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Ending The War On Cannabis

How Colorado and Washington State Impact North American Decriminalization Policy

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Since Colorado and Washington State legalized recreational cannabis in the 2012 Presidential election, many U.S states have amended their cannabis laws. The constitutional referendums are having a catalytic effect ranging from legalizing medical marijuana to decriminalizing possession in small amounts. An unexpected consequence of the passage is a renewed effort to legalize industrial hemp in the U.S. In Canada, the Liberal Party adopted legalization as a potential policy issue in the next federal election. While Canada recently implemented mandatory minimum sentencing for growing cannabis and expanded prison construction, reformers in both countries are using decades of economic data to debunk tough-on-crime policy approaches. As a result, decriminalization can help shift North American policy focus on rehabilitation over incarceration. Focusing on financial responsibility, cannabis reformers are winning at the ballot box. With seventeen U.S States either having legal or decriminalized Cannabis, the War on Cannabis has reached a critical turning point. Moving forward, reformers have an unprecedented opportunity to end the criminalization of cannabis in North America.

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Introduction:

Throughout the twentieth century, an important point of bi-national co-operation for Canada and the United States is international narcotic prohibition. Originating with the criminalization of opium, morphing into an official “War on Drugs” and continuing today, both countries are vocal advocates of the status quo. Focussing on the recent legalization of Cannabis in Colorado and Washington St., as well as intense pressure for policy change within British Columbia, this paper will examine how the rhetorical tactics of reformers are translating to success at the ballot box. Focussing on economic freedom, a respect for local autonomy and social spending, communities are leading a ground-up approach to ending the militarized drug war. Politicians, academics and individual citizens are coalescing to repeal policies that created huge budgetary deficits. By simply passing constitutional amendments, Colorado and Washington State initiated a change in cannabis laws that inspired thirty four States to either amend, or introduce legalisation to alter marijuana laws. This has the potential to address decades of prohibition that has disproportionately targeted African Americans and Native Canadians while exacerbating State and Provincial budgets through private prison construction and mandatory-minimum sentencing laws.

The criminalization of cannabis occurred during civil unrest throughout the United States. To deal with high crime rates, fading manufacturing output and the effects of globalization; States throughout the U.S implemented tough on crime legislation that resulted in the construction of a new prison industry. Legislation came with the promise of falling crime rates, jobs for average Americans and a return to economic power. Chapter 1 addresses a brief history of North American drug prohibition in both Canada and the U.S. It discusses how North

American drug prohibition began as a series of international policy agreements as well as the criminalization of cannabis.

By highlighting the cost of funding massive private prison industries, chapter 2 discusses why U.S States are closing prisons while Canadians are expanding them. Due to the differing political economy of the U.S, with States' having their own criminal codes and many States near bankruptcy, Americans have more direct control over how their State handles marijuana legalization. Canadian provinces cannot take as proactive an approach to legalization because it lies solely under federal criminal jurisdiction. Ending marijuana prohibition undercuts an industry that disproportionately incarcerates both countries minority populations. This will save money and address the racial bias of the laws.

Chapter 3 engages with a growing consensus of international think tanks, nation-states' and academics calling for an end to the drug war. Increasing international pressure from the Global Commission on the War on Drugs, the Organization of American States and numerous academic studies give academic and political credence to the politicians fighting for reform. With extensive statistical evidence that prohibition has not only failed, but drug use has increased in North America, politicians and lobbyists have additional ammunition to advocate for experimenting with decriminalization. While it is unlikely that cannabis will be removed from the Schedule 1 listing as a federally banned substance anytime soon, States can experiment with varying degrees of decriminalization

Chapter 4 covers the recent legalization legislation in Colorado and Washington. Additionally, it examines how both conservative and liberal States are experimenting with varying degrees of decriminalization, as a direct result of the November 2012 election. States including Louisiana, Illinois and Vermont have already amended marijuana laws and the

successful implementation of legal markets in Colorado and Washington will likely spur even faster progress. It also covers the initial response from the Obama administration, the rapid change in public opinion and the future of state and federal efforts to decriminalize cannabis. Focussing on economic freedom, respecting states' rights and potential tax revenue, efforts to regulate cannabis are outpacing the response time from the federal government.

Chapter 5 explains how marijuana prohibition is limiting the production of industrial Hemp in the U.S. Canada provides nearly ninety percent of America's Hemp, yet it is illegal to produce in the United States. Farmers in both countries are advocating for reform, but face legal hurdles because of marijuana prohibition. Since the November 2012 election, Hemp lobbyists have pushed Congress to lift the ban on domestic Hemp production. The renewed willingness to lobby for industrial hemp shows the widespread impact of the recent election. Furthermore, it represents a potential source of revenue for farmers in both countries.

Key to overcoming a century of federally led prohibition is giving advocates ample ammunition to debunk the rhetorical tools of both federal governments. Most importantly, providing credible economic alternatives to prohibition is needed. It must focus on prevention, funding for social programs and fair taxation that encourages a safe, legal cannabis market. States in closest proximity to legal jurisdictions are more likely to adopt legalization policies because of potential lost revenue. Jurisdictions with the most exposure to marijuana are adopting liberal policies, while more isolated locations are conservative in their approach.

With guidance from international and domestic organizations, the success of Colorado and Washington is leading to a greater re-examination of drug policy that focuses on removing the criminalization of users. While hurdles remain, economics, instead of idealist social welfare policies, are forcing legislators to adopt a decriminalized approach to cannabis policy.

Chapter 1: A Brief History of North American Drug Prohibition

To properly understand the current roadblock in fighting the War on Drugs, it is critical to establish that Canada and the United States are co-operative leaders in advocating drug prohibition. Originating with the first ban on opium smoking in San Francisco in 1874, the victims of drug criminalization are predominantly minority populations (Musto 34).

By associating the drug evil with ethnic minorities and foreign others, the United States, with the consent of Canada, has long dominated the international crusade on drug prohibition. International policies are “constructed on the foundations of a long line of American influenced international agreements” (Bewley-Taylor “American Crusade” 72). This is based on a long-standing American view of having “the enforcement of prohibition [as] a model for the other colonial powers, not merely for their opium policy, but in showing them the way towards what many American’s believed could and should be a new era in colonial relations” (Foster 254). Since the opium scare of the late 19th century, Canadian and American governments have led international prohibition.

The Marijuana Tax Act of 1937 made possession or transfer of cannabis illegal throughout the U.S under federal law, excluding medical and industrial uses. It wasn’t until the Reagan Administration that mandatory minimum sentences began the aggressive criminalization of marijuana users. Through the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984, mandatory minimum sentencing guidelines paved the way for an amendment which created mandatory twenty five years imprisonment for drug offences (Musto 270). Since 1984, America is now the nation with the highest incarceration rate in the world (Frezza).

Canadian Drug Laws: Then and Now:

Canada's prohibition of drugs began federally with the 1908 Anti-Opium Act. In response to the Vancouver Riots of 1907, William Lyon Mackenzie King was sent by the liberal government to investigate. He was originally sent on a mandate to compensate the Chinese owners of legal opium factories, which were destroyed by rioters. Instead, King returned with a call to ban opium, except for appropriate medicinal uses (Grayson 105).

By 1922, the Chinese made up nearly three-quarter of arrests stemming from the 1911 Opium and Drug Act, which initiated imprisonment for opium users and dealers (Grayson 106). As a result, many white, Christian Canadians constructed drug use as akin to foreigners and considered it a criminal and not a health threat (Grayson 105). After the initial prohibition of opium, possession of all illegal drugs such as cannabis, LSD, and psilocybin became an indictable offence through an order in council (Whitaker 67). This allowed the government to simply add substances to the *Opium and Narcotic Drug Act* without parliamentary consent or approval. Without any exposure to these substances, MP's sought prohibition as the best public safety tool.

As Robert Whitaker explains, the majority of MP's had no experience with Cannabis. The order-in-council procedure criminalized drug users without parliamentary debate. As a result, research into the medical benefits of these substances is just beginning. In conjunction with international agreements, Canada criminalized substances based on international consensus (68).

In 1929, the *Opium and Narcotic Drug Act* was implemented, serving as the regulatory framework in Canada until the late 1960's. Interestingly in 1932, the act was amended to allow "retail druggists" to sell preparations and remedies that contained no more than two grains of

“soft extract of Cannabis sativa or its equivalent, in one fluid ounce, or, of a solid or semi solid preparation” (68). What this reveals, as Whitaker explains, is that at that time the government viewed Cannabis as a medical substance. (67).

In 1938, Canada prohibited cannabis cultivation. While it was still legal for some doctors, the aim was to eliminate recreational use after the U.S implemented the Marihuana Tax Act of 1937 (Booth 156). This remained the status quo until the late 1960’s. In 1972, after four years of work, *The Le Dain Commission* released its comprehensive report on Cannabis. While it did not recommend full legalization, focussing on criminal penalties for dealers, it did “recommend the repeal of the prohibition against the simple possession of Cannabis” (Le Dain Commission). Even in 1972, policy makers understood that incarceration for possession cannot eliminate use.

Despite this, Canada acted in accordance with international treaties instead of domestic recommendations. The present system of worldwide drug control, which Canada and the U.S are signatories, is regulated by three international conventions. These are the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Bewley-Taylor “Challenging U.N” 172). These agreements replace many international agreements of the late 19th and early 20th centuries. They remain the primary justification for, and main impediments from, changing drug laws.

Indicating the immense corporate medical interests, plant based drugs such as coca, opium, heroin, cocaine and cannabis are limited to use by pharmaceutical corporations. (172). Endemic to international treaties, there is no formal power to enforce the convention provisions (173). So while Canada and the U.S federally are upholding international standards, they are not obliged to enforce them. David Bewley-Taylor, scholar of international drug law comments that

the “situation certainly leaves some room for interpretation at the national level and consequently presents signatory nations with a degree of freedom when formulating domestic policies” (172). In short, both federal governments use adherence to international law as reason not to change drug laws. This is reinforced by U.N agencies, which echo the message that both federal governments wish to maintain. So despite a reliance on international agreements, both countries still control their own drug policy.

Canadian cannabis policy allies closely with federal U.S interests, solidified through U.N treaties which are extensions of policy formulation in the late 19th century. The main hurdle remains the “prohibition-oriented camp and the powerful US-UN axis” (Bewley-Taylor 178). Thus, federal policy is informed through adherence to international standards and agreements. In contrast, decriminalization advocates are using evidence from the most financially burdened jurisdictions’ to show the economic waste of cannabis prohibition.

Canadian Reform Leaders:

In the Canada, the Liberal Party of Canada, through the B.C chapter, is leading cannabis reform. Indicative of Canadian party-politics, the Liberal Party has left it open to their new leader Justin Trudeau to decide whether or not to adopt that provision in the next election (Berthiaume and Fekete). There remains, however, a stark divergence between the priorities of the federal government and the initiatives of the Liberal Party and British Columbia. For the first time in Canadian history, the conservative government included a mandatory-minimum sentence for growing cannabis (“Marijuana Legalization Canada”). While B.C may have a greater consensus regarding marijuana because of their proximity to Washington State, the Conservative Party has other plans. Campaigning as tough-on-crime legislators, Canadians must wait until the next federal election to expect any changes.

Championing responsible regulation, the Liberal Party adopted the B.C economic plan that promises to bring jobs and tax revenue across Canada. The B.C plan stresses that full legalization and regulation is needed to thwart the low-prices and high-quality of the illegal market (Tencer). In the Liberal Party of B.C's report, titled "Legalization of Marijuana: Answering Questions and Developing a Framework", they stress legalization as a tool for use reduction and more efficiently allocated resources. The goals include to "invest significant resources in prevention and education programs... especially amongst youth [and] maintain significant federal responsibility for marijuana control while respecting provincial health jurisdiction and regional concerns" ("Lib Party Standing Policy Committee"). Advocates in both countries are using similar rhetorical tools to fight prohibition. Cannabis reform is both financially prudent and socially responsible.

Importantly, former law enforcement officials are vocally supporting policy change. The announcement of four former B.C attorney generals, calling for British Columbia to legalize cannabis, indicates support from former cannabis prosecutors. In a letter to the B.C Premier Christy Clark and NDP Leader Adrian Dix, the former AG's called for a change in policy because of a lost war.

The result of prohibition, they argue is "massive profits for organized crime, widespread gang violence, easy access to illegal cannabis for our youth, reduced community safety, and significant-and escalating- costs to taxpayers" ("Legalize Pot, B.C AG"). These officials understand first-hand the economic and social consequences of continued prohibition.

The problem with Canadian criminal law, opposed to American law, is that the federal government has sole criminal responsibility over marijuana. Clark commented that she is "going to leave the marijuana debate to the federal government...it's their sole sphere of responsibility,

so as a premier [she respects] that former AG's have taken this stand...but as a premier [she is] going to leave this to the federal government" (Ibid). With the Conservatives in power, it is unlikely they will decriminalize cannabis. Moreover, with a long history of international support for prohibition, Canada will likely not act at a federal level without American federal approval.

The federal governments of both countries are converging in policy while the communities that bear the financial burden are resisting.

Dr. Paul Hasselback, who chairs the Health Officers Council of B.C, stresses that drug policy is fear-based. He explains that Canadians "need to acknowledge that [their] current approach [to their] substance-use policies are perhaps not as evidence-based as it should be" ("B.C Medical Officers"). Dr. Evan Wood, a founder of Stop the Violence BC, says it is clear prohibition isn't working. The money going into law-enforcement, a projected \$260 million since 2007, is ineffective. Instead "organized crime has absolutely overwhelmed law enforcement efforts with the price of marijuana going down dramatically... [and] the potency going up astronomically" Wood said ("B.C Medical Officers"). There is a growing consensus in Canada about the need to change cannabis law and re-examine the overall War on Drugs. Cannabis reform is led by those most affected. Stressing harm reduction, fiscal responsibility and local concerns, reformers in B.C are using the same rhetorical tools as Americans.

Decriminalized cannabis has a diverse impact on both countries. Understanding that criminalization has dire social, political and economic consequences is central to the rationale of reformers. Examining America's experience with private prisons demonstrates the need for Canada to avoid the same pitfalls.

Chapter 2: Prisons, Profits and Possibilities:

As of May 2000, the U.S had two million inmates, a higher percentage of incarcerated citizens than any other country in history (“Prisons fuel profits”). Also, the industry employs approximately 523,000 people with more than 100 prisons in 27 states that are run entirely by private corporations (“Prisons”). The war on drugs quickly turned into a profit-driven industry. The government started issuing contracts to deal with everything from food supply to sanitation services, with around \$7 billion worth awarded annually as of 2000 (“Prisons”). The prison-industrial complex, fuelled by the war on drugs, created a massive industry. Without comprehending the long-term economic impact, the policies sought to eradicate drug use through harsh enforcement.

When California began to implement massive prison complexes, the long-term economic impact was not understood. This “permitted conservative law and order advocates like George Deukmejian to escape taxpayers scrutiny for their dramatic expansion of the State despite their public rhetoric of small government” (Volker 340). Conservative legislators sold to American’s the cost efficient way to deal with the perceived increase in crime in America. Without evidence to the contrary, this legislation passed with little skepticism from the public. With the promise of reduced crime and drug rates, many American’s welcomed more prisons.

The 1970’s also witnessed a major reallocation in American wealth. Instead of strengthening the social welfare net, America began a change which saw “the increase in private wealth and the deterioration of infrastructure ... [which witnessed] the rapidly eroding legitimacy of welfare state strategies... [which] produced a crisis” (Volker 340). The shift to prison construction specifically benefited small town American communities that were hardest hit by the shift in economic production caused by globalization.

Californian towns such as Corcoran, “won the bid [for construction] with cheap surplus land and hopes for jobs for local townspeople, new middle-income employee-residents and additional funds for necessary infrastructure” (340). Rural communities shifted from agricultural production to prison construction and became willing recipients of federal money to re-establish their communities. They became corporate partners in the prison industry out of economic necessity. While Cannabis use is roughly equal between races, African-Americans made up a grossly disproportional amount of those incarcerated (“The War on Marijuana in Black and White”).

Those benefitting from a prison related job are thus prone to support and perpetuate these policies. Dependence on the state for employment forces citizens to view the government as paternalistic provides of the people. By legitimating the State, and “putting half the population into prisons so the other half can make money watching them” (Gilmore 228), the narrative of stability based on the efficacy of prisons creates a society dependent on incarceration.

Not only do opponents of tough on crime legislation have to deal with fear-based approaches to policy, but they must lobby against an industry which is self-interested in perpetuating policies which harm the most vulnerable. Ironically, these are the same policies that are bankrupting many States.

The profit incentive of the prison industry preys on the nations’ most vulnerable. While the State claims to protect the vulnerable by this type of legislation, the role of the State has become to “wage a low intensity war against its unwanted and dangerous classes: the economically and racially identifiable casualties produced by the advent of a post-welfarist social order” (De Giorgi 162). Thus, while tough on crime legislation was enacted under the pretense of protecting the population, its implementation targeted the country’s most vulnerable.

In a review of Bruce Western's *Punishment and Inequality in America*, David Beito describes how mass imprisonment became the alternative to funding social welfare programs:

Despite the end of welfare as we knew it, government has not withdrawn from the lives of America's poor: its role had simply changed. More punitive than limited, government had reached into poor communities by sending record numbers of young men to prison and jail at a time when crime rates were at their lowest levels in thirty years (Beito 135).

This created a federal campaign to replace the social welfare state with a private prison society placing prisoners against their guards in a perpetual cycle of incarceration. The federal government began taking "thousands of unemployed (and potentially angry and rebellious) young men and women off the streets" (Goldberg and Evans) and instead created a manageable prison population. Imprisonment from possession of Cannabis has a cascading effect. Creating an entire new class of drug-user criminals led to short-term economic gain that won votes. It took many years of spending for citizens and politicians to reconsider these policies. Between 2001 and 2010, there were over eight million pot arrests ("War on Marijuana"). Additionally, the ACLU reported in May 2010 that African American's are 3.73 times as likely to be arrested for possession (ibid).

Private prison advocates can no longer argue they are financially viable. State level resistance to federal hegemony remains America's best hope to reverse the trend towards continued expanding private prisons.

Reviewed by Bill Frezza of *Forbes*, Michelle Alexander's book *The New Jim Crow* highlights how the War on Drugs created an America where African-Americans are a permanent underclass. He rehashes statistics from her book including that "nearly half a million people are

in prison or in jail for a drug offense today, compared to around 41,000 in 1980. Four out of five arrests are for pure possession, 80% for marijuana” (Frezza). He points out that if drug laws were not racially biased, “instead of growing up to be doctors, lawyers, engineers, and entrepreneurs, we would all be unemployable former felons” (ibid). Frezza underscores that these policies have directly targeted African Americans and largely ignored the large swaths of white intellectuals who experimented with these substances. While a generation of black Americans went to jail for possession, their white counter parts did not suffer the same systemic targeting. Cannabis reform addresses racial as well as economic problems.

There is an increasing movement by Law Enforcement officials to repeal archaic drug laws. *Law Enforcement Against Prohibition* is a group of current and former members of law enforcement who speak out against the failures of the existing drug policies. Its’ bi-national members include Chief Coroner Vince Cain, former RCMP Chief Superintendent in Vancouver, Major Neill Franklin of Baltimore, among many other active and non-active police members. The most poignant part of their website is under the heading “Why Legalize Drugs” when they argue that the difference between arresting a rapist and drug dealer is that, unlike a rapist, arresting a dealer:

only creates a job opening for an endless stream of drug entrepreneurs who will take huge risks for the sake of the enormous profits created by prohibition... Regulated and controlled environments [will allow for] drugs to be safer for adult use and less accessible to our children...and we believe that by placing drug abuse in the hands of medical professionals instead of the criminal justice system, we will reduce rates of addiction and overdose deaths. (LEAP)

Those who are most involved in the war understand that outright prohibition does not work and has only perpetuated the increase in both addiction rates and violence. The continued leadership of these officials is needed to overcome a century of prohibition.

An article from *BusinessInsider.com* describes how America now has more citizens in jail than were in Stalin's Gulag's, totalling 760 prisoners per 100,000 citizens (Blodget). In 1980, there were only 150 prisoners per 100,000 citizens (Blodget). This is putting an enormous burden not just on the federal government, but importantly on individual states. As a result, there are conflicting forces throughout the U.S that are creating unlikely allies. As states begin to realize the enormous and unsustainable costs of incarceration, many states are changing their mandatory minimum laws due to simple financial necessity.

After nearly thirty years of mandatory minimum sentencing, legislators in Delaware, Florida, Indiana, Pennsylvania, South Carolina, Colorado and New York have repealed mandatory minimum laws since 2008 (ibid). It reflects a "growing belief among state lawmakers that prosecuting drug offenders aggressively often fails to treat their underlying addiction problems" (ibid). This presents an interesting trend that directly conflicts with the official federal policy of prohibition. It also demonstrates how federal policy directly impacts the fiscal well-being of the individual states. This tension will continue as the federal government maintains the war.

Tracey Velazquez, executive director of the Washington-based *Justice Policy Institute*, commented that "Republican governors and state legislators in such states of Texas, South Carolina, and Ohio are repealing mandatory minimums...and funding drug treatment because they know it will improve public safety and reduce taxpayers costs" (Millewski). Conservative Republicans are leading the charge against ever-increasing prisons based on economic

arguments. America can successfully negate the federal incentive to keep a massive part of its population incarcerated through stressing the enormous financial burden. At the very least ending criminal penalties for possession can save states' millions of dollars.

When Texas began redirecting funds to rehabilitation, “costs fell and crime fell, [there was] a double-digit decline... both in [the] prison incarceration rate and, most importantly, in [the] crime rate” (Millewski). Texas is the model for how to effectively scale back tough on crime policies. The state even closed a prison for the first time in their history, and “taxpayers have saved hundreds of millions of dollars, and the changes have coincided with the violent crime rate dipping to its lowest level in 30 years” (Savage). Thus, the potential for long-term change is necessitated by fiscal crisis. It took until an independent auditing company told Texas it was bankrupt until they were willing to re-examine policy (ibid). Since Republican administrations were largely responsible for their implementation, they are better equipped to debate the legitimacy of federal legislation.

Canadian Prisons:

Canadian prison policy is influenced by similar forces to the U.S. In 1979, the Federal Law Reform Commission and the Parliamentary Subcommittee on the Penitentiary System recommended an end to increasing prison size. It recommended funding for other rehabilitation programs, but instead the Canadian Correctional Service privately decided to increase prison spending (Conly 7).

Canada did not implement the same mandatory minimum sentences as the Americas and took a less militant approach to incarceration and drug laws until election of the Conservative government in 2006. The strategy used by the Conservative party was similar to conservative Governor's in the U.S. They were both trusted with being financially prudent, but subsequently

enlarged the size of government. The Harper government demonstrates a larger trend towards “structural adjustment [where] police and military expenditures are the only government spending that is encouraged... [along with the] privatization of state-run industry” (Goldberg and Evans). Indicative of Canada’s support for a global system of prohibition, crime policy disproportionately affects Canada’s native population. Instead, decriminalizing Cannabis and other drugs and replacing jail with treatment is the most effective way to end drug use and support harm-reduction.

In accordance with how the prison industry targets racial minorities and lower-class citizens in America, tough on crime policies in Canada threaten the most vulnerable. Writing in 2000, Judge Mary Ellen Turpel-Lafond describes her fear that the prison industry creates “a society whose main industry is a prison industry... The people who are incarcerated will largely be aboriginal people, and the people running the system will largely be non-aboriginal people” (“Judge fears” A15). Canada’s aboriginals face the largest threat from policies which penalize low-level drug offenders with the threat of recidivism. Barbara Yaffe argues that “it doesn’t make sense to lock up folks who are more in need of mental health services, or aboriginals who’d be better served by rehab programs” that work (Yaffe A6). Aboriginals make up just 3.75 percent of the general population but 18 percent of federal prisoners are from aboriginal communities (“Bill C-10”). National Chief Shawn Atleo believes that harsher prison sentences do not work, “it’s really intervention; it’s support, it’s rehabilitation” (“Bill C-10”). By inadvertently targeting minority groups, these bills threaten Native communities already at risk.

The privatisation of Canadian prisons re-emerged in 2007 when Stockwell Day created a panel to conduct a review of the federal prison system. Rob Sampson was appointed as chair of this panel, who coincidentally was the chief architect of Canada’s first private prison: the Central

North Correctional Centre (Conly 7). The report they produced called for the privatising of “financing, construction, maintenance, and service delivery... [for the] ‘regional complexes’ containing up to 2200 cells” (7). The recommendations from this council became part of the omnibus crime bill. The bill passed on December 5th, 2011 (Fitzpatrick).

Echoing the rhetoric of many before him, Dale McFee, president of the Canadian Association of Chiefs of Police, describes that “Bill C-10 provides appropriate consequences for serious criminal acts [which] assist in strengthening the public’s faith in the justice system” (Fitzpatrick). Canada, via the Harper government, is adopting a distinctly American approach to crime policy which contradicts thirty years of American experience. The creation of an economy of prisons in Canada allows for the same process of dependence on the prison industry for financial success. Canada is falling into American policy amalgamation, where “society’s members learn to believe that the concerns and the enemies of the elites are their concerns, and their enemies” (Melossi 274). Despite this, there is widespread resistance among Canadians that makes the long-term success of the policy unlikely. In short, the decriminalization of cannabis can save money while addressing the racial legacy of prohibition.

Yaffe writing in *The Windsor Star* explains that it costs taxpayers \$88,000 annually to keep a federal prisoner in 2012 (Yaffe A6). These costs are expanding. The independent analysis done by Kevin Page, the Parliamentary Budget Officer, projects additional costs as high as \$51 billion a year, by 2015-16” (Hunter). Harper’s Omnibus bill is a reincarnation of failed prison policies that will cost Canadian taxpayers far too much time and money. It is also an indication that Canada is unlikely to independently adopt more lenient policies under the conservative government.

Reforming federal policy remains the most difficult task in defeating the Americanization of the Canadian prison system. Canadians can resist the implementation of these programs using a strategy similar to how their American state counterparts began to reform their system. Following the passage of the crime bill, Quebec was the first province to protest. Former Minister of Justice Jean-Marc Fournier argued that “this is a bill that is against the experience that [Quebec had for] 40 years now that is giving results...that [bill] is not [their] choice, so [they] will not pay for that choice” (Cohen). Quebec is a leading example of how provinces can fight back against this legislation. Refusing to take on funding is the most effective way to resist the policy.

Former Ontario Premier Dalton McGuinty joined forces with Quebec to protest the bill. He claims the federal government is implementing a financial burden that is unsustainable because of the budget crisis (Hunter). Using the economic argument, McGuinty and his allies can resist the implementation of the crime bill by simply refusing to fund them. While Quebec argues on the basis of protecting the rights of young offenders, the American experience suggests that McGuinty would be much more successful in resisting funding private prisons by focusing on the economic arguments against it.

While this shift demonstrates the coalescence on the federal level, U.S states that have suffered the economic burden are warning Canada. Before the crime bill passed, Texas Republican’s warned Canadian legislators against adopting their failed policies. Judge John Creuzot of the Dallas County Court explains that the prison industry results in “a point in time where the public says, ‘Enough!’ And you’ll wind up letting them out” (Millewski). Republican representative Jerry Madden explained that “Texas had diverted money from treatment and probation services to building prisons. But sending people to prison was costing 10 times as

much as putting them on probation, on parole, or in treatment...[whereas treatment] cut crime much more effectively” (Millewski). As the economic detriments of mass prisons become more widely understood, Canadians will rebuke the crime policies in the same way that Texas did. Unfortunately, it took until Texas was near bankruptcy before policy began to change.

Consistent with international agreements and a century of prohibition, federal officials are converging. Meanwhile, the states and provinces that are forced to fund these initiatives are resisting. Unless the feds are willing to take on more funding responsibility, they may lose the war. Advocates must maintain their economic argument to convince the public of experimenting with different policies.

If the crime bill is any indication that Canada is following the same path as America in the 1970’s, Canadians social security is now more than ever, dependent on fostering an inclusive society. It can be accomplished by reducing incarceration penalties and encouraging rehabilitative and re-integrative programs, especially for native communities. These programs are more cost-efficient and prevent a private industry developing that is dependent on creating two distinct and perpetual classes of citizens. The argument must be centered on the financial reality and based on empirical results. If a strategy of resistance based on economic rational is followed, Canadians can resist the creation of a prison society comparable to the US. Otherwise, Canada will likely create more criminals until they face the same financial doomsday that forced many American states to reform.

By establishing the economic burden imposed on taxpayers of both countries, advocates can harness decades of evidence to change cannabis laws throughout the U.S. Canadians are watching these developments closely. As the first jurisdictions in North America to legalize Cannabis use, Colorado and Washington State serve as litmus test for how to enact reform.

Reformers in both countries can point to decades of wasted prison money to avoid reverting back to these laws. They are reinforced by a growing consensus of international organizations that are pushing for global drug reform.

Chapter 3: International Pressure to Reform Drug Laws

Perhaps the most legitimate, well sourced and respected reports decrying the War on Drugs came from the Global Commission on Drug Policy. Released in June 2011 and commissioned by various important political figures such as Ernesto Zedillo, former President of Mexico, Kofi Annan, former Secretary General of the United Nations, and George P. Shultz, former Secretary of State for the United States. This organization has representatives from every North and South American country ranging from politicians to celebrity Richard Branson.

They write that the most important tool to change the rhetoric of the debate is to make prohibition a conversation about economic cost and harm-reduction. The report emphasizes the importance of the initiative by stressing that countries must “respect the human rights of people who use drugs. Abolish abusive practises carried out in the name of treatment – such as forced detention, forced labor, and physical and psychological abuse” (Global Commission Report 4-5).

The Commission agreed on four main principles as a guide for the future of drug reform. They stress that policies should be a global responsibility, while being mindful of how to implement these policies on a local level, as was discussed in the 1988 Convention on Drug Trafficking (8-10). Finally, it asserts that combating drug use is a comprehensive strategy which involves all levels of government. It is more important to create health awareness than it is spreading fear-mongering. While the commission takes a more radical approach than most, advocating for the decriminalization of all drugs, it is an accumulation of decades of data that shows drug use in North America is at an all time high (11).

According to the Global Commission, global usage in opiates, cocaine and cannabis have all increased since 1998 by 34.5%, 27% and 8.5%, respectively (Global Commission 6). Despite the clear evidence that escalating the war on drugs has not stemmed violence or consumption

rates, U.S officials continue to advocate for draconian legislation. Using data from the United Nations and World Health Organization, the report recommends a radical approach to ending the war. While advocating for full reform, the report stresses that solutions must be locally based.

Pressure is mounting on the Obama administration from outside the U.S. The Organization of American States (OAS) released a report in 2013 called “The Drug Problem In The America’s”. The report stresses that if the United States is serious about stopping drug related violence they must embrace new enforcement approaches. It acknowledges the success of prohibition, but stresses that the overall supply of drugs remains constant (“Drug Problem 1”). While the U.S rightly claims it is confiscating more drugs each year, more drugs are simultaneously entering (5).

The report comes on the heels of many Latin American countries, including Uruguay, who are seriously considering legalizing marijuana (Padget). It also coincides with a radical new program in Bogotá, Colombia, where officials are experimenting to see if marijuana can be used to wean junkies of *bazuco*, a cheap but highly addictive cocaine paste (Pagdet). Many countries are experimenting with cannabis for medicinal use.

Critics of legalization worry that it is synonymous with increased and condoning use. Unfortunately, prohibitionist policies have not proved to deter or prevent youths from using weed. In April 2013, UNICEF reported that Canadian teens were the most likely to smoke pot of all teens in the developed world (Roberts). In Canada at least, prohibition is not properly protecting young Canadians. The central conceit of the failed war is that harsher criminal penalties increases use by youth.

When North American drug use is only second to Australia and New Zealand, a new approach is needed (Roberts). Portugal became the first European country to officially abolish all

criminal penalties from possession of all illegal drugs in 2001. After a national commission into Portugal's drug problem, the Portuguese decided to replace jail time with the offer of therapy. The theory was that fear of prisons drive addicts underground and incarceration is more expensive than treatment. As a result, those caught with small amounts of drugs are sent to a panel consisting of a psychologist, social worker and legal adviser for appropriate treatment (which may be refused without criminal punishment) (Szalavitz "Drugs in Portugal").

A report by the *Cato Institute* in April of 2009 found that in the five years after drugs were decriminalized, use among teens declined. Additionally, rates of new HIV infections caused by sharing of needles dropped and the number of people seeking treatment for addiction more than doubled ("Drugs in Portugal"). The findings from Portugal serve as a valuable guideline for North American policy makers. Importantly, drug possession trafficking is still illegal (Greenwald). This could be an attractive policy for Obama, because it allows for prosecution of major traffickers while boosting public health accountability.

For teens specifically, lifetime use of any illegal drug among seventh through ninth graders fell from 14.1% to 10.6%; drug use in older teens also declined (Greenwald). It is no surprise that America has both the harshest penalties for drug possession and the highest rates of cocaine and marijuana use in the world (Szalavitz). While unlikely to convince the American electorate, Portugal's success proves decriminalization can reduce usage.

One of the principle fears of legalization, which can be mediated through decriminalization, is drug tourism. U.S Drug Czar Gil Kerlikowske uses the example of the Netherlands, who have had marijuana cafes for years but recently closed many, as proof of the failure of legalization ("The U.S Drug Czar"). Importantly though, the Dutch have never legalized marijuana, they have simply refused to enforce existing laws. This is why states like

Colorado are closely regulating the use of Cannabis, making it illegal to market to teens. Making the public understand that decriminalizing is not condoning is central to the success of drug reformers.

While Portugal serves as a useful model for all drug reform, the remainder of the paper will deal primarily with decriminalization/ legalization efforts in Canada and the U.S. The intent of the Washington St. Legalization initiative is to “stop treating adult marijuana use as a crime and try a new approach that: 1) allows law enforcement resources to be focussed on violent and property crimes; 2) Generates new state and local tax revenue for education, health care, research and substance abuse prevention” (Peterson). While it is unlikely that public officials in the U.S will use Portugal to convince Americans, the growing literature of the drug war’s failure provides states with more justification to experiment with their own marijuana laws.

Chapter 4: American Cannabis Policy November 2012-Present

Coinciding with the re-election of Barack Obama in 2012, Washington and Colorado State passed constitutional amendments legalizing the recreational use of marijuana. Since that time, other states have experimented with changing cannabis laws. States closest to legal jurisdictions, like Oregon, are debating legalizing and regulating cannabis. Even more conservative states like Louisiana are softening cannabis laws since the election. Laws are changing at a rapid pace. Therefore, the Obama administration must balance historic enforcement priorities with respecting the voters in the legal states.

In Colorado, the immediate effect of Amendment 64 is the legalization of possession of up to one ounce of marijuana for adults over the age of 21. Additionally, individuals may also grow up to six plants for personal use (Peterson). However, this does not mean users will be smoking on every street corner. Smoking in public spaces remains illegal. In some areas, such as Douglas County, recreational pot sales will be banned under local ordinances (Peterson).

Similarly, in Washington, Initiative 502 legalized possession and personal use of one ounce or less of marijuana for adults 21 and up. In both states, legal sales will not begin until at least December of 2013. Both States are forming Control Board's to regulate the manufacture and sale of Cannabis (Peterson).

On May 28th, 2013, Colorado Governor John Hickenlooper made history by signing two bills into law that fully regulates the recreational use of marijuana for adults. Contrary to Amsterdam, where authorities often ignore cannabis laws, Colorado becomes the first place in the world to fully regulate cannabis and industrial hemp (Knowles).

Importantly, Governor Hickenlooper, originally opposed to the bill a year previous, praised the bill as an important first step to safe regulation (Wyatt). The bill covers how cannabis

will be grown and sold, with purchasing limits for out of state visitors, as well as a driving THC blood-level limit similar to alcohol (Wyatt). The Governor's support was contingent on revenue being directed to the construction of new public schools. Mason Tvert, director of communications for the Marijuana Policy Project, responsible for lobbying in many states said in 2014, the new excise tax is expected to raise \$24.1 million (Knowles). School funding is the primary benefactor of legalization.

Additionally, Tvert estimated that Colorado police forces expect to save \$12 million by the legalization measure. As a way to ensure prices will be kept low, a wholesale tax is capped at 15% until 2017 (Knowles). The goal is to put the underground market out of business, not create a sin tax that will undermine legalization efforts. The bill is comprehensive. Safeguards include potency labels, child-proof opaque packing with warning labels to discourage child use (Wyatt). In contrast to the approach of the federal government, Colorado is actively taking control of the cannabis issue through regulation, not intimidation. Focussing on local initiatives that foster education, Colorado will benefit from increased revenue.

An independent analysis by the *Colorado Center on Law & Policy* found that in addition to the first year of projected revenue, the state could “expect \$60 million in total combined savings and additional revenue for Colorado’s budget with a potential for this number to double after 2017” (Knowles). Colorado’s legislature is being looked at as a model for other states to either follow or avoid. Success is contingent on how the Obama administration responds to the bills.

White House Response:

Due to the pressure from the American public, the Obama administration responded to official White House petitions. In response to the petition, Kerlikowske wrote that “it is clear that [America is] in the midst of a serious national conversation about marijuana” (Kerlikowske). The acknowledgement by the administration that a national conversation is happening indicates the success of the reform movement. Kerlikowske’s comment was in response to three separate, but related petitions. In total, the petitions received 173,918 signatures. The majority of which came from the “Remove marijuana from the federal Controlled Substance Act and allow states to decide how they want to regulate it” petition (Kerlikowske). Before the referendums an admission by the federal government of a national conversation was unthinkable. Americans may not favor outright legalization, but most believe that states can more effectively deal with local concerns.

Out of the three petitions, the top two directly involved allowing States to determine their own Cannabis policy. The petition that received the least support was to “Federally Legalize Marijuana”. American’s do not necessarily favour outright legalization, but the support for State based decision making indicates that American’s favor a new approach to the drug war. Tom Angell, chairman of legalization advocacy group Marijuana Majority, discusses the promising signs of the President’s statement.

Highlighting the dramatic shift in rhetoric, Angell focuses on what comes next. “Of Course, what really matters is to what extent the administration actually shifts enforcement priorities and budgets, but I sure do like hearing the U.S drug czar acknowledge the fact that marijuana legalization is a mainstream discussion that is happening whether he likes it or not” (Wing). How the feds respond to state initiatives directly impacts the future of Canadian policy.

In February of 2013, *Macleans* magazine interviewed Kerlikowske. This was the first public explanation of the administrations' policies since the election. He indicated that the Department of Justice (DOJ) will continue to pursue distributors and large-scale growers and not go after individual users ("The U.S Drug Czar"). This is a major victory for legalization advocates. However, uncertainty remains in terms of how the DOJ or the DEA will prosecute the large-scale distributors. Along with legalising possession, both laws in Colorado and Washington allow for licenses to distribute and produce marijuana (Flatow). Thus, Obama is trying to strike a balance between respecting state's rights and maintaining the survival of a bureaucracy.

Kerlikowskes' response shows the tricky rhetorical tight-rope he must walk. He explains that unlike the administrations evolution on gay marriage, marijuana "is not a human, or a civil right, or even in the same venue as gay marriage ("The U.S Drug Czar"). He also stretches the legalisation argument to imply that it necessitates wide-scale distribution to the public. Changing marijuana laws, instead of ignoring the problem and wishing it away, directly addresses issues of public advertising, education and awareness. Legalization still entails strict control and regulation, forcing the government to monitor issues prohibition prevents.

In an attempt to avoid Amsterdam-style pot cafes, Colorado banned sale of cannabis in any place that sells food or drink; cannabis-laced food would also be available for to-go-only orders. Similarly, magazines like "High Times" will be treated like pornography and kept behind the counter, out of sight (Wyatt). The goal of legalization is not to condone cannabis use, but to implement regulation that is socially responsible and financially prudent.

Colorado differs from Washington in that they make no attempt to ban concentrated THC such as hashish (Wyatt). In an effort to keep distributors and users safe, all pot-related businesses are required to have 24 hour surveillance and insurance.

The bills gained praise from Neill Franklin, executive director of marijuana reform advocacy group *Law Enforcement Against Prohibition*. Appearing on the Rachel Maddow show, Franklin outlined why he thought the new bills would be successful:

This is going to be very similar to alcohol. You're going to see different policies in different communities and they have the option to do that. From a public safety perspective, this is really what's needed. We, the police, need to get back to focusing on violent crime. It's a great day that we're not out there chasing marijuana users in Colorado and the state of Washington. Thousands of fewer arrests and more focus on those people who are committing the robberies, the rapes, the murders, the burglaries -- and that's where we should be. This is a great opportunity for the police to get back in touch with the community (Ferner).

Colorado and Washington St. are important exemplars of responsible cannabis policy. By directing revenue to educational funding, including awareness campaigns to prevent use by children, legislators are taking control of their state. By diverting revenue away from illegal supplies and sellers, Colorado is focusing on the economic benefit of legalization as a tool to legitimize its' decision. Colorado citizens voted more in favor of cannabis legalization than Obama, giving the state legislature a popular mandate to reform (Knowles).

Franklin went on to debunk the gateway theory, used by opponents of cannabis to justify prohibition. "As a matter of fact, it's the environment that is the gateway into the things that cause us problems in society. So it's the environment of the drug dealer on the corner. Now, with these policies of legalization for marijuana that environment will go away for those who choose to use marijuana" (Ferner). Franklin and other officers in *LEAP* understand that prohibitions' culture, not the substances, is the real gateway to more dangerous drug use.

The economic incentive is spurring many states to define the market regulation for pot. States are vying to participate in a market which ranges in estimates from \$10 to \$120 billion a year. Brad Barker, a *Bloomberg Industries* analyst estimates that there would be between \$9 and \$20 billion in additional tax revenue throughout the entire United States (Oldham and Vekshin). In the age of austerity budgets, cannabis is too attractive to ignore.

Turning to the issue of states' rights, cannabis legalization encounters one of the most debated parts of the constitution, the commerce clause. Barry Friedman, Professor of Law at NYU, wrote in *The Huffington Post* about how states can overcome an outdated understanding of the clause. Their error, according to Friedman, is their reliance on commerce between states. Instead, he argues advocates must focus instead on the federal governments' ability to regulate (Friedman). He explains that the Commerce Clause was intended to facilitate commerce, not prohibit it entirely. He argues "it would have shocked the framers to learn that Congress- rather than the states- would have the power to decide what goods the people could possess, consume or use" (Friedman). As a result, he contends that judges may rule in favor of plaintiffs who argue that the clause was never intended to prohibit commerce altogether.

This updates the 19th century notion that Congress cannot regulate goods within a state, but changes it to focus on the rationale for prohibition as justified through the Commerce Clause. By examining it in this way, Friedman argues that "it certainly seems like marijuana is being banned not to protect us from unsafe pot, but because Congress does not like marijuana, period. If this is the case, there is a strong reason to be made that federal laws are unconstitutional" (Friedman). As substantial progress is made in state legislatures, advocates of legalisation must adapt their legal methods as well.

One of the leaders in the legalization movement is Mark Kleiman, a drug policy expert at UCLA, recently hired by Washington State to design a fully legal commercial cannabis market (Keller). He is an example of someone who was opposed to legalization, in 2002, but changed his view as the war has dragged on. Since then, Kleiman has come to believe that marijuana is still a dangerous drug, but the best harm-reduction method is a well-regulated market (Keller). While Kleiman believes cannabis won't be removed from the federal Schedule 1 listing "until the second Hillary Clinton administration", there is still a lot of unknowns surrounding how the DOJ will prosecute (Keller). Nevertheless, Kleiman is a part of a large group of individuals who once worked to end drugs through prohibition but are now choosing regulation.

Kleiman and others in Washington and Colorado fear that the emerging industry will be taken over by the equivalent of Big Tobacco. He instead envisions a market similar to the wine industry, fragmented with many producers (Keller). Especially in Washington, regulators are very careful not to equate legal cannabis use with promoting use. They view legalisation as the most effective method of preventing abuse. This includes hiring inspectors, testing for potency and contamination, setting limits on advertising and especially on preventing children from obtaining it (Keller). Legalizing and regulation presents alternate ways to reduce drug use. This can be done simultaneously, as governments can responsibly regulate the legal market, taking profit from cartels and into school budgets.

Colorado's amendment 64, the "Regulate Marijuana Like Alcohol Act of 2012" states in (1) Purpose and findings that (a) in the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom as the first three reasons to legalize ("Regulate Marijuana Like Alcohol"). Americans are increasingly focusing on these local concerns. Federal prohibition is too costly for states to maintain. Following the passage of

the amendments, the pace of states experimenting with Cannabis laws is increasing. From liberal to conservative states, there is a renewed willingness to experiment with laws as a matter of economic necessity.

On June 6th in Vermont, a more liberal state, Governor Peter Shumlin signed H.200, which eliminated the state's criminal penalties for possession and replaced them with fines (Wing "Vermont Marijuana"). The much more conservative state of Illinois also passed new legislation. While not as progressive, marijuana reform is gaining legitimacy through a willingness to experiment with new policies. Illinois's legislature narrowly passed the "Compassionate Use of Medical Cannabis Pilot Program Act" in the Senate 35-21 and in the House 57-51 (O'Keefe). It is clear that American's do not outright legalization of cannabis. Regardless, with a strong tradition of autonomy over criminal law, states are empowered by the constitutional referendums to experiment with their own laws.

In Louisiana, one of the states with the highest incarceration rates, legislators recently passed House Bill 103 to reduce jail time and fines (McGaughy). Rep. Austin Badon, D-New Orleans, argues that the state will see immediate savings because they are putting too many people in jail for too long. The bill would not lessen penalties for dealers, but is projected to save \$2.2 million in 2014 alone (ibid).

In a state where the prison-industrial complex is alive and well, the bill would drastically reduce penalties. Under current law, a first-time offender could be jailed up to six months and repeat offenders up to 5 years, with those convicted three times up to 20 years (ibid). Badon's bill would lessen this jail time to not more than two years for repeat offenders, and eight years for those convicted four or more times. The maximum fine would also be lessened from \$5,000 to \$2,500. The bill passed narrowly 54-38, after it was amended to maintain higher jail times

than Badon wanted. In Louisiana, arguments are not focussed on patient medical rights. Nevertheless, this is an encouraging sign from a state that has historically favoured draconian crime prevention measures. Cannabis reform is dependent on local concerns, but is unavoidably influenced by decisions in Colorado and Washington. The examples of Vermont, Illinois and Louisiana demonstrate that cannabis reform is an attractive policy option that transcends state lines. However, the extent to which legalization is pursued over decriminalized is directly correlated to debates about losing potential tax revenue.

Federal Efforts to Change Cannabis Laws:

Efforts to change cannabis laws, while heavily a state-focused endeavour, also have a federal counterpart. To immunize anyone acting in compliance with state cannabis law, the bi-partisan H.R 1523, Respect State Marijuana Laws Act was introduced by (R-Cal) Dana Rohrabacher. The law, if signed, would protect both medical and recreational users from federal prosecution (Barrabi).

The bill was introduced as Americans are at an all-time high for supporting a change in cannabis policy. State-level efforts to legalize and regulate marijuana are supported through a push at the federal level to protect entrepreneurs and users from the DEA. While these bills are unlikely to pass, the bi-partisan effort represents the growing strength of the legalization movement. In order for state initiatives to succeed, an amendment to the Controlled Substances Act is needed. This would help attract investment, knowing donors will not face federal prosecution (Barrabi).

The *Pew Research Center* released a report in April of 2013 that found nationally 52% of Americans say that the use of marijuana should be made legal, while 45% believe otherwise (“Majority Now Supports”). Additionally, support has risen eleven points since 2010. Even more

dramatic is the change from the 1969 Gallup survey that found just 12% favoured legalizing it, while 84% were opposed (ibid). This drastic change further validates the catalytic effect of the last election.

Further indicating that prohibitionist policies have failed, 48% of Americans said they have tried cannabis, compared to 38% a decade ago (ibid). Interestingly, as support for legalization has grown, there has been a decline in the percentage of people who view it as a gateway drug. Currently, only 38% agree that it is a gateway drug, down from 60% in 1977. (ibid).

Perhaps demonstrating that Americans believe the massive cost of prisons and criminalization is more immoral than pot smoking, only 32% of Americans say smoking cannabis is wrong, an 18-point decline since 2006 (50%) (ibid). Moving toward a cost-effective, harm-reduction approach to drug use is a realistic goal. Affirming this, 72% of Americans say government efforts to enforce cannabis laws cost more than they are worth. Additionally 60% say that the federal government should not enforce federal laws in places like Colorado or Washington (ibid).

H.R 1523, which has the support of 60% of Americans, is co-sponsored by Reps. Justin Amash, R-Mich, Earl Blumenauer, D-Ore., Steve Cohed, D-Tenn., Jared Polis, D-Colo., and Don Young., R-Alaska. Introduced by Rep. Rohrabacher, she said: “This bipartisan bill represents a common-sense approach that establishes federal government respect for all states marijuana laws. It does so by keeping the federal government out of the business of criminalizing marijuana activities in states that don’t want it to be criminal” (Barrabi). The rhetoric is grounded in the fundamental American pillars of states’ rights and respect for the free-market. Avoiding

moralizing language, the bill is aimed to protect the actions of state legislatures and local businesses.

By highlighting the waste of the war, there is a growing bi-partisan consensus to change these laws. According to the *Pew* study Republicans (57%), Democrats (59%) and Independents (65%) most closely agree that the Fed's should not enforce federal laws where states permit its' use. Since the failure of Proposition 19 in California in 2010, there has been a radical shift in support for marijuana legalization. About 52% of adults today support legalizing up from 41% in 2010, with support rising in all demographic and political grounds (ibid).

Another indicator of the failed war is that cannabis use is up nationally to 48%, up from 40% two years ago (ibid). Understanding that nearly half of American's are spending in an illegal market, Rep. Jared Polis (D-CO) introduced the Ending Federal Marijuana Prohibition Act of 2012. The bill would remove cannabis from Schedule I of the Controlled Substances Act and from the jurisdiction of the DEA. ("Ending Federal Marijuana Prohibition Act of 2013"). Under the act, growers would need a federal permit and regulated by the revamped Bureau of Alcohol (ibid).

The bill was introduced with the Marijuana Tax Equity Act, which would establish a federal excise tax, similar to the one on alcohol. Rep Earl Blumenauer (D-Oregon) said it could raise at least \$100 billion over the next decade (Barrabi). These bills are unlikely to pass. Nevertheless, the growing consensus in America may be a turning point that proves irreversible.

A multitude of states have engaged in changing their cannabis laws in this last year. Developments occur at a rapid pace. Moving forward, examining the states that may legalize cannabis in the near future is integral to understanding the radical change in the past three years. States in closest proximity to fully legal jurisdictions are the most likely to adopt full legalization

measures. Firstly, there is Oregon. That state also had a legalization measure in the 2012 ballot. However, due to poor organization and a lack of major supporters, the effort failed 56-54 (Dickinson “The Next 7”).

Part of the push for legalization, immediately after the 2012 failure, is because Oregon’s biggest city, Portland, is just across the Colombia River from a legal cannabis market. For Peter Buckley, co-chair of the Oregon state legislature’s budget committee, it’s about dollars and cents. Campaigning for the Yes side of Vote 80, his desire for legalization stems from the budgets he has signed that is continuously cutting school funding (Oregon Editorial Board). There is legitimate tax revenue that states’ are refusing to take sovereignty over. Due to the close proximity, the economic impact of lost marijuana revenue will influence legislators to act.

Writing shortly after legalizing in its’ neighboring state, Washington, the Editorial Board wrote that “[their] neighbor to the north will collect millions of dollars in new “sin” taxes, with much of the money, coming from Oregonians who’d be happy to keep their business—and taxes—in state if given the opportunity.” (OEB). While taking a moral stab at cannabis users, the Editorial board understands the opportunity. Throughout America, state legislators are beginning to comprehend the benefits to taxing instead of prohibiting.

The article continues, treating legalization almost as a foregone conclusion. “Like the idea or hate it, it wouldn’t amount to a radical change. For all intents and purposes, Oregon legalized the casual use of marijuana years ago...by taking the Washington approach, the state at least would be honest about what it’s doing and, perhaps, collect some cash in the process” (OEB). Journalists, politicians and the public are starting to accept the full economic disaster of the continued war.

The editorial board urges lawmakers in Oregon to take charge of legalization. If representatives do not act, Oregon runs the risk of adopting a poorly written amendment that would undermine legalization efforts (OEB). Many states understand the economic potential and are vying to be leaders in a legalized and taxed market. Due to these factors, Oregon is likely one of the next states to experiment with regulated Cannabis.

Opponents of Legalization:

Despite the impressive progress in the last three years, there are many American's who still oppose legalization. These individuals may "lack the authority to actually change laws, [but] their larger purpose is to maintain the marijuana propaganda machine and push back against pro-legalization rhetoric" (Gwynne). This includes individuals like Mel and Better Sembler, founders of *Save Our Society from Drugs*, an advocacy group who lobbied against legalization in Colorado. Additionally, they founded the *Drug Free America Program*, which helps small businesses employ drug-testing programs that brought them \$250,000 in taxpayer dollars in 2010 (ibid).

They tie into the large government and non-government matrix of individuals and companies who benefit from continued prohibition. However, with increasing usage rates throughout the U.S and Canada, it is harder for these organizations to justify their large grants without showing results.

Opposition to legalization is understandably strong among former DEA chiefs. On March 5th, 2013, eight former U.S drug chiefs warned the federal government that time was running out to take action on legalization measures (Tarm). Not surprisingly, the announcement came as the

International Narcotics Control Board, a U.N agency, urged the Obama administration to adhere to international treaties (Tarm). It is not surprising because the U.S and Canada have used the independent United Nations to reinforce archaic drug war stereotypes.

The ex-DEA heads issued their statements through the Florida-based *Save Our Society from Drugs*. However, as the *Pew* study clearly indicates, Americans en masse view drug warrior's rhetoric as out of date. Ethan Nadelmann, executive director of the New York-based Drug Policy Alliance criticises the statement. The plea "can be best seen as a self-interested plea to validate the costly and failed policies they championed but that Americans are now rejecting at the ballot box" (Tarm). Success at the state level, through constitutional referendum, is a paradigm shift in legalization.

Diverse groups throughout the U.S are campaigning for reform with economic necessity as the primary justification. Cannabis reformers are combining with hemp reformers to create a unified approach to ending the drug war. Focussing on economic viability, hemp farmers are seeing similar success in legislation since November 2012.

Chapter 5: Hemp: How Cannabis Reform Affects an Emerging Industry:

Industrial hemp farming is an area of economic growth that is stymied by its association to cannabis. It is no wonder that in 2010, *Economic Policy Journal* reported that Thirty-Two States were officially bankrupt. These States have run out of money to fund unemployment benefit payments. In total, by May 20th of that year the federal government loaned \$37.8 Billion, the most of which was borrowed by California totalling \$6.9 billion (“32 States Have Borrowed”).

Part of the problem of prohibition is that it prevents legitimate industries, such as hemp production, from becoming an economic success story. Hemp is cultivated before the plant buds into its cannabis producing form. Additionally, hemp is genetically altered to eliminate the majority of THC, so even if it was grown to full maturity, the user would not ‘get high’ (St. Pierre). Hemp legalization advocates argue the plant has diverse and untapped economic potential. The U.S is the only major industrialized country that still prohibits hemp production (Eilperin). Hemp, although not psychoactive, was prohibited because of the association to cannabis.

Currently, Canada produces about 90% of the hemp imported to the U.S (St. Pierre). In late 2012, the *Hemp Industries Association* released a report that the market for hemp food, body care and other products brought in 2011 an estimated \$452 Million (Fletcher and Murphy 1). The report detailed the findings, stressing that increased sales “have occurred against the backdrop of increasing grassroots pressure to allow hemp to be grown domestically once again for U.S processors and manufacturers” (1). Hemp advocates understand that to defeat decades of enforcement, the economic benefit to Americans must be stressed. The pace of legislation resembles the change in cannabis laws.

Hemp legalization is also an area of rare bi-partisan support. Senators Ron Wyden (D-OR), Rand Paul (R-KY), Jeff Merkley (D-OR) and Bernie Sanders (I-VT) introduced S.3501, the Senate companion bill to H.R 1831, the Industrial Hemp Farming Act of 2011. Senator Wyden rightly focuses on “a common sense policy on hemp that helps create American jobs...to re-establish this economically important crop” (2). Hemp is not only economically productive but also beneficial to the environment.

This includes being grown organically and requiring very little water and fertilizer. The stalks not only store carbon but produce biomass energy. The oil produced through refinement is rich in protein and Omega-3 fats. Additionally, it can be used as a fibre for paper, fibreglass and even concrete (Eilperin).

Cannabis and Hemp also share a more conflicted relationship. Because of the War on Drugs, Hemp has been categorized as a Schedule 1 drug, making it nearly impossible to grow. Additionally, hemp advocates have campaigned by distinguishing it from the high-seeking sinfulness of cannabis (1). The effort to legalize it gained momentum after the cannabis-legalization efforts in Colorado and Washington. Interestingly, while both governments remain federally opposed to marijuana legalization, Canada has actively pursued hemp production (2).

Hemp, like Cannabis, has a strong Canadian-American connection. The *Hemp Industry* explains that “hemp production in Canada almost doubled in 2011... [which] validates U.S farmers concerns that they are being shut out of the lucrative hemp market that Canadian farmers have cashed in on for over a decade now” (2). The Conservative government of Canada is also supporting hemp. On November 5th, 2012, Harper announced \$100,000 in funding to create market opportunities for hemp producers (English).

As part of the Agricultural Innovation Program (AIP), the money will test and evaluate different hemp varieties for their food and non-food uses. Importantly, in 2012 “demand surpassed supply in the hemp market” which is why Canada is investing now to “grow 100,000 acres of hemp by 2015, which represents more than \$100 million to the Canadian economy” (English). Canadians are not trying to dominate the market, however.

As Colorado began working on their state’s ballot to legalize Cannabis, the Canadian consulate flew Mounties and an expert in composites to discuss the logistics of enforcement and processing hemp once it’s legal (Eilperin 3). Hemp Oil Canada President Shaun Crew explained “if and when it becomes legal to grow hemp in the U.S, that’s just going to add credence and credibility to what [Canadians are doing]” (3). Hemp production is another area where Canadians and Americans can work together to overcome the draconian laws resulting from the War on Drugs.

To date, thirty-one states have introduced pro-hemp legislation and nineteen have passed such legislation. Most recently, Kentucky became the first state to fully legalize hemp production (Wing “Kentucky”). Despite this, hemp farmers face very similar hurdles to cannabis growers. Kentucky Senators Rand Paul (R) and Mitch McConnell (R) have sponsored federal legislation to remove hemp from the same classification as cannabis (ibid). Until that changes, hemp growers face prosecution from federal officials. If legalisation fails, growers can still receive a waiver from the DEA to allow hemp production. Kentucky Agriculture Commissioner James Comer summarized the progress: “[Kentucky must] create new opportunities for [their] farmers and to own the industrial hemp market... from automobile manufacturing and textiles to cosmetics and health foods. [They] now have a unified message that Kentucky wants to be first!”

(Wing “Kentucky”). Kentucky is helping pioneer a change in hemp laws which highlights how the war on drugs adversely affects many aspects of American life.

Hemp represents a convergence on issues of economic viability that is given legitimacy through marijuana reform. This represents an opportunity for both countries to work together to take advantage of a growing market. As a result, it can benefit not only farmers, but the subsidiary industries that benefit from refinement, wholesale and retail services. The increasing public discussion and pace of legislation demonstrates the immediate impact of the November 2012 election.

Chapter 7: A Few Thoughts on the Future of Cannabis Reform

The passage of the constitutional referendums in Colorado and Washington State are an important turning point for North American drug law. It has the potential to influence not just cannabis legislation, but help state budgets while encouraging agricultural production. By replacing prisons with treatment and counselling, it also has the potential to revolutionize addiction treatment.

It must be done responsibly, using tax revenue for education while catering to community concerns. Moreover, it demonstrates that policy change can be accomplished through local experiences. Instead of a trans-nationally agreed approach to drug policy, reformers are highlighting the need for a global change that focuses on local issues. Financial necessity caused American states to radically take charge of cannabis policy, in spite the substance remaining federally prohibited. While it is unlikely that either federal government will remove cannabis as a criminal substance this year, co-ordinated efforts throughout the U.S may stymie federal enforcement efforts long-term.

The rapid pace of policy change, mixed with increasingly vocal efforts to respect economic freedom and state rights will likely overwhelm federal efforts to crack down on cannabis users and distributors. Nevertheless, government and non-government organizations such as the DEA and *Save Our Society From Drugs*, who financially benefit from prohibition, continue to lobby for the status quo.

Policy change is the direct result of dire financial straits. Reformers must focus on the financial benefit by experimenting with decriminalization. By understanding that criminalization is an unnecessary and unsustainable fiscal burden, voters will seek policies that make financial sense. As this paper is being read, red and blue states throughout the U.S are introducing

legislation to deal with costly cannabis laws. Some states are allowing for medical marijuana for the first time, while other states are enacting decriminalization measures for recreational possession. America's uniquely decentralized system of criminal justice allows for extensive experimentation. Not all states want full legalization, but most desire the ability to dictate their own cannabis policy after decades of federal leadership.

For Canadians, cannabis reform is accomplished through winning federal elections. Premiers, when refusing to fund the recent Omnibus Crime bill, must stress that they are unwilling to adopt the economic burden imposed on them. While Canada's cannabis laws are conservative, many Canadians have reported using cannabis at least once. The most progressive part of Canada, B.C, unsurprisingly borders Washington State. Bearing the brunt of the militarized drug war, legislators, health officials and law enforcement officials in both countries understand that policy experimentation is needed. By taking control of the illegal market, North America can take profit away from cartels, while focussing budget money on prevention instead of incarceration.

Reformers must continue to debunk drug myths like the gateway theory. Focussing on economics and local experiences, the war on drugs has reached the beginning of its end. Progress in repealing the criminalization of cannabis also benefits hemp farmers, who are prohibited in the U.S federally from growing the durable crop. Taking control, instead of simply prohibiting cannabis, will have positive economic and social consequences. Following the passage of two constitutional referendums in Colorado and Washington State, the pace of legislation introduced attempting to amend cannabis and hemp laws is staggering. Public opinion polls confirm that American's are rapidly rejecting federal drug war claims.

After over thirty years of a militarized, top-down approach to cannabis prohibition, public opinion is rapidly changing. Fuelled by the constitutional referendums legalizing possession in Colorado and Washington State, Americans are experimenting with cannabis laws at an unprecedented rate. The hemp industry benefits as well. Canadians living in British Columbia overwhelmingly share the beliefs of their neighbours to the south. Those jurisdictions that have the most cannabis use, highest enforcement budget and militarized approach to the drug war, are the leading advocates for change. While cannabis reform is a first step for more harm-reduction policies, the most successful lobbying strategy is focussing on economic waste. As reformers lobby throughout North America, they must stress that the socially responsible policy is also the fiscally responsible one. Cannabis and hemp advocates have an unprecedented opportunity to repeal prohibition. By working together and focussing on economic responsibility that respects local stakeholders' priorities, North American reformers have the real potential to end thirty years of the criminalized approach to cannabis.

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