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The Effects of Massachusetts' Decriminalization of Marijuana Law on Use Patterns

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Kerriann is a junior majoring in Criminal Justice. Her research was made possible by the Adrian Tinsley

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The practice of smoking marijuana was imported to the United States from Mexico in the early 1900s. Fear around the use of marijuana provoked sixteen states to pass laws prohibiting the use of marijuana by 1930 (Becker, 1963). It was not until 1937 that the United States Congress passed the Marihuana Tax Act to stamp out use of the drug after the Bureau of Narcotics presented to the public in a series of propaganda films and news articles the perceived dangers of marijuana use – including violence (Becker, 1963). Since that law, the United States government has attempted to create a marijuana-free America.

Based on utilitarian and deterrence theories, the US implemented laws starting in the 1970s with harsh punishments to deter the use, possession and sale of marijuana. The 1970 Comprehensive Drug Abuse Prevention and Control Act affirmed the illegal status of marijuana, in which marijuana was (and remains) categorized as Schedule I drug, with high abuse for potential and no medical uses. The 1984 Federal Sentencing Reform Act established the United States Sentencing Commission, which created harsh mandatory sentencing guidelines. The Anti-Drug Abuse Act of 1988 reestablished the death penalty for major traffickers. These resulting new laws caused a massive rise in the arrests, incarceration rates, and sentences of marijuana users, traffickers, and dealers. However, these harsh drug laws have not seemed to deter use.

Marijuana is the third most popular recreational drug (behind only alcohol and tobacco). In 2008, 40.4% of Americans over the age of 18 have tried marijuana in their lifetime, and 1.2% aged 12 or older have used marijuana for the first time within the past 12 months (Substance Abuse and Mental Health Services Administration [SAMHSA], 2009). In 2008, an estimated 6.1% of those aged 12 or older used marijuana in the past month (SAMHSA, 2009)

While the federal government continues its efforts to eradicate marijuana use, by keeping marijuana a Schedule I drug (United States Drug Enforcement Administration [DEA], 2008), certain states have taken a different approach to marijuana. Twelve states have decriminalized marijuana including; Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio, and Oregon. It is estimated that more

than 30 percent of the U.S. population lives under some form of marijuana decriminalization. Massachusetts joined these states in 2008 when 60% of voters passed the law that replaces the criminal penalties for possession of one ounce or less of marijuana with a new system of civil penalties. These civil offenses are not included in the state's criminal record information system.

In Massachusetts, offender's aged 18 or older are subject to forfeiture of the marijuana plus a civil penalty of \$100. The money received from the new civil penalties is given directly to the city or town where the offense occurred. Possession of more than one ounce is punishable by up to six months in jail and a fine of up to \$500. For first time offenders, the court sentences the offender to probation, and upon successful completion of the probation period, the offender's record is sealed (United States Department of Justice, 2008).

There are many proponents and opponents to this newly acquired law. Proponents argue that decriminalization ends the creation of a permanent record and removes barriers to housing and employment. Moreover, police can focus on serious crimes, rather than continuing to arrest 7,500 people annually for marijuana possession, which would save almost \$30 million a year in arrest costs (Miron, 2008).

Opponents claim that decriminalization is an endorsement of substance abuse and dangerous criminal activity, and sends the wrong message to young people. They claim that decriminalization emboldens and enables drug dealers, and poses a threat to public health and safety (Miron, 2008). They further assert that marijuana is a gateway drug; thus, with decriminalization, people will be more likely to use marijuana and progress to harder drugs. Opponents also note that the federal government still considers marijuana a harmful, illegal substance (DEA, 2008). This research project assesses if these concerns have been realized.

By interviewing 20 users about their usage patterns before and after Massachusetts' Decriminalization Law went into effect, this project investigates if marijuana use increased and if the users progressed to more "harmful" drugs. As other studies evaluating decriminalization laws more generally and marijuana decriminalization specifically have found (e.g., Erickson, 1993; MacCoun & Reuter, 2001), this study concludes that marijuana use has not increased and users have not progressed to more "harmful" drugs. The decriminalization law has not affected their use patterns.

METHODOLOGY

Qualitative methods were employed with semi-structured interviews that lasted between twenty to sixty minutes. The interview protocol was designed to obtain information regarding the following research question: How has marijuana use changed since the decriminalization law was implemented? Prior to the commencement of the interview, each participant signed an informed consent form and received \$15 worth of Hempz® products for his/her time. The participants were interviewed face-to-face in a manner to elicit a conversation, and the interviews were digitally recorded.

Sampling

To gather participants, the snowball sampling technique was used. This technique was employed because marijuana is an illegal drug and the users of illegal drugs are apart of a "hidden" population. Like many drug researchers (e.g., Alder, 1993, Perrone, 2009; Williams, 1989), my life experience has supplied me with an entrance into the lives of marijuana users.

Numerous individuals became key informants who were my main source of information, and began the snowball chain. Some of these key informants provided a pool of marijuana users whom I asked to participate in my research. I had nine key informants who provided on average at least two other individuals whom I interviewed.

This sampling method was not as successful as I had previously hoped, or as successful as it has been in other studies (e.g., Alder, 1993; Perrone, 2009; Williams, 1989). All of my initial informants gave me names of willing participants, but the chain has stopped at them, meaning those links did not give me any more names. Even though marijuana is decriminalized in Massachusetts, most of the people I contacted for an interview feared repercussions if they discussed their marijuana use. For example,

I contacted Interviewee A and B on July 6, 2010 to set up a meeting. They agreed to a meeting for July 14, 2010. Upon arriving, Interviewee A started having hesitations about being recorded during the interview. I explained to her I did not have to use the digital recorder but she still seemed reluctant. She explained she was not comfortable exposing her drug use for fear of future repercussions. I did not interview interviewee A but still completed an interview with interviewee B (Field note, 7/14/2010)

The Sample

The sample size was 20 participants with the average age of 28.4 years with a range from 18-60 years (see Table 1). The majority of the participants were male (60%), most identified

Table 1: Sample

Name	Age (Yrs)	Gender	Race	Sexual Orientation	Income	Education
Adam	26	Male	Caucasian	Heterosexual	Meat Cutter	HS Diploma
Alex	24	Male	Caucasian	Heterosexual	Short-Order Cook	HS Diploma
Amanda	20	Female	Caucasian	Heterosexual	Waitress	In College
Andrew	24	Male	Caucasian	Heterosexual	No Income	HS Diploma
Anna	22	Female	Caucasian	Heterosexual	Unemployment	HS Diploma
Brian	18	Male	Caucasian	Heterosexual	Retail Food	HS Diploma
Christopher	21	Male	Caucasian	Heterosexual	Cable Sales Rep.	In College
Cocoa	33	Female	Caucasian	Heterosexual	Factory Worker	BS Degree
Donald	60	Male	Caucasian	Heterosexual	Disability	G.E.D.
Frank	45	Male	Caucasian	Heterosexual	Engineer	4th Year College
Jojo	42	Female	Caucasian	Heterosexual	No Income	HS Diploma
Keith	37	Male	Caucasian	Heterosexual	Cust. Svc. Rep.	Some College
Kristian	20	Female	Mexican/German/Korean	Heterosexual	Unemployment	HS Diploma
Lori	49	Female	Caucasian	Heterosexual	Self- Employed Farmer	3rd Year College
Mike	20	Male	El Salvadorian	Heterosexual	Mechanic	In College
Olivia	20	Female	African American	Heterosexual	Retail Apparel	In College
Paul	21	Male	Caucasian	Heterosexual	Unemployment	HS Diploma
Sean	28	Male	Caucasian	Heterosexual	Self Employed Electrician	HS Diploma
Shannon	20	Female	Caucasian	Heterosexual	Waitress	In College
Stephen	18	Male	Russian	Heterosexual	No Income	HS Diploma
<hr/>						
Avg. Age						
Median	28.4					

as Caucasian (80%) and all identified as heterosexual. Twenty-five percent were in college while 55% only completed a high school diploma. Most were employed either full or part time, and 15% had no income.

The sample was comprised of both former and current users of marijuana. Most have been using marijuana for about 10 years (see Table 2), and current users consumed marijuana, on average, 2-6 times a day with smoking out of bowls and joints being the preferred method. The majority of the participants were poly-drug users in which they consumed a variety of substances from alcohol and prescription drugs to hallucinogens. Still, most (80%) had never been arrested for a drug related offense.

Limitations

This study has some limitations. The key informants displayed a greater openness and were less guarded during their interviews

than those who were obtained via the snowball chain. The interviewees from whom I gathered informants were more apprehensive or restrained in their responses. To address this, my mentor suggested attending the interviews. However, participants did not want a third party present at the interview. When I mentioned bringing my mentor along, many indicated they would decline participation. They simply did not feel comfortable discussing their marijuana use with an additional person. This could have limited some of my interview data.

Although my grant application was accepted with gift cards as incentives and payment for participation, I was later notified that this would not be supported. After selecting Hempz® products for my incentives, it was a bit harder to gain participants because some individuals decided they did not need the products, and thus, declined the invitation to participate.

Table 2: Sample Drug Use History

Name	Onset	First Used Drug	Other Drugs Used
Adam	11	Marijuana	Alcohol, cocaine, LSD, mushrooms, nicotine, percocet, vicodin,
Alex	13	Tobacco & Ritalin	Alcohol cocaine ecstasy, flexeril, ketamine, LSD, marijuana, mescaline, mushrooms, oxycotin, PCP, percocet, salvia, xanax, valium
Amanda	16	Alcohol	Marijuana
Andrew	13	Alcohol	Ecstasy, marijuana, nicotine
Anna	14	Alcohol	Adderall, marijuana, nicotine, salvia
Brian	14	Oxycotin & Ketamine	Adderall, alcohol, ecstasy, ketamine, marijuana, mushrooms, nicotine, percocet, vicodin,
Christopher	14	Marijuana	Adderall, alcohol, cocaine, ecstasy, LSD, mushroom, nicotine, oxycotin, salvia, vicodin
Cocoa	17	Alcohol	Alcohol, cocaine, LSD, nicotine
Donald	21	Amphetamines	Alcohol, barbiturates, cocaine, marijuana, nicotine
Frank	19	Alcohol	Alcohol, cocaine, crystal methamphetamine, marijuana, mescaline
Jojo	14	Marijuana	Alcohol. amyl/butyl nitrite, cocaine, LSD, mushrooms, nicotine, oxycotin, oxycodone, percocet, vicodin suboxone,
Keith	13	Alcohol	Alcohol, cocaine, LSD, marijuana, mescaline
Kristian	17	Alcohol	Cocaine, ecstasy, marijuana, mushrooms, xanax, klonopin, percocet, ritalin, opium, LSD, salvia,
Lori	17	Alcohol	Cocaine, marijuana, mushrooms, ketamine, PCP,
Mike	12	Marijuana	Alcohol, mushrooms
Olivia	18	Alcohol	Marijuana, salvia
Paul	16	Percocets	Adderall, alcohol, cocaine, ecstasy, marijuana, mushrooms, salvia
Sean	14	Alcohol	Ecstasy, LSD, marijuana, mushrooms, percocet, vicodin, oxycotin
Shannon	17	Alcohol	Adderall, marijuana, mushrooms, percocet, vicodin, xanax
Stephen	11	Marijuana	Alcohol

UTILITARIANISM AND DETERRENCE THEORIES

The principle foundation of both the US criminal and sentencing laws under the criminal justice system is utilitarian theory. Utilitarian theorists Bentham (1781/1988) and Beccaria (1764/1983) claim that individuals seek to engage in behaviors that bring them the most pleasure with the least pain. Based on that principle, legislators enact laws that clearly define what is unlawful, and prescribe punishments (pain) for law violations sufficient enough to offset the gain (pleasure) from crime to deter criminal behavior.

Thus, to deter the crimes, the punishment must be tailored to be just severe enough to offset the gain or pleasure the crime would provide. Punishment that is too severe is unjust, and

punishment that is not severe enough will not deter. The punishment then must “fit the crime.” To Bentham (1781/1988) and Beccaria (1764/1983), fitting the punishment to the crime meant more than making the punishment proportional to the harm caused by society. Rather, the basis behind this argument is that the amount of gain or pleasure derived from committing a particular crime is approximately the same for everyone (Akers & Sellers, 2009). Therefore, making the punishment fit the crime stands in contrast to the punishment fitting the individual. Akers and Sellers (2009) state, “the law should strictly apply the penalty called for a particular crime, and the penalty should not vary by the characteristics or circumstances of the offender” (p.18). This argument also assumes that the more serious or harmful the crime, the more the individual stands to gain from it; therefore, the more serious the crime,

the more severe the penalty should be to deter it (Akers & Sellers, 2009).

Despite the pervasiveness of criminal legislation based on deterrence, Bentham (1781/1988) argues that certain behaviors cannot be deterred. He describes these behaviors as “cases unmeet for punishment” (p. 170). He explains that in the “following cases punishment ought not to be inflicted:” when punishment is groundless, inefficacious, unprofitable, and needless (p.171). Bentham (1781/1988) clarifies that this occurs “where the penal provision, though it were conveyed to a man’s notice, could produce no effect to him, with respect to the preventing him from engaging in any act of the sort in question” (p. 173). For these behaviors, even when the law is established and made known to the person, the punishment will not prevent individuals from engaging in the behavior (e.g., drug use). This could be interpreted to mean that Bentham only included violent or property crimes to be deterred in a society rather than non-violent, victimless crimes (e.g., drug use).

Marijuana and Deterrence

Given the US government’s extensive punitive efforts to deter marijuana use, researchers have evaluated the effectiveness of marijuana criminalization on usage patterns. Research has also compared patterns of marijuana use in jurisdictions with very different policy responses (i.e., criminalization and decriminalization) to address marijuana use (MacCoun & Reuter, 2001), while others have examined trends in use over time in a particular jurisdiction where the policy response to marijuana was altered (MacCoun & Reuter, 2001). The results of these studies suggest that the enforcement of marijuana laws generates little impact on rates of marijuana consumption.

For example, a number of studies measuring the general deterrent effect of the law in preventing marijuana use demonstrated repeatedly to have little effect on use rates (e.g., Erickson, 1993). Actually, compared to 1970, when the US had more lenient laws on marijuana, the onset of marijuana use was higher (about 16 yrs.) than it is currently [13-14 yrs. (Lloyd, 2003)]. Also, past month marijuana use in the US for individuals aged 12 or older has remained stable over the past five years at about 5-7% (SAMHSA, 2009). Furthermore, when marijuana usage patterns in the US are compared to other countries that have more lenient marijuana policies criminalization does not seem to have an effect.

For example, the rates of illegal drug use are much higher among US teenagers than their European counterparts, despite the fact that drug law enforcement is far more vigorous in the US (Beckett and Herbert, 2004). According to researchers

Beckett and Herbert (2004), “in 1999, 41% of 10th graders in the United States had tried marijuana versus 17% of European teenagers; 23% of the students in the United States had used other illicit drug versus 6% of Europeans” (p. 48).

When assessing the effects of decriminalization on usage patterns, other studies show that the de-penalization of marijuana possession is not associated with increased marijuana use. There are negligible differences in the rates of the United States, Australia, and the Netherlands (Mosher & Akins, 2007). In fact, rates of marijuana use are in most cases higher in the US than in marijuana de-penalized nations (Dilanian, 2006).

The findings from this study corroborate that research. The Federal and Massachusetts criminalization of marijuana laws did not deter onset of use. The average age of onset of marijuana use in this study was 15.05 years. Additionally, since the decriminalization law went into effect, 90% of the participants’ marijuana use has not changed. The following quotes exemplify this:

Researcher: Has your use changed since the decriminalization law went into effect?

Adam: Not at all, I haven’t gone without smoking even when I’ve been sick for at least 6 or 7 years.

Researcher: Has your use changed since the decriminalization law went into effect?

Jojo: No, no I’ve pretty much stayed the same, 3 a day [joints] for 15 years.

Researcher: So has your use changed since the law went into effect?

Anna: No, I mean I’ve been smoking for so many years; it has always been just the same.

Two participants indicated a slight increase in their use, but this was not attributed to the law. Rather, personal factors (i.e., financial status) contributed to increasing their use. This is evident with the following quote:

Researcher: Um, so has your use changed since the law went into effect, have you used it more in the past year than previously?

Mike: Um, my use is probably the same amount maybe a little more but not much.

Researcher: Do you think the law affected that?

Mike: No, definitely not; I just have more money this year than last.

PROGRESSION TO HARDER DRUGS

Marijuana, alcohol, and nicotine are presumed to be gateway drugs leading users to try harder drugs. The goals of criminalization of marijuana are not only to deter marijuana use, but also to prevent the use of harder drugs (DEA, 2008). Regardless if criminalization of marijuana deters marijuana use, proponents of marijuana criminalization claim that such laws reduce the use of harder drugs because marijuana is a gateway drug (Lessem, Hopfer, Haberstick, Timberlake, Ehringer, Smolen, & Hewitt, 2006). They argue that the use of gateway drugs, specifically marijuana, causes youths to have an increased risk of progressing to other, more serious drugs (Lessem et al., 2006). Critics of the gateway theory argue that individuals predisposed to use hard drugs would likely do so regardless of whether they use marijuana first—marijuana just happens to be the most available so it comes first (Lessem et al., 2006).

This research indicates that 90% of the marijuana users in the study used other drugs in addition to marijuana (see Table 2). Of that 90%, 20% used marijuana prior to other drugs, including alcohol, and 50% used alcohol prior to marijuana. Importantly, 90% of those who used harder drugs, used these those drugs when marijuana was criminalized. Only 10% (2 participants) used harder drugs (e.g., prescription drugs, ecstasy and psilocybin mushrooms) after marijuana was decriminalized. However, both of these participants also used harder drugs prior to marijuana decriminalization.

Two of the participants never moved on to harder drugs as the following quotes show:

Researcher: So have you tried other drugs?

Stephen: No, I don't try other drugs. I stick with drinking and my weed.

Researcher: So have you tried other drugs?

Amanda: Not really...nope, and I never will.

According to this study, marijuana decriminalization did not lead users to try harder drugs. All of those who used harder drugs used those drugs when the marijuana criminalization law was in effect.

Policy Implications and Discussion

The opponents' fears of the marijuana decriminalization law have not been met. Marijuana use did not increase for the majority (90%) of the participants in this study since the passing of the law in 2009. Furthermore, the majority (90%) of the users did not try harder drugs as a result of the decriminalization law. This study lends support to the proponents' of marijuana

decriminalization claim that marijuana may fit in Bentham's (1781/1988) cases unmet for punishment. Decriminalization did not increase use. This may call into question the use of harsh punishments for deterrence from drug offenses. Regardless if marijuana is criminalized or decriminalized, users will continue to use it. This is clearly seen in the national trends of marijuana use; as of 2008, 40.4% of Americans have tried marijuana in their lifetime (SAMHSA, 2008), even though marijuana has been and remains a Schedule I drug.

Given the ineffectiveness of criminalization, the dearth of effects of decriminalization on use patterns, and the potential harms of incarceration if marijuana remains a Schedule I drug, it is clear that marijuana should be legalized. Seventy five percent of the users in this study agree. This is evident with the following quotes:

Kristian: It might as well be legal, I mean, I know so many people you wouldn't even think smoke weed, and I just think you might as well make it legal because everybody is going to do it anyways.

Sean: Best policy, um yeah, I'd love to see it legal... I think that there's too many people that get in trouble for it that shouldn't.

Lori: It [legalization] would give the public and police a lot more time to not be dealing with it. I wish they would though, do like alcohol, make it twenty-one and up only.

Furthermore, 100% agreed their use would not change if marijuana were legalized. This is evident in the following quotes:

Researcher: So, how would your use change if it became legal?

Jojo: It wouldn't really. I would just smoke it more in the open, and I don't care that anyone knows I smoke now as it is, so it wouldn't really make much difference.

Researcher: Do you think it would stay the same?

Lori: Oh, I'm sure it would pretty much stay the same.

Researcher: Would your use change if it became legal?

Kristian: Um, I think it would be nice to sit outside and smoke openly and not be worried, you know? But, my use would be the same

The United States drug policy relies on criminalizing certain substances with the goal of preventing use. This study shows that even when substances are criminalized, it does not prevent use. The harsh penalties the US has enacted for drug use has not had any effect on prevention, rather it has increased incarceration and arrest rates for petty drug use. In the global world, the US does not rank high on effective drug policies (i.e., to reduce use). Rather, those countries that have changed their policies to more health-based, harm reduction initiatives have shown to be more effective in reducing illicit drug use and harmful drug behaviors.

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