript{297} maybe its time for the United States Government to acknowledge what twelve states and countless other foreign nations have realized: the benefit of prohibition must outweigh the social costs, and the scale in America is rapidly tipping in the wrong direction. In a discussion of current drug laws, an article in \textit{The Economist} once stated: “repeal [modern drug laws], replace them by control, taxation, and discouragement. Until that is done, the slaughter in the United States ... will continue. Europe’s turn is next.”\textsuperscript{298} The European nations, much like Canada, seem to be moving toward a more comprehensive drug strategy to avoid the burden prohibition places on society.\textsuperscript{299} Hopefully, it is only a matter of time before the United States begins to do the same.

\textsuperscript{292} \textit{Medical Marijuana FAQ}, supra note 148.
\textsuperscript{293} The Merck Manual, supra note 99.
\textsuperscript{294} See Riley, supra note 55, at 59.
\textsuperscript{295} \textit{HEALTH CANADA}, supra note 163.
\textsuperscript{297} Nickerson, supra note 162.
\textsuperscript{298} Riley, supra note 59.
\textsuperscript{299} See \textit{HEALTH CANADA}, supra note 163.