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Caitlin Turner

University of New Hampshire, Durham

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The Relationship Between Marijuana Policy and Prejudice Regarding Adult Black Americans

Caitlin Turner

ABSTRACT

Marijuana policy has been a crucial debate for many years in America. Even with the legalization of marijuana in many states, Black people are still being arrested at an unjustified rate in contrast to white people. These differences have led to the overrepresentation of Black people incarcerated for this low-level crime as a direct result of the aftermath of the War on Drugs. This paper will analyze the effects of the overcriminalization of marijuana, more specifically among Black people. It will question the extent of marijuana policy on the outcomes of Black people versus white people and will discuss what steps can be taken to mend the marijuana policies in place to express more equality.

INTRODUCTION

Today, the perception revolving around marijuana has changed drastically from the past as it has become legalized in many states nationwide. As of 2019, 11 states (and the District of Columbia) have legalized marijuana and 33 other states have decriminalized marijuana consumption (Augustyn, Loughran, Larroulet and Henry 2020). Sixty-seven percent of Americans are now in favor of the legalization of this drug (Mumford 2020). This reflects the narrative that Americans are feeling more comfortable with this drug as the number of U.S. adults who opposed legalization decreased twenty percent from 52% in 2010 to 32% today (Daniller, 2019). Policy changes have occurred in response to the more tolerant societal perspectives towards marijuana in regards to the diverseness in marijuana use (i.e., medicinal use vs. recreational use). These changes have also been a direct result of the War on Drugs and its unequal conviction percentages of marijuana possession and use between minorities, specifically Black people (Augustyn, Loughran, Larroulet and Henry 2020).

Regardless of the public's changed perceptions, marijuana has been an active component of the mass criminalization of over 600,000 people, over 360,000 of whom are Black people (Mumford 2020). Currently, over-criminalized districts relentlessly hurt from the disagreement of our country's drug laws, strangely in states that have legalized marijuana and have experienced a considerable decrease in the number of people arrested for marijuana crimes. Regardless of legalization, it has not eliminated the unjustifiable ratio at which Black people are convicted for marijuana offenses in those states. In reality, numerous states have experienced an increase in the percentage of marijuana convictions regarding Black men (Ahrens 2020). Added police enforcement has been instituted to reinforce decriminalized marijuana laws, yet that has actually increased marijuana arrests to those who distribute this

drug as their livelihood. This has also affected individuals of low socioeconomic status as well as communities of color (Ahrens 2020). Black men are 23-66% at a higher risk than white people for incarceration due to marijuana dealing than their white counterparts (Smalls 2001) even though both racial identities roughly deal the same. Nevertheless, with the public's recent change of perception of this drug and legalization/decriminalization, retroactive legality is imperative to address the social and economic disparities regarding marijuana convictions.

Having any conviction on your record, let alone a marijuana charge, can make it strenuous and burdensome to obtain employment, housing accommodations, or receive government assistance for the remainder of life (Ahrens 2020). This paper will argue the importance of clearing marijuana convictions from criminal records; if we perceive marijuana in a positive aspect and not indicative of criminal activity, then why are we allowing the continuation of suffering imposed by marijuana prosecution?

This is why clearing people's records of marijuana convictions is a necessary addition to any legalization measure. If we believe that marijuana is not worthy of criminal intervention, then it is only right we stop the suffering inflicted on people by a marijuana prosecution.

REVIEW OF LITERATURE

History

The War on Drugs arose in the early 1970s in response to the heightening of the heroin epidemic. In order to gain control of the community, President Richard Nixon implemented punitive drug laws and severe prison sentences to avert future drug-related crimes. In particular, in 1973 all New York residents faced a mandatory minimum of 15 years to life if they were caught in possession with a minimum of four ounces of cannabis, cocaine or heroin (Stanton, et al. 2020). Evidently, the War on Drugs did not just attack the heroin epidemic, but

also citizens with certain socio-economic statuses and races. Currently, as was the case when these drug laws were implemented, Black and non-white Americans are targeted for heightened drug enforcement and more harsh sentencings than their white counterparts (McLean, Robinson and Densley 2018). The first commissioner of the U.S. Treasury Department's Federal Bureau of Narcotics during the presidencies of Nixon and Ford in the War on Drugs era, Harry Anslinger, had fortified the argument that marijuana was a destructive drug. He claimed that "Mexicans and African Americans" were "bringing it into white communities" to "turn people into psychopaths, murderers, and rapists" (Todd 2018:105). While government surveys depict the usage of marijuana to be similar between Black and white people, Black and Hispanic individuals are 87% more likely to be arrested for crimes relating to this drug. Marijuana charges and arrests vary per geographical location, but in some areas, Black people are eight times more likely to be arrested than white people and Hispanic people are five times more likely to be arrested than white people (McLean, Robinson and Densley 2018). The criminalization of marijuana users delivered from racial hostility. Mexican migrants were the focal point of early anti-marijuana legislation and now the target is on Black Americans (McLean, Robinson and Densley 2018). Today, there are over 2.2 million people incarcerated; the dominant reason as to the United States' high rate of incarceration is due to the persistent and racist policies and enforcement of the War on Drugs (Smalls 2001).

Marijuana Policy

The Marihuana Tax Act of 1937 made marijuana, in any form, illegal under federal law. As time progressed, illegal substances of any kind were criminalized. The height of drug-related crime prosecution occurred in the 1980s and early 1990s. Although this period did not

primarily focus on marijuana legislation as crack cocaine was a more significant concern, marijuana offenses were generally incorporated with drug offenses (Ahrens 2020). The federal government implemented mandatory minimum sentences; some drug offenses also had two and three-strike rules (Ahrens 2020). Today, although marijuana is still illegal under federal law, recreational marijuana is legal in 11 states (including the District of Columbia) and medicinal marijuana is legal in 33 states (Augustyn, Loughran, Larroulet and Henry 2020). Regardless of its legalization, the amount an individual can carry depends on each state's marijuana policy. It is also federally illegal to cross state borders with marijuana, regardless of whether if the state has legalized it (Cheon, Decker and Katz 2018). In terms of punishments, federal law classifies marijuana as a Schedule 1 drug. If arrested for the first time on a possession offense—of any amount—the punishment can be up to a year in prison, or a \$1,000 minimum fine. If arrested a second time for possession, then that is considered a felony and the individual would then lose their civil liberties. However, if an individual were to sell the marijuana they were in possession of, then the punishment becomes more severe—they could face mandatory prison time as well as forfeiture of property or money. A strict “two-strike” policy with a severe penalty like this can infringe on future life opportunities for an individual. When a minority, who already experiences racial strains that their white counterparts do not experience, it becomes difficult for the individual to leave their current economic and social statuses (Kurti and Shanahan 2018).

The War on Drugs has replaced slavery and segregation with imprisonment to preserve racial oppression (Smalls 2001). Alexander (2010) discusses the concept of preservation through transformation. Systems of control (in this case, slavery and segregation) have evolved through the system of praxis (imprisonment). Racial oppression has become more

institutionalized from refinement over time, making it less visible and harder to uncover and attack them (Alexander 2010). In some states where Black communities are present, Black men are 20-57% at a higher risk than white people for incarceration due to drug offenses (Smalls 2001). The disproportionate arrests—and media—perpetuate the mistaken belief that Black people utilize drugs at higher rates than white people to serve as grounds for continued racial profiling (Smalls 2001). However, this is a direct result of Black (and POC) communities being heavily targeted for the enforcement of drugs unlike their white counterparts (Rosenberg et al. 2017). A study conducted from 2010-2011 involving non-violent drug offenders in New Haven, CT illustrated that one reason why Black individuals have a higher probability of getting arrested for possession and sale was due to drug sales being more visible in inner-city areas as they are more likely to take place outside. The study also found that the historic notion of over-policing in Black communities is still prevalent to today, which was also another factor in the overrepresentation of Black individuals with possession charges (Rosenberg et al. 2017).

American Prison System and Prejudice Against Black Americans

The United States today has the greatest incarceration rate, as well as the highest number of people residing under penal institutions more widely (including probation and parole), than any other country in the world. As of March 24, 2020, there were almost 2.3 million people in prisons, local jails, and other holding facilities (Sawyer and Wagner 2020). However, while 32% of that 2.3 million is composed of Black Americans and Hispanics, 56% of the incarcerated population is represented by African Americans and Hispanics (McCarter 2018). In one study conducted in 2018, researcher Susan McCarter found that the proportion of offenders sentenced in state prison for drug offenses was roughly equal for white people (67,800) and Black people (68,000), whereas 28,000 were Hispanic. (McCarter 2018).

However, other research has been conducted that illustrates and emphasizes that the magnitude of the American criminal justice system is not only internationally unmatched, but it is also historically unequal. This system is also abjectly racialized. African Americans, Latinos, and indigenous populations (Hawaiian, Puerto Rican, Native American) are all reflected in the U.S. jails and prisons in numbers considerably excessive to their representation in the population as a whole, and every non-White population is imprisoned at a rate exceeding that of white people. Notably, however, while the extent of today's criminal justice system is unmatched and unequal, its rigid racial disproportionality has always been a characterizing property (Thompson 2019).

In the 1990s and 2000s, the rate of marijuana consumption was similar between Black and white Americans, yet Black Americans were 3.73 times more likely to be arrested for marijuana possession than their white counterparts (McCarter 2018). A 2020 study gathered that "Black people are 3.74 times more likely than white people to be arrested for marijuana possession" (Ahrens 2020:392). In 2018, the number of people arrested for marijuana charges was 663,367 yet the number of possession only charges were 608,775. From that 663,367, Black Americans made 27% even though they only make up 13.4% of the U.S. population (Drug Policy Alliance 2020).

Although Black Americans are excessively represented in marijuana charges, researchers have argued that the legalization of marijuana has encouraged an increase in other types of crimes such as DUIs, drug selling and violent crimes (Cheon, Decker, and Katz 2018). When analyzing individual variances in the levels of offenses, many researchers depend on the conventional criminological theories, which characteristically state that Black people "have more restraint, a greater number of deviant peers, and less control due to their disadvantaged

structural position in America” (Isom Scott and Grosholz 2019:1445). They claim that Black people commit more crime and therefore that is the reason why they are disproportionately incarcerated. However, race sociologists would argue the need for race-based conclusions to be made regarding crime. Race sociologists utilize the method of Racialized General Strain Theory (RGST) to illustrate how due to the impeding social class that Black Americans hold, Black people are more prone to facing certain strains that their white counterparts do not have to face, thus conditioning different response behaviors in accordance to crime (Isom Scott and Grosholz 2019). General Strain Theory (GST) can only provide so many key correlates of crime (age, sex, community) but offers limited answers to the racial differences in crime offenses. RGST on the other hand sheds a theoretical perspective on the subject by highlighting the emotional, psychological, social and motivational processes that create unique strains for other racial identities other than white non-hispanics. The unique social conditions Black people endure are directly related to systemic and systematic processes (like the effects of the pre-industrial historic discrimination) that still prevail today (Isom Scott and Grosholz 2019).

Outcomes for Convicted Individuals

The need for retroactive legality, or the practice that examines acts that existed before the act came into effect, is imperative. Since the perception of marijuana has changed and marijuana use has become legalized in many states, retroactive legality is needed for those who have been implicated in the overcriminalization of marijuana charges (Ahrens 2020). Eight percent of American adults have a criminal record which compares to the 33% of Black Americans that hold a criminal record (Selbin, Mccrary, and Epstein 2018). Of the 8.2 million marijuana arrests between 2001 and 2010, 88% were for marijuana possession (Daniller 2019). In an era of increased security concerns, effortlessly available data, and reinforced criminal

background checks, these records act as a considerable obstacle to gainful employment and other opportunities. However, if convicted of a felony, or even charged with a crime, it creates a negative credential on an individual's record. As a whole, having a criminal record infringes on the ability to gain employment, find housing, and receive/apply for loans. It will also increase your insurance rates as companies and others will see the individual as a liability. As racial general strain theorists suggest, the racial implications of having a criminal record creates even more strain on the individual as their social situation already produces limitations for a comfortable lifestyle (Isom Scott and Grosholz 2019).

Selbin, Mccrary, and Epstein (2018) discuss solutions to give aid to convicted individuals. They describe how lawyers have started unmarking programs to aid people take advantage of legal record clearing solutions. The authors studied a random sample of participants in one such program to examine the effect of the record clearing intervention on employment outcomes. Their evidence found: (1) the record clearing intervention improved participants' employment rates and average real earnings, and (2) people pursued record clearing remedies after a period of suppressed earnings. These conclusions propose that the record clearing intervention makes a significant distinction in employment outcomes for people with criminal records. These conclusions also highlight the value of early intervention to surge employment opportunities for people with criminal records (Selbin, Mccrary, and Epstein 2018).

In 2017 an attempt to rebrand mass incarceration was enacted. The Independent Commission on New York City Criminal Justice and Incarceration Reform (the Lippman Commission) posted their recommendations to replace Rikers Island with a modern community-based jail that has increased supervision that would strengthen connections to the resources prisoners need. That year, 51,000 people were incarcerated in New York's state prisons (Kurti and

Jarod Shanahan 2018). The Lippman Commission stated that marijuana charges appealed to the state's guidelines of decarceration, which would ultimately release 18,241 Americans over a period of time (releasing roughly 750 inmates over the course of a few days). The commission has acknowledged the racial disparities within the prison's population: "As initial steps towards addressing persistent inequity, the city should empower a permanent working group on racial disparities to make concrete policy proposals, and track and publicly report on disparities at each stage of the criminal justice system" (Kurti and Jarod Shanahan 2018). The Lippman Commission plans to expand community supervision such as probation and alternatives to incarceration which would greatly give aid to convicted individuals for their future lives.

Regardless of a conviction on a criminal record, racial disparities already exist in the employment process (Pedulla and Pager 2019). In a study conducted in 2004, almost 5,000 résumés were sent to job applications with randomized names (either names associated with Black people or names associated with white people). The study discovered that the résumés with white-sounding names received 50% more callbacks than those with black-sounding names (Bertrand and Sendhil Mullainathan 2004). Black Americans face considerable obstacles when applying for jobs in terms of racial bias. In conjunction with a criminal record, it is often difficult to find work in any field other than working for community programs themselves for Black Americans (Kurti and Jarod Shanahan 2018).

CONCLUSION

This review has considered the link between marijuana policies and how they differ among Black and white Americans in terms of incarceration and arrest rates. This exploration has revealed that retroactive legality would bring corrective justification to those convicted of marijuana charges as the perception around this drug has significantly changed over time. In

addition, it would also bring justice to the overrepresentation of Black Americans incarcerated for marijuana possession when Black people and white people use marijuana at approximately identical rates (Daniller 2019). The research was overall in accordance with other published journal articles although there were some discrepancies regarding marijuana use. One study found that partaking in marijuana increased crime, and therefore created logic as to why there was an overrepresentation of Black Americans incarcerated for marijuana charges (Cheon, Decker and Katz 2018). In correlation to this finding, another study found that marijuana use is connected to lower rates of employment, which would be the cause as to why Black Americans face such severe difficulty in the employment process (Augustyn, Loughran, Larroulet and Henry 2020). These concepts can possibly be explained through the racial bias from police officers as Black Americans are more likely to be arrested for marijuana possession than their white counterparts (McCarter 2018) and the socio-economic status of Black Americans. Black Americans have a higher probability of having low socioeconomic statuses, thus affecting their income, home life, housing and education (Isom Scott, and Jessica M. Grosholz 2019).

Based on my findings, modifications regarding marijuana policy can help decrease the unequal representation of Black Americans incarcerated for marijuana possession. Numerous states have legalized marijuana already but marijuana needs to be legalized on the federal level as well. In California, although weed has been legalized in 2017, in 2019 there were 1,181 felony cannabis arrests which decreased by 27% from the previous year. However, Hispanic individuals accounted for almost 42% of those arrests, Black for 22% and white individuals for 21% (Blood 2020).

In terms of specifics, it would help if marijuana was not only legalized, but the amount an individual can be in possession of was increased (Ahrens 2020). If this were to occur, this

might create more equality for Black Americans in terms of the proportion of marijuana arrests. Fundamentally, the literature proposes improved legislation that could help decrease the number of incarcerated individuals in regards to both race and marijuana policy through the concept of retroactive legality and other demarking programs to create a more harmonious environment for Black Americans to live in.

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