High Time for Change

A Sound, Humane, and Fiscally Responsible Marijuana Policy for Canada

Natassia Ciuriak
Carleton University

Introduction

If a country’s legal framework is broadly in line with its society’s values, it follows logically that crime will be minimized. No public policy more obstinately ignores this principle than that regarding marijuana. Despite statistics suggesting a large portion of the Canadian population uses cannabis regularly and an increasing portion of the public no longer supports its criminalized status, the current Conservative government under Prime Minister Stephen Harper is pushing for reforms that intensify its proscription including “reverse onus bail hearings, the elimination of conditional sentences and statutory release and especially, mandatory sentences.”¹ These proposed legislative changes are symbolic of most governments’ persistent and dominant mindset when it comes to drug laws: the sentiment is expressed as being ‘tough on crime,’ and the solution is to strengthen

¹ McKnight, Peter. “Canada should learn from U.S. mistakes; Putting more non-violent criminals in jail is not the solution to our justice problems.” The Vancouver Sun. April 4, 2009: D5.
enforcement and to put more people (generally non-violent offenders when related to marijuana) behind bars. However, there is an increasing civil society movement towards more progressive and informed marijuana laws that incorporate such policies as harm reduction, decriminalization or legalization, education and prevention, and health care.

Based on an international comparative analysis, this paper will argue that Canada’s marijuana laws, rather than toughened, should be changed in the opposite direction, to align them with strong scientific, social, empirical, economic, and historical arguments and evidence against criminalization. The paper will further argue that legalization is preferable to decriminalization.

This paper will first provide a short social and legal history of marijuana in Canada, for we cannot understand the steps that must be taken without first understanding how and why we have arrived at our present position. It will then develop three arguments. First, it will show why marijuana prohibition has failed to prevent or even decrease usage by examining the lessons learned from alcohol prohibition and the American criminalization of marijuana, and by exploring the current Canadian marijuana position. Second, it will assess whether decriminalization might provide a better legal framework based on an examination of the legal approaches the Netherlands and Portugal have taken. Third, it will discuss the differences between decriminalization and legalization by comparing marijuana’s health and social effects to those of alcohol and tobacco, weighing each possibility’s benefits and drawbacks as discussed in a 2002 Senate Special Committee report that strongly recommended legalization, as well as briefly reviewing the international barriers to implementing either option.

**History of Marijuana Regulation in Canada**

Marijuana was first criminalized in Canada in 1923 when Parliament added it to the Schedule of the Opium and Narcotic Drug Act,\(^2\) with “no debate, no justification, [and despite the fact that] many members did not even know what cannabis was.”\(^3\) Canada did not have a significant marijuana-using population at the time, and “there were no seizures of marijuana in Canada until

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In her book on historic Canadian drug regulations, Catherine Carstairs argues this action was probably taken due to discussions at the Hague Opium Conference in 1911-12, which Mackenzie King attended, and because of the Geneva Convention of 1925, which limited Indian hemp to “medical and scientific” consumption. The Senate Special Committee on Illegal Drug suggests “early drug legislation was largely based on a moral panic, racist sentiment and a notorious absence of debate.” The moral panic regarding drugs coincided with, and was very strongly linked to, the panic that led to the prohibition of alcohol. Regarding marijuana specifically, the Committee describes “the criminalization of the drug [marijuana] as a solution without a problem”; essentially preemptive legislation.

In 1969, following the 1960s’ rapid increase in marijuana use and public outcry for reform, the government appointed Gerald Le Dain, dean of Osgoode Hall Law School, as chairman of the Commission of Inquiry into the Non-Medical Use of Drugs. It “concluded that the criminalization of cannabis had no scientific basis.” Despite a number of concerns, including that of the ‘gateway theory,’ which posits that marijuana leads to hard drug use, and the drug’s possible effects on youths’ brain development (thirty years’ experience and research have shown these to be factually wrong and greatly exaggerated, respectively), “all members supported movement toward decriminalisation.” Prime Minister Pierre Trudeau subsequently promised to advance legislation that would comply with the Commission’s recommendations. However, he was unable to do so before Joe Clark took over government, forcing the issue off the political radar screen.

Three years after the Controlled Drug and Substances Act replaced the Opium and Narcotic Drug Act in 1997, the Ontario Court of Appeal struck down a federal law prohibiting possession of less than 30 grams of marijuana, ruling that “banning marijuana for medicinal purposes violates the

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5 CarstairsIbid., p. 31.
6 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 22.
8 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 35.
9 Ibid., p. 36.
11 Ibid.
Canadian Charter of Rights and Freedoms.”  

This led to the Marijuana Medical Access Regulations of 2001, which made Canada the first country to permit medicinal marijuana use, but failed to address recreational marijuana use. In 2003, the Ontario Court of Appeal ruled that the new regulations provided acceptable access to medical marijuana, re-criminalizing possession of marijuana for recreational purposes. Later that year, the Supreme Court ruled that our marijuana laws “do not violate the Charter of Rights and Freedom and its protection of life, liberty and security of person.”

Then, under the Liberal minority government of Paul Martin, Bill C-17 was introduced. Had it passed, “adults caught with less than 15 grams of pot could be fined up to $400, but wouldn’t have a criminal record.” It also called for a doubling in the length of jail terms for marijuana growers.

The road to decriminalization ended with the election of the Harper Conservatives in 2006, the debate within government over changing marijuana’s legal status concluded; criminalization and harsher penalties would be sought.

**Has Criminalization Succeeded?**

The prohibition of alcohol in both the United States (1920-33) and Canada (duration specific to municipalities and provinces) has given us many insights into the effects of marijuana prohibition. Prohibition was enacted namely “to reduce crime and corruption, solve social problems, reduce the tax burden created by prisons and poorhouses, and improve health and hygiene.” It is, however, largely considered a failure today for several reasons, including the following: “Alcohol became more dangerous to consume; crime increased and became ‘organized’; the court and prison systems were stretched to the breaking point; and corruption of public officials was rampant.”

Many of these symptoms currently characterize marijuana prohibition, particularly the increase in

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**References:**


13 Ibid.

14 Ibid.

15 Ibid.

16 Ibid.


18 Ibid.
organized crime and the incarceration rate, which are also expensive and have thus greatly increased government spending.

Furthermore, according to Richard Cowan, prohibition of any substance is subject to the “Iron Law of Prohibition,” which states that “when drugs or alcoholic beverages are prohibited, they will become more potent, will have greater variability in potency, will be adulterated with unknown or dangerous substances, and will not be produced and consumed under normal market constraints.” During alcohol prohibition, there was an important increase in potency: it was uneconomical to produce bulky, weak alcohols like beer, “because the largest cost of selling an illegal product is avoiding detection” and stronger liquors like whiskey consume less space for similar alcohol content. Although potency has increased in marijuana, this does not negatively affect the health of users, “because THC [marijuana’s active component] does not cause physiological damage to organs or tissues.” The main danger is that it might be adulterated, or ‘laced,’ with chemicals, namely pesticides, which can have significant detrimental health effects. The legalization of marijuana would allow government to set production standards to eliminate this threat.

Prohibition also heightened the “attractiveness of alcohol to the young by making it a glamour product associated with excitement and intrigue.” Although statistics of this kind are difficult to obtain for marijuana, anecdotal evidence suggests this plays a significant part in first time use of marijuana by youth.

So why does most of the developed world, particularly the United States, insist on criminalization? If the era of American Prohibition taught us anything, it was that repeal of that legislation “dramatically reduced crime, including organized crime, and corruption. Jobs were created, and new voluntary efforts, such as Alcoholics Anonymous, which was begun in 1934, succeeded in helping alcoholics.” These are the results every country wants, but governments are too frightened of the unknowns of decriminalization.

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19 Thornton, Mark. “Policy Analysis: Alcohol Prohibition Was a Failure.”
20 Ibid.
24 Thornton, Mark. “Policy Analysis: Alcohol Prohibition Was a Failure.”
25 Ibid.
The main consequence of criminalization of marijuana in the United States has been the high incarceration rate, which until the 1980s, was roughly in line with the rest of the developed world, but is now five times the rate of the rest of the developed world, or 756 people per 100,000 residents— the United States has “five per cent of the world’s population, but 25 per cent of the known prison population.” Much of this results from the imposition of mandatory jail terms for drug offences (a policy the Harper government is currently seeking to emulate). This eliminates the judiciary’s ability to keep non-violent offenders out of jail, where they are likely to become violent: “most drug offenders serving time have been convicted of non-violent offences involving possession or low-level trafficking.”

Additionally, the way in which drug laws are enforced in the United States perpetuates racism: “while illicit drug use rates among black and white Americans are similar, black people total (...) 74 per cent of those sent to prison. Consequently, one in nine black men in America is serving time.” This racial disparity is also present in Canada, where Aboriginals are overrepresented in our prisons, with many of them serving time for drug offences. In the United States the growing incarceration rate has also created 1.7 million “prison orphans” – children with parents serving time – who are “six times more likely than their peers to end up in prison themselves.”

The criminalization of drugs has also led to the high mortality rate of police officers fighting the War on Drugs: “Across the U.S., a police officer dies on duty nearly every other day. Even more officers are wounded, too many fighting the war on drugs.” This is because the sale of illegal drugs, often undertaken by organized criminals or dealers who are also users, leads to an atmosphere of violence, where “disputes about money or respect are settled with guns.” However, it is important to note that much of this violence is absent from the marijuana market, as marijuana does not incite

26 Ibid.
27 McKnight, Peter. “Canada should learn from U.S. mistakes; Putting more non-violent criminals in jail is not the solution to our justice problems.”
28 Ibid.
29 Ibid.
30 Ibid.
31 “America’s prison blues; The U.S. jail population is five times the world average - one in every 31 adult Americans is either in prison or on parole.” The Gazette. Montreal: April 5, 2009: p. A13.
33 Ibid.
violence, is less expensive than other illegal drugs, and is often sold “in residential settings by dealers who do not themselves have expensive habits.”

Consistent with the failures of the War on Drugs in general, marijuana prohibition has failed to prevent its continued use: “If prohibition decreased drug use and drug arrests acted as a deterrent, America would not lead the world in illegal drug use and incarceration for drug crimes.” In fact, the United States has some of the highest usage rates in the developed world, and this considering its high penalties: “32.9% of Americans aged 12 and above have experience with cannabis and 5.1% have used in the past month. These figures are twice as high as those in the Netherlands [a country with very liberal marijuana laws].” In fact, “proportionally, more Americans have used cocaine than Portuguese [where drugs were decriminalized in 2001] have used marijuana.” However, the United States refuses to officially acknowledge or understand the logic behind decriminalization and has instead “single-mindedly agitated for greater criminalization approaches and appears, at least to [European Union] officials, interested solely in enforcement actions, rather than empirically vindicated policy changes […] designed to manage usage rates and ameliorate drug-related harms.”

Canadian officials are following the Americans despite statistics that suggest our drug, and specifically marijuana, policies are ineffective. In fact, depending on the study, somewhere between 23% and “over 30%” of Canadians have used marijuana at least once in their lives. Furthermore, in 2002, the Senate Special Committee on Illegal Drugs reported that “approximately 2 million Canadians over age 18 have used cannabis during the previous 12 months, approximately 600,000 have used it during the past month, and approximately 100,000 use it daily.” However, only 0.85% of them were charged with possession. Furthermore, “over 50% of all drug-related incidents

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35 Ibid.
40 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 15.
41 Ibid., p. 15.
42 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy, p. 359.
[reported by police] involve possession of cannabis."\(^{43}\) Those who are charged and convicted face negative effects to their financial situation, career opportunities, and restricted travel.\(^{44}\) It is also important to note that, according to the Senate Special Committee, Canadian drug enforcement is unevenly applied, which could lead to “discriminatory enforcement, alienation of certain groups within society, and (...) disrespect for the law.”\(^{45}\)

Marijuana law enforcement is thus a waste of time and taxes “not warranted by the danger posed by the substance.”\(^{46}\) If the government passes Bill C-15, this waste can increase, without greatly affecting usage rates, as the bill is designed to discourage marijuana growers. However, the Fraser Institute’s Stephen Easton points out that the rewards are simply too high for Canadian marijuana growers (“the 100-plant grow-op makes around 55 percent return for a year’s worth of activity,"\(^{47}\) according to conservative estimates) and that as soon as one of the roughly 17,500\(^{48}\) British Columbia grow-operations is closed by police, another opens. In fact, the Senate Special Committee estimated in 2002 that 50% of the marijuana available in Canada is grown in the country, mostly in British Columbia, Ontario, and Québec.\(^{49}\) Although C-15 might deter some growers due to mandatory prison terms, the cost of law enforcement would almost surely increase, from the estimated current costs of between $700 million and $1 billion.\(^{50}\)

Decriminalization in Europe

One must wonder if there is a better public policy option than such an ineffective, costly, and socially harmful one as criminalization. Much of Europe is experimenting with unofficial decriminalization: marijuana is technically criminalized, but few, if any, users are arrested or charged, and none are imprisoned – it is for the most part a depenalized system. A well-known example is the Netherlands, where “coffee-shops” are licensed to sell small quantities of marijuana to adults (buyers must show identification, similarly to when buying alcohol or tobacco). Marijuana is taxed and production is standardized, allowing buyers to know the strength of the marijuana and to be assured

\(^{43}\) Ibid., p. 24.
\(^{44}\) Senate Special Committee on Illegal Drugs. *Cannabis: our position for a Canadian public policy: Summary Report*, p. 25.
\(^{45}\) Ibid., p. 24.
\(^{46}\) Ibid., p. 38.
\(^{47}\) Easton, Stephen T. *Public Policy Sources: Marijuana Growth in British Columbia*, p. 11.
\(^{48}\) Ibid., p. 3.
\(^{50}\) Ibid., p. 24.
of consistent quality. Sellers are also informed and able to provide important advice to first-time buyers. The public atmosphere is acceptant and non-judgmental. However, only 17% of the Dutch population 12 years or older have reported a lifetime prevalence (having used the drug at least once in one’s life), compared to 36.9% in the United States.51 In fact, a study comparing marijuana use in Amsterdam and San Francisco found that “there were no differences between the 2 cities in age at onset of use, age at first regular use, or age at the start of maximum use.”52 The study also notes that “Dutch decriminalization does not appear to be associated with greater use of other illicit drugs relative to drug use in San Francisco, nor does criminalization in San Francisco appear to be associated with less use of other illicit drugs relative to their use in Amsterdam;”53 in fact, they found that the reverse may be true. Furthermore, they argue that the data they collected suggest that marijuana users “organize their use according to their own subcultural etiquette—norms and rules about when, where, why, with whom, and how to use—and less to laws or policies.”54

Portugal has gone one step further than the Netherlands. In 2001, this deeply conservative, Catholic country decriminalized all drugs, not just marijuana, thus “no distinction is made between the types of drug (so-called hard drugs or soft drugs).”55 Decriminalization, it should be clear, means that drugs are still prohibited, but the possession of small amounts of drugs for personal use has been removed from criminal law and is instead treated administratively. If police catch someone using drugs, they refer them to a Commission for Dissuasion of Drug Addiction, which may issue a fine or simply a warning to non-addicted consumers.56 Though the Commissions may not force addicted users to seek treatment, they can suspend sanctions on the provision that he or she agrees to undergo treatment.57 Although rarely used, they may also impose “suspension of the right to practice a licensed profession (...); a ban on visiting high-risk locales (nightclubs); a ban on associating with specified individuals; requiring periodic reports to the commission to show there is no ongoing

53 Ibid., p. 841.
56 Ibid., p. 3.
57 Ibid., p. 3.
addiction or abuse; prohibitions on travel abroad; termination of public benefits for subsidies or allowances."\(^{58}\)

It is important to understand that the intent of the changes was specifically to reduce usage. Drug use rates in Portugal, specifically those for heroin, were among the highest in the EU, causing pervasive and perverse social repercussions. Legalization was not considered, however, as "numerous international treaties impose the ‘obligation to establish in domestic law a prohibition’ on drug use."\(^{59}\) Despite the seeming leniency of the system, the Portuguese have found it to be remarkably successful. Police have found that "treatment options (…) are far more effective than turning users into criminals (who (…) were typically back on the street the next day, but without real treatment options)."\(^{60}\) In fact, both Portuguese and European officials emphasize that "the overriding goal of that process is to avoid the stigma that arises from criminal proceedings,"\(^{61}\) allowing addicts to seek treatment without fear of reprisals. The important point is that Portugal defined the public policy problem of drug use as a health issue, not as a criminal one, as the United States have.

Prior to decriminalization, many Portuguese politicians worried that the proposed changes would make Portugal a "safe haven" for foreign drug users. This has been disproven: "Roughly 95 percent of those cited for drug offenses (…) have been Portuguese. Close to zero have been citizens of other EU states."\(^{62}\) There was also the worry that decriminalization would suggest that drug use was considered to be acceptable and that it would increase dramatically as a result. The data are, in fact, extremely favourable on this point: "for those two critical groups of youth (13–15 years and 16–18 years), prevalence rates have declined for virtually every substance since decriminalization."\(^{63}\) In 2006, Portugal had the lowest lifetime prevalence rates for marijuana use in the EU (8.2% for Portugal compared to 25% for Europe generally).\(^{64}\)

Although it is not perfect, Portugal’s decriminalization framework appears to be far more effective at actually reducing drug use than criminalization. Law enforcement and the justice system have also seen significant savings, which have been re-routed into addiction-treatment facilities.

\(^{58}\) Ibid., p. 4.
\(^{59}\) Ibid., p. 7.
\(^{60}\) Ibid., p. 4.
\(^{61}\) Ibid., p. 6.
\(^{62}\) Ibid., p. 6.
\(^{63}\) Ibid., p. 12.
\(^{64}\) Ibid., p. 22.
reinforcing the system and its goals. But would legalization, with its accompanying regulations and taxation measures, be a better system? Is it even possible in Canada, given our relationship with the United States and our international commitments?

**Decriminalization versus Legalization**

Before embarking upon this line of argument, it is important to note the differences between marijuana and the two prominent legal drugs in our society, alcohol and tobacco. Marijuana, unlike alcohol and tobacco, is significantly less harmful to one’s health and does not produce similar societal externalities. From 2000-2001, there were “27,084 hospital admissions involving alcohol-related conditions.”

Furthermore, 61% of alcohol-related severe trauma hospitalizations were related to traffic accidents, 21% were due to falls, and assaults and homicides accounted for 18%.

Also, in 2006, traffic crashes accounted for 3,122 deaths in Canada. In 1996, 133 people were involved in fatal collisions, killing innocent people, while driving under the influence. Alcohol is also a cause of fetal alcohol syndrome, spousal abuse, and other forms of violence.

Tobacco is also a significant killer: 45,000 Canadians die from smoking-related causes each year – the primary preventable cause of death – and 100 of these deaths are among infants.

Although there are no comprehensive Canadian statistics regarding second-hand smoke, “international scientific reviews indicate that [it] is the third leading cause of preventable death (after smoking and drinking alcohol).” One needs no statistics to know that tobacco is highly addictive and linked to many different cancers.

Marijuana is very different. When the Senate Special Committee began hearing witnesses for its report, it found that most were very critical of the fact that the Controlled Drugs and Substances

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66 Ibid.


68 Collin, Chantal. “Substance Abuse and Public Policy in Canada: V. Alcohol and Related Harms.”


70 Ibid.
Act “did not categorize drugs on the basis of the dangers they represented [to society].” According to a 1996 study published by the Canadian Centre for Substance Abuse based on 1992 data (thus these costs have probably increased), “the costs associated with all illegal drugs were $1.4 billion, compared with $7.5 billion [for] alcohol and $9.6 billion [for] tobacco.” The primary costs of illegal drugs are measured based on externalities: loss of productivity, health care, and losses in the workplace. Loss of productivity is measured by mortality and morbidity costs, which, apart from traffic fatalities caused by driving while high, are nil for marijuana. Furthermore, the vast majority of marijuana users, especially heavy users, are youth that are not yet part of the workforce, and thus represent very little or no losses in the workplace. Therefore, according to the Senate Special Committee, “cannabis itself entails few externalities.”

It is also “not a cause of violence,” nor is it “a cause of delinquency and crime.” Furthermore dependence or addiction caused by marijuana is both less severe and less frequent than those caused by alcohol or tobacco. Marijuana does not lead to the use of harder drugs, and long-term effects are reversible. Excluding its relation to organized crime and driving while impaired, “cannabis involves few of the factors that generate criminal behaviour.” For these reasons, the criminalization of marijuana is clearly not related to any health reasons, as it is far less harmful than alcohol and tobacco, both legal and regulated substances. This calls into question why criminalization continues to this day; it is certainly not based on rational analysis of costs and benefits to society nor in any way consistent with legal treatment of other recreational drugs. One may speculate that it is based on a general moral panic towards drugs.

When the Senate Special Committee began its work, it developed a mission statement recognizing that the rule of law is not the only source of normative rules and that government must use the “instruments of constraint” only sparingly in a free society. The Committee asserted that “public policy on psychoactive substances must be structured around guiding principles respecting

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72 Ibid., p. 28.
73 Senate Special Committee on Illegal Drugs. *Cannabis: our position for a Canadian public policy: Summary Report*, p. 29.
74 Ibid., p. 29.
75 Ibid., p. 29.
76 Ibid., p. 15.
77 Ibid., p. 17.
78 Ibid., p. 36.
79 Ibid., p. 29.
the life, health, security and rights and freedoms of individuals, who, naturally and legitimately, seek their own well-being and development and can recognize the presence, difference and equality of others.” They underline the importance of only criminalizing “offences involving significant direct danger to others.” Marijuana use, significantly, is a victimless crime.

These statements make reference to a few important notions. First, it is time that our free and democratic society recognizes that adults are competent to decide for themselves whether or not they wish to use marijuana. We have already acknowledged this competence regarding far more harmful substances, namely alcohol and tobacco. Even prescription drugs, which may have significant ill health effects, as prominently listed on the labels, are merely regulated, with the discretion to use ultimately resting with the user. It is clearly not a perfect system, as many people become addicted to legal drugs, but “at least a system of distribution involving doctors and pharmacists works without violence and high-volume incarceration.” Science has shown marijuana to be less harmful, which should dispel the moral panic surrounding this substance.

Second, the Committee’s statements make reference to instruments of constraint. Regarding drugs, criminalization is the most constraining policy tool available and is clearly ineffective. Decriminalization is much less socially damaging, but, nonetheless, removes many effective tools from the government’s control: they may only make drug violations administrative offences, exacting small fines from users. Legalization, on the other hand, affords governments the use of a wide array of policy tools that would enable them to make marijuana safer and ensure it is sold only to adults. In fact, the Senate Special Committee favoured a legalization framework primarily because of the lack of control associated with decriminalization. Legalization allows government to assert control over the production of marijuana, which is primarily related to controlling pesticide use. This lowers the risk of adverse health effects from asymmetrical information regarding the product’s quality.

This framework would also allow governments to assure consistent quality, affording buyers confidence in the drug’s type and strength. The government or licensed companies would produce the marijuana and licensed retailers would sell it, thus completely removing the criminal element from the marijuana trade, which is the major danger associated with it. The end of alcohol

80 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 7.
81 Ibid., p. 12.
82 Moskos, Peter and Stanford Franklin. “Legalizing drugs will lead to cuts in crime.”
83 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 34.
prohibition did just that – organized crime elements could no longer profit from the sale of alcohol, as safer, better, and often cheaper alcohol was available from licensed sellers. A key improvement accompanying licensing systems for sellers is that of controlling youth’s access to the drug. It is unlikely to be perfect – the current system for alcohol sales still allows many under-age drinkers to gain access to alcohol, but the legalized and regulated system works far better than prohibition did.

Finally, legalization would allow the government to apply a “sin tax” to marijuana sales, similar to those applied to alcohol and tobacco sales. This is not a primary motivation behind legalization, but it is an important one. Stephen Easton with the Fraser Institute attempted to conservatively estimate the revenue from sales taxes on marijuana. Based on the assumptions that the marijuana is valued at retail street price and sold by the gram,\textsuperscript{84} quantities in which most licensed retailers would deal, the amount of British Columbian marijuana produced is worth approximately $7.156 billion.\textsuperscript{85} He calculates that the production costs per gram are approximately $4.70 and the street returns per half gram of $8.60.\textsuperscript{86} Easton argues that consumers have already shown themselves willing to pay this price for marijuana; therefore, if the government or licensed companies were to produce the legal marijuana at lower costs (making use of economies of scale) and sell it at the current price, they could tax the difference (an amount that is currently profiting illegal producers). Easton estimates this tax revenue to be approximately $2 billion.\textsuperscript{87} This amount would be substantially higher if we were to consider an export tax, which is a difficult proposition because of American and international drug prohibitions. All the same, combined with the savings from reduced law enforcement, fewer trial costs (Canadian Alliance MP Keith Martin estimated that decriminalization of marijuana possession would save Canada $150 million each year in court costs\textsuperscript{88}), and lower prison budgetary needs, these substantial tax revenues could be re-routed to fund educational drug-prevention programs, which must be “credible, verifiable and neutral,”\textsuperscript{89} as well as substance abuse treatment centers to help lower the social costs of other, still-criminalized drugs. As Easton points out, “the broader social question has become not whether we approve or disapprove of

\textsuperscript{84} Easton’s calculations are made in terms of the amount of marijuana required to roll a marijuana cigarette, or joint. This is approximately one gram.
\textsuperscript{85} Easton, Stephen T. Public Policy Sources: Marijuana Growth in British Columbia, p. 21.
\textsuperscript{86} Ibid., p. 27.
\textsuperscript{87} Ibid., p. 27.
\textsuperscript{89} Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 26.
local production, but rather who shall enjoy the spoils. (…) Unless we wish to continue the transfer of these billions from this lucrative endeavor to organized crime, the current policy on prohibition should be changed.”

Despite the United States declining to implement such a regulated system with taxation, if it were to end its War on Drugs it would save $44 billion annually, with an additional $33 billion from taxation, according to Harvard economist, Jeffrey Miron.

Finally, it is important to note that a legalization scheme for marijuana would necessitate some form of amnesty program for people previously convicted of simple possession, removing the negative social, career, and travel effects of a criminal conviction carries, which is advocated by the Senate Special Committee. The government is attempting to encourage low-income earners to enter the workforce to help address the long-term problem in Canada of a rising dependency ratio that threatens the solvency of Canada’s pension system. Restoring to potentially full employability the 600,000 Canadians whose employment prospects have been diminished through marijuana convictions would have a much greater effect in expanding the effective Canadian labour force with no fiscal costs.

Before concluding, it is necessary to briefly discuss the international constraints on legalization. We have already discussed the American War on Drugs and the fact that the United States is highly unlikely to change its stance on drug criminalization. Despite this, first-term Virginia democratic senator Jim Webb has advanced a bill to create an independent commission, similar to the Portuguese one that recommended decriminalization, to review the War on Drugs, its costs, and its results.

However, there are a number of international drug control conventions, to which Canada is a party, that call for continued prohibition of drugs. As we have seen, this does not preclude decriminalization, but it would constrain legalization. The Senate Special Committee considers these conventions to be “an utterly irrational restraint that has nothing to do with scientific or public health considerations.” In fact, the Committee found that the conventions instead reflect 20th century geopolitical North-South relations: “the strictest controls were placed on organic substances.

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91 Moskos, Peter and Stanford Franklin. “Legalizing drugs will lead to cuts in crime.”
92 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 46.
93 Szalavitz, Maia. “Drugs in Portugal: Did Decriminalization Work?”
the coca bush, the poppy and the cannabis plant – which are often part of the ancestral traditions of the countries where these plants originate, whereas the North’s cultural products, tobacco and alcohol, were ignored and the synthetic substances produced by the North’s pharmaceutical industry were subject to regulation rather than prohibition."95 These conventions echo a contributing factor to the original criminalization of most drugs: racial prejudices.

The Senate Special Committee therefore argues that Canada should request the removal of cannabis and its derivatives from these international conventions, as their classifications do not reflect the danger the drugs pose to health and society.96 They also called for the creation of a Drugs and Dependency Monitoring Agency for the Americas, to be developed within the Organization of American States.97 This would allow for accurate, unbiased collection of data to support research into drugs and their health and social effects and to help prevention and education efforts.

Conclusion

Canadian public opinion regarding marijuana has become more informed and there is now growing public support for decriminalization and, to a lesser extent, legalization.98 This is not surprising considering an estimated 4.5 million people (about 14% of the population) used marijuana in 2004 and 600,000 Canadians have a criminal record for marijuana possession,99 which would be purged if the law changes. The Senate Special Committee argued that it is not the State’s role to “impose a particular way of life on people.”100 The State must respect adults’ freedom to choose which substances they wish to consume and to use exhortative, as opposed to coercive, means to promote “an ethic of responsibility [that] teaches social expectations (...) and responsible behaviour.”101

Through a comparative analysis of the historic case study provided by the criminalization and subsequent legalization of alcohol, American criminalization, and Dutch and Portuguese decriminalization, this paper has shown that criminalization is ineffective at reducing drug

95 Ibid., p. 31.
96 Ibid., p. 32.
97 Ibid., p. 49-50.
98 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 20.
100 Senate Special Committee on Illegal Drugs. Cannabis: our position for a Canadian public policy: Summary Report, p. 38.
consumption and the accompanying crime. It has also demonstrated that legalization affords governments more regulatory tools, allowing the creation of a controlled environment, similar to the alcohol and tobacco markets. Legalization allows drug distribution to become “the combined responsibility of doctors, the government and a legal and regulated free market.”\footnote{Moskos, Peter and Stanford Franklin. “Legalizing drugs will lead to cuts in crime.”} Finally, the fiscal revenues that could be generated by legalization (approximately $2 billion), combined with the fiscal savings on enforcement (approximately $1 billion), prosecution (approximately $150 million), and incarceration would not only cover the costs of proper regulation, but generate a fiscal bonus to fund other priorities. Going in the opposite direction, as the Harper government proposes, simply digs the fiscal hole even deeper.
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