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GRADE / DEGREE

Department of Philosophy

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**The Criminalization of Recreational Marijuana Use in Canada:
A Scientific, Social, Legal and Philosophical Analysis Based on the Work of Douglas Husak**

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**The Criminalization of Recreational Marijuana Use in Canada:
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Husak**

Glenn Williams

Thesis submitted to the
Faculty of Philosophy in partial fulfillment
Of the requirements for the degree of
MA Public Ethics

St. Paul University
Ottawa, Ontario, Canada
April 2010

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ISBN: 978-0-494-69030-7
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ISBN: 978-0-494-69030-7

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Abstract

The recreational use and mere possession of marijuana is considered a criminal offense under current Canadian legislation. This thesis argues that the criminalization of recreational marijuana use in Canada is not justified because the “criminal” punishment exceeds the seriousness of the crime. Furthermore, excessive criminalization results in an unwarranted infringement of the autonomy and moral right of citizens to recreational marijuana use. Chapter 1 identifies the contemporary science and medical research surrounding cannabis, especially the psychological and physiological risks of marijuana use and the medicinal benefits of marijuana use. Chapter 2 presents a *socio-cultural* perspective on marijuana use. We look at how Canadians’ views have changed toward marijuana, as well as the social ramifications of two major Governmental reports: *The Le Dain Commission Final Report* of 1974 and the *Senate Special Committee Report on Cannabis* of 2002. The socio-cultural context of marijuana in Canadian society is illustrated and compared with other licit and illicit drugs and the stigma associated with a criminal marijuana conviction is illuminated. We move from the social to legal arena in Chapter 3 and outline Canadian laws regulating marijuana offenses from past to present. We show how politics has affected marijuana policy in Canada and how increased penalties to marijuana offenders are irrational and out of step with socio-cultural attitudes toward cannabis use. Chapter 4 marks the beginning of our philosophical, non-consequentialist moral rights argument. The philosophical framework of Douglas Husak is appropriated in order to introduce ethical arguments that challenge the criminalization of marijuana based on the harm it poses to the individual user and to others in society. The principle of autonomy is analyzed as a basis for challenging state interference on paternalistic grounds in the state’s efforts to prevent harm to users. The “harm principle”

is also put to the test in identifying the plausible harms caused to others. Chapter 5 differentiates our philosophical position from that of Douglas Husak by providing arguments for why marijuana ought to be separated from other “harder” drugs under a moral rights approach. We recommend a more liberalized marijuana policy (although not as liberal as Husaks!) in light of a decriminalized system in Canada, and suggest why such a system could continue to uphold the moral rights of citizens to recreational marijuana use. In order for the moral rights of marijuana users to be upheld, marijuana use and possession ought to be decriminalized, and penalized by no more than a \$100 civil fine, accompanied by community service, rehabilitation and job training programs at the discretion of the judiciary. Under a policy of decriminalization, the risk of receiving a conditional discharge, criminal record, and imprisonment is diminished and the vast number of recreational marijuana users will not be hindered from further contributing to Canadian society.

Acknowledgements

I would first like to thank my professor, thesis advisor, and more importantly, my inspirational mentor, Gregory Walters. His intellectual and rational insight has provided me with the necessary guidance and structure to write about a controversial issue in which I am truly passionate about. Without his gentle words, and patience with me as a student, completing this thesis would have proven to be far more difficult.

With no less of a thank you to both of my parents, Rod and Luci Williams, who have given me their enduring support throughout the entire writing process. I'm certain it has been difficult, at times, for them to support an academic paper that is based on the contentious issues surrounding recreational marijuana use. However, their compassion, encouragement and direction proved to be fundamental to the successful completion of this thesis.

To my loving and caring girlfriend, Julia Bradshaw, thank you for standing by me all along the way. The amount of conversations we have had regarding some aspect of this thesis or another is enough to drive anyone insane. Yet her inimitable sense of understanding and levelheaded thinking helped provide me with logical responses to many of the challenges and obstacles that I was confronted with.

Last but not least, I would like to thank all those who are part of the social network in which I subsist. I have been fortunate to have been surrounded by such a large, tight-knit group of friends, for a majority of my life (many since the early stages of elementary school). I have been blessed to have chosen a group of friends that have been like a life force for me from the beginning; and for that I am grateful.

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List of Acronyms

2-AG	2-arachidonolyl-glycerol
CAMH	Center for Addiction and Mental Health
CAS	Canadian Addiction Survey
CBC	Canadian Broadcasting Corporation
CCSA	Canadian Center on Substance Abuse
CDSA	Controlled Drugs and Substances Act
CPHA	Canadian Public Health Association
CTV	Canadian Television Network
DEA	Drug Enforcement Agency (US)
FDA	Food and Drugs Act
FNB	Federal Narcotics Bureau
HC	Health Canada
LSD	Lysergic acid diethylamide
MRI	Magnetic Resonance Imaging
NCA	Narcotics Control Act
ODA	Opium and Drug Act
SES	Socio-Economic Status
THC	Tetrahydrocannabinol
UN	United Nations
US	United States

Introduction

Under current Canadian legislation the recreational use and mere possession of marijuana is considered a *criminal offense*. The maximum penalty associated with this offense is six months imprisonment, a \$1000 fine, or both. The offender is also at risk of receiving a conditional discharge or criminal record. This is a hefty punishment dished-out by the state, which threatens the present and future freedoms of many Canadians who use marijuana. These otherwise law-abiding citizens are at risk of being treated unjustly by legal officials, subjected to the financial burden and severe sentencing of the Canadian court system, and subsequently isolated from the rest of society. A secure job is the goal of each and every aspiring citizen and is a primary focus for young graduates. A criminal record or prison sentence is damaging to any individual trying to get into the labour force, and it can have detrimental effects on people already in the labour force. A majority of the esteemed and reputable jobs in the country, such as private sector industry, government, the teaching professions and law, place a strong emphasis on a clean record of the prospective employee. The legal consequences of a conditional discharge, criminal record, or imprisonment are far too high of a price to pay for an individual who commits a non-violent marijuana-use or possession offense. With a criminal record, one's hope for future educational and financial success may be hindered or completely diminished. The excessive criminalization of marijuana use is, from a philosophical perspective, questionable on moral grounds.

What does the emergence of scientific research tell us about the effects of marijuana? How have the views of Canadians changed over time regarding marijuana use and the laws regulating its use? What are the origins of Canadian law regarding

marijuana policy and how has the changing political culture affected these laws? Can the philosophical framework of the American philosopher, Douglas Husak, shed light on the problems of excessive criminalization of marijuana offenders in Canada? If so, what needs to be changed in Canada's drug laws to uphold the moral right of citizens to the recreational use of marijuana without excessive punishment and harm to the user?

Canadian views on marijuana policy have shifted greatly through the years. Prior to the late 1960's, Canadian policy was influenced, in large part, from the United States (US) and its hostility towards marijuana. In the early 1900's, the US opened their borders to "marijuana loving" Mexicans because of the need for cheap labour. This resulted in the demonizing of marijuana use by the Federal Narcotics Bureau (FNB), with Harry Anslinger at the helm. American society at the time, feeling threatened by more affordable immigrants, decided to side with the FNB. This led to marijuana being stigmatized in the US on the basis of ethnic discrimination. Since the Canadian and American political cultures have for the longest time been one of mutuality, it was only natural for the political and social scene to be hostile to the newly migrated, marijuana using, ethnicities when they arrived in Canada during the early 1960's. However, in the early 1960's in the US, and the late 1960's in Canada, indigenous Canadians and American's started to become involved in the marijuana scene. Many of these individuals also began expressing their concerns with the infringement of rights of ethnic minorities. Not long after, with widespread use by indigenous citizens, marijuana policy was criticized on the home front. Students and celebrities mobilized to call for a more relaxed legislation toward marijuana offenders. With so many otherwise law-abiding

citizens engaging in recreational marijuana use, it was clear that the punishment did not fit the crime.

More recently, the “Canadian Addiction Survey,” (CAS) completed by Health Canada in 2006, as well as many scholarly articles from the Canadian Center on Substance Abuse and the Canadian Public Health Association, have identified marijuana’s place in society in comparison to other licit and illicit substances. Canadians do not regard marijuana as a substance that is any more harmful than other licit substances such as tobacco and alcohol. From a legal standpoint, marijuana legislation has changed from one Act to another, providing more sympathy to recreational users with each move. Nonetheless, marijuana legislation has continued to remain under the heavy hand of criminal law.

In addition, two past liberal government committees - the Le Dain Commission of 1969-1973 and the Senate Committee of 2000-2002 - have compiled vast amounts of research on the marijuana problem in an attempt to bring out the truth about marijuana. Each committee proposed slightly varying forms of decriminalization, but their ideas and legislative recommendations were never implemented. Since the Senate Committee findings and recommendations on Cannabis in 2002, the fight for decriminalization has taken a backseat – especially while the current Conservative Party of Prime Minister Harper is in power.

On what philosophical justificatory grounds are citizens deterred by the state, via *criminal punishment*, from using marijuana?

The logical response is that marijuana is *harmful* to both the user and to others in society. *This thesis argues that the criminalization of recreational marijuana use in*

Canada is not justified because the “criminal” punishment exceeds the seriousness of the crime. Furthermore, excessive criminalization results in an unwarranted infringement of the autonomy and moral right of citizens to recreational marijuana use.

Individuals ought not to be criminally punished for the recreational use of marijuana. Under specified conditions such use is not as harmful as it is portrayed to be. In fact, there may well be no good reasons whatsoever to believe that individuals should be excessively punished for recreational marijuana use, especially when these harms are put into philosophical perspective. If the recreational use of marijuana may be justified on moral grounds, as we will argue following the philosophical analysis of Douglas Husak, then the current Canadian criminal law framework for punishment is out of sync with reality and in need of remedy with respect to justice.

We hope to balance the scales of justice by establishing why recreational marijuana use ought to be permitted on moral grounds. We understand the greatest rationale for criminalizing is based on the harm factor. We agree with Douglas Husak’s argument that individuals ought to be acting within their given right to *autonomy* when using marijuana, just as they are when they engage in other high-risk recreational activities. With Husak, we argue that there is no “morally relevant difference” that distinguishes the risks of harm to the user caused by marijuana from other risky recreational activities, for example, the use of tobacco, alcohol, and even a host of other risky recreational activities. As for harm to others, a major qualification for an offense to classify as a *criminal* harm is based on John Stuart Mill’s “harm principle.” This suggests that an offense is deemed *criminal* in nature only when an individual violates the rights of another. Murder, rape, and assault all clearly violate the individual’s right to

autonomy and well being, and thus criminal punishment is justified. Recreational marijuana use and/or possession of marijuana, on the other hand, do not *prima facie* violate the rights of anyone, at least in a “criminal” sense. Whereas Douglas Husak argues that *all* illicit drug use should be decriminalized, we argue for a moral right of citizens to the recreational use of *marijuana* without excessive and punitive criminal punishment.

We concede, in this thesis, that there may be real harm caused by the use of “harder” illicit drugs. Therefore, we propose that the moral analysis of marijuana use ought to be separated from the use of “harder” illicit drugs. Moreover, our policy recommendations favour a decriminalization of recreational marijuana use, which differs from the system of decriminalization proposed by Husak who argues for the legalization of all illicit drugs. Specifically, we propose that recreational marijuana users be given modest fines of \$100 when caught using or possessing marijuana (28.3 grams or less). These fines could be accompanied by drug rehabilitation, job training, and community service programs at the discretion of the judiciary. Such treatment of marijuana use would avoid criminalizing the recreational user, and thereby avoid criminal records, conditional discharges and imprisonment.

Chapter 1 analyzes contemporary science and medical research that reveals epidemiological aspects of marijuana use and harms. We examine the active ingredients in marijuana and illustrate how these ingredients *may* affect the psychological and physiological health and behavior of the user. We will also identify some of the health benefits of marijuana use that are presented by contemporary scientific research.

Chapter 2 presents a *socio-cultural* perspective on marijuana use. We look at how Canadians' views have changed toward marijuana, as well as the social ramifications of two major Governmental reports: *The Le Dain Commission Final Report* of 1974 and the *Senate Special Committee Report on Cannabis* of 2002. The socio-cultural context of marijuana in Canadian society is illustrated and compared with other licit and illicit drugs. In addition, we identify the stigma associated with a criminal marijuana conviction on the individual user.

Chapter 3 identifies Canadian laws regulating marijuana offenses from past to present and specifies some of the adverse consequences that have resulted from such laws. We show how politics has affected marijuana policy in Canada and how increased penalties to marijuana offenders are irrational and out of step with socio-cultural attitudes toward cannabis use. A key objective is to demonstrate that Canadian marijuana policy has reflected the highly punitive marijuana policy of the United States in recent years.

Chapter 4 appropriates the philosophical framework of Douglas Husak in order to introduce ethical arguments that challenge the criminalization of marijuana based on the harm it poses to the individual user and others in society. The principle of autonomy is analyzed as a basis for challenging state interference on paternalistic grounds in the state's efforts to prevent harm to users. The "harm principle" is also being put to the test in identifying the plausible harms caused to others.

Chapter 5 differentiates our philosophical position from that of Douglas Husak by providing arguments for why marijuana ought to be separated from other "harder" drugs under a Husakian moral rights approach. We recommend a more liberalized marijuana

policy in light of a decriminalized system in Canada, and suggest why such a system could continue to uphold the moral rights of citizens to recreational marijuana use.

Chapter 1 - Cannabis: What's the Science?

1.0. Introduction

The science of cannabis has come a long way since it was first prohibited under Canadian legislation in the early 1920's. The scientific research presents compelling arguments for both marijuana "advocates" and "prohibitionists." For the advocates, there is new ground being made with the medical benefits and the multiple treatment capabilities of marijuana. For the prohibitionists, the psychological and physiological effects of marijuana present risks that may be used to justify the drugs current criminalization. This chapter provides a fundamental and straightforward analysis of the science behind cannabis and its empirical effects on human beings. What does the scientific research tell us about the direct and indirect psychological effects of marijuana use? What does the scientific research tell us about the physiological effects associated with marijuana use? What positive treatment capabilities may cannabinoid boosters (i.e. marijuana) have on ill individuals?

We begin with a brief introduction into cannabis pharmacology, especially our current scientific understanding of the role of Tetrahydrocannabinol (THC), Cannabidiol, and Cannabinol on the human being. In turn, we identify the psychological and physiological effects entailed by cannabis use, and critically engage the prohibitionist critiques with support from the scientific community. Finally, we introduce the variety of positive treatment capabilities of cannabis, which, paradoxically, are a result of many of the psychological and physiological effects that prohibitionists believe to be negative.

1.1. Pot Pharmacology

There are over 400 diverse chemical compounds in marijuana that range in magnitude of force; with at least 66 of these being identified as cannabinoid compounds.¹ The cannabinoids, when ingested or inhaled, cause a certain reaction that is dependent on which receptor they trigger.² Science has identified that humans have two types of cannabinoid (marijuana) receptors: CB1 and CB2. The CB1 receptor is located in the brain and mediates the psychological effects caused by cannabis.³ The CB2 receptor, on the other hand, is far more widespread in the immune system.⁴ The complete functioning of the CB2 receptor is not yet determined.⁵

To understand how marijuana affects individuals it is important to identify the plant's active ingredients. Tetrahydrocannabinol (THC) is the most prominent active ingredient in marijuana that is responsible for the psychoactive properties of the substance. The specific compounds that are believed to have the largest psychological impact on the individual user are delta-8 THC and delta-9 THC.⁶ Delta-9 THC is the most abundant chemical in the plant, which leads researchers to believe that it is the main source of the drug's psychological impact.⁷ Two additionally common compounds that stimulate many of the psychological effects of marijuana are cannabidiol and cannabivarin.

¹ Mitch Earleywine, *Understanding Marijuana: A New Look at the Scientific Evidence* (New York: Oxford University Press, 2005), 121.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ David Castle and Robin Murray, *Marijuana and Madness: Psychiatry and Neurobiology* (United Kingdom and New York: Cambridge University Press, 2004), 35.

⁶ Mitch Earleywine, *Understanding Marijuana*, 122.

⁷ Ibid.

Although there are many other chemical compounds in marijuana, the vast majority of these are alternatives of delta-9 THC, delta-8 THC, cannabitol or cannabidiol.⁸

Cannabidiol and Cannabitol have been extensively studied because of their implicit reactions with THC. On the one hand, Cannabidiol represents the first stage of marijuana's breakdown and eventually becomes THC after stored marijuana ages.⁹ Interestingly enough, cannabidiol acts to reduce many of the unwanted side-effects related to THC, such as anxiety, panic and various psychotic symptoms.¹⁰ Cannabitol, on the other hand, is the compound into which delta-9 THC eventually breaks down after stored marijuana continues to age. The role of aging is important to note because cannabitol appears to be more active in the immune system, while THC is clearly more active in the nervous system.¹¹ This implies that the length of time marijuana is stored could depict what cannabinoid receptors are used to mediate its activity, whether it is CB1 in the central nervous system, or CB2 in the immune system. Cannabitol is one-tenth the strength of THC and may also act to decrease some of the excessive stimulations caused by THC.¹²

Areas of the brain that contain higher densities of CB1 receptors are: the cerebral cortex, the hippocampus, the basal ganglia, and the cerebellum. The cerebral cortex is a key structure in the brain that is responsible for higher mental functioning, such as learning, memory and awareness.¹³ The hippocampus is solely responsible for short-term

⁸ Ibid., 123.

⁹ Ibid., 125.

¹⁰ Ibid.

¹¹ Ibid., 124.

¹² Ibid., 124-125.

¹³ Janet Joy, Stanley Watson and John Benson, *Marijuana and Medicine: Assessing the Science Base* (Washington DC: National Academy Press, 1999), 49.

memory and spatial navigation.¹⁴ The basal ganglia are located within the cerebral cortex, and consist of a group of nuclei that are primarily responsible for regulating motor control and body movements.¹⁵ Similar to the basal ganglia is the cerebellum, which is important in integrating sensory perception and coordinating body movements.¹⁶ It is important to note that, while each of these areas of the brain may be triggered at times with marijuana use, they will all go back to their normal state once the marijuana “high” has diminished; or shortly thereafter.

A more recent discovery indicates that our bodies naturally produce compounds similar to the THC in marijuana that are also mediated by cannabinoid receptors. The two most commonly studied endogenous compounds are arachidonylethanolamine (Anandamine) and 2-arachidonolyl-glycerol (2-AG). Anandamine does not produce the same *intense* effects as THC, but effects still appear to be similar. “This endogenous cannabinoid induces overeating and lowers activity, body temperature, and pain sensitivity.”¹⁷ 2-AG is a greater (170 times) component of brain tissue than anandamine; its precise biological impact is far less understood.¹⁸ All that is known thus far about 2-AG is that it affects the blood pressure and heart rate in mice, and that it undoubtedly interacts with both the CB1 and CB2 receptors.¹⁹ Increased research on both anandamine and 2-AG will likely help reveal a greater understanding of their functioning on the human brain.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Mitch Earleywine, *Understanding Marijuana*, 139.

¹⁸ Ibid., 139-140.

¹⁹ Ibid., 140.

1.2. Psychological Effects

As marijuana is taken in, the mediation of THC by the cannabinoid receptors causes an uncontrollable neurological effect. This is marked by a varying degree of *cognitive impairment*. The instant cognitive impairment that follows marijuana use may cause short-term memory loss, slight delays in reaction time, and uncoordinated activity because of a brief incapability to adjust to certain surroundings. Although these represent “direct psychological effects”²⁰ caused by the use of marijuana, we have labeled them as *direct psychological risks*, in light of prohibitionist assertions, which see these effects as a threat to the individual user and to society. Prohibitionists claim the individual user is at risk mentally, as marijuana may directly cause delirium, panic attacks and increased anxiety. Moreover, prohibitionists claim society is at risk, as the cognitive impairments caused by marijuana use may cause driving accidents or other problems in society that could cause harm to others.

Let us first address the mental risks of delirium, panic, and anxiety to the individual user. The revered work of Mitch Earleywine indicates that the panic and anxiety caused by marijuana is typically experienced by novice users, and; with use over time, experienced users actually find that marijuana helps *decrease* anxiety or panic attacks.²¹ Prominent civil libertarians, Lynn Zimmer and John Morgan, provide reassuring results that suggest that if delirium, anxiety or panic does result, the duration of this occurrence is very short-lived, and generally eradicated once the high is over.²² Similarly, in 2004 the DSM-IV-TR on Mental Disorders suggested that cannabis-induced

²⁰ Other Academics have referred to these as Acute Effects.

²¹ Mitch Earleywine, *Understanding Marijuana*, 145.

²² Lynn Zimmer and John Morgan, *Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence* (New York: The Drug Policy Alliance, 1997), 80.

psychotic and anxiety disorders as well as cannabis induced delirium rarely persist beyond the period of acute intoxication with the drug.²³

In addition, the short term memory loss associated with marijuana use can act as an integral part of lessening the panic and anxiety experienced by the individual marijuana user. A leading scientist on cannabinoid research, Allyn Howlett, has demonstrated how cannabis replicates natural neurotransmitters such as serotonin, dopamine and endorphins.²⁴ Since marijuana is able to mimic these other transmitters, she suggests that the THC in marijuana contributes to anxiety relief by lessening painful memories.²⁵ German research from the esteemed Max Planck Institute of Psychiatry in Munich holds a parallel position, which suggests that cannabinoids reduce the action in the nerve cells that contribute to the anxiety brought forth by remembered bad experiences.²⁶

In addressing the risks of cognitive impairment of individuals and the risk to society, it must be first specified that a majority of individuals who use marijuana do so in the comfort of their own homes and not in public places. Under these circumstances cognitive deficiencies are not only seen as benign, but also as controllable.²⁷ Our argument for marijuana decriminalization does not call for the decriminalization of marijuana-impaired driving, or of any marijuana-induced activity that might *risk* causing

²³ Michael First and Allan Tasman, *DSM-IV-TR Mental Disorders: Diagnosis, Etiology, and Treatment* (London: John Wiley & Sons Ltd, 2004), 480.

²⁴ Rudolph J. Gerber, *Legalizing Marijuana: Drug Policy Reform and Prohibition Politics* (Westport: Praeger Publishers, 2004), 85.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Misty Harris, "High Times For Cannabis, Middle Class Loves it Too," *The Ottawa Citizen*, May 16, 2008, A4.

criminally liable harm to another individual.²⁸ Thus we will not defend such activities on the grounds of science.

While there are clearly documented cognitive impairments, these could arguably be weighed against the individual's freedom to act on the grounds of either real or perceived benefits. Although these will be discussed further in Chapter 4, the most notable benefit to individuals who use marijuana is a sense of euphoria. When many individuals smoke marijuana, they are often relaxed and put into a pleasant state of being.²⁹ The fun and enjoyable experience of marijuana use should not be neglected from the marijuana debate, especially when a sense of euphoria can considerably offset many of the *risks* posed to society. Marijuana can bring unity to society and in doing so can help develop more peaceful communities.

The cognitive impairment caused by marijuana also has the ability to bring the user to new heights of innovation by enhancing problem-solving and creative thinking.³⁰ Marijuana can open an individual's mind to observe certain views that would have not otherwise been apparent. Thus the ideas and thoughts that present themselves while using marijuana can be of much greater value to the individual.

We will now look to the indirect psychological effects associated with marijuana use. For the purpose of this sections critique, we have labeled these as indirect psychological *risks*, as we intend to once again dispute prohibitionist claims. The three indirect psychological effects that prohibitionists most commonly identify as risks are:

²⁸ As Husak notes, criminal harm is one that clearly violates the right of another individual and is justifiably punishable by law. Douglas Husak, *Drugs and Rights* (New York: Cambridge University Press, 1996), 177. See further, Chapter 4 below.

²⁹ David Castle and Robin Murray, *Marijuana and Madness*, 44.

³⁰ Lynn Zimmer and John Morgan, *Marijuana Myths, Marijuana Facts*, 73.

depression, dependence and amotivational syndrome. These are considered *indirect* psychological risks because marijuana is not necessarily the causal factor in each case; in fact, in most circumstances there are only closely related correlations linking such risks to marijuana use.

Perhaps the largest uncorroborated claim by prohibitionists is that marijuana use causes *depression*.³¹ The two universally accepted ways in which marijuana use *may* cause depression are (1) by causing psychological change after long-term heavy use, and (2) by affecting serotonin and other neurotransmitters that bring about depressive symptoms. Many recent studies have focused on the co-occurrence of marijuana and depression. Although no study has directly proved that marijuana use causes depression after making use of control factors (such as alcohol use, tobacco use, or prior social problems) there are studies that suggest the drug's use and depression occur more often than mere chance would have it.³²

Aside from these closely related correlations, time and time again scientific research has proven *no causal link* between marijuana use and depression. For example, in 2000, a longitudinal study of over 800 New Zealanders found no additional signs of anxiety or depression disorders as a result of marijuana use.³³ In 2008, a more comprehensive longitudinal study of 1,494 individuals (assessed between 1985 and 2002) from a mid-Atlantic metropolitan area of the United States suggested that there was no evidence of a causal association linking adolescent cannabis use with young adult

³¹ David Castle and Robin Murray, *Marijuana and Madness*, 60.

³² Henri Chabrol and Carine Saint-Martin, "Cannabis Use and Delinquent Behaviors in Highschool Students," *Addictive Behaviors* 34, no. 2 (Feb, 2009): 187, <http://scholarsportal.info.proxy.bib.uottawa.ca/pdflinks/09030818075523153.pdf>.

³³ Mitch Earleywine, *Understanding Marijuana*, 145.

depression.³⁴ In April 2008 the British Government's official scientific advisors completed a highly esteemed report, which stated that they remain unconvinced that there is a causal relationship between adult cannabis use and depression.³⁵

A more plausible association between cannabis and depression is that depression may cause cannabis use and not the reverse. Individuals may use cannabis to stabilize their mood or in fact suppress depression altogether. In 2005, one of the largest academic studies completed to date, and involving over 4300 internet users, suggested those who used marijuana *once a week or less* were less depressed than those who didn't use marijuana at all.³⁶ Even daily users reported to have a less depressed mood than those who have never used marijuana.³⁷ After all, it is unlikely that individuals would use marijuana to become more depressed.

Marijuana *dependence* is another perceived psychological risk that constitutes a major problem in the eyes of pot prohibitionists. We do not dispute that marijuana use *can* cause dependence in certain individuals. "Self report data suggest that about 10 percent of cannabis users become dependent at some time."³⁸ This is a significant fraction of marijuana users who are at risk of becoming dependent. The causes of

³⁴ Valerie Harder, Elizabeth Stuart and James Anthony, "Adolescent Cannabis Problems and Young Adult Depression: Male-Female Stratified Propensity Score Analyses," *American Journal of Epidemiology* 168, no. 6 (August 2008): 592-601, <http://aje.oxfordjournals.org.proxy.bib.uottawa.ca/cgi/reprint/168/6/592>.

³⁵ Michael Rawlins, *Cannabis: Classification and Public Health* (London: Central Office of Information, 2008), <http://drugs.homeoffice.gov.uk/publication-search/acmd/acmd-cannabis-report-2008?view=Binary> (accessed Dec 3rd, 2009).

³⁶ Thomas Denson and Mitch Earleywine, "Decreased Depression in Marijuana Users," *Addictive Behaviors* 31, no. 4 (April 2006): 738-742, <http://scholarsportal.info.proxy.bib.uottawa.ca/pdflinks/09030818112623632.pdf>.

³⁷ Ibid.

³⁸ Robert MacCoun and Peter Reuter, *Drug War Heresies: Learning from other Vices, Times, & Places* (New York: Cambridge University Press, 2001), 353-354.

dependence could range far and wide, but the major study involving 800 New Zealanders in 2000 concluded that the more a child smokes at a younger age, the more dependent they become in the future.³⁹

Coffee, liquor, tobacco and many over-the-counter drugs, however, may also cause similar dependence. The scientific research suggests that marijuana users are less likely to develop dependence than users of other drugs (including alcohol, nicotine and caffeine); and this dependence appears to be less severe than dependence on other drugs.⁴⁰

Opponents of marijuana decriminalization claim that prolonged marijuana use caused by dependence can lead to brain damage. The scientific research focused on marijuana use and brain atrophy, however, does not support such a claim. One study of a dozen people who smoked an average of five marijuana cigarettes a day for five years showed no evidence of cerebral atrophy.⁴¹ Another study of 19 people who consumed just less marijuana (25-62 joints per month) for at least a year also found no abnormality in CAT scans.⁴² In a third study, 12 users smoked at least a gram a day, for anywhere between 6 to 20 years, and there was still no evidence of brain damage.⁴³ A more recent study that used magnetic resonance imaging (MRI) technology found that marijuana actually protects users from brain damage or cerebral atrophy.⁴⁴ Although it is far-fetched to believe that pot use actually protects the brain from structural damage,

³⁹ Mitch Earleywine, *Understanding Marijuana*, 148.

⁴⁰ Janet Joy, Stanley Watson and John Benson, *Marijuana and Medicine*, 98.

⁴¹ Mitch Earleywine, *Understanding Marijuana*, 149.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

scientific studies suggest that marijuana use, even heavy use, does not create brain damage.

We now turn to so-called *amotivational* syndrome, which prohibitionists argue to be one of the more widespread effects caused by marijuana use. Prohibitionists claim that marijuana makes people inactive, uninterested and apathetic. Those who believe marijuana causes amotivational syndrome suggest that it takes away the users ambition and drive to succeed and go further in life. The marijuana users who are targeted most under this claim are youth and heavy marijuana users.⁴⁵ There is no conclusive evidence, however, that links marijuana smoking to such amotivational behavioral characteristics; it is not sufficient to observe that a chronic marijuana user lacks motivation.⁴⁶

Lynn Zimmer and John Morgan emphasize that there have been many esteemed studies that have given subjects high doses of marijuana for several days or even weeks. These studies have illustrated no decrease in work motivation or productivity.⁴⁷ In fact, in one extensive study where subjects had to perform extremely boring tasks in order to be given less boring tasks, marijuana was seen as the instrument of success, contrary to the researchers expectations.⁴⁸ When individuals used marijuana, they were more content doing any task at hand, regardless of how unexciting it may have been. There are many trades where marijuana can and does act as an essential tool in helping many workers deal with such tedious work as house painting and roofing.

Many marijuana users may smoke a joint as an incentive to do more. Marijuana, itself, is used as a motivator. Indulging in marijuana may be exactly what an individual

⁴⁵ Lynn Zimmer and John Morgan, *Marijuana Myths, Marijuana Facts*, 62.

⁴⁶ Janet Joy, Stanley Watson and John Benson, *Marijuana and Medicine*, 107-108.

⁴⁷ Zimmer and Morgan, *Marijuana Myths, Marijuana Facts*, 62.

⁴⁸ *Ibid.*, 67.

needs to get into the right mental state in order to complete the tasks at hand. Marijuana may reduce the *length of time* during which an individual stays motivated, but it certainly does not take away the total sum of an individual's motivation.

There are also claims that link chronic marijuana use to student failure rates. However, with respect to High School students, Zimmer and Morgan identified educational or social problems even prior to marijuana use.⁴⁹ When the studies put controls in place for these prior problems, marijuana held no significant impact on the students' academic achievements.⁵⁰ In terms of college students, it became apparent that there was no difference in grades amongst those who use marijuana and those who do not use the plant.⁵¹ With educational institutions in mind, it is also important to note that marijuana users are not any less likely to participate in sports or extracurricular activities than non-users.⁵²

1.3. Physiological Effects

The negative physiological effects associated with marijuana use will now be examined. Prohibitionists claim that the highest physiological areas of risk caused by marijuana use are *the respiratory system* (namely the lungs) and *the immune system*.

The risk of damage to the *respiratory system* is arguably one of the greatest roadblocks to the decriminalization of marijuana. Many opponents of marijuana decriminalization, including Health Canada, argue that marijuana should remain prohibited because the *smoking* of the substance is not safe.⁵³ Marijuana smoke does

⁴⁹ Ibid., 64.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid., 63.

⁵³ Marijuana has predominantly been consumed, both medicinally and recreationally in

indeed contain carcinogens, which are similar to those found in tobacco smoke.⁵⁴

Marijuana smoke can cause as much as four times the amount of tar build-up in the lungs as tobacco smoke.⁵⁵ Extended marijuana smoking can increase symptoms of bronchitis, asthma, and irritabilities of the respiratory tract.⁵⁶

A leading epidemiological study conducted by Donald Tashkin in 2001 hypothesized that smoking marijuana increased the risk of lung cancer because of the accelerated and unpleasant changes in the lung tissue of marijuana users.⁵⁷ Tashkin felt that the distal smoke from a marijuana cigarette may cause cell damage to the respiratory system.⁵⁸ Additionally, there is 50-70% more polynuclear aromatic hydrocarbons-- which are linked to carcinogenesis, in marijuana smoke over that of tobacco smoke.⁵⁹ However, in a more recent study conducted in 2005, Tashkin concluded that there was no risk of lung cancer posed by marijuana when controls were used.⁶⁰ Tashkin was quoted in the Washington Post as stating “we found no association, not even a suggestion of a positive association, of marijuana use -- even heavy, long-term use -- and lung cancer after controlling for tobacco smoking and other potential cofounders.”⁶¹

the Canadian culture, by the smoking of the substance.

⁵⁴ Gary Fisher, *Rethinking Our War on Drugs: Candid Talk about Controversial Issues*, (Westport: Greenwood Publishing Group, 2006), 78.

⁵⁵ Janet Joy, Stanley Watson and John Benson, *Marijuana and Medicine*, 111.

⁵⁶ *Ibid.*, 113-114.

⁵⁷ Donald Tashkin, “Airway Effects of Marijuana, Cocaine and Other Inhaled Illicit Agents,” *Current Opinion in Pulmonary Medicine* 7, no. 2 (2001): 44, <http://ovidsp.tx.ovid.com.proxy.bib.uottawa.ca>.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Donald Tashkin cited by Marc Kaufman, “Study Finds No Cancer-Marijuana Connection,” Washington Post Staff Writer, <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/25/AR2006052501729.html> (Accessed Dec 27th, 2009).

⁶¹ *Ibid.*

Another academic study led by medical students at Case Western Reserve University, in Cleveland, Ohio, came up with similar results in 2006 that suggested there to be pre-cancerous symptoms caused by marijuana, yet concluded that there is no evidence that marijuana has caused or will cause lung cancer.⁶² These pre-cancerous symptoms include “increased tar exposure, alveolar macrophage tumoricidal dysfunction, increased oxidative stress, and bronchial mucosal histopathologic abnormalities.”⁶³ Although there is no conclusive evidence that marijuana use causes lung cancer as of yet, this research team suggested that future longitudinal studies focusing on the pre-cancerous symptoms caused by marijuana use may prove useful in identifying possible causal relationship of lung cancer and even related treatments possibilities.

Marijuana’s affect on the *immune system* has been rigorously studied over the past three decades. Pot prohibitionists who claim to be in tune with the scientific research on marijuana suggest that marijuana use damages the immune system and leaves marijuana users open to an increased risk of disease. This allegedly occurs as white blood cells or lymphocytes (T-Cells) are inhibited after marijuana use, which causes destabilization of the immune system.⁶⁴ For this reason, many prohibitionists believe that marijuana will have the most harmful affect on the immune system of already ill individuals, such as AIDS or cancer patients, whose immune systems are quite vulnerable from the outset.

Gabriel Nahas, a long time opponent of marijuana use, performed a study using human lymphocytes (T-Cells) in hopes of demonstrating how the immune system would

⁶² Reena Mehra, Brent Moore, Kristina Crothers, Jeanette Tetrault, and David Fiellin, “The Association between Marijuana Smoking and Lung Cancer,” *Archives of Internal Medicine* 166, no. 13 (Oct, 2006): 1365, <http://archinte.ama-assn.org.proxy.bib.uottawa.ca/cgi/content/abstract/166/13/1359>.

⁶³ *Ibid.*, 1359.

⁶⁴ Lynn Zimmer and John Morgan. *Marijuana Myths, Marijuana Facts*, 106.

speed up to eradicate marijuana's presence.⁶⁵ What in fact happened was a *diminished* immune system response after marijuana use. Thus, Nahas argued that marijuana actually suppressed the immune system and made it more vulnerable to infection.⁶⁶ Unfortunately Nahas was never able to replicate his findings, and these results proved to be inconclusive.⁶⁷

Much to the detraction of prohibitionist arguments, there have been no studies that conclusively link THC to *lasting* immune-system changes in humans.⁶⁸ Although recent studies have concluded that marijuana use does in fact inhibit lymphocyte (T-Cell) proliferation in the immune system of mice, and increases their susceptibility to infection, there has been no direct causal association linking marijuana use to increased infectious disease in humans.⁶⁹ It is uncertain why the inhibition of lymphocytes caused by increased cannabis use does not lead to an increase rate of infection in humans; however, one explanation could be simply that the immune systems of humans are much stronger than those of lab-tested animals.

Moreover, marijuana has been proven safe to use for those individuals whose immune systems have already been lowered because of a weakening illness.⁷⁰ The relationship between marijuana use and the debilitating effects of AIDS is of particular importance because aids patients represent the greatest number of medical marijuana

⁶⁵ Gabriel Nahas cited by Zimmer and Morgan, *Ibid.*, 107.

⁶⁶ Gabriel Nahas cited by Zimmer and Morgan, *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Rudolph Gerber, *Legalizing Marijuana*, 80.

⁶⁹ Lynn Zimmer and John Morgan, *Marijuana Myths, Marijuana Facts*, 106.; Bonnie Dittel, "Direct suppression of autoreactive lymphocytes in the central nervous system via the CB2 receptor," *British Journal of Pharmacology* 153, no. 2, (June, 2008): 271-276, www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2219523.

⁷⁰ Lynn Zimmer and John Morgan. *Marijuana Myths, Marijuana Facts*, 106.

users.⁷¹ A comprehensive study in 1989 reported that there was no conclusive evidence that psychoactive drugs accelerated immunodeficiency in HIV positive individuals.⁷² In 2002, the Canadian Senate Committee reported that the immunosuppressive effects of cannabinoids have a very low impact on the human immune system, and there is good reason to support cannabis as a therapeutic treatment for individuals whose immune systems have already been compromised by an illness such as AIDS or cancer.⁷³

1.4. Medicinal Benefits of Marijuana

It is important that we now focus on the medicinal benefits of marijuana and reflect upon the significant number of illnesses marijuana is able to treat. Here we are able to see how many of the psychological and physiological effects of marijuana use, which are deemed by prohibitionists as unwanted, are actually able to maintain a positive result for ill individuals.

For glaucoma patients, marijuana is able to prevent irreversible damage to vision by reducing the fluid pressure in the eyes.⁷⁴ Marijuana is also able to reduce the dangers posed by lung irritants and fungal illnesses such as aspergillosis in AIDS patients.⁷⁵

⁷¹ Janet Joy, Stanley Watson and John Benson, *Marijuana and Medicine*, 115.

⁷² R. A. Kaslow, W. C. Blackwelder, D. G. Ostrow, D. Yerg, J. Palenicek, A. H. Coulson and R. O. Valdiserri, "No evidence for a role of alcohol or other psychoactive drugs in accelerating immunodeficiency in HIV-1-positive individuals," *National Institute of Allergy and Infectious Diseases* 261, no. 23, (Jun, 1989), <http://jama.ama-assn.org.proxy.bib.uottawa.ca/cgi/content/abstract/261/23/3424>.

⁷³ Barbara Wheelock, "Physiological and Psychological Effects of Cannabis: Review of the Research Findings," Office of Senator Eileen Rossiter, <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/library-e/Wheelock-e.pdf> (Accessed Dec 3rd, 2009).

⁷⁴ Rudolph Gerber, *Legalizing Marijuana*, 81-82.

⁷⁵ *Ibid.*, 82.

Marijuana helps suppress nausea and increase appetites in cancer treatment patients, Alzheimer's patients and AIDS patients.⁷⁶

In 1997 the National Institute of Health Society for Neuroscience in the US reported that the active ingredients in marijuana "cause a direct beneficial effect on pain signals in the central nervous system."⁷⁷ On a similar note, marijuana has been proven to alleviate chronic pain and the inflammation of arthritis.⁷⁸ What's more is that pot's painkillers, unlike opiate-based painkillers, are not addictive and do not develop tolerance.

One of the largest attributes of marijuana is its ability to safely help decrease the firing rate of neurotransmitters.⁷⁹ This essentially means that the increase in cannabinoids caused by marijuana is able to provide a safe brake in the brain. As marijuana acts as an endocannabinoid booster, it is able to slow the breakdown of cannabinoids and can be useful in treating epilepsy, where neurons are firing excessively.⁸⁰ It can also be used to treat and possibly prevent neurodegenerative conditions such as Alzheimer's and Parkinson's, both conditions where so-called "excitotoxicity" plays a major role.⁸¹ Even phobias and post-traumatic stress disorder (PTSD) may be amendable to treatment with endocannabinoid boosters.⁸² The immunosuppressant characteristics of cannabis that was previously mentioned, has more

⁷⁶ Cf., Janet Joy, Stanley Watson and John Benson, *Marijuana and Medicine*, 173.

⁷⁷ Rudolph Gerber, *Legalizing Marijuana*, 83.

⁷⁸ *Ibid.*

⁷⁹ Jean Marx, "Drugs Inspired By a Drug," *Science Magazine* 311 (2006): 325, <http://www.sciencemag.org.proxy.bib.uottawa.ca/cgi/content/full/311/5759/322>.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*; David Baker and Pryce Gareth, "The Endocannabinoid System and Multiple Sclerosis," *Current Pharmaceutical Design* 14, no. 23 (Aug, 2008) 2326-2336.

⁸² Jean Marx, "Drugs Inspired By a Drug," *Science Magazine* 311, <http://www.sciencemag.org.proxy.bib.uottawa.ca/cgi/content/full/311/5759/322>.

recently been studied for a potential role in autoimmune inflammation in the central nervous system, thereby providing therapeutic value to illnesses such as multiple sclerosis involving extreme spasticity.⁸³

More recently, there has been a wealth of scientific research that suggests marijuana may be able to help treat cancer patients by reducing tumor proliferation. In one esteemed study concerning colon cancer, it has been revealed that the cannabinoid receptors are turned off, which means that a boost of cannabinoid activity could help treat this disability.⁸⁴ Even more impressive is that the tumors associated with colon cancer began to shrink when the genetically engineered mice were given doses of cannabinoids. Another study led by Guillermo Velasco indicates that cannabinoid therapy helps with the treatment of Gliomas, which is considered “the most frequent class of malignant primary brain tumors and one of the most aggressive forms of cancer.”⁸⁵ Cannabinoid enhancement has been proven to kill Glioma cells in a selective manner, and works to slow the overall growth of the glioma tumor.⁸⁶

With respect to the foregoing “risks” posed to the respiratory system, a Harvard University chemical research study conducted in 2007 proclaimed that cannabinoid

⁸³ Bonnie Dittel, “Direct suppression of autoreactive lymphocytes in the central nervous system via the CB2 receptor,” *British Journal of Pharmacology* 153, no. 2, (June, 2008): 271-276, <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2219523>.

⁸⁴ New Scientist, “Cannabis Compound Clue to Colon Cancer,” *New Scientist* 198, no. 2668 (Sept, 2008): 17, <http://www.newscientist.com/article/mg19926685.000-cannabis-compound-clue-to-colon-cancer.html>.

⁸⁵ Guillermo Velasco, Ismael Galve-Roperh, Cristina Sanchez, Cristina Blazquez and Manuel Guzman, “Hypothesis: Cannabinoid therapy for the treatment of gliomas?” *NEURO Pharmacology* 47, no. 3 (Apr 2004): 315, <http://scholarsportal.info.proxy.bib.uottawa.ca/pdflinks/09030818503428267.pdf>.

⁸⁶ Ibid.; Jenny Flygare and Birgitta Sander, “The endocannabinoid system in cancer – Potential therapeutic target?” *Seminars in Cancer Biology* 18, no. 3 (Jun, 2008): 179, <http://scholarsportal.info.proxy.bib.uottawa.ca/pdflinks/09030818550628978.pdf>.

boosters such as marijuana could reduce common lung cancer by up to 50%.⁸⁷ After mice implanted with human lung cancer cells were injected with standard doses of THC for three weeks, tumors were reduced in size and weight by about 50% in treated animals compared to the control group. This was accompanied by a 60% reduction in cancer lesions on the lungs in the mice and a significant decrease in protein markers linked with cancer progression.

Evidently, many of the *instant* benefits of marijuana, such as the treatment of nausea, pain, or the stimulation of eating, are a result of the direct effects of cognitive impairment triggered by the CB1 receptors in the Central Nervous System. On the other hand, many of the benefits of marijuana in treating long term, mentally debilitating illnesses, such as Parkinson's, Alzheimer's, or the decrease in cancer cell proliferation, are a result of the inhibitory effects of marijuana, which are most often triggered by the CB2 receptors in the Immune System.

Important to note, however, is that the intake of marijuana often causes the stimulation of *both* the CB1 and CB2 receptors. Hence, it is possible that "novice" marijuana users seeking treatment to long term illnesses may take issue with the short term cognitive impairment caused by marijuana use until they are able to adapt properly to such psychoactive effects. For this reason, more research must be done on singling out the benefits of marijuana, while containing many of the unwanted or newly experienced side effects.

⁸⁷ A. Preet, R.K. Ganju and J.E. Groopman. "D9-Tetrahydrocannabinol inhibits epithelial growth factor-induced lung cancer cell migration in vitro as well as its growth and metastasis in vivo," *Oncogene* 27, no. 3 (2008), <http://web.ebscohost.com.proxy.bib.uottawa.ca/ehost/pdf?vid=4&hid=105&sid=66c1087f-658e-497c-9199-25687e84e0c2%40sessionmgr114>.

1.5. Conclusion

We have identified the psychological effects that prohibitionists commonly view as a threat to the individual and to society as a whole. Scientific research indicates that many of the direct psychological effects of marijuana use are not debilitating and in many instances are welcomed by the individual user. If anxiety, panic, or delirium does result, it is not long lasting in nature. As for the indirect psychological risks, there is no conclusive evidence that marijuana is the causal factor in depression, or amotivational syndrome; in fact, marijuana may lessen symptoms of depression and allow for an increase in pleasure, productivity and creativity in individual users. What's more is that marijuana dependence is pale in comparison to the dependence caused by many other licit substances, thereby suggesting a minimal risk factor.

We have also identified the major physiological risks to the respiratory and immune systems. Although marijuana smoke may cause an increased risk of temporary, yet treatable respiratory problems, there is no conclusive evidence that marijuana caused *lasting* respiratory problems in humans. As for marijuana's risk to the immune system, it is clear that marijuana does not lower the immune system response in healthy or ill humans, and thus does not increase the risk of infection. What's more is that endocannabinoid research has opened up the door to a whole new realm of medical treatments, which in many cases are, ironically, a result of the so-called psychological and physiological "risks" that prohibitionists vigorously argue to be problematic in society.

Scientific research highlights many of the remarkable attributes of marijuana and discredits many of the negative risks. It is reasonable, therefore, to suggest that

individuals be free to engage in marijuana use as they see fit. In order to see if we can move past prohibitionist claims and legitimately engage in marijuana use without criminal restraints, it is first important to understand the public's perception of marijuana use (Chapter 2), and then to assess the legal debate surrounding marijuana's criminalization (Chapter 3).

Chapter 2 - The Social Implications of Marijuana Use in Canada

2.0. Introduction

Current marijuana legislation has raised many eyebrows with respect to its impact on Canadian society. Marijuana is the most widely used illicit substance in the country. In 2007 a World Drug Report by the United Nations (UN) Office on Drugs and Crime indicates that “16.8 percent of Canadians aged 15-64 smoked marijuana or used another cannabis product in 2004.”⁸⁸ This is a high proportion of the working-age population that, under current legislation, *should* be incarcerated within the criminal justice system if our current laws are properly enforced. Just imagine if 16% of contributing Canadians were instantly found guilty for their reported marijuana offence, given criminal records, or sentenced to prison. Court rooms and prisons would be overflowing with small-time marijuana offenders. The economy would be in shambles. Resentment to law enforcement officials and the judiciary would be at an all time high.

A key problem with marijuana use in Canadian society is the drastic difference in perceptions of the law on the part of the public and authorities. Canadian society has changed dramatically since marijuana laws were put in place over 85 years ago. Public opinion on marijuana use has also changed significantly over the years, but marijuana laws have remained the same. Politicians are afraid to tackle the subject of marijuana decriminalization because of the stigmas attached to it. These stigmas have remained in society solely on the basis that the substance is illegal, not because of the effects of marijuana itself. The criminalization of marijuana, which continues to hinder the lives of so many Canadians, does not fit within Canada’s current social context. Thus, current

⁸⁹ CBC News Team, “Canada Tokes at 4 Times World Average: UN,” CBC News, www.cbc.ca/health/story/2007/07/09/canada-cannabis.html (Accessed Dec 3rd, 2009).

legislation must and ought to be reviewed. Appropriate amendments must be implemented to coincide with today's societal beliefs.

How have the socio-cultural factors impacted marijuana use and the perception of marijuana use in contemporary Canadian society? How does marijuana weigh-in against other licit and illicit substances of abuse? What effect does the stigma caused by criminalization have on the individual user, family members, and significant others?

2.1. A Socio-Cultural Perspective

Everything an individual does in society is heightened by the various interactions they have with those around them. Socio-cultural factors established amongst ethnicities can work to influence outsiders to take part in certain aspects of tradition. This has certainly been the case for marijuana use in Canada. In 2004 Canada ranked the highest of all industrialized nations and fifth highest of all countries worldwide in marijuana consumption.⁸⁹ Evidently, Canadians love to smoke pot; and the majority of those who don't smoke it, accept it. Ironically, Canada currently has a higher rate of marijuana use than many of the countries that introduced the mysterious plant into the Canadian culture in the first place.

The marijuana social culture in Canada has a short-lived history to the present. In fact, between the years 1930-1946 there were only 25 reported marijuana offenses nationally.⁹⁰ In the years 1946-1961, marijuana accounted for only 2% of all drug arrests

⁸⁹ Ibid.

⁹⁰ Benedikt Fischer, Kari Ala-Leppilampi, Eric Single and Amanda Robins, "Cannabis Law Reform in Canada: Is the Saga of 'Promise, Hesitation and Retreat' Coming to an End?," *Canadian Journal of Criminology & Criminal Justice* 45, no. 3 (July 2003), <http://web.ebscohost.com.proxy.bib.uottawa.ca/ehost/pdf?vid=4&hid=105&sid=ad4e42a5-4eac-4144-9fc0-f7e3c804d497%40sessionmgr112>.

in the country.⁹¹ The initial increase in marijuana use was closely associated with an increase in immigration. Before the 1960's, Canada's immigration laws only permitted individuals from the United States, Britain and Europe to settle in the country. In 1961, Canada's immigration policy was amended to allow inhabitants of Asia, the Caribbean, Africa, and Central and South America. Without this increase in immigration, we can be fairly certain that marijuana use would not nearly be as widespread as it is today.

In order to understand how these new settlers impacted marijuana culture in Canada, we must first illustrate what impact marijuana had in their own cultures. The earliest recreational and medicinal uses of marijuana date to 479-502 (ACE) in China, although hemp was believed to be discovered as early as 10,000 BCE.⁹² In India, marijuana was not only used recreationally in the form of "Bhang," but was placed at the center of ritual in spiritual gatherings.⁹³ From India, to the Caribbean island of Jamaica, many laborers took up marijuana use as a pastime, and for Rastafarians in particular, marijuana again found itself as a sacrament of ceremony.⁹⁴ In Africa, several African tribes used marijuana recreationally, religiously, medicinally and in times of battle.⁹⁵ In Central and South America, marijuana was used by peasant farmers and ranch workers as a release from the misery and oppression of the daily work grind.⁹⁶

It is apparent, then, that marijuana use was widespread long before it hit Canadian soil. With an expansion in immigration, especially from those countries that have

⁹¹ Catherine Carstairs, *Jailed For Possession: Illegal Drug Use, Regulation, and Power in Canada, 1920-1961* (Toronto: University of Toronto Press, 2006), 68.

⁹² Martin Booth, *Cannabis: A History* (London: Doubleday Publishers, 2004), 19.

⁹³ *Ibid.*, 21.

⁹⁴ *Ibid.*, 263.

⁹⁵ *Ibid.*, 45, 116.

⁹⁶ *Ibid.*, 130.

experienced high rates of marijuana use, it is not surprising that marijuana would trickle in through Canadian borders. What is astounding, however, is how marijuana use took off at such drastic rates since the expansion of immigration. Indigenous Canadians essentially welcomed the substance with open arms.

The cultural shifts in Canada were actually a back draft, of sorts, of what had occurred in the United States several years before. In the United States, the doors were opened to immigrants from Central and South America in the early 1900's because of the need for cheap labour. It was during the unstable capitalist dictatorship of Porfirio Diaz (1900-1910) that many Mexican's immigrated north to Texas and brought their love of marijuana with them. Mexican migrants spread throughout many of the lower states, offering affordable labour to the communities in which they settled.⁹⁷ US-Mexico relations had been weak for nearly a century before, and many traditional American's had a hard time accepting Mexican settlers. They were seen as affordable replacement workers, and a disruption to the existing social structure.⁹⁸ The common stereotype was that immigrants who used marijuana were bad, thus marijuana use in general must be equally bad. Harry Anslinger and the Drug Enforcement Agency (DEA) took issue with the soaring rate of marijuana use by Mexican immigrants. The DEA exercised every opportunity to spread propaganda to demonize the drug.⁹⁹

Racial discrimination occurred as many local state laws were put in place, not to inhibit cannabis but rather to suppress Mexicans.¹⁰⁰ This fuelled a poor public image of

⁹⁷ Ibid., 132.

⁹⁸ Ibid.

⁹⁹ Clayton Mosher and Scott Akins, *Drugs and Drug Policy: The Control of Consciousness Alteration* (California: Sage Publications, Inc, 2007), 7.

¹⁰⁰ Ibid., 133.

Mexicans and other immigrants who engaged in marijuana use in the United States. They were thought of as “misfits” and “deviants.”¹⁰¹ We may see, then, that war was not only waged against marijuana, but also had a degree of ethnic racism and discrimination attached against new immigrants.

When greater numbers of immigrants were allowed to enter Canada in 1961, initial public attitude was in agreement with the excessive punishment of the so-called “deviant” marijuana users. Fortunately, this *resentment* to immigrants did not last long. The mid-1960’s brought many social movements that favored ethnic rights. Ironically, the misguided hatred toward ethnicities and stringent prohibition of marijuana by the United States in the early 1900’s is exactly what the North American “hippie movement” of the 1960’s and 1970’s fought against. Canadians began to gladly accept ethnicities and took fondly to their marijuana-engaged cultural customs. From spiritual gatherings to social gatherings, the mid-1960’s and beyond demonstrated widespread use of marijuana amongst various cultures in Canada, including native-born Canadians. The “hippie movement” represented a tried and true example of peace, love, and universality with marijuana use at the forefront of the movement. The Canadian government was publicly influenced to accept a more tolerant multicultural policy that recognized the customs and traditions of new settlers. Immigrants were free to practice their own customs and traditions, while actively participating in Canadian society. As a result, the social fabric of Canadian marijuana culture had shifted, accompanied by a transnational shift in cultural practices. From the global view, Canada led the way in upholding ethnic rights.

¹⁰¹ Martin Booth, *Cannabis: A History*, 132.

The 1970's were much the same as the 1960's, with many great musicians promoting the use of marijuana across North America. Bob Marley, the Beatles, and the Rolling Stones are just a few of the celebrities and groups who helped transform cultural views on pot. Canadian society connected with marijuana from passing joints at concerts to the organization of high attendance "smoke-ins."¹⁰² Persons who did not engage in marijuana use still generally tolerated its use in society. Unfortunately, the immense increase in marijuana use across the nation brought forth an equally immense increase in marijuana-related arrests: "from 2,300 in 1968 to over 12,000 in 1972."¹⁰³ The majority of these marijuana offenders were young, educated, and otherwise lawful individuals. As a result, there was an overwhelming call from society to change the punitive marijuana legislation.

In 1969 the Liberal Government of Pierre Elliott Trudeau coincided with public views and took action by calling on Gerald Le Dain to organize a committee that would make recommendations on Canadian marijuana policy. The Le Dain Commission, which was formally known as *The Commission of Inquiry into the Non-Medical Use of Drugs* completed four reports: the *Interim Report*, *Treatment*, *Cannabis* and the *Final Report*.¹⁰⁴

¹⁰² Smoke-ins consisted of large groups of marijuana activists getting together and protesting against injustices such as racism, women's rights or marijuana criminalization. Leah Spicer, "Historical and Cultural Uses of Cannabis and the Canadian Marijuana Clash," Library of Parliament, http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/ille-e/library-e/Spicer-e.htm#_ftn126 (Accessed Dec 3rd, 2009).

¹⁰³ Ibid.

¹⁰⁴ Commission of Inquiry into the Non-medical Use of Drugs, *The non-medical use of drugs: interim report of the Canadian Government's Commission of Inquiry* (Ottawa, Queens Printer, 1971); Commission of Inquiry into the Non-medical Use of Drugs, *Treatment; a report of the Commission of Inquiry into the Non-Medical Use of Drugs* (Ottawa, Queens Printer, 1972); Commission of Inquiry into the Non-medical Use of Drugs, *Cannabis; a report of the Commission of Inquiry into the Non-Medical use of drugs* (Ottawa, Queens Printer, 1972); Commission of Inquiry into the Non-medical Use

The social repercussions of the *Final Report* were widespread. Many individuals, including members of the academic, legal and medical community started to educate themselves on issues pertaining to drug use. They sought clarity on the powers of the police, the costs of enforcement, and the impact of such stringent laws on offenders.¹⁰⁵

In the 1980's marijuana use in Canada seemed to be on the downward trend. This is partly because marijuana had started to be frowned upon on the global scale.¹⁰⁶ Many of the non-democratic nations had open drug trade, which fuelled their corrupt economies. The Canadian population was also aging and individual responsibilities were mounting. The fight for marijuana legislation reform took a backseat. Marijuana use became more of a private and personal activity at home and out of site of friends, co-workers and family members.

The 1990's to the present day have witnessed an increase in marijuana use. While the 1980's saw an increase in older marijuana users (30-49 years of age), the opposite became apparent in the 1990's, with a significant increase in "youth users" (18-29 years of age).¹⁰⁷ For the most part, this was a result of a weakened perception of the risk of harm and a weakening moral disapproval of drug use.¹⁰⁸ Canadians were starting to embrace marijuana use with open arms just as they did in the late 1960's. The difference now is that the educated students who smoked the substance, regardless of punitive

of Drugs, *Final report of the Commission of Inquiry into the Non-Medical Use of Drugs* (Ottawa, Queens Printer, 1973).

¹⁰⁵ Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada: A Risky Business* (Toronto: Nelson Canada, 1988), 108.

¹⁰⁶ Leah Spicer, "Historical and Cultural Uses of Cannabis and the Canadian Marijuana Clash," Library of Parliament, http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/ille-e/library-e/Spicer-e.htm#_ftn126 (Accessed Dec 3rd, 2009).

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

legislation, are also accompanied by older citizens of the past who had lived through the hippie era and realized the true innocence of the substance.

It was during the late 1990's and early part of this century that marijuana use again skyrocketed. According to Statistics Canada's *Health Reports*, "6.5% of Canadians reported using cannabis in 1989, 7.4% in 1994, and by 2002, the proportion had reached 12.2%."¹⁰⁹ Thus, it was only a matter of time until the issue took precedence in the machinery of Government.

In the year 2000 the Canadian Senate, comprised predominantly of liberal members, took the initiative in addressing the excessive criminalization of marijuana. A special Senate Committee, chaired by Pierre Claude Nolin, was granted the responsibility of preparing a full report. The committee would provide unbiased recommendations toward current Cannabis legislation. The final report titled *Cannabis: Our Position for a Canadian Public Policy* was compiled of comprehensive research which analyzed the harms, benefits, and social perception of marijuana in Canada.¹¹⁰ Travelling all parts of the country, and witnessing much of what the Le Dain Commission had witness nearly 30 years before, the Senate Committee concluded that the costs of marijuana prohibition had grossly outweighed any possible benefits that could have come from prohibition.¹¹¹ In 2002 the Senate recommended that marijuana be legalized and regulated by the

¹⁰⁹ The Daily, "Health Reports: Use of Canada and Other Illicit Drugs," Statistics Canada, <http://www.statcan.gc.ca/daily-quotidien/040721/dq040721a-eng.htm> (Accessed Dec 3rd, 2009).

¹¹⁰ Senate of Canada, "Final Report: Cannabis: Our Position For a Canadian Public Policy," Canadian Senate Committee, http://www.parl.gc.ca/common/committee_senrep.asp?language=e&parl=37&Ses=1&comm_id=85 (Accessed Dec 23rd, 2009).

¹¹¹ Senate Special Committee on Illegal Drugs, "Cannabis: Our Position for a Canadian Public Policy," Senate of Canada, <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/rep-e/summary-e.pdf>.

Government.¹¹² Unfortunately, the legal ramifications of the Senate Committee Report were few and far between.

Research since 2008 has shown that the majority of marijuana users are now middle-class, income-earning citizens.¹¹³ This is a far cry from the “deviant” image looming over marijuana users in society nearly fifty years ago. The problem now is that many older individuals remain “in the closet” when it comes to expressing their interest in marijuana. Quite frankly, they are well informed about the consequences of the punitive marijuana legislation, but the fight for decriminalization appears to rest on the shoulders of Canadian youth.

2.2. Societal Views on Marijuana Vis-à-vis Other Licit and Illicit Substances

We will now identify the context of marijuana in Canadian society in relation to other licit and illicit drugs. This assessment is vital because it helps us understand where marijuana stands in Canadian society compared to other common substances of abuse. The illicit drugs that will be held in comparison to marijuana are hallucinogens (psilocybin & LSD) and cocaine. The licit drugs that will be evaluated are alcohol and tobacco. Usage rates, perceived harm and actual harm are the three variables used in comparing marijuana and the other licit and illicit substances. The majority of empirical data presented herein is extracted from the Canadian Addiction Survey (CAS) of 2004, and selected journals from the Canadian Public Health Association (CPHA), the Canadian Center on Substance Abuse (CCSA) and the Health Canada (HC) website.

¹¹² Ibid.

¹¹³ Misty Harris, “High Times for Cannabis, Middle Class Loves it Too,” *The Ottawa Citizen*, May 16, 2008, News Section, A4.

Marijuana is by far the most commonly used illicit substance in Canada. The CAS of 2004 reported that 44.5% (50.1% of men and 39.2% of women) of Canadians aged 15 to 64 (working age) have used marijuana at least once in their lifetime.¹¹⁴ After marijuana, the most common grouping of illicit substances consumed over lifetime experiences was hallucinogens at 11.6% (16% of men and 7.1% of women), followed closely by cocaine at 10.7% (14.1% of men and 7.3% of women).¹¹⁵ While placing an emphasis on education, the CPHA reported that over 25% of all high school students in Canada had used cannabis at least once in 2007.¹¹⁶ In 2002, 18.2% of university undergraduate students in Canada had reportedly used marijuana during their academic year.¹¹⁷

As expected, the usage rates of alcohol and tobacco were higher than that of any illicit substance, including marijuana. For alcohol, the 2004 CAS study indicated that 76.2% of women and 80% of men over the age of 15 had consumed alcohol in the last twelve months.¹¹⁸ As for tobacco, Health Canada reported that 20% of the working aged population in Canada engaged in cigarette smoking in 2004.¹¹⁹ However, in 2008 Health

¹¹⁴ Health Canada, *Canadian Addiction Survey (CAS): Public Opinion, Attitudes and Knowledge* (Ottawa: Department of Health Canada, 2006), 55.

¹¹⁵ Health Canada, *Canadian Addiction Survey (CAS): Focus on Gender* (Ottawa: Department of Health Canada, 2008), 42.

¹¹⁶ Canadian Public Health Association, *Marijuana, Is it Safe?* <http://www.cpha.ca/en/portals/substance/article04.aspx> (Accessed on March 13th, 2009).

¹¹⁷ Edward M. Adlaf, Louis Gliksman, Andrée Demers, and Brenda Newton-Taylor. "Illicit Drug Use Among Canadian University Undergraduates," *Canadian Journal of Nursing Research* 35, no. 1 (2003),

<http://docserver.ingentaconnect.com.proxy.bib.uottawa.ca/deliver/connect/mcgill/08445621/v35n1/s4.pdf?expires=1259865079&id=53771599&titleid=6601&accname=University+of+Ottawa&checksum=4E00DBFC1F5522CCEE3A28CDCCB7B261>

¹¹⁸ Health Canada, *Canadian Addiction Survey (CAS): Focus on Gender*, 13.

¹¹⁹ Health Canada Personnel, "Smoking Prevalence, Canada, 1999-2008," Health Canada, http://www.hc-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/ctums-esutc_2008-

Canada reports indicated that tobacco smoking has decreased slightly over the years to 18%.¹²⁰ This is likely due to increased education on the harms of tobacco use combined with an increase in taxes by the Federal Government.

The CAS reports that the Canadian population perceived marijuana use to be more harmful than alcohol use (29% vs. 8.4% respectively), but less harmful than tobacco use (33.1%).¹²¹ However, when harm to others was analyzed, under regular activity of both marijuana use and alcohol use, it was alcohol use that the Canadian population perceived to be more harmful (56.1% vs. 47.8%).¹²² It is also noteworthy that 32.2% of women and 43.8% of men felt that individuals should be allowed to use marijuana because it was not at all dangerous.¹²³ Relative to other illicit substances, marijuana ranked a great deal lower than Cocaine (80.9%) and Hallucinogens (78.6%) in perceived harm.¹²⁴

The CAS indicates that the types of harm experienced most by men and women of both licit and illicit drugs are physical health, social life and friendships.¹²⁵

Unfortunately, the CAS did not specifically focus on the harm caused by marijuana. However, it did study the harm experienced by users of eight illicit substances (i.e., marijuana, cocaine, speed, hallucinogens, ecstasy, inhalants, heroin, and steroids) and then studied the harm experienced by users of five illicit substances that excluded the

eng.php (Accessed Dec 3rd, 2009).

¹²⁰ Ibid.

¹²¹ Health Canada, *Canadian Addiction Survey (CAS): Public Opinion, Attitudes and Knowledge*, 31.

¹²² Health Canada, *Canadian Addiction Survey (CAS): Focus on Gender*,

¹²³ Health Canada, *Canadian Addiction Survey (CAS): Focus on Gender*, 41.

¹²⁴ Health Canada, *Canadian Addiction Survey (CAS): Public Opinion, Attitudes and Knowledge*, 31.

¹²⁵ Health Canada, *Canadian Addiction Survey (CAS): Focus on Gender*, 53.

noticeably less harmful substances (i.e., marijuana, inhalants and steroids). When analyzing all eight illicit substances, 23.5% of total users experienced harm from use.¹²⁶ However, when marijuana, inhalants and steroids were taken out of the picture, the number of users experiencing harm from the five other “harder” illicit substances almost doubled to 44.7%.¹²⁷ Thus, it is fairly clear that the harm from marijuana use and the other less dangerous substances (inhalants and steroids) was reduced significantly when other hard drugs were taken out of the picture. In addition, in the 12 months prior to the 2004 CAS, 24.3% of all drinkers experienced harm from alcohol.¹²⁸ The CAS did not account for harm caused by tobacco use.

The CCSA provides a plausible outline of the harm caused by alcohol, tobacco and illicit drugs in 2002. They illustrate the mortality rate of each substance, and the number of cumulative days spent in hospital care caused by each substance. Tobacco use was clearly the leading cause of unpreventable death in Canada during 2002, and it continues to be the leading cause of unpreventable death today.¹²⁹ Tobacco caused a whopping 37,209 deaths in 2002, while alcohol caused 4,258 deaths and all illicit substances combined caused 1,695 deaths.¹³⁰ Although tobacco caused nearly nine times as many deaths as alcohol, the day’s spent in hospital care because of illnesses caused by both of these licit substances were not far apart (2.2 million days of acute care for

¹²⁶ Ibid., 64.

¹²⁷ Ibid.

¹²⁸ Ibid., 53.

¹²⁹ Health Canada, *The Health and Socioeconomic Issues*, <http://www.hc-sc.gc.ca/hc-pps/pubs/tobac-tabac/ns-sn/preface-eng.php> (Accessed Dec 3rd, 2009).

¹³⁰ J. Rehm, D. Baliunas, S. Brochu, B. Fischer, W. Gnam, J. Patra, S. Popova, A. Sarnocinska-Hart, B. Taylor, *The Costs of Substance Abuse in Canada 2002* (Ottawa: CCSA, 2006), <http://www.ccsa.ca/2006%20CCSA%20Documents/ccsa-011332-2006.pdf> (Accessed Dec 3rd, 2009).

tobacco users and 1.6 million days of acute care for alcohol users).¹³¹ Even though marijuana was not separated from other hard illicit drugs, the number of days spent in acute care for illicit drug users was significantly lower, totaling 353,121.¹³² This resulted in health care costs that were 65.7% less than alcohol-related costs and 74% less than tobacco-related costs.¹³³

This is noteworthy because there are nearly as many marijuana smokers (approx. 16.8%) as tobacco smokers (approx. 18.6%). Still, with marijuana being combined with all illicit drugs, the rates of hospital care and mortality were significantly lower. In addition, this data demonstrates that society must be tolerant of a degree of self-harm because individuals are permitted to engage in tobacco and alcohol use.

2.3. The Stigma Caused by Criminalization

A vast majority of marijuana users are labeled, looked down upon in society, and penalized by authorities because the substance continues to remain illegal. The stigmatization associated with a marijuana offense, and the criminal label placed on an otherwise law-abiding individual, can have a detrimental affect on that individual's life. We need not look past the case of American Olympian Michael Phelps to illustrate this point. Phelps took home a record-breaking eight gold medals, and still lost all of his official sponsors when a picture of him inhaling marijuana through a bong surfaced in the media. Ironically, one of his major sponsors, Kellogg's, who cancelled his sponsorship funding, thrives on the "munchies" caused by marijuana use. Still, the "illegality" of

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

marijuana use, especially as it is portrayed in the United States, forced this sponsor to re-evaluate its sponsorship endeavors in light of public perception.

The stigma of a criminal conviction creates long-lasting effects on the individual that can severely disrupt their way of life. There can be an instant impact on the individual's relationship with their family, friends and coworkers. There can be a significant financial burden on the individual and relatives if forced to go through the court system with a respectable lawyer. Opportunities and freedoms must often be given up in light of the legal consequences of the offense, such as employment opportunities or international travel.

When the marijuana offender in question is a youth or young adult (under the age of 25), which is often the case, the consequences are even more extensive. The effect of a criminal conviction can be equally harmful to parents. In most cases, parents are given no option but to go through the court system in support of their child's case. This would of course help in terms of guidance and financial support for the child, but it could have detrimental affects on their relationships with other friends and family. When an otherwise lawful individual is forced to go through the court system for a marijuana-related offense, the best evidence to attest to the individual's truly lawful and good-hearted personality is a series of character references. References could be hard to come by, however, as the association with an illegal drug could act as an obstacle that others in society may frown upon when considering to write a reference for the accused individual.

Moreover, a *criminal conviction for recreational marijuana use or small time possession* could be a major shock to the offender's social beliefs. It is hard for an individual to bounce back after being lured through the court system for something they

once believed to be a harmless substance. This is especially true if marijuana was incorporated into daily activities in which the individual had come to take pleasure. If an individual enjoyed the high, succeeded while high, and felt they were contributing to society by establishing peace amongst individuals in the community, then it is not hard for the thought of marijuana's illegality to take the back seat in one's mind. A life can be ruined at the cost of something so minor.

The stigma associated with the "illegality" of marijuana may actually increase criminal behaviour in society by virtue of *labeling*. Labeling theory emphasizes an individual's response to a given consequence. MacCoun and Reuter provide an excellent explanation of the labeling theory: "The stigma associated with criminal sanctioning alienates the individual from conventional society, promoting contact with deviant referent groups and enhancing the likelihood of future deviance befitting the label – a self-fulfilling prophecy."¹³⁴ Thus, once a marijuana offender is labeled as a criminal, they feel that society has turned their back on them. They often begin to resent authorities and "fit" the role that the legal system has created for them. In this respect, the legal system is breeding criminals with an insufficient marijuana legislation that entangles marijuana offenders in the court rooms, takes away their hope of future success in the community, and gives them a taste of blood that could result in future offending.

2.4. Conclusion

This chapter has identified and engaged key social and cultural implications of marijuana use in Canada. It is apparent that the increases in immigration and the hippie movement provided breeding grounds for marijuana in Canadian society. With the use of

¹³⁴ Robert MacCoun and Peter Reuter, *Drug War Heresies*, 91.

empirical data, we illustrated the trivial harms of marijuana in Canadian society when compared to other licit and illicit substances. After assessing the stigmas caused by the criminalization of marijuana, we were able to see that the punishment of marijuana users is often cruel and can have harmful effects on the progression of individuals in society. Canadians should not have to hide their love of marijuana because the mysterious plant has had a vital impact on making Canada the country it is today: a place where peace, unity and compassion are amongst top values. In light of such widespread cultural marijuana use, the laws ought to be re-evaluated and amended to accommodate our society's keen interest in marijuana.

Chapter 3 - Marijuana Law: From Political Apathy to Substantial Punishment

3.0. Introduction

What are the past and present laws that have regulated marijuana offenses within the Canadian criminal justice system? How has politics, from Prime Minister Trudeau's tenure onward, affected the enforcement of marijuana legislation in Canada? Should marijuana laws become more stringent, in order to deter use and associated organized crime, or less stringent? In response to these questions, we first identify the Canadian law, past to present, that has regulated marijuana offenses. We provide an in-depth history of the diverse government party platforms that have had a direct impact on the enforcement of marijuana legislation in Canada from Prime Minister Trudeau to Prime Minister Harper. Finally, we critically examine Prime Minister Harper's newly proposed drug policy that would increase penalties to large scale marijuana offenders in an effort to reduce marijuana use and organized crime across the country. We highlight the legal discourse surrounding marijuana policy in Canada and analyze the legal framework that is crucial in helping us determine if the risks and/or harm caused by marijuana use justify the criminalization laws that have been put in place to deter its widespread use amongst Canadians.

3.1. Laws Prohibiting Marijuana in Canada

Marijuana laws have shifted over the course of Canadian history from one Act to another. The three acts that have regulated marijuana offenses in Canada are *The Opium and Drug Act* (1911), the *Narcotic Control Act* (1961) and the *Controlled Drugs and Substances Act* of 1997.¹³⁵ Each Act has regulated the possession, trafficking, importing,

¹³⁵ Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada*, 99-103; *Ibid.*, 118-

exporting, and cultivation of marijuana. Although the laws have become more civil from the introduction of one act to another (e.g., the abolition of whipping and mandatory minimum sentences for minor offenses, relaxed amendments to acts, and separation of substances into distinct schedules), the strict criminalization of marijuana has remained intact.

Marijuana offenses are not directly regulated by the Criminal Code (other than drug paraphernalia and money laundering offenses). However, the Acts that have been put in place to regulate marijuana have made use of many of the substantive and procedural rules outlined in the Criminal Code.¹³⁶ Substantively, marijuana offenses can either be defined as a summary conviction offense (less punishable by law), an indictable offense (more punishable by law) or a hybrid offense (decided upon by the ruling of the judge), which are all classifications under the Criminal Code.¹³⁷ In addition, the more recent Acts adopted the extensive Criminal Code meaning of a “possession” offense.¹³⁸ Procedurally, the acts have made similar use of the various regulations delineated in the Criminal Code, such as arrest, conducting searches, holding trials and appealing court decisions.¹³⁹ For the most part, however, the acts provide broader procedural authority

123; Minister of Justice Canada, “Controlled Drugs and Substance Act,” Department of Justice Canada, <http://laws.justice.gc.ca/PDF/Statute/C/C-38.8.pdf> (Accessed Dec 3rd, 2009).

¹³⁶ Richard Barnhorst and Sherrie Barnhorst, *Criminal Law and the Canadian Criminal Code* (Toronto: McGraw-Hill Ryerson Limited, 2004), 376.

¹³⁷ *Ibid.*, 18.

¹³⁸ Judith C. Blackwell and Patricia G. Erickson, *Illicit Drugs in Canada*, 122.

¹³⁹ Richard Barnhorst and Sherrie Barnhorst, *Criminal Law and the Canadian Criminal Code*, 376-385.

than the Criminal Code, which has proven questionable under the administration of drug policy.¹⁴⁰

The prohibition of marijuana in Canada had first occurred when the substance was added to the *Opium and Drug Act* (ODA) in 1923. The ODA dished out the harshest punishments of all Canadian drug laws. In 1922, Parliament passed legislation, which not only allowed judges to deport immigrants - mainly Chinese - for possession and trafficking of *any* substance outlined under the ODA, but also implemented a minimum sentence of six months' imprisonment for these offenses.¹⁴¹ The maximum punishment for marijuana possession and trafficking was seven years imprisonment accompanied by a \$1,000 fine.¹⁴² In 1929, whipping was added to trafficking offenses at the discretion of the judge.¹⁴³ The offense of marijuana cultivation was added to the ODA in 1938,¹⁴⁴ which carried similar punishments as trafficking offenses. Possession for the intent of trafficking was added to the Opium Act in 1954, which forced simple marijuana possession offenders to prove that they had no intention of selling the substance.¹⁴⁵ Not long after this, the maximum punishment of trafficking offenses had doubled from seven years imprisonment to fourteen; however, the mandatory fine was eliminated.

The *Narcotics Control Act* (NCA) replaced the *Opium and Drugs Act* in 1961. The six common offenses under the NCA were: possession, trafficking, possession with the intent to traffic, cultivation, importing and exporting, and prescription shopping/double doctoring. The NCA only included one Schedule, and did not distinguish between any

¹⁴⁰ Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada*, 265, 274, 276.

¹⁴¹ Catherine Carstairs, *Jailed for Possession*, 19.

¹⁴² Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada*, 99.

¹⁴³ Catherine Carstairs, *Jailed for Possession*, 32.

¹⁴⁴ Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada*, 100.

¹⁴⁵ *Ibid.*, 103.

drugs in the Schedule; meaning that heroin and marijuana offenses held the same maximum penalties.¹⁴⁶

A *possession* offence could have been deemed either as a summary conviction or an indictable offense. A summary conviction offense carried a maximum penalty of 6 months imprisonment and a \$1,000 fine for a first offence, or 1 year imprisonment and a \$2,000 fine for a subsequent offence; whereas an indictable offense carried a maximum penalty of 7 years imprisonment.¹⁴⁷ A *trafficking* offense and a *possession for the purpose of trafficking* offense were both considered indictable offenses and carried a maximum penalty of life imprisonment; whereas a *cultivation* offense carried a maximum penalty of 7 years imprisonment.¹⁴⁸

For the purpose of this paper, there is no need to discuss the consequences of the importing and exporting offenses or prescription shopping/double doctoring offenses.

In 1997 the *Controlled Drugs and Substance Act* (CDSA) was introduced. The Act replaced the *Narcotic Control Act*, and amalgamated parts III and IV of the *Food and Drugs Act*. The CDSA is the current legislation governing marijuana offenses and is divided into eight schedules. Schedules 1-4 and 7-8 are outlined herein to inform the reader of the seriousness of a cannabis crime in relation to other commonly known substances. There are many other salts, acids and prescription drugs, regulated under schedules 5-6, but for the purpose of this paper they are not mentioned. The most dangerous drugs are regulated in schedule 1, such as heroin, opium and cocaine.¹⁴⁹

¹⁴⁶ Ibid., 119.

¹⁴⁷ Ibid., 123.

¹⁴⁸ Ibid.

¹⁴⁹ Minister of Justice Canada, "Controlled Drugs and Substance Act," Department of Justice Canada, <http://laws.justice.gc.ca/PDF/Statute/C/C-38.8.pdf> (Accessed Dec 3rd,

Cannabis and cannabis resin are regulated under schedule 2. Lysergic acid diethylamide (LSD), amphetamines, and many other prescription drugs are regulated under schedule 3. Anabolic Steroids, barbiturates and other similar drugs that are dangerous but may have therapeutic uses are regulated under schedule 4. Schedule 7 and 8 regulate the quantity of cannabis under schedule 2. 3kg of cannabis or cannabis resin is regulated under schedule 7 and 30 grams of cannabis or 1 gram of cannabis resin is regulated under schedule 8.¹⁵⁰

Possession of 30 grams of marijuana or less is considered a summary conviction offense; it is punishable by a maximum penalty of 6 months imprisonment or a \$1000 fine, or both.¹⁵¹ Possession of more than 30 grams is considered an indictable offense, and is punishable by a maximum penalty of five years imprisonment less a day. Trafficking or, possession with the intent of trafficking 3kg of marijuana or less, is punishable by a maximum penalty of five years imprisonment, less a day. Trafficking or possession with the intent of trafficking more than 3kg of marijuana is punishable by a maximum penalty of life imprisonment. The production or cultivation of marijuana is punishable by a maximum penalty of seven years imprisonment.¹⁵² Interesting to note is that all cannabis related offenses are punishable by greater maximum penalties, than LSD and Psilocybin (magic mushrooms).¹⁵³

2009).

¹⁵⁰ Ibid.

¹⁵¹ Ron Jourard, "Criminal Offence Penalty Chart,"

<http://www.defencelaw.com/penalties-drugs.html> (Accessed Dec 3rd, 2009).

¹⁵² Ibid.

¹⁵³ Ibid.

3.2. Canadian Politics & Marijuana Legislation: 1968 to Present

The four distinguished governments that have had the most influential impact on the enforcement of marijuana legislation in Canada are the Liberal governments of Pierre Trudeau and Jean Chrétien, and the Conservative Government's of Brian Mulroney and Stephen Harper. We discuss these governing parties in chronological order and not based on their political ideologies per se. This way, we are able to see how marijuana legislation, although diversely enforced at times, has continued to remain under the heavy hand of criminal law.

When Prime Minister Trudeau took office in 1968, the NCA of 1961 was the sole federal statute governing the criminalization of marijuana. The majority of arrests and convictions prior to the mid-1960's were for heroine and other opiate related offenses.¹⁵⁴ Thus, when the drastic shift in socio-cultural practices brought forth soaring rates of marijuana use by Canadian youth, it was only a matter of time until Canadians would unite and call for a change to the harsh punishment of marijuana offenders delineated in the NCA.

In 1969, the Trudeau Government responded to the call for less severe penalties on youth by amending the NCA to allow prosecutors to precede by way of summary conviction in possession cases, rather than ruling it a mandatory indictable conviction.¹⁵⁵ This meant that courtroom judges were able to issue a fine rather than the traditional mandatory sentence. The *Proceedings of the Standing Committee on Health, Welfare and Social Affairs Canada* stated that the official purpose of this change in legislation

¹⁵⁴ Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada*, 119.

¹⁵⁵ Frederick Desroches, *The Crime That Pays: Drug Trafficking and Organized Crime in Canada* (Toronto: Canadian Scholars' Press Inc., 2003), 16.

was to lessen the punishment “of young persons who were not ordinarily of the criminal class,”¹⁵⁶ and also to effectively deal with the courtroom problem of too many simple possession cases.

Prime Minister Trudeau asked that the Le Dain Commission be set up in 1969 to look into the non-medical use of drugs and marijuana specifically. The Le Dain *Final Report* helped influence the Liberal Government to propose Bill S-19. This Bill completely removed cannabis from the NCA and created its own exclusive section under the Food and Drugs Act (FDA). The Bill would have effectively taken away the “criminal” sanctions previously associated to marijuana possession offenses and made it a “fine only” punishment.¹⁵⁷ Unfortunately, the bill never came to pass; it died on the order paper of Parliament in 1976.

Although Bill S-19 never came to pass, the Le Dain Report persuaded the Government to amend the Criminal Code to allow judges to issue a conditional or absolute discharge to drug offenders. This amendment drastically reduced the length of time associated with a criminal record.¹⁵⁸ In addition, the Le Dain Report had an indirect effect on the ways in which judges interpreted and enforced marijuana laws. After the release of the Le Dain Report, many judges, some of whom held similar liberal views toward drug policy as Justice Le Dain, were able to take the opportunity to educate themselves on the true extent of the marijuana culture in Canada; resulting in more lenient penalties toward marijuana offenders from the early 1970’s to mid-1980’s.¹⁵⁹

¹⁵⁶ Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada*, 355.

¹⁵⁷ *Ibid.*, 342.

¹⁵⁸ *Ibid.*, 308.

¹⁵⁹ *Ibid.*, 342, 303, 308.

There are three primary reasons for the downfall of Bill S-19. First, there was diversity in the legal recommendations coming from the Le Dain commission. Although the Le Dain majority report had recommended that marijuana be decriminalized, the report by Marie-André Bertrand called for complete legalization and government regulation of marijuana, while the report from Ian Campbell recommended that marijuana should continue to be criminalized, with slightly reduced penalties to marijuana offenders.¹⁶⁰ Second, the Canadian Association of Chiefs of Police and RCMP mobilized interest groups that lobbied against any sort of marijuana legislation reform.¹⁶¹ Stringent enforcement of marijuana laws funded their jobs and those of their colleagues. Third, and most important, the Bill failed to pass in Parliament because of the few liberalized amendments to the Criminal Code just prior to the tabling of the Bill. With relaxed procedures already taking precedence in courtrooms, there was less of a need for any significant reform in marijuana legislation.¹⁶²

From 1976 to 1984 there were several governmental and judicial promises to lessen the penalties of marijuana offenders in Canada; however, each scenario was marked by hesitation and false hope.¹⁶³ All optimism of liberalized marijuana legislation reform had diminished when the Conservative Government of Brian Mulroney took office in 1984. The new Minister of Justice and Solicitor General were quick to confirm that marijuana legislation would not be liberally amended. Drug policy in Canada during the Mulroney tenure can be best described as one that was kick-started by American political influence. In 1986, a speech by President Regan reaffirmed the United States “war on drugs” as a

¹⁶⁰ Ibid., 356.

¹⁶¹ Ibid., 309, 346.

¹⁶² Frederick Desroches, *The Crime That Pays*, 16-17.

¹⁶³ Judith Blackwell and Patricia Erickson, *Illicit Drugs in Canada*, 356-357.

result of the cocaine outbreak.¹⁶⁴ Just two days after Regan's speech, Prime Minister Mulroney declared that "drug abuse has become an epidemic that undermines our economic as well as our social fabric."¹⁶⁵ Both the United States and Canadian governments took the opportunity to capitalize on the public drug war spotlight and introduce more stringent drug legislation, with cocaine use paving the way as the immoral dilemma.

The problem is that Canada did not experience the same cocaine or crack epidemic that the United States had experienced in the 1980's. Student and adult use of cocaine and crack was three to four times greater per capita in the United States than in Canada.¹⁶⁶ In fact, there was no concrete evidence of the "drug epidemic" about which Mulroney spoke. Drug use survey data had pointed to a downward trend in both soft and hard drugs since 1981. Even a government official acknowledged that "when he [Mulroney] made that statement, then we had to make it a problem."¹⁶⁷

After Prime Minister Mulroney's speech the Conservative Government had focused on preparing a "National Drug Strategy" that was implemented in May 1987. The Conservative Government claimed that this strategy would be diverse from the hard-nosed law enforcement strategies employed by the Americans. The National Drug Strategies development process involved broad insight from community groups across the country. The process helped guide the strategy toward more lenient marijuana

¹⁶⁴ Jurg Gerber and Eric Jensen, *Drug War American Style: The Internationalization of Failed Policies and Its Alternatives* (New York: Routledge, 2000), 123.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid., 122.

¹⁶⁷ Ibid., 123.

policy.¹⁶⁸ Even when the strategy was renewed for an additional five years in 1992, the Government stated goal was to continue to focus on harm reduction.

However, shortly after the “National Drug Strategies” reinstatement, there were conflicting views over the drug problem. The Conservative Government moved away from the harm reduction approach and implemented many prohibitionist measures at national, provincial, and local levels to suppress cannabis use and trade.¹⁶⁹ Later in 1992 the Conservative Government proposed a Bill that would double the penalties to marijuana offenders for simple possession.¹⁷⁰ This Bill was highly ridiculed, and died before becoming a law due to the Conservatives defeat by the Liberal Party in 1993.¹⁷¹ By the time the “National Drug Strategy” had come to an end in 1997, the goals of Canadian drug policy were shaped very much by the same forces as those driving the United States drug policy.¹⁷²

There are two primary reasons why Canada’s drug policy continued on route toward American style drug policy motives, even after Prime Minister Mulroney was out of office in 1993.¹⁷³ First, Prime Minister Chrétien had a much larger problem to embrace during his first term in office, which was trying to keep the country intact with Quebec on the verge of separation. Second, the Chrétien government had its hands tied

¹⁶⁸ Jurg Gerber and Eric Jensen, *Drug War American Style*, 123.

¹⁶⁹ Leah Spicer, “Historical and Cultural Uses of Cannabis and the Canadian Marijuana Clash,” Library of Parliament, http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/ille-e/library-e/Spicer-e.htm#_ftn126 (Accessed Dec 3rd, 2009).

¹⁷⁰ CTV News Team, “Marijuana Backgrounder,” CTV News, http://www.ctv.ca/generic/WebSpecials/marijuana/index_timeline.html (Accessed Dec 3rd, 2009).

¹⁷¹ Brennan Clarke, “Unpaid Bills Mount over Ottawa’s Pot,” *Globe and Mail*, July 3, 2007, S1.

¹⁷² Jurg Gerber and Eric Jensen, *Drug War American Style*, 123.

¹⁷³ *Ibid.*, 128.

by the relationship that Mulroney's previous Conservatives maintained with the United States. Prime Minister Chretien was pressured into implementing a more stringent drug policy in line with American traditionalism.

In 1997, the CDSA was implemented by the Chrétien Government. Although the CDSA provided schedules that separated between softer drugs such as cannabis and harder drugs such as heroine, it continued to uphold many of the harsh penalties to marijuana offenders that were outlined in the NCA. In fact, the CDSA coincided more with the wants and needs of local authorities than anything else.¹⁷⁴ It provided the police with greater police power, such as the ability to sell drugs in "reverse sting" operations, and also to obtain a warrant where it would have otherwise been considered impractical. As for the judiciary, the goals of sentencing under the CDSA were unclear. It did not provide adequate guidelines for judicial prudence which left judges limited in their interpretation and enactment of the laws. Public attitudes during the time of the CDSA's implementation were in favour of decriminalizing marijuana. A National Poll stated that 51% of Canadians felt marijuana use or possession should not be a criminal offense.¹⁷⁵ With politicians not acting in line with their constituents demands, it was clear that American pressures were looming over their every move.

In 2000, the Canadian Senate called for a thorough review of marijuana legislation in Canada. In particular, the Senate Committee was concerned about the unwarranted penalties outlined in the CDSA.¹⁷⁶ The Senate Committee Report,

¹⁷⁴ Ibid., 124.

¹⁷⁵ Ibid., 128.

¹⁷⁶ Senate Special Committee on Illegal Drugs, "Cannabis: Our Position for a Canadian Public Policy," Senate of Canada, <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/rep-e/summary-e.pdf>.

Cannabis: Our Position for a Canadian Public Policy, recommended that the production and sale of cannabis be legalized and regulated by the Government.¹⁷⁷ Although this emphasized a considerably liberal recommendation, it was not at all new for Chrétien; he lived through the Canadian hippie era and was Trudeau's right hand man during the release of the Final Le Dain Commission Report in 1974.

With support from the Senate, the Chrétien Government felt it was time to make a stand and put a halt to the increasingly influential American values over drug policy in Canada. In July of 2001 Chrétien's party made amendments to the CDSA and legalized marijuana for medicinal purposes.¹⁷⁸ This made Canada the first country in the world to do so. Then in 2003 the Chrétien Government proposed marijuana decriminalization in Bill C-10. This Bill was an attempt to position drug policy in line with the public voice and apart from American prohibitionist values. This Bill would have removed the possession of less than 15 grams of marijuana from criminal law.¹⁷⁹

Although Bill C-10 failed to pass in Parliament, the attempted shift in marijuana policy by the Liberal Government had a short term, tranquil effect on a significant number of police and judicial representatives across Canada's most populated province of Ontario. Tom Kaye, President of the Ontario Association of Chiefs of Police, told police across the province that "if it's under 30 grams, process them [marijuana offenders] in accordance with your department's policy procedure, lob the drugs in the vault, do up all the paperwork that would be required, and then wait until we see what's going to happen

¹⁷⁷ Ibid.

¹⁷⁸ Brennan Clarke, "Unpaid Bills Mount over Ottawa's Pot," *Globe and Mail*, July 3, 2007, S1.

¹⁷⁹ CTV News Team, "PM Jokes He'll Try Pot Once It's Decriminalized," CTV News, http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20031003/pm_pot_031003?s_name=&no_ads= (Accessed on Feb 14th, 2009).

from the appeals court.”¹⁸⁰ Toronto’s Police Chief, Julian Fantino, stated that his department would continue to seize marijuana and take names, but would no longer lay charges for simple marijuana possession offenses. Many provincial courts on the other hand, had either adjourned marijuana possession cases until the decision from Parliament or the Court of Appeal court had been heard or thrown the charges out all together.

Ironically, the style of politics (corruption!) that occurred in Quebec (Sponsorship Scandal) under Chrétien’s watch is the exact reason why the most recent shift toward liberalized marijuana legislation fell by the wayside. The sponsorship scandal, and the unease in Quebec, resulted in new liberal leadership. Prime Minister Chrétien was replaced by liberal successor, Paul Martin in the National election of 2004. Although decriminalization Bill C-10 was re-administered during Prime Minister Martin’s short tenure in office, it again failed to be passed because of accountability issues and the need to call an early election.

When Chrétien’s Liberal Government proposed decriminalization Bill C-10, there was much pressure from United States officials warning Canada to reconsider their push for marijuana’s decriminalization. John Walters, director of US drug policy, advised the Canadian Government that there would be greater security accompanied by longer delays at the border if Canada decriminalized marijuana.¹⁸¹ Similarly, President George Bush

¹⁸⁰ Nicholaas van Rijan, “Police Backing Off on Pot,” *Toronto Star*, June 6, 2003, A1.

¹⁸¹ Wade Raaflaub, “Canada’s Proposed Decriminalization of Marijuana: International Implications and Views,” Library of Parliament, <http://www.parl.gc.ca/information/library/PRBpubs/prb0433-e.htm#cunited> (Accessed Dec 3rd, 2009).

stated “we’re going to have to clamp down even stronger on our border if you liberalize and contribute to what we consider a drug tourism problem.”¹⁸²

Although Chrétien’s Liberal Government had no intention of taking the threats from United States officials into consideration, Stephen Harper’s opposition Government at the time was already set on playing ball with their American counterparts. One of the major reasons why Paul Martin and the Liberals were able to achieve a Liberal minority government in the 2004 election, even when news of the sponsorship scandal broke out, is because the media portrayed Stephen Harper to be overly accepting of traditional American values. Nonetheless, with the Liberal Government under the gun from the sponsorship scandal mess, the Conservatives were able to achieve a minority government in the early January election of 2006. The door for relaxed marijuana legislation closed once again when the Conservative Government of Stephen Harper took office. In fact, Prime Minister Harper has headed in the opposite direction, and announced harsher penalties towards serious marijuana offenses, in order to deter use. With a “tough on crime” approach, and plans for an increasingly stringent drug policy, Harper’s Conservatives have sought to rekindle the severed relationship with the United States.

3.3. Excessive Criminalization & Bill C-15

In November of 2007 the Harper Government introduced amendments to the *Controlled Drugs and Substance Act* (CDSA) under Bill C-26, which would impose mandatory minimum sentences and increase maximum penalties to those trafficking and cultivating marijuana.¹⁸³ This Bill sat dormant in the House, with other more important

¹⁸² Ibid.

¹⁸³ Canadian Foundation for Drug Policy Personnel, “What’s New (2000-2008),” Canadian Foundation for Drug Policy, <http://www.cfdp.ca/index.htm#new> (Accessed Dec

priorities on the Conservative Governments agenda. However, on February 27th 2009, an equally punitive, Bill C-15, was introduced by the Conservative Government. The amendments to the CDSA under Bill C-15 would include the following provisions to marijuana related offenses: “A one-year mandatory prison sentence for dealing drugs such as marijuana, when carried out for organized crime purposes or when a weapon or violence is involved; a two-year mandatory prison sentence for the offence of running a large marijuana grow operation involving at least 500 plants; increased maximum penalties for cannabis production from 7 years to 14 years imprisonment.”¹⁸⁴

By issuing greater penalties to traffickers and growers, Prime Minister Harper hopes to completely dismantle the marijuana industry and associated organized crime in Canada. Although the Conservative’s proposed drug legislation is guided by policy motives that are aimed at curbing overall marijuana use and violent crime, it is greatly misrepresenting the public view; it is also highly irrational.

In order to address the illogicality of Bill C-15 and its inability to have an impact on the dangers linked to the marijuana industry in Canada, it is important to note the role of *deterrence theory*: “the likelihood of an individual committing a crime will depend on the relative balance of risks and rewards.”¹⁸⁵ Furthermore, “crime can be deterred if the negative consequences for criminal behavior outweigh the expected rewards that follow from the crime.”¹⁸⁶ In light of the proposed increase in the criminalization of marijuana

3rd, 2009).

¹⁸⁴ Department of Justice, “Government Re-Introduces Serious Legislation to Fight Serious Drug Crimes,” <http://www.marketwire.com/press-release/Department-Of-Justice-Canada-955458.html> (Accessed Dec 3rd, 2009).

¹⁸⁵ Charis Kubrin, Thomas Stucky, and Marvin Krohn, *Researching Theories of Crime and Deviance* (New York: Oxford University Press, 2008), 21.

¹⁸⁶ *Ibid.*, 21.

offenders under Bill C-15, the likelihood of an individual trafficking or growing marijuana would depend on whether the individual believes he or she will be caught. The fear of the punishment that would follow will outweigh the rewards resulting from marijuana-related actions.

Deterrence does not really work under the Canadian criminal system however. The demand for marijuana is too prevalent and the supply of pot too lucrative. The supply-side is a direct result of the demand-side. The sheer amount of simple marijuana users in the Canadian marijuana market has created an immensely profitable opportunity for growers and traffickers. The potential rewards outweigh the consequences attached to increased criminalization. At the same time, however, stricter penalties to high-end marijuana offenders will result in an increase in petty arrests. Many otherwise law-abiding citizens will be forced to pay the consequences because police would be forced to engage in more serious and in-depth encounters with *any* and *all* marijuana users. While the image of hard-nosed “deserving” penalties to large scale offenders is upheld, there will be greater police incentive to use unprincipled means to find out who exactly is trafficking and growing the marijuana. In turn, this will hold a negative consequence for all recreational users, because they are the individuals who are most frequently apprehended for simple possession offenses.

In addition, Bill C-15 will place a significant strain on the already burdened legal system. Not only would it add to the cluttered courtrooms, but jails would be overflowing with many non-violent offenders. In British Columbia alone (2002-2004), nearly 850 individuals were convicted of growing marijuana each year; however, only

125 of those were sent to prison.¹⁸⁷ Over 700 individuals were spared from jail sentences almost certainly because the judge deemed these individuals to be of good character and otherwise non-violent offenders. If Bill C-15 were enacted we can be sure that these otherwise passive individuals would be sentenced to no less than six months imprisonment. In 2007, nearly 80% of provincial jails were double-bunked, with nearly 2,735 individuals behind bars.¹⁸⁸ Where will police put all of these non-violent marijuana offenders?

When discussing consequences of deterrence it is important to consider an individual's ability to purchase and use marijuana. In *any* major city, and many outskirts of major cities, if *any* individual, young or old, wants to purchase and or smoke marijuana, they can do so with hardly any trouble at all. It can be bought for as little as \$5.00 for the purpose of getting high. There are now online mailing services, many of them set up in British Columbia. They ship any quantity of marijuana to any selected destination within Canada, most commonly to a PO Box close to home. There are surely risks in businesses like this, indeed, severe risks. However, the profit brought in, and the plain inability of the Government to contain every online pot distributor, makes this business a realistic facet of every day life.

Just as an individual's ability to purchase and use marijuana must be taken into perspective, so too must an individual's ability to grow and traffic marijuana. To begin with the former, we will allow Stephen Easton to provide us with a profitability model of a modest size grow op. "For a modest marijuana growing operation of 100 plants, harvest

¹⁸⁷ Chad Skelton, "BC will need more jail space for pot growers; New federal legislation would create about 700 more prisoners every year," *Vancouver Sun*, November 22nd, 2007, A1.

¹⁸⁸ *Ibid.*

revenue is from 13 kilograms of marijuana sold in pound blocks out the back door valued at \$2,600 per pound. This amounts to slightly less than \$20,000 per harvest. With four harvests per year, gross revenue is nearly \$80,000. A conservatively high estimate of production cost is about \$25,000. The return on invested money is potentially high: around 55 percent.”¹⁸⁹

Even at a conservative estimate, this is a significant amount of profit made in a modest sized grow operation. In addition, many grow operations occur in peaceful neighborhoods, close to schools and smack dab in the center of the community. Thus, indirectly taking the attention off one “illicitly” run grow house in the area. The current legal system does not allow for far enough resources to be spent on marijuana production cases of a smaller nature. Thus, a lot of growers can perform effectively under the radar. Whether it’s a small-scale or large-scale grow operation, the point is, the cost benefit analysis suggests that growing marijuana is a profitable business, and if performed properly, there are very few risks attached.

In terms of trafficking, with such prevalence in marijuana use, it is very easy for any individual to start selling marijuana. It could be as simple as an individual buying a larger quantity of marijuana for a cheaper rate, to split between his or her friends. Or it could extend as far as an individual having specific contracts with growers, to sell mass quantities of marijuana to a vast clientele. The size and personal characteristics of a “dealers” clientele will delineate the size of risk associated. Generally, the more

¹⁸⁹ Stephen Easton, *Public Policy Sources: Marijuana Growth in British Columbia* (Vancouver: Fraser Institute, 2004), http://www.cfdp.ca/mj_bc_04.pdf (Accessed Dec 3rd, 2009), 3.

marijuana users a trafficker sells to, the higher the risks. However, greater risks are also associated with greater profits.

Those who are growing and selling marijuana to make a profit, rarely consider the risks associated because there are such great amounts of money being brought in. As William Trudell, a Toronto defense Lawyer states, “they [dealers and growers] don't have the discipline. They're looking for immediate gratification.”¹⁹⁰ Unfortunately, both, organized crime syndicates and small time marijuana growers or traffickers, are too concerned with the short term gain to feel that what they are doing is wrong.

It is evident that the profits of growing and trafficking marijuana greatly outweigh the associated risks. Thus, as long as demand is high, these illegal activities will not diminish. Stephen Easton says it best, “as it stands now, growers and distributors pay some of the costs and reap all of the benefits of the multi-billion dollar marijuana industry while the non-marijuana-smoking taxpayer sees only costs.”¹⁹¹ With such a lucrative underground industry, it is only natural for the marijuana game to operate similar to that of a hydra. Once one grower or trafficker is cut off by local authorities, another will sprout right back up again. Ethan Nadelmann, the esteemed founder of the Drug Policy Alliance in the United States calls this the “push down, pop up” effect. In many instances, where the apprehended grower or trafficker had a vast clientele, there would be room for many others to take his/her place.¹⁹² In turn, this may cause

¹⁹⁰ CTV News Team, “Tories would impose mandatory jail time for dealers,” CTV News, http://ottawa.ctv.ca/servlet/an/plocal/CTVNews/20090227/gang_laws_090227/20090227/?hub=OttawaHome (Accessed on Dec 3rd, 2009).

¹⁹¹ Ibid., 29.

¹⁹² Ethan Nadelmann, Mark Kleiman and Felton Earls. “Should Some Illegal Drugs Be Legalized?” *Issues in Science and Technology* 6, no. 4 (1990): 43-54.

competition between rivaling gangs to pick up the vast clientele that was left behind by the previous trafficker or cultivator.

In terms of deterrence, unless marijuana users are given stricter penalties, there will be no decline in marijuana use, sale or production across the nation. In other words, curbing demand is the only way to curb supply, and thus restrain the associated organized crime. The prevalence of users (demand) is what is keeping the entire marijuana market intact. In chapter 4, we will discuss exactly why users ought *not* to be criminally punished for engaging in recreational marijuana use on moral grounds.

It seems as if the Conservative Government is stuck with a conundrum. The public will not allow for more severe penalties to marijuana users, or small time possession offenders. Parents do not want to see their children go to jail, or get slapped with a criminal record because of a little bit of pot. Nor do children want to see their parents in the same boat. As esteemed lawyer and current professor of Criminal Law at Ottawa University, David Paciocco notes, “savage punishments...can cause a humane public to rebel against the values demonstrated by the administration of justice, thereby undermining the educational effect of criminal prosecutions.”¹⁹³ We can be fairly certain that the Harper Government does not want to stir the pot so much that they initiate another public outcry for lenient marijuana legislation, similar to that of the hippie movement.

3.4. Conclusion

This chapter sheds light on the various laws and legislation regulating marijuana throughout Canadian history. The governing parties from Prime Minister Trudeau to

¹⁹³ David Paciocco, *Getting Away with Murder* (Toronto: Irwin Law Inc., 2000), 31.

current Prime Minister Harper have been evaluated, and their influences over marijuana policy have been illustrated. Finally, we have addressed recently proposed Bill C-15, which calls for increased punishment to marijuana growers and traffickers. We provided reasonable arguments that have identified the harmfulness and futility of this bill. This chapter has shown how draconian are Canadian laws prohibiting marijuana. It has also offered an explanation as to why there has been no significant liberalized reform in marijuana laws on the political front. Marijuana laws continue to harm many otherwise law-abiding individuals. Is it not necessary to question the justice behind criminalization? Chapter 4 challenges the current justification for criminalization. We provide a deontological moral rights argument for why individuals ought to be allowed to use drugs recreationally and free from excessive criminal punishment.

Chapter 4 – Douglas Husak’s Philosophical Argument For a Moral Right to Recreational Drug Use

4.0. Introduction

Chapter 1 identified the psychological and physiological risks and benefits associated with marijuana use through a critical assessment of the scientific research. In Chapter 2 we evaluated the socio-cultural factors that have influenced the exponential growth of marijuana use in Canada. In Chapter 3 we examined Canadian law, drug policy and political procedures that have led to current marijuana policy under the Canadian legal system. These chapters reveal primarily a “cost/benefit” assessment and critique over policy and laws regulating the recreational use of marijuana. What is missing is a deontological moral evaluation of recreational marijuana use in Canada.

This chapter develops the philosophical foundation for a moral rights argument to use drugs (all illicit drugs) recreationally. We appropriate the work of the esteemed criminal law theorist and philosopher of drug policy, Douglas Husak. He argues that individuals ought to have a moral right to engage in the *recreational* use - “consumption that is intended to promote the pleasure, happiness, or euphoria to the user”¹⁹⁴ - of all illicit drugs, free from criminal punishment. Husak maintains that with the use of criminal law comes excessive punishment and that the moral rights of citizens -- primarily, the right not to be unjustly punished-- are thereby relinquished. In order to critically assess this problem, we will identify whether the *harm* caused by recreational drug use justifies its prohibition under criminal law. Harm is the central focus under Husak’s moral rights discourse because it is well established that any sensible

¹⁹⁴ Douglas Husak, *Drugs and Rights* (New York: Cambridge University Press, 1992), 44.

justification for criminal legislation must exemplify that it is needed to prevent harm.¹⁹⁵

There are two possible harms that may result from recreational drug use: harm to the user and harm to others. If the harm caused by marijuana use is insufficient, or trivial, under criminal law, then the prohibition of recreational marijuana use is unjust. What harm does the recreational use of illicit drugs cause to the user? Should recreational drug use be protected by the principle of autonomy? What harm does the recreational use of illicit drugs cause to others? Should increased “disutility” in society be equivalent to increased harm? Does recreational drug use count as an “anticipatory offense” in the state’s goal of preventing the *risk* that harm may be caused to others?

We begin by identifying presuppositions in Husak’s work concerning the moral right of individuals to use drugs recreationally. We then assess the harm caused to the user by the recreational use of illicit drugs. We refute the paternalistic defense of criminal prohibition by illustrating that the recreational use of drugs falls within the protection provided by the *principle of autonomy*. Analogies with other recreational activities are used to justify why recreational drug use ought to be protected by the principle of autonomy. We then assess the impact of addiction and indicate why the addict’s choice to continue using drugs still ought to be protected by the principle of autonomy. With respect to harm to others caused by the recreational use of drugs, John Stuart Mill’s “harm principle” is introduced and put to the test in identifying plausible harms caused by recreational drug use. We then emphasize how and why increased disutility – which may in fact be caused by recreational drug use – does not necessarily represent increased harm; at least harm in a criminal sense. Key features that

¹⁹⁵ Ibid., 63.

differentiate criminal harm and civil harm are then highlighted, and the drug-crime connection is carefully examined. Finally, we assess and challenge the most plausible defense for drug prohibition, which suggests drugs are prohibited because they are classified as an “anticipatory offense.” As an anticipatory offense, recreational drug use and possession offenses are not prohibited because they cause *direct* harm to others, but rather because they increase the likelihood that others will be harmed.

4.1. Presuppositions of Douglas Husak’s Decriminalization Approach

Douglas Husak views drug use as just another *recreational activity*; one with a legal justification that could and should be comparable to any number of other *risky* recreational activities that are currently legalized. He suggests that drug use is not different than other recreational activities because “no support for the belief that drugs are different can be drawn from the legal definition of ‘drug’ found in the statutory scheme that controls drug use.”¹⁹⁶ Furthermore, simply using drugs should not be the cause of prohibition; rather a rationale for prohibition should be focused on the *actions* and *effects* that result from the use of drugs. By arguing that drugs are not different from recreational activities, Husak devises an argument dependent on analogies between engaging in drug use and other risky recreational activities.

Another important presupposition is Husak’s conception of decriminalization. Since it is the overall punishment that Husak sees to be flawed with the use of criminal law, he proposes a system that simply allows individuals to *use* all drugs, and not be bothered by the legal system whatsoever. One would think that Husak would accept the civil punishment of drug offenses if drug use is not prohibited under criminal law.

¹⁹⁶ Ibid., 27.

However, quite the opposite is true. Husak views *mandatory* treatment or rehabilitation, job training and monetary fines as punishments as well. These punishments are not supported under his system of decriminalization.¹⁹⁷

Husak's moral rights argument for the decriminalization of drug *use* does not extend to the *sales* and *manufacturing* of drugs.¹⁹⁸ He admits that his argument associates *use* with *possession*, because *use* is hardly criminalized, whereas *possession* is a leading cause of incarceration. This is not hard to comprehend as an individual must possess a drug to use it in the first place. Husak's ideal drug decriminalization policy would be similar to a system of decriminalization covering the *use* and *possession* of alcohol during the Prohibition (1920 – 33) in the United States. Individuals could *use* and *possess*, but not *sell* or *manufacture* alcoholic beverages.¹⁹⁹

Husak's arguments are *principled* in nature. They are not reflective of the classic utilitarian or consequentialist arguments that are frequently used in the drug decriminalization debate. By offering a principled approach to affording individuals the right to use drugs, free from punishment, Husak is able to avoid the complexities presented by arguing for or against the costs and benefits of prohibition. There are simply too many costs and benefits, or hidden costs and benefits, which need to be taken into consideration under the consequentialist approach. He notes that most drug prohibitionists tend to use utilitarian rationales to respond to the challenges presented by those favoring decriminalization. For example, "from a public health standpoint, creating

¹⁹⁷ Douglas Husak, "Drug Legalization," *Criminal Justice Ethics* 22, no. 1 (Winter/Spring 2003) 22.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

a cocaine problem the size of the current alcohol problem would be a major disaster,”²⁰⁰ or “the question is not which is worse, alcohol or drugs. The question is can we accept both legalized alcohol and legalized drugs? The answer is no.”²⁰¹ To put it simply, such prohibition theorists are not addressing the problem in principled terms. Their responses have no regard for the moral rights of the individual, but only focus on what’s best for the majority. Husak’s point is that “this resort to democratic theory cannot be used to justify the legalization of some drugs but not others, even if ‘we’ cannot ‘accept’ them all.”²⁰² So what if a majority of individuals disagree with the decriminalization of recreational drug use? There still must be reasonable, nonconsequentialist or principled responses given to justify why recreational drug use is, in fact, prohibited and punished.

Finally, it is important to identify how Husak frames his moral rights discourse. Unlike the majority of decriminalization activists, he does not argue that drugs should be decriminalized; rather he argues that drugs should not be criminalized.²⁰³ Instead of looking at why drugs should be decriminalized, Husak asks for a justification for the current policy of drug criminalization.²⁰⁴ Husak maintains that there is no rationale strong enough to satisfy criminal punishment of recreational drug users.²⁰⁵ Philosophers must assess the *harm* caused by recreational drug use to the *user* and *others* in society.

²⁰⁰ Douglas Husak, *Drugs and Rights*, 93. See further, Mark Kleiman and Aaron Saiger, “Drug Legalization: The Importance of Asking the Right Question,” *Hofstra Law Review* 18 (1990): 543.

²⁰¹ Douglas Husak, *Drugs and Rights*, 93. See further, William Bennett, “Drug Policy and the Intellectuals,” (Speech delivered at the Kennedy School of Government, Harvard University, December 11, 1989).

²⁰² Douglas Husak, *Drugs and Rights*, 93.

²⁰³ Douglas Husak, “Drug Legalization,” *Criminal Justice Ethics* 22, no. 1 (Winter/Spring 2003) 23.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

Although some degree of harm may exist with the use of drugs, he contends that it is hardly worthy of justifying criminal punishment. Below we outline Husak's arguments surrounding the harm caused by recreational drug use to the *user*, before turning our attention to the harm caused by recreational drug use to *others*.

4.2. Harm to Users

The harm that drugs *may* cause to users is what provides support for the paternalistic measures taken by the state. In effect, the state recognizes its role as one that is authoritative enough to prevent people from engaging in certain activities if doing so will prevent the individual from harming themselves. If recreational drug use is indeed sufficiently harmful to oneself – comparable to other offenses regulated under criminal law - then the state is justified in preventing individuals from engaging in drug use. Although Husak is not completely against state paternalism, he does feel that there is no place for it within the domain of criminal law.²⁰⁶

Crucial to Husak's moral rights argument is the *principle of autonomy*. This principle provides the moral norm (or foundation) for preventing the state from interfering with the autonomous lives of its citizens.²⁰⁷ If an individual's decision to engage in a given recreational activity is protected by the principle of autonomy and consequently deemed a *prima facie* moral right, then no careful balancing of the costs or benefits by the state is able to prevent individuals from partaking in such an activity.²⁰⁸ The principle of autonomy, of course, may be interpreted in a variety of ways. Some

²⁰⁶ Douglas Husak, "Convergent Ends, Divergent Means: A Response to My Critics," *Criminal Justice Ethics* 28, no. 1 (May 2009) 125.

²⁰⁷ Douglas Husak, *Drugs and Rights*, 81.

²⁰⁸ *Ibid.*

conceptions of the principle of autonomy allow for degrees, whereas others do not.²⁰⁹

Some conceptions of the principle of autonomy are formal where others are informal (substantive).²¹⁰ All in all, some interpretations of this principle suggest that drug use is protected by the principle of autonomy, whereas others do not.

Apparently, Husak does not argue for any particular conception of the principle of autonomy. This is likely because he does not want to get caught up in the complexities that arise with one conception over another; as each conception has its own potential limitations and constraints. He does, however, suggest how both a formal conception of autonomy and a non-formal (or substantive) conception of autonomy could provide protection for an individual's right to use drugs recreationally. Under the formal conception, he points to Gerald Dworkin's conception of autonomy, which insists that individuals act autonomously so long as they are able to line up their second order preferences with their first order desires.²¹¹ As Husak notes, "adults who want to use drugs can, after critical reflection, want to want to use drugs."²¹² This formal conception is reflective of a capacity building where individuals are acting autonomously so long as they do not let their true goals and objectives get side-tracked by other recreational activities.

As for a non-formal or substantive version of autonomy, Husak appropriates Joel Feinberg's conception of autonomy. For Feinberg, "the kernel of the idea of autonomy is the right to make choices and decisions – what to put into my body, what contacts with

²⁰⁹ Ibid., 82.

²¹⁰ Ibid., 83.

²¹¹ Ibid., 84. See further, Gerald Dworkin, "Autonomy and Behavior Control," *The Hastings Center Report* 6, no. 1 (Feb, 1976): 23, <http://www.jstor.org.proxy.bib.uottawa.ca/stable/pdfplus/3560358.pdf>.

²¹² Douglas Husak, *Drugs and Rights*, 84.

my body to permit, where and how to move my body through public space, how to use my chattels and physical property, what personal information to disclose to others, what information to conceal, and more.”²¹³ The recreational use of drugs would be considered autonomous under this non-formal conception of autonomy because of Feinberg’s explicit mention of “what to put into my own body.” His conception suggests that autonomy permits individuals to engage in recreational drug use, just as they are permitted to engage in eating apples.

Husak uses *analogies* to compare and contrast the paternalistic case for prohibiting recreational drug use to the paternalistic case for other risky recreational activities. He advises that triumph does not fall on the side of those in favour of drug prohibition simply by arguing that drug use is non-autonomous and unprotected by a moral right. “There must be *a morally relevant difference* between those recreational activities that should be permitted and those that should be prohibited.”²¹⁴ Husak argues that recreational drug use should be protected by the principle of autonomy, and is, in fact, representative of at least a *prima facie* moral right of the individual.

Perhaps, however, it is the level of risk associated with recreational activities that helps determine which recreational activities are deemed permissible and which prohibited? According to Husak, the *risks* caused by using recreational drugs seem to be no greater for the individual than the *risks* caused by participating in other recreational activities. The risks associated with recreational drug use are not all that extraordinary. While Husak does not doubt that risks of harm (psychological, physiological and even

²¹³ Ibid., 85. See further, Joel Feinberg, *Harm to Self* (New York: Oxford University Press, 1986), 54.

²¹⁴ Douglas Husak, *Drugs and Rights*, 92. (Emphasis added).

death) are associated with recreational drug use, he respectfully indicates that there are other licit recreational activities that present an equal or even greater *risk* of harm to the user. For example, there are similar numbers of injuries and even fatalities caused by motorcycle accidents and/or mountain climbing when compared to the use of illicit drugs. Playing football and boxing places the participant at a greater risk of an irreversible mental deterioration from excessive blows to the head. To date, obesity is a rapidly growing problem that adversely affects the health of millions of individuals in both the United States and Canada. Nevertheless, football and boxing will not ever be banned, nor will the eating fatty foods, mountain climbing or driving motorcycles. Although the state may warn individuals to be cautious about engaging in such activities, it would be a violation of the rights of individuals to overtly prohibit these activities.

Moreover, there are between 350,000-430,000 deaths attributed to tobacco products each year in the United States. These fatalities are far greater than every other licit and illicit recreational drug fatality combined.²¹⁵ Even more risk-revealing is that “about 25 percent of all adolescents who smoke a pack of cigarettes daily lose, on average, ten to fifteen years of their lives.”²¹⁶ In terms of alcohol use, scientific research has pointed to about 75 different human illnesses and conditions pertinent to drinking liquor.²¹⁷

Whether it be the broken bones, or concussions caused by some recreational pursuits, the health hazards pertinent to obesity, the “slow suicide” caused by tobacco smoking, or the high levels of illness/aggression caused by drinking liquor, it is clear that

²¹⁵ *Ibid.*, 95.

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*, 97.

there is an acceptable level of risk of harm permissible in and by society. To highlight the *principle* behind this argument, the illicit drug using individual has the right to know why harmful licit recreational drug pursuits are permitted, but not my illicit, but arguably less harmful, pursuits? Husak maintains that “existing illegal recreational drugs should probably not be prohibited because they pose an unacceptable magnitude of risk of harm to users relative to other permissible recreational activities.”²¹⁸

It is not only the risk factor that should be considered when prohibiting certain activities, but the *importance* of such activities as well. “Important risky activities have a claim to protection that unimportant risky activities do not.”²¹⁹ How is the importance of certain risky recreational activities determined? The problem is that there are no criteria to determine which activities are important in a person’s life and which are not. Husak appeals to the principle of autonomy stating that it should be within the individual’s rights to determine which activities are important and which are not in their life. If the principle of autonomy backed the choice of individuals to determine which recreational activities are important, the prohibition of drugs would be hard to support, since it is likely that many individuals would rank recreational drug use, even assuming licit drug use, high on the scale of importance.

When discussing the scope of the protection of autonomy over recreational use, Husak notes the importance of determining if there is another similar activity that is less risky or harmful that could replace recreational drug use.²²⁰ If there is another similar activity that could replace the risks of recreational drug use, then maybe the principle of

²¹⁸ Ibid., 97.

²¹⁹ Ibid.

²²⁰ Ibid., 99.

autonomy should not be extended to protect recreational drug use. Consider, for example, the illness of diabetes. An individual may use foods containing aspartame rather than sugar in sweet foods that diabetics would not otherwise be able to enjoy. Recreational drugs are, in Husak's view, more like foods than food additives; whereby there is no other substance that can replace such feelings that result from the use of such drugs.

Or let us consider the case of cigarettes. There have been new electronic products developed that look like a cigarette. They have similar amounts of nicotine as a cigarette. They let you feel the hall of a cigarette and even let you exhale (artificial) smoke like a cigarette. These products are meant to allow for individuals to smoke in bars or restaurants where it has otherwise been prohibited. These products do not have the same carcinogenic properties as a cigarette. They drastically reduce the serious illnesses caused by cigarettes. Although Husak hardly regards recreational drug use as harmful, he argues that the government should find alternative methods that allow users to continue using drugs harmlessly before punishing them for using drugs. *Punishment* should only be inflicted on the individual for partaking in a recreational activity as a last resort.²²¹

Perhaps the best reason to believe that recreational drug use is different than other recreational activities and falls outside of the protection provided by the principle of autonomy is because some drugs can cause *addiction*.²²² Addiction is the greatest rationale in defense of a paternalistically-motivated prohibition of drugs. Why? It is because users are said to be acting in a nonvoluntary way.

²²¹ Ibid.

²²² Ibid., 100.

How, though, does addiction to recreational drugs differ from addiction to other recreational activities? Many individuals are addicted to cigarettes, alcohol, coffee, salt, chocolate, gambling, etc. Individuals, who are passionate about boxing, playing football, playing videogames, Internet surfing, or mountain climbing may also claim that they are addicted to such activities. Many of the foregoing recreational activities pose risks of harm to the physical or mental health of the individual. Yet, addiction is not singled out as a factor that determines the legitimacy of these recreational activities. Some individuals may have an addictive personality, but being addicted does not justify criminalization.

Husak implements Gerald Dworkin's formal conception of autonomy to raise doubts about whether the actions of recreational drug users are actually non-autonomous. As previously mentioned, Dworkin's conception of autonomy suggests that individuals are acting autonomously so long as they are able to line up their "second-order preferences" with their "first order desires."²²³ Addiction, based on Dworkin's formal conception of autonomy, would only apply to a subset of addicts. This is because many addicts may find no problem lining up their first order desires with their second-order preferences.²²⁴ In other words, most addicts know the risks involved in drug use, but continue to do it anyway.

In order for autonomy to be forfeited, Husak suggests the pain of withdrawal must be so severe that it forces the addict to continue drug use.²²⁵ In short, the addict must be powerless to stop using drugs. Husak argues there is no such pain that can be caused by

²²³ Ibid., 84.

²²⁴ Ibid., 102.

²²⁵ Ibid., 109.

any recreational drug in modern-day society. “Persons of ‘reasonable firmness’ should be required to endure lesser pains in order to remain law-abiding. The discomfort of withdrawal is not comparable to serious bodily injury.”²²⁶ The individual is not powerless to stop using drugs in the same way a person would be powerless to stop his fall after being pushed off a cliff, or in the same way an individual is powerless to stop their breathing, or even in the same way a programmed robot is powerless to stop its actions.

Husak’s appeal to autonomous action, even in the case of drug addiction, is similar to a notion of free choice. All drug addicts have the “freedom of choice” to quit using drugs and many addicts do quit using drugs. Withdrawal is not severe enough to coerce addicts into continuing to use drugs. So long as the option to quit remains and withdrawal is not completely forceful, autonomy should not be forfeited. Provided that autonomy is maintained, the rationale that drugs should be prohibited because they are addictive, lacks significant ground with respect to a principled argument (at least an argument based on the principle of autonomy).

Recreational drug use may also fall outside of the sphere of protection provided by the principle of autonomy according to a conception of *soft* paternalism: “the state has the right to prevent self-regarding harmful conduct *when but only when* such conduct is substantially nonvoluntary.”²²⁷ Drug users may not know, for example, exactly what it is that they are using. The rationale provided by *soft* paternalism assumes that adults are ignorant about the dangers of recreational drug use, and it would be naive to believe that

²²⁶ Ibid., 114.

²²⁷ Ibid., 130.

adults have no idea about what recreational drugs they are taking or the risks involved. The fact is that “most adults know that drug use may be harmful.”²²⁸

Even if individuals take a “wishful thinking” or an “it can’t happen to me” approach to risk-taking, autonomy should not be forfeited. Why? The same thoughts are maintained in the participation of many risky recreational activities such as riding roller coasters, hang-gliding or mountain climbing. It is not obligatory that individuals know the entirety of risks involved with each recreational activity they pursue before engaging in such activities. If such were the case, then a great majority of the currently permissible recreational activities would be prohibited. The most likely scenario is that many individuals use drugs for the same reasons that they partake in other risky recreational activities: “They believe that the likelihood of immediate pleasure outweighs the risk of eventual harm.”²²⁹ According to Husak, then, the extent of ignorance amongst recreational drug users provides a weak rationale for prohibiting recreational drug use in general.

Another plausible argument that recreational drug use may be undeserving of protection under the principle of autonomy is illustrated through a conception of *hard* paternalism. John Kleinig states that “our lives do not always display the cohesion and maturity of purpose that exemplifies the liberal ideal of individuality, but instead manifest a carelessness, unreflectiveness, shortsightedness, or foolishness that...represents a departure from some of our own more permanent and central commitments and dispositions.”²³⁰ This statement places high regards on personal

²²⁸ Ibid., 132.

²²⁹ Ibid., 135.

²³⁰ Ibid., 138. See further, John Kleinig, *Paternalism* (Totowa, NJ: Rowman and

integrity. Husak is able to relate Kleinig's concern for personal integrity to the principles of autonomy conceived by Gerald Dworkin and Harry Frankfurt. If an individual wants to use drugs, but also does not want to use drugs, his consumption of drugs may be seen as non-autonomous because his first order desire conflicts with his second order preference.²³¹

Husak poses an important question: Is the individual seriously unable to focus on his or her more stable and central commitments, or simply unwilling to do so?²³² In reality, individuals must have their rationality intact or else they "would not have noticed the discrepancy in the first place."²³³ Husak notes that the best reason for being unable to quit using drugs would be if the pain of withdrawal is so severe that it forced the individual to keep using. However, this brings back a past argument, where we have already identified the pain of withdrawal as not being so severe that it forces individuals to continue using drugs. "The promising lives of some people are ruined by drugs,"²³⁴ notes Husak. "The lives of others are not hampered in any apparent way; the lives of still others are enriched."²³⁵ The point here is that the same can be said about a vast majority of other recreational activities.

Now let us assume that the argument for paternalism based on maintaining *personal integrity* is a worthy rationale for drug prohibition. One may still ask: does *criminal punishment* help mend this problem? It would be better for the paternalist to help educate and to treat the individual who is lacking personal integrity rather than to

Allanheld, 1983), 168.

²³¹ Douglas Husak, *Drugs and Rights*, 139.

²³² *Ibid.*, 140.

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ *Ibid.*

criminally punish them.²³⁶ Two wrongs do not make a right. Personal integrity is not enriched by giving people a criminal record or sending them to prison. In fact, the opposite often occurs. As a result of prohibition, individuals who are criminally punished suffer loss of self-esteem and are barred from partaking in their more permanent or stable commitments.

4.3. Harm to Others

It is now crucial that we look at Husak's arguments which assess the other, potentially more important defense of drug prohibition, i.e., recreational drug use inflicts harm on *others* (non-users).

John Stuart Mill's "harm principle" will be put to the test in determining if the state is justified in prohibiting recreational drug use on the basis that it will cause harm to others. Mill's "harm principle" holds an honorable place in North American criminal law because no one doubts that the state is justified in preventing individuals from engaging in a certain activity if doing so will prevent harm to others in society.²³⁷ Of course, the harm principle is not the "end all and be all" for determining which activities should be permitted or prohibited. Nonetheless, all criminal theorists would agree that the rights of others are violated when harm is inflicted; and such actions should be held liable by criminal law.

Husak stresses the importance of differentiating between *harm* and *disutility*. One of the reasons harm and disutility seem to be synonymous is because most individuals who defend prohibition of an unfavourable activity will propose that those activities are harmful. This is not always the case. "Much of the disutility said to be created by

²³⁶ Ibid., 141.

²³⁷ Ibid., 145.

recreational drug use does not amount to harm in the sense capable of justifying criminal prohibitions.”²³⁸ In addition, harm is easily misconstrued because some theorists seemingly use the expressions “bad effect,” “evil,” “disutility,” and “harm” interchangeably.²³⁹ The most plausible reason why bad effects, evils, or disutility may not qualify as harm is because the individual or business that may have caused the misfortune was said to be acting within their rights. For example, although the Walton’s of Wall-Mart open a new store in Ottawa and thereby create a degree of disutility or bad effects for smaller retail competitors, they are acting within their rights specified by law. As such, they are thus not harming their competitors in the criminal sense.

Husak borrows liberally from Joel Feinberg in employing the harm principle as a “substantive, nontrivial requirement that criminal legislation must satisfy.”²⁴⁰ Under Feinberg’s fitting understanding of the harm principle, individuals are *only* criminally harmed when their moral rights are being violated. In the foregoing example of the business competitor, Feinberg would suggest that the bankrupt competitor is in a harmed stated, but they are not harmed in the sense deemed necessary by criminal law.

To focus on the harm to others, or breach of their moral rights, caused by recreational drug use, the underlying question is, “whose rights – and what rights – are violated by acts of recreational drug use?”²⁴¹ If this question cannot be accurately and sufficiently answered, then prohibition of drugs is irreconcilable with the harm principle. As past American drug Czar William Bennett indicates, it is true that drug use may breed bad neighbours, inattentive parents, poor students, and unproductive employees, each of

²³⁸ Ibid., 162.

²³⁹ Ibid., 164.

²⁴⁰ Ibid., 163.

²⁴¹ Ibid., 166.

whom may prioritize the recreational use of drugs before any of their other essential daily activities.²⁴² Such use clearly creates greater “disutility” amongst others in society. Does it actually cause *harm* to the lives of others, especially *harm* deemed necessary for a criminal conviction under any legal system that includes the harm principle? For example, surely there are non-drug users who go to work every day, unmotivated and accomplishing nothing. There are also individuals who are too lazy to go to work at all. Does this justify *criminal punishment*? The fact that a parent is inattentive is hardly a reason to invoke criminal law, and neither is poor academic behavior on behalf of students whose poor marks stem from drug use. What about the many students who have never used drugs but have serious behavioral problems? Of course, criminal punishment does not come into play. Further, there are “bad” neighbours without the use of drugs; they may even be worse than neighbors that use recreational drugs. Unfortunately that’s their choice, but bad neighbors are not routinely punished under the criminal system.

An increase in drug use – whether or not it increases disutility – does not *necessarily* increase harm (in a criminal sense) any more than the harm that is visible with non-drug users. No one’s moral rights are infringed by having unproductive employees, inattentive parents, poor students or bad neighbours. Nobody has been morally wronged under any of these circumstances. According to Husak, this disutility is not harm because society has no right to these benefits in the first instance. Furthermore, such a society is actually present today regardless of drug use. There are indeed other causes of disutility. Let’s be fair here. We must seriously consider whether recreational drug use really does fit under the *criminal* law system today.

²⁴² Ibid., 166-167. See further, William Bennett, *National Drug Control Strategy* (Washington: Office of the National Drug Control Policy, 1989), 7.

Even assuming that an individual's moral rights are justifiably infringed by illicit recreational drug use, it does not imply that *harm* -- deemed necessary under *criminal* law -- is at stake.²⁴³ In other words, the infringement of another individual's moral rights may not necessarily cause a *criminal* harm to that individual. This is because the legal systems of both the United States and Canada are divided into two frameworks, i.e., criminal law and civil law. Although Husak suggests that there is no reasonable theory that is used to differentiate between criminal and civil law, he cites two approaches that attempt to differentiate between them: the pragmatic approach and the principled approach. We will illustrate the rationale for each approach, while focusing on an attempt to reconcile them with drug prohibition. It is questionable whether either approach justifies the need for criminal law in the enforcement of the prohibition of drugs.

In differentiating between criminal and civil harm, the *pragmatic* approach does not focus on the type of harm that has been committed. It relies, rather, on the legal resources and administrative convenience of the necessary law.²⁴⁴ If the pragmatic approach were used in determining drug policy, decriminalization theorists would win out over the prohibitionists. The pragmatic approach would likely recognize the punitive harms caused by recreational drug use as civil harms rather than criminal harms.²⁴⁵ This is because the current criminal laws put in place to prohibit drugs have proven to be an ineffective means to stop the little harm that results because of drug use. The prohibition

²⁴³ *Ibid.*, 170.

²⁴⁴ *Ibid.*, 171.

²⁴⁵ *Ibid.*

of drugs has been a complete legal nightmare, from backed up courts to corrupt law enforcement systems.

The pragmatic approach is also sensible. First, it would make certain that only a minimal amount of harm was caused by recreational drug use. Second, it would ensure that the victim would be compensated for the harm caused. With the pragmatic framework in mind, Chester Mitchell suggests that tort law would be more realistic than criminal law in accomplishing the goals set forth under a reasonable drug policy.²⁴⁶ Under this perspective, each individual who was harmed could sue the recreational drug user who has harmed them. In cases where harm is not great enough, no one would bother to take legal action against their offending drug user because it would not be worthwhile for them.

In terms of compensating the victims for the harm caused, Husak highlights the possibility of imposing a “harmfulness tax” on the sale of recreational drugs.²⁴⁷ This tax would allow the user to continue to use drugs, while contributing back to society. The tax would be in place to offset the costs incurred by the vast amount of disutility caused by recreational drug use. In some respects, it would be similar to car insurance. Not always do drugs - like cars - cause disutility, harm or bad effects to others. When they do, there would be pooled money to help reimburse victims.

The *principled* approach to differentiating between criminal and civil harms is based more on the nature of harm – whether criminal or civil - committed, rather than the administrative convenience outlined under the pragmatic approach. There is no clear

²⁴⁶ Ibid., 172. See further, Chester Mitchell, *The Drug Solution* (Ottawa: Carleton University Press, 1990), 224. As Husak notes (p.275, note 57), Mitchell “argues that still other alternatives are preferable to either criminal or civil liability.”

²⁴⁷ Ibid.

understanding of what exactly differentiates criminal harm from civil harm. Most theorists agree that criminal harms are “public” or “social,” while noncriminal (civil) harms are not.²⁴⁸ Leading theorists have suggested that criminal harms may occur when there has been a disturbance of the social structure (Lawrence Becker), when fear has been invoked in another individual (Robert Nozick), or when trust has been breached (John Kleinig).²⁴⁹

These guidelines used to distinguish between criminal harm and civil harm are vague. Recreational drug use may certainly breach some of these guidelines, but so do many other civil harm cases. Traffic accidents and offenses may disturb the social structure, or cause fear in another individual, but they are still considered civil harms so long as no serious injury has resulted. A breach of contract can be seen as eroding another individual’s trust; yet, this offense is still resolved by civil means, rather than criminal means. Why should recreational drug use be any different?

Evidently, under both the pragmatic and principled approach, there are only blurred guidelines that distinguish between criminal harm and civil harm. The pragmatic approach would probably conceptualize recreational drug use as a civil harm, necessitated by civil law. The principled approach may go either way. However, it is clear that the *nature* of harm is lacking the characteristics deemed necessary by criminal law under the principled approach. This proves to be troublesome for the defense of drug

²⁴⁸ Ibid., 174.

²⁴⁹ Ibid. See further, Lawrence Becker, “Criminal Attempt and the Theory of the Law of Crimes,” *Philosophy and Public Affairs* 3 (1974): 262, 275; Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 67; John Kleinig, “Criminally Harming Others,” *Criminal Justice Ethics* 5 (1986): 259, 265.

prohibition because each approach could potentially recommend a legal system that invokes civil law, rather than criminal law, within the scope of a rational drug policy.

Many prohibitionists argue that drugs and *crime* are closely related. The crime that may be caused by recreational drug use appears to be one of the largest defenses of drug prohibition – under the conditions that drug use causes harm to others. This is because crime disrupts all of society. Husak notes that many prohibitionists who identify drug use as a leading cause to crime often cite worst case scenarios.²⁵⁰ Crime, and criminal harm in particular, are in themselves classified as worst case scenarios that are looked down upon by society. Theorists who look to the large, drug-using prison population are focusing on the wrong issue. We must look at the bigger picture, and consider all drug users and not just those who have already been punished for committing a crime. It is true that many crimes have been committed by individuals who have been intoxicated on drugs – with alcohol at the helm. “Although the majority of criminals may be drug users,”²⁵¹ Husak notes, “the majority of drug users are not (otherwise) criminals.”²⁵²

It is important to assess *why* drugs are said to motivate individuals to commit crime. Husak highlights three effects-- systemic, economic and pharmacological-- of drug use that are said to cause users to commit crime.

First, the *systemic effect* of drug use represents the majority of drug crime. It accounts for as much as 74% of drug-related homicide.²⁵³ Such crime could result

²⁵⁰ Ibid., 196.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid., 199.

because of competition between dealers, debt-collection, turf wars and informants.²⁵⁴ The majority of systemic crime is caused by dealers or suppliers of drugs and not users. For this reason it cannot be used to refute the notion that the prohibition of drugs should be repealed because it infringes upon the *moral rights* of recreational drug users. Again, it is only a subset of users who are committing a large majority of the crime. The systemic rationale also does not hold up under Husak`s moral argument because drug use is already illegal. Illegal activities caused while under an already illegal substance dismiss the argument. “The controversial issue is not whether drug use causes crime, but whether drug use causes behavior that would persist and remain illegal even if drug use were decriminalized.”²⁵⁵ The decriminalization of drugs would very likely reduce the vast amount of systemic crime altogether. Therefore, it is not the behavior of the individual, but the policies in place within our legal system that seem to be the causal factor of systemic crime.

Second, the *economic effect* of drug use represents those individuals who need to steal, rob or commit petty crimes in order to preserve their drug habit. Any of the foregoing crimes can cause harm (including death) to the victim or perpetrator. The problem with this *effect* is that it immediately becomes an argument revolving around the price of drugs. Decriminalization theorists would argue that it is the laws prohibiting drugs - causing the price of drugs to shoot up – that is responsible for economic crimes. Prohibitionists, on the other hand, argue that the price of drugs would have to come down dramatically within a decriminalized system in order for economic crime to be taken out

²⁵⁴ Ibid., 198.

²⁵⁵ Ibid., 199.

of the equation; but, a decreased price would surely breed an immense escalation in drug use.

Nonetheless, it is evident that a large amount of economic crime associated with drug use is committed by a small portion of the drug-using population, primarily by those who excessively use drugs.²⁵⁶ Again, this is highly representative of worst-case scenarios. Here, prohibitionists want to prevent drug use from getting out of hand. If drug use increases greatly amongst the population, they have reason to believe that economic crime would also increase greatly. This can explain why drug prohibitionists take a “zero tolerance” approach in trying to forbid all drug use. However, rather than a “zero tolerance” approach, drug policy should be aimed at deterring only those who consume drugs excessively (drug abusers), rather than deterring all drug users.²⁵⁷

If it is primarily drug abusers who are causing the majority of economic crime, then the argument that drug use causes crime distances itself even further from Husak’s main moral argument that recreational drug use by non-abusers, in general, does not harm others. The crime of drug use becomes even more remote from the harm that is being committed.²⁵⁸ Real criminals must not only be drug users, but they must consume a large amount of drugs and be of a lower income level in order to commit an economic crime.

Third, *the psychopharmacological* effects of drug use suggest that use causes mental impairment (behavioral changes) to the point where individuals will *lose control* of their mental faculties and commit crime. Drugs are often cited by prohibitionists as

²⁵⁶ Ibid., 201.

²⁵⁷ Ibid., 202.

²⁵⁸ Ibid.

substances that make normal people “abnormal” and even more hazardous to society.²⁵⁹ However, it is rare that any criminals would suggest that drugs caused their behavior to change, which further brought them to commit a crime. Rather, many criminals use drugs to commit a crime more skillfully, or to help them gather the courage to commit such a crime. Here it is evident that the use of drugs often “enhances rather than undermines self-control.”²⁶⁰

After careful examination of the drug-crime connection, it is apparent that drugs and crime are not necessarily correlated as prohibitionists hope. The majority of recreational drug users do not commit a crime that is systemic in nature. Crimes are often caused by the big time sellers and growers of drugs. Moreover, it is the prohibition of drugs in the first place that gives rise to such systemic crime by creating an underground market that is free from legal regulations and safety nets. In addition, a majority of drugs are not so highly demanded, nor are they so costly that they cause the typical recreational user to cause economic crimes (marijuana in particular). Finally, drugs do not cause individuals to lose control to the point of committing a so-called psychopharmacological crime.

Now, according to Husak, the most plausible defense for prohibiting recreational drug use in an attempt to prevent harm to others would be if recreational drug use was recognized as an *anticipatory offence*, that is, recreational drug use is legitimately prohibited because it impermissibly increases the likelihood of harming others.²⁶¹ Most crimes of possession, including the possession of drugs, are anticipatory offenses. It is

²⁵⁹ Ibid., 203.

²⁶⁰ Ibid.

²⁶¹ Ibid., 181.

difficult to decipher what offenses do and do not fall under anticipatory legislation, however, because legislators do not need to specify the wrongdoing a statute is designed to prevent.²⁶² Recreational drug use does not violate the rights of others, like murderers or rapists. In fact, the consumption of drugs for recreational purposes does not inflict harm on others whatsoever. Rather, it is the actions that the individual carries out or does not carry out when they are using drugs recreationally that causes harm to others.

Husak does not call for the abandonment of criminal sanctions for justified anticipatory offenses. He does argue that anticipatory legislation fares no better than the paternalistic rationales in providing a reasonable defense for prohibiting recreational drug use. To establish his case, Husak sets forth four principles that are necessary to act as constraints for anticipatory legislation so that it does not over-step its boundaries and completely void citizens of their moral rights. These four principles are the *inchoate* principle, the *triviality* principle, the *remoteness* principle and the *empirical* principle. He does not pretend to implement these principles to provide a legal framework for anticipatory legislation. Rather, his objective with the four principles is to illuminate why recreational drug use is not justified, even under anticipatory legislation. Husak is trying to assess whether laws against drugs are defensible as an anticipatory offense on the justificatory basis that recreational drug use impermissibly increases the chance that other individuals will be harmed. He concludes that “the application of these principles reveals serious defects in attempts to justify an anticipatory offense of recreational drug use.”²⁶³

²⁶² *Ibid.*, 182.

²⁶³ *Ibid.*, 184.

Under the inchoate principle “conduct X should not be criminalized on the ground that it increases the likelihood of harm Y unless conduct that directly and deliberately causes Y should also be prohibited.”²⁶⁴ In other words, recreational drug use should not be criminalized on grounds that it increases harm to another individual unless the conduct that directly and deliberately causes the same harm to the individual should also be prohibited. When we look back to some so-called harms that are caused by recreational drug use to others (becoming bad neighbours, poor students and unproductive employees) it is clear that these are not harms punishable under criminal law.

Under the triviality principle “conduct X should not be criminalized on the grounds that it increases the likelihood of harm Y unless Y is a substantial harm.”²⁶⁵ Many prohibitionists look to the overall costs of drugs on society and suggest recreational drug use is very harmful because of these high costs. However, the rare acts of violence caused by recreational drug users reflect a series of worst case scenarios. Such acts entail a very small subset of recreational users – generally those individuals addicted to drugs, with low incomes. Ultimately, a small portion of recreational drug users are causing the majority of crime. Even in Canada, and with respect to recreational marijuana use, Dr. Rehm (from the Canadian Center for Addiction and Mental Health) suggests that the typical marijuana users only indulge in marijuana once a month or less and the number of hazardous users is only 2% of all users.²⁶⁶

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*, 186.

²⁶⁶ CAMH personnel, “Marijuana Use on The Rise Among Ontario Adults, CAMH Reports, Despite positive substance use trends, tobacco and alcohol still have high costs to society,” CAMH, http://www.camh.net/News_events/News_releases_and_media_advisories_and_backgrounders/april08_marijuana_use_ontario.html (Accessed April 3, 2009).

Under the remoteness principle “conduct X should not be criminalized on the ground that it increases the likelihood of harm Y unless X and Y are sufficiently proximate.”²⁶⁷ Although “proximate” can be taken to mean various distances, the point here is that recreational drug use should only be criminalized if it is somewhat close to the harm that is being committed. Again, this is rarely the case with recreational drug use. As Husak notes, recreational drug use can be “doubly, triply, quadruply, or n-tuply anticipatory.”²⁶⁸ In order to illustrate the remoteness of recreational drug use from the harm being committed, Husak provides the following example: “Jones’s use of marijuana should be prohibited because it might induce him to try cocaine, which might cause him to become addicted, which might lead him to become poor, which might make him more inclined to commit a crime.”²⁶⁹ Here it is clear that the recreational use of marijuana is quadruply remote from the harm that may be committed as a result. This tends to be the case with the mainstream recreational drug using society. It is rare for any recreational drug use offenses to be proximate to the complete harm being committed.

Under the empirical principle, “conduct X should not be criminalized on the grounds that it increases the likelihood of harm Y unless there is an established *causal connection* between X and Y in a reasonably high percentage of cases.”²⁷⁰ The main purpose of this principle is to determine if the correlation between marijuana use and harm actually constitutes a genuine *causal connection*. The difficulties in applying this principle to prohibiting recreational drug use are that most of the harmful acts that are said to be caused by recreational drug use are anecdotes or worst-case scenarios.

²⁶⁷ Douglas Husak, *Drugs and Rights*, 189.

²⁶⁸ *Ibid.*, 191.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*, 193.

Moreover, one cannot generalize about the problems said to be *directly caused* by recreational drug use when serious criminal punishment is at stake that may, itself, directly cause unjust harm.

These principles all fall short, according to Husak, in labeling recreational drug use and possession as an anticipatory offense. Therefore, even the best plausible defense of laws prohibiting recreational drug use fails to suffice with respect to preventing the risk of harm to others.

4.4. Conclusion

This chapter has identified key presuppositions in Husak's argument for the moral right of individual's to use drugs recreationally. We introduced the principle of autonomy, which is crucial to Husak's work, in combating the paternalistic interference of the state. Then, through use of analogies with other recreational activities, we presented the best reasons why recreational drug use should be protected under the principle of autonomy, and also illustrated and refuted the best reasons why recreational drug use should not be protected under the principle of autonomy. With respect to the problem of "harm to others," we introduced Mill's "harm principle" and challenged its defense of criminal law with respect to the recreational use of drugs. The vital difference between harm and disutility was outlined, which helped us to determine that recreational drug use does not cause a harm to others that is deemed necessary under criminal law. We then assessed the nature of criminal and civil harm. Recreational drug use, although possibly reflective of civil harm, does not have the qualities reflective of criminal harm. The drug-crime connection has been identified. After assessing systemic, economic, and psychopharmacological explanations of crime, it seemed quite infeasible that recreational

drug use held much weight, if any, under each account of criminal action. Finally, we recognized anticipatory legislation as the most plausible regulatory framework put forth to justify the prohibition of recreational drug use. However, after illuminating Husak's four constraints that ensure justice behind anticipatory legislation, it became clear that, even as an anticipatory offense, excessive criminalization of recreational drug use is not warranted.

Although our philosophical analysis appropriates the deontological starting point of Husak's analysis, our concern is specific to Canadian culture. We neither attempt to justify decriminalization nor an end to punishment for all drugs that fall outside the scope of the recreational use of marijuana. The next chapter presents a delimited version of Husak's arguments and argues for the moral right of Canadians not to be criminally punished for recreational marijuana use. We will present arguments for and against a *prima facie* (first order) moral right for individuals to use marijuana recreationally in light of the principle of autonomy. We also identify reasons why recreational use of marijuana might still incur civil prohibitions, but not criminal punishment, under a Husakian interpretation of the principle of autonomy.

Chapter 5 – The Decriminalization of Recreational Marijuana Use in Canada

5.0. Introduction

In the previous chapter we highlighted Douglas Husak's analysis of why individuals ought to have a moral right to engage in the recreational use of *all* drugs. Vital to his moral rights argument is the principle of autonomy, which provides the groundwork for individuals to be protected from state interference and punishment. Although we see the logic in Husak's principled arguments, we do not agree with a system of complete legalization or decriminalization, as he terms it, for all recreational drug use in Canada. We also do not suggest that criminal punishment should be taken away from the use of "hard" drugs. Here the focus is to go beyond Husak's work by isolating marijuana from *all* other drugs. We recommend a drug policy of decriminalization for the recreational use of marijuana that would continue to respect the moral rights of all marijuana users and non-users in the Canadian context.

Why is it important to separate recreational marijuana use from the use of "harder" drugs? Is the decriminalization of recreational marijuana use feasible in the Canadian context? What might constitute a just and plausible policy framework for marijuana decriminalization? Would the moral rights of marijuana users be legitimately infringed by implementing a system of decriminalization, one whereby civil law, and not the criminal law, regulates recreational cannabis use by citizens?

In this chapter we begin by illustrating why there is a need for marijuana policy reform with respect to the laws governing the recreational use and small-scale possession (28.3 grams and less) of marijuana. Next, we emphasize the moral relevance of differentiating between marijuana and harder drugs, such as cocaine, crack, heroine and

ecstasy. We then assess the possibilities of decriminalizing marijuana in Canada and present, in considerable differentiation from Douglas Husak's drug philosophy, our proposed system of decriminalization. We conclude by arguing why our proposed system of decriminalization would better respect the moral rights of individuals to use marijuana recreationally.

5.1. Discrepancy in Canadian Law Regulating Marijuana Use and Possession

Recently, it has become common for first time marijuana possession offenders to receive a fine, rather than criminal record.²⁷¹ Nonetheless, there are still well over 600,000 Canadians that have been prosecuted and given a criminal record for a marijuana possession offense.²⁷² What's more is that Statistics Canada reported in 2007 that drug offenses had hit an all time high over a 30-year trend.²⁷³ Marijuana offenses represented 62% of all drug offenses, and possession of marijuana represented ¾ of all marijuana offenses.²⁷⁴ Ultimately, the discretion of police officers and the judiciary sets the bar for the determinable sentence of the recreational marijuana user.

Is there not a clear problem presented by these facts? Drug crimes are increasing at a drastic rate, led by marijuana, and marijuana possession offenses in general.

Canadian courtrooms are filling quickly as a result. More and more compassionate

²⁷¹ Mia Dauvergne, "Trends in police-reported drug offences in Canada," *Statistics Canada Catalogue* 29, no. 2 (May 2009), <http://www.statcan.gc.ca/pub/85-002-x/2009002/article/10847-eng.pdf> (Accessed Dec 3rd, 2009).

²⁷² Lisa Khoo, "Up in Smoke? Canada's marijuana law and the debate over criminalization," CBC News, http://www.cbc.ca/news/background/marijuana/marijuana_legalize.html (Accessed Dec 3rd, 2009).

²⁷³ Mia Dauvergne, "Trends in police-reported drug offences in Canada," *Statistics Canada Catalogue* 29, no. 2 (May 2009), <http://www.statcan.gc.ca/pub/85-002-x/2009002/article/10847-eng.pdf> (Accessed Dec 3rd, 2009).

²⁷⁴ *Ibid.*

discretion is being used by courtroom officials and police officers alike, with an aim to rid the courtroom of clutter. Why do marijuana possession offenses continue to be dictated by criminal law, when high-ranking legal authorities are simply dismissing criminal sanctions in the long run?

So long as marijuana use and possession falls under the heavy hand of criminal law, the possibility of a criminal record or imprisonment is not diminished whatsoever; and although police/judiciary discretion may favour some recreational marijuana users, all are not safe from this burden. This situation is unjust from a moral standpoint.

5.2. Distinguishing Recreational Use of Marijuana from Hard Drug Use

It is important that every illicit drug be debated separately because of the wide ranging effects of all diverse drugs in the illicit market. Even Husak acknowledges an alternative approach to his own that could rely on “sorting drugs into different categories, depending upon their pharmacological properties, and discussing each drug separately.”²⁷⁵ He does not dismiss this strategy, but argues that “a surprising number of the arguments for and against prohibitions of recreational drug use can be evaluated without attending to the differences between various drugs.”²⁷⁶ We, however, will identify several scenarios that suggest it is prudent to distinguish the recreational use of hard drugs from the recreational use of marijuana when assessing the *harm* caused to self and others by illicit drugs.

The largest distinction between Husak’s work and our own is that he defends his claim by using analogies and empirical evidence, which are inclusive of *all* illicit drugs, hard drugs and marijuana combined. For instance, Husak claims that an astounding 28

²⁷⁵ Douglas Husak, *Drugs and Rights*, 5.

²⁷⁶ *Ibid.*

million Americans break drug laws annually.²⁷⁷ How many of these are hard drug users? How many are simply using marijuana? Husak's moral rights argument holds great strength because he includes marijuana as one of all illicit drugs. When marijuana users are empirically, and correctly, included in *the minority* of hard drug users, then the harm caused by *all* illicit drug users seems trivial. A statistically significant number of marijuana users cause little to no harm at all amongst Husak's sample population. If marijuana users were separated from hard drug users, the harm caused to the user and others in society would likely increase tenfold with the recreational use of hard drugs.

Moreover, hard drugs may cause a long-lasting chemical imbalance in the brain that leads to addiction. Although Husak has provided clarity to why the decisions of drug addicts should continue to be protected by the principle of autonomy, it goes without much argument that addiction to hard drugs is far more severe than addiction to marijuana. Marijuana simply does not stimulate the same long-lasting chemical reaction in the brain. All mental impairment from marijuana use diminishes shortly after the high is over.²⁷⁸

Marijuana may, however, place the user at a less serious risk of dependence, where minor withdrawal-like symptoms could result. Again, these symptoms are not nearly as detrimental to the user as hard drug withdrawal. Even Husak has pointed out that withdrawal from heroine can be comparable to the symptoms of a week-long flu.²⁷⁹ Of course, this may not be reason enough to criminally punish the individual. Those who have the flu are not held criminally liable simply because of being ill! However, it does

²⁷⁷ *Ibid.*, 2.

²⁷⁸ Lynn Zimmer and John Morgan, *Marijuana Myths, Marijuana Facts*, 80.

²⁷⁹ Douglas Husak, *Drugs and Rights*, 113.

give good reason for the state to provide some sort of interference to prevent individuals from going through this avoidable hardship.

Withdrawal from marijuana, on the other hand, *may* cause an increase in energy, and difficulty in sleeping combined with slight irritation. Moreover, the effects of marijuana withdrawal are closely related to, if not less sizeable, than quitting smoking, giving up the morning coffee, or abstaining from alcohol.

Hard drugs such as cocaine or crack-cocaine, in particular, may cause uncontrollably *aggressive* or irregular behaviour towards self or others in society. The aggression caused by the recreational use of various hard drugs can be comparable to, or even worse than that which can be caused by the use of alcohol; while marijuana will at best induce passive and/or peaceful behaviours. The point is that the typical marijuana user is pleasantly satisfied in society and not concerned about being the dominant aggressor.

Another major difference between marijuana and harder drugs (aside from crack cocaine) is that marijuana is far more prevalent to the user and, consequently, less costly than other harder drugs. Although crack is labeled the “poor man’s drug,” it is also the most addictive and mentally debilitating drug on the streets because the high is so extreme while only lasting a very short period of time. Marijuana is thought of as a safer, middle-upper class drug. Marijuana smokers continue to contribute to society as a whole. A greater prevalence and lower cost of marijuana, combined with a more “well off” demographic of susceptible users to marijuana, would suggest that petty crimes are not as likely to occur because of recreational marijuana use.

Furthermore, the risk of individuals using hard chemical drugs mixed with increasingly toxic chemicals may also cause significant harm to the user. Without an underground drug-quality regulation board, it is difficult to decipher between many of the chemically produced illicit drugs and say, crushed aspirin or even rat poison for that matter. This provides a convenient scheme for dishonest drug dealers trying to get away with quick money. While marijuana may at times be sprayed with intoxicants, it is by its physical appearance a distinguishable drug.

A more important fact, crucial to the moral assessment of harm, is that it is physically impossible to fatally overdose from marijuana use.²⁸⁰ Several esteemed research groups have even gone so far as to say that smoked marijuana has yet to cause any fatalities whatsoever.²⁸¹ Health Canada and the Canadian Center on Substance Abuse have identified the two leading causes of death for illicit drug users as (1) overdose, and (2) the spread of infectious illnesses such as AIDs and Hepatitis C, which are most likely the result of injection drug use.²⁸² Even cocaine and ecstasy place the user at a great risk of cardiac arrest and potential death. So when “soft” and “hard” drugs are combined under one illicit drug framework, as Douglas Husak has set forth, it

²⁸⁰ Allison Mack and Janet Joy, *Marijuana As Medicine: The Science Beyond the Controversy*, (Washington D.C.: National Academy Press, 2001), 50.

²⁸¹ Rudolph J. Gerber, *Legalizing Marijuana*, 85.; L. Grinspoon, and J.B. Bakalar, “Marijuana as Medicine: A Plea For Reconsideration,” *JAMA* 273, no. 23 (1875, 1876, 1995): http://norml.org/pdf_files/NORML_Medical_Marijuana_Plea.pdf.; L. Grinspoon, “Whither Medical Marijuana?” *Contemporary Drug Problems* 27, no. 3 (2000): http://rxmarijuana.com/wither_medical_marijuana.htm.

²⁸² Canadian Center on Substance Abuse Personnel, “Abuse of tobacco, alcohol and illegal drugs costs Canadians \$40 billion, according to new estimate,” CCSA, <http://www.ccsa.ca/2006%20CCSA%20Documents/ccsa-newrel-20060426-e.pdf> (Accessed Dec 3rd, 2009); Health Canada Personnel, “Reducing the Harm with Injection Drug Use in Canada,” Health Canada, <http://www.hc-sc.gc.ca/hc-ps/pubs/adp-adp/injection/appendix-a2-annexe-eng.php> (Accessed Dec 3rd, 2009).

tarnishes the image of marijuana, by closely associating it with overdose deaths and the AIDs and Hepatitis C epidemics.

To be sure, there is *good reason to prohibit a substance* that has an increased potential to cause severe withdrawal from addiction, aggressive behaviour resulting in violent crime, and most importantly, fatalities caused by overdosing. It is an obvious act of harm that ought to be prevented. Moreover, the state can legitimately invoke prohibitive drug policy on the basis that illicit drug use *may* cause harm to others via the spread of an AIDS or Hepatitis C outbreak. It can also be rationalized by the state as an aim of preventing the emotional and possibly physical harm that the illness or death of a drug user may cause to *other* individuals who are “close” to the user.²⁸³

A philosophical approach that uses Husak’s rational arguments in challenging the most plausible defenses of drug prohibition, with a delimited scope and focus on cannabis, provides a reasonable case for an ethical call to end *the excessive criminal* prohibition of recreational marijuana use and punishment of users in Canada.

5.3. Possibilities of Marijuana Law Policy Reform in Canada

Marijuana policy reform is crucial to the development of Canadian society. Less stringent marijuana laws, which don’t criminalize marijuana offenders by means of a criminal record or jail sentence, are necessary in a country with such a high rate of marijuana users. Based on the scientific, socio-cultural, legal, and philosophical analyses we have presented, the current marijuana policy in Canada does not appear to “fit” within Canadian society. It is crucial that a more appropriate system of decriminalization be considered and implemented for Canadian society.

²⁸³ By “close” to the user, we generally mean good friends, immediate family and relatives.

It is important to recognize the legitimacy of decriminalizing marijuana under international guidelines. Regarding marijuana policy, Canada is obliged to follow the motions set forth in three major international drug control treaties. These are: *The Single Convention on Narcotic Drugs (1961)*, the *Convention on Psychotropic Substances (1971)*, and the *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)*. Each treaty sets forth guidelines over drug policy for all of the participating countries to follow.²⁸⁴

The *Single Convention on Narcotic Drugs (1961)* focuses on restricting all use, sales, production, manufacturing, importing, and exporting of drugs to scientific and medicinal purposes.²⁸⁵ In addition, the *Single Convention on Narcotic Drugs (1961)* combined with the *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)* focus on the reduction of large-scale, cross-border trafficking.²⁸⁶ The *Convention on Psychotropic Substances (1971)* ensures that controls are in place for modern drugs of abuse and also that drugs of abuse are separated from drugs that have therapeutic value.²⁸⁷

The 2002 *House of Commons Special Committee on Non-Medical Use of Drugs* recognized that decriminalization of marijuana would be feasible, so long as some form of “punishment” (civil or criminal) be imposed on marijuana offenders in Canada.²⁸⁸ It was determined that the only system that would not comply with the treaties guidelines

²⁸⁴ Wade Raaflaub, “Canada’s Proposed Decriminalization of Marijuana: International Implications and Views,” Library of Parliament, <http://www.parl.gc.ca/information/library/PRBpubs/prb0433-e.htm#canada> (Accessed Dec 3rd, 2009).

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

would be a system of legalization. Moreover, these treaties are not legally binding, but they are morally binding. If Canada did want to legalize marijuana it could certainly do so; however, Canada would be forced to opt-out of the treaties prior to making a decision to legalize marijuana.

5.4. Marijuana Decriminalization: A Canadian Policy Framework

We will now introduce our recommended decriminalization approach, which differs significantly from the “decriminalization” approach conceptualized by Husak. To recap briefly, Husak’s meaning of decriminalization is more aptly seen as a form of legalization, where no one is *criminally* or *civilly* punished for using illicit drugs whatsoever.²⁸⁹ Under our proposal, *criminal* punishment for the recreational use and small time possession (28.3 grams and less) of marijuana would also be dismissed and all other marijuana offenses (trafficking, cultivating, and exporting/importing) would continue to be criminalized. Distant from Husak’s ideals, however, the recreational use of marijuana would still be considered unlawful and regulated by *civil* law. The offender would be given a monetary fine dependent on the offense committed. In addition, our system would incorporate potential treatment, community service and job training programs at the discretion of the judiciary.

With respect to driving or operating heavy machinery while intoxicated, the offender should be held criminally liable in a similar manner to alcohol-impaired driving offenses – especially when harm is inflicted. Insurance companies should be notified and standard procedures should be taken.

²⁸⁹ Douglas Husak, “Drug Legalization,” *Criminal Justice Ethics* 22, no. 1 (Winter/Spring 2003), 22.

The suggested penalties and monetary fines under our proposed decriminalization policy take into consideration the context of marijuana in Canadian society. The following fines are dependent on first time offenders. In the case of subsequent offenders, the maximum fine can be increased at the discretion of the judiciary. Reasonable minds might differ on the specificity of the fine to be determined under the Canadian legal framework. Thus, the following framework is simply an example of the fines that could be applied:

1. A possession offense of 28.3 grams (one ounce) or less by *adult* users (19 years and older) would be held civilly liable to a maximum fine of \$100.00.
2. A possession offense of 28.3 grams or less by *youth* users would be held civilly liable to a maximum fine of \$400.00, accompanied by 25hrs of youth community service.
3. In the instance of re-offending, mandatory rehabilitation and job training programs could also be implemented at the discretion of the judiciary.

A larger fine for youth users will help deter such use, without imposing the stigmatizing effects of a criminal record. Additionally, mandatory community service will help the youth give back to the community, and also enable them to recollect why they are coerced into completing such service in the first place.

Why do we propose decriminalization rather than a system of legalization similar to what Husak sets forth? We believe decriminalization is a good first step to take. It allows us to see how society reacts to the change in marijuana legislation in a progressive manner. Moving from criminalization to legalization would be a drastic change for the Canadian culture and may take its toll on Canadian communities. In addition, once a

legalization policy is implemented, as we have seen with the case of alcohol prohibition, it is very difficult to go back to a system of criminalization or even decriminalization. Although we agree with Husak that there is no telling what may occur with usage rates if marijuana were legalized, we can be certain that decriminalization would help to monitor usage rates and also the potential harm that may or may not result. Legalization would mean free reign over marijuana use without hindrance. This can be dangerous.

Another key rationale for our proposed decriminalization policy is because it is the most feasible route for Canada to take with respect to the preceding international treaties. Canada can move forward and maintain its role under the guidelines set forth within the international agreements, even after implementing a system of decriminalization. Thus, Canada can continue to lead by example in not breaking international law. This sets the tone for many less developed countries that may otherwise devise a system of legalization in replacement of criminalization from the onset. Many legalization theorists, and Douglas Husak in particular, who are not satisfied with the current status quo of marijuana prohibition under the criminal context should be willing to accept a small civil fine, provided criminalization is abandoned.

And yet, by introducing a system of decriminalization over a system of legalization, it may seem that the moral rights of individuals are still being infringed. This is because many contend that civil law is still being used as a paternalistically-motivated deterrent for preventing individuals from harming themselves, and thereby violating individual rights to act autonomously. Again, however, many liberal drug theorists would agree, including Husak, that soft paternalism is morally licit so long as it remains outside of the domain of criminal law.

We suggest that individuals have a moral right to use marijuana recreationally under our proposed system of decriminalization, but that moral right must continue to act in accordance with civil law. In essence, marijuana offenders are asked to pay a small monetary fine for using marijuana. This is our exact point of divergence from Husak, who would argue that recreational marijuana users ought not to be bothered by the state whatsoever.

Are the moral rights of individual's infringed by incurring civil penalties? From the outset, it may seem that individuals cannot possibly be protected by a principle of autonomy and have a *prima facie* moral right to engage in a certain activity when they are fined for engaging in such activities. However, we are not swaying too far from Husak's argument, as we are still arguing that individuals ought to have a moral right to use marijuana recreationally. The crucial point of our departure from Husak's argument centers on the *interference* permissible by the state. Where Husak argues individuals should be free from all state interference, we argue that the individual should certainly be free from all *criminal interference*, but should not be excused of *civil interference*.

In this context, it is important to identify various levels of state interference. One of the first licit substances that comes to mind is tobacco. In the past 5 years, tobacco prices have increased three-fold, and suppliers have definitely not made a three-fold increase in profit. Rather, the government is gaining an immense amount of revenue off of the high taxation of tobacco products. Although there are no civil penalties associated with smoking cigarettes, outside of private establishments, this excessive government taxing is a form of state *interference* over a product that individuals have a moral right to

engage in according to Husak's analogical arguments. Many cigarette smokers would even go so far as to say that the high increase in tobacco prices (i.e. taxes) is criminal!

Once more, highlighting the analogical aspect of Husak's moral rights discourse, it becomes evident that individuals have a moral right to engage in the drinking of alcohol or the smoking of cigarettes just as they have the right to engage in most other recreational activities. This is because the risk of harm is trivial when comparing one risky recreational activity with another. If this moral rights argument is concrete, it is clear that the government is interfering – to some degree - in the lives of these autonomous individuals by implementing a “no smoking” ban in private establishments or a “no drinking” policy in public places. This is because the moral rights of these individuals who are smoking or drinking are being limited to a certain degree, through a legislation set forth under civil law.

Let us use an example concerning freedom of speech. If individuals have a moral right to freedom of speech, but use vulgar words while confronting a police officer, it is possible that they will receive a civil fine. Whether it's smoking in a private establishment, drinking in public, or swearing at police officers, most individuals would understand why they are receiving a fine (maybe not at the time) and accept it. This is not to say that individuals do not have a moral right to engage in the foregoing activities. There are simply boundaries put in place to limit when and where individuals may engage in such activities.

There is no reason why an individual should be seen as having no moral right to engage in a recreational activity simply because civil law may be used as a means of state interference. One may hold a moral right to recreational use of marijuana, but still have

the state regulate offenses by a small civil fine. Both can occur. It essentially depends on what the individual arguing for the moral right depicts as punishment. We agree with Husak that punishment is the worst thing that the state can do to citizens. However, we believe this to be true with respect to criminal punishment. Civil fines and civil law, in general, is not a punishment that we believe to be restricting of the moral rights of individuals.

Our arguments have focused, among other things, on the excessive punishment entailed by *criminal law*. We feel that the moral rights of individuals are only hampered by the state when they are no longer able to contribute positively back to society. This would only occur with a conviction under criminal law, where a conditional discharge, criminal record or imprisonment is imposed by the state. The autonomy or moral rights of individuals is not denied simply because interference may come in the form of a modest civil fine.

5.5. Conclusion

This chapter has argued for the moral right of individuals to use marijuana recreationally in Canada. We have illustrated why it is necessary to separate recreational marijuana use from the recreational use of “harder” drugs. We have suggested why our system of decriminalization will provide the right fit for Canadian society. Finally, we have outlined why our proposed system of decriminalization, which allows for a small degree of state interference via civil fines, treatment programs, community service and job training efforts, will continue to respect the moral rights of recreational marijuana users.

Concluding Remarks

This thesis has explored a number of questions. What is the recent historical context of marijuana's criminalization? What does the emergence of scientific research tell us about the effects of marijuana? How have the views of Canadian society changed over time towards marijuana use and the laws regulating its use? What do other philosophers say about the criminalization of marijuana? What needs to be changed under Canada's drug laws to uphold the rights of marijuana users? Our thesis has argued that the criminalization of marijuana in Canada is not justified because the punishment exceeds the seriousness of the crime. Furthermore, the extremely punitive marijuana laws in Canada rigorously infringe upon the human rights of marijuana users. Rather than preventing harm, this legislation amplifies the harm to a significant proportion of the Canadian population.

Chapter 1 highlighted the risks and benefits of marijuana and made use of the scientific research to determine if the risks hold significance in the case for criminalization. In Chapter 2 we conducted social research surrounding marijuana use, which helped illuminate the high demand for marijuana in Canada, and the newly found acceptance of marijuana by Canadian society. In Chapter 3 we focused on research in the criminal law field and illustrated where marijuana currently stands under the criminal justice system, and why criminalization has been the cornerstone of marijuana policy throughout Canada's history. Chapter 4 appropriated the philosophical work of Douglas Husak in order to argue, on ethical grounds, why recreational drug users in general, ought not to be criminally punished by the legal system. In Chapter 5, we go beyond Husak's work and note the importance of distinguishing between hard drugs and marijuana. We

also offer policy recommendations as a basis for marijuana policy reform, which will continue to uphold the rights of recreational marijuana users in Canadian society.

What has happened to individual freedom, the right to autonomous action and personal responsibility? Certainly, marijuana has been prohibited without sufficient research to determine if there is a justifiable reason to do so. The beliefs held by authorities today that they know best without any communication, feedback or research are leading to unfair, unethical and unjust policy decisions. These decisions often cause more harm to an individual than is necessary. This is especially true with respect to the current marijuana legislation in Canada.

Should judicial sentencing place marijuana users in the same category as more serious crimes such as murder? A criminal record is a criminal record, be it for possessing marijuana or committing murder. Once a person has a criminal record, travel is restricted, jobs are very limited, life choices are altered, and a stigma is created. It's unjust that in today's society a marijuana user has to be placed under such stringent laws when legislative changes could be made relatively easily.

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