

Marijuana Reform in the United States: The World is Watching

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Dramatic changes have begun unfolding for the marijuana industry in the United States recently. Attitudes toward marijuana legalization have rapidly changed, with more than 60% of Americans in 2018 supporting legalization of the drug.¹ More than twenty states have legalized the medicinal use of marijuana and ten have enacted laws decriminalizing the recreational use of the drug. The former Obama Administration's Attorney General issued a memorandum effectively terminating federal law enforcement of the Controlled Substances Act, which makes marijuana possession, distribution and use unlawful, in states that legalized its use.² And, though the first Attorney General of the Trump Administration rescinded that policy,³ the President has expressed support for legislation that would place power back in the hands of states to decide on their own marijuana use policies.⁴

Despite these changes in U.S. attitudes toward marijuana laws and the bipartisan support for changes to U.S. law, albeit for distinct political reasons, any federal action to terminate enforcement of recreational marijuana laws faces a major hurdle under international law. The 1961 United Nations (UN) Single Convention on Narcotic Drugs, to which 184 nations subscribe, requires parties to enact legislation that makes narcotic drug possession and production illegal. To implement this treaty, the United States enacted the 1971 Controlled Substances Act,⁵ the principal basis for federal prohibition of marijuana today. Though the UN Convention allows for the medicinal use of marijuana, it does not support its recreational use and has made clear its position in recent statements in response to countries that attempt to legalize the recreational use of marijuana.⁶

Accordingly, as the U.S. Congress pushes to remove prohibitions on recreational marijuana use found in the Controlled Substances Act, and as the Executive continues to restrict enforcement of existing provisions of that law, the United States is moving dangerously close to a violation of its international treaty obligations. In this paper, I argue that the United States, which has historically taken the lead in pushing the global war on drugs, must now leverage its leadership position to reform international law in favor of marijuana decriminalization. I start from the premise that there is a growing global recognition that strict punitive approaches are less effective in curbing marijuana usage than regulatory approaches. The United States has recently aligned itself with that position as it allows states to experiment with regulatory programs for marijuana. From there, I will consider what it would take for the U.S. to revise both federal laws and international treaties in favor of a decriminalized approach to the recreational use of marijuana. Finally, I will argue that the U.S. should utilize its federalist structure to incubate ideas for the appropriate balance of marijuana legalization and regulation, and use the results from these “experiments” to guide reforms of international narcotics treaties.

¹ Hannah Hartig and A.W. Geiger, *About six-in-ten Americans support marijuana legalization*, Pew Research Center, Oct. 8, 2018.

² U.S. Dep't of Justice, *Guidance Regarding Marijuana Enforcement*, Aug. 29, 2013 [hereinafter the “Cole Memorandum”].

³ U.S. Dep't of Justice, *Justice Department Issues Memo on Marijuana Enforcement*, Jan. 4, 2018.

⁴ Eileen Sullivan, *Trump Says He's Likely to Back Marijuana Bill, in Apparent Break With Sessions*, N.Y. Times, June 8, 2018 (expressing support for the Strengthening the Tenth Amendment Through Entrusting States Act, which is currently pending as S. 3032).

⁵ Pub. L. No. 91-513, 84 Stat. 1236 (1971).

⁶ See, e.g., United Nations Office on Drugs and Crime, *Statement attributable to the UNODC Spokesperson on Canada's Cannabis Act*, June 21, 2018 (criticizing the decision by Canada's legislature to legalize recreational marijuana and stating that “this decision contravenes the provisions of the drug control conventions, and undermines the international legal drug control framework and respect for the rules-based international order.”).