

A BRIEF OVERVIEW OF DRUG CONTROL POLICY IN THE UNITED STATES AND ITS CURRENT CHALLENGES

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ABSTRACT: *The United States have had a great fluctuation over history concerning the way drugs were viewed and drug policies. The social and legislative situation of drugs evolved up to the present days by fluctuating towards the extremes in most cases, but in the present it seems to have arrived in a balance point which will in great part determine the future of the drug policy.*

The social component is a key part of this process, as the public is not only influenced by the drug policy but influences it in turn by its opinion of drugs, which is a factor to be considered when thinking about the future and influence on upcoming generations.

The goal of this article is to briefly summarize the history of drug policy in the United States, to then attempt a better understanding of the controversial issue of marijuana legalization, and finally to see how the current drug control policy, meant to protect or educate, influences American youth.

KEYWORDS: *drug policies, United State of America, prohibition policies, drug tolerance*

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1. INTRODUCTION

The drug policy in the United States has greatly fluctuated over its history, beginning with the 19th century when pharmaceutical and technological advances permitted the creation and wide distribution of unregulated and even unnamed “drugs”. Over time, American drug policy evolved to different stages, in sometimes harsher and sometimes more lenient

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degrees, until arriving to the present-day level which can be viewed as more balanced than the past ones.

Drug policy should be considered under two aspects: first as being influenced by society, and second as an influence on society. These two roles are tightly interwoven and represent the connection between drugs, the criminal system and the larger public: drug policy is what the public wants it to be, but at the same time its standing at a certain point in time tells the public what is right and what is wrong, thus influencing future opinions.

It is because of this dual system that drug policies experience lack of balance or conflicting eras, but their standing always remains important to preserve as it will influence future generations by imposing a certain standard and conduct.

The goal of this paper is to first summarize the fluctuating history of American drug control policy, to then observe a controversial issue that has been under the spotlight for several years, which is the legalization of marijuana, and finally to observe the way the current drug control policy influence American youth, who will represent the future decision-makers and may, one way or the other, impose new trends in the United States' drug control policy.

2. THE EVOLUTION OF DRUG CONTROL POLICY IN THE UNITED STATES – AN OVERVIEW

Drug policies throughout the world evolve accordingly to societal and moral views on what is unacceptable or wrong. American drug policy was no exception as it went from acceptance to prohibition in an incessant series of changes, each time shifting to an extreme.

Before observing the history of American drug policy, however, one must ponder on the meaning of the term “drugs”.

A standard definition of drugs would be “a chemical substance that, when taken into the body, alters the structure and functioning of the body in some way, excluding those nutrients considered to be related to normal functioning”¹.

Nowadays, when thinking of drugs, a variety of psychoactive substances comes to mind first, but we neglect taking into account the “socially accepted” drugs such as tobacco, alcohol and caffeine. The reason is that some substances such as those mentioned are perceived by society as perhaps not being as dangerous, which has led to legalizing them. However one should not assert that legalization prevents them from being drugs, as they remain so in spite of societal and legal acceptance.

The same logic must be applied when observing the history of American drug policy, which has fluctuated according to the American society's fluctuating periods of approval and disapproval of certain substances.

The 19th century is particularly relevant due to scientific progress as it represented the beginning of the development of pharmacology, and the extraction of active ingredients from natural substances. Another historical aspect to be taken into account is that the post-Civil War era brought with itself much trauma and injury that needed treatment. Morphine and cocaine are two major examples of substances abused in that period – their soothing, almost magical properties made of them “miracle drugs”.

¹ Levinthal, C.F., *Drugs, Society and Criminal Justice*, Pearson Education, Inc, 2008, pg.4

The exposure to opiates was therefore quite common and almost unavoidable in the 19th century United States, the cocaine-laced formulas spanning from beverages to pharmaceutical products.

Many people became addicted without fault or knowledge as there were no proper labels or records, and most of the time no one really knew what was in the syrup or pills, just that it was miraculously calming. From a legal point of view, this issue could not be addressed as there was no agency regulating the medical field and the distribution of drugs, and the federal government could not intervene due to the time's political trend of strict separation between states and federal powers.

The early 20th century, however, reversed the trend, leading toward drug regulation through a series of legislative steps: the Pure Food and Drug Act in 1906 which made it mandatory for packaged foods and drugs to list ingredients, the Smoking Opium Exclusion Act in 1909 and the Harrison Act of 1914, all of which represented the first crest of prohibition².

The prohibition policy thus intensified from 1910-1925, not only concerning opiates but also alcohol, which industrialization had made very easy to distribute and obtain. The Congress thus passed in 1919 the 18th Amendment, outlawing alcohol, and was closely followed by the passage of the Volstead Act which created the Prohibition Bureau, a federal agency enforcing the 18th Amendment. Alcohol prohibition was enforced until 1933, when the 21st Amendment repealed the 18th Amendment, the main reason being the need for greater tax revenues after the beginning of the Depression in 1929. Alcohol remains to this day the only once illegal or controlled substance to have been re-legalized by Congress.

It is interesting to note, from a social point of view, that the need for drug regulatory legislation was also introduced to society through the means of racist propaganda – it was the only means to overcome the states' active resistance to federal involvement in their legislations. For the Southern society, this propaganda played on the fear of the African-American population by spreading stories of cocaine-induced raping of white women, and for the Western society it referred to the Chinese immigrants' habit of smoking opium, which was seen as leading to prostitution, gambling and moral decline.

At the same time, concerning alcohol, because of the First World War German immigrants which were mostly involved in the beer market were shunned. The Mexican minority also became the target of social discrimination as it became connected to the use of marijuana and its negative consequences, the result being the Marijuana Tax Act of 1937, the underlying issue, however, being the discontent with Mexican immigration to the United States. *Prohibition represented a battle between America's Protestant rural towns and America's "sinful", immigrant-filled cities*³.

Of course, the "Prohibition Era" did not have the intended effect at all, being actively defied by bootlegging activities and thus creating a prosperous, lucrative market for organized crime, in the field of both alcohol and drugs.

By the end of the Second World War, alcohol and tobacco became recreational drugs – although not considered drugs at all by the population – and dominated society, for

² Mieczkowski, Thomas. Drug Policy and KO. *Journal of Crime & Justice*, Vol.32, Issue 2, 2009, pg.141

³ Cashman, S.D., *Prohibition*, NY Free Press, 1981

example through the image of glamorous movie stars such as James Dean who made out of smoking a trademark.

Drugs such as cocaine, heroin or marijuana, on the other hand, were an absolute taboo, and the Congress passed further legislation to increase the penalties for drug and narcotics violations: the Boggs Act in 1951 and Narcotics Control Act of 1956. Such legislation was considered to have a deterrent effect on the demand for drugs.

The 1960s brought about a radical change in the perception of society – drug tolerance – having as background another traumatic event, the Vietnam War, as well as the “hippy generation” which was strongly challenging society’s established norms and order as well as being predisposed towards experimentation. Liberalizing forces were quite focused on certain types of drugs, not necessarily the same, and not including all types, some advocating therapeutic properties, others advocating lack of dangerousness.

Under the Nixon administration beginning 1968, “total war” was declared on drugs. Nevertheless, in the legislation adopted under this administration, such as the Controlled Substance Act of 1970, a number of mandatory minimum sentences were reduced, references to treatment and rehabilitation were included and a distinction was made between possession for personal use and possession with intent to redistribute⁴ – these measures being seen as less harsh than the ones of the previous era, perhaps a positive response to society’s call for liberalization.

In 1976-1979, President Carter took the most liberal stance of any American President towards drugs, declaring that possession of small amounts of marijuana should be decriminalized. Although there was no federal law approving this standpoint, several states did follow his lead, which led to a rise in illicit drug use due to a more relaxed view of drugs.

The 1970 Controlled Substance Act also marked a notable change in the administration of drug enforcement, which shifted from the Treasury Department to the Justice Department, resulting in the creation of a new federal agency: the Drug Enforcement Agency (DEA). Its mission involves conducting drug investigations, collecting intelligence about general trends in drug trafficking and drug production, and coordination efforts among federal, state and local law enforcement agencies, sharing responsibility with the FBI and maintaining liaisons with foreign law enforcement agencies⁵.

The 1980s began with a strong trend towards cocaine, especially the cheaper “crack” cocaine, but also in its more expensive form which became a symbol of economic success among professionals or celebrities.

The negative effects did not delay in appearing and being known by all because of strong media involvement, and American society soon began complaining about “the drug problem”.

The Congress therefore reenacted harsh drug legislation under the Reagan administration, notably through the Anti-Drug Abuse Act of 1986, and the Anti-Drug Abuse Act of 1988, both of which profoundly changed the criminal justice system: the numbers of officers needed for enforcement of drug laws quickly escalated, as did the numbers of convictions for drug violations, leading to an overcrowding of courts, prisons and jails.

⁴ Mieczkowski, Thomas. Drug Policy and KO. *Journal of Crime & Justice*, Vol.32, Issue 2, 2009, pg.144-145

⁵ Levinthal, C.F., *Drugs, Society and Criminal Justice*, Pearson Education, Inc, 2008, pg.49

This marked the beginning of a “get tough on drugs” era that continued to present days, although with less political interest in the field, especially after 9/11, when fighting terrorism became the main priority⁶.

It is, however, clear that in our age, a wider range of psychoactive substances can qualify as drugs and be therefore misused or abused, thus increasing the need for “zero tolerance” in this field. The approach of lawmakers can be currently characterized by a struggle between the desire to minimize the harm done to individuals by drug abuse through treatment and rehabilitation, and the need for a deterrent, stricter legislative stance. This struggle can be seen as a chance to restore more balance to the system as well as finding new and improved ways of dealing with the “drug issue”.

3. HOW SOCIAL ATTITUDES CURRENTLY REFLECT ON THE DRUG CONTROL POLICY – LEGALIZING MARIJUANA

As seen in the previous section, the “war on drugs” and its accordingly strict legislation are the result of several historical or political eras of social intolerance of drugs, which in turn have been influenced by changing social attitudes related to drugs.

Indeed, the multiple shifts in attitude are best reflected by the American public itself, and a recent study⁷ showed the enormous fluctuation over time in the Americans’ opinion of two key issues: government expenses related to drug policy and legalization of marijuana.

Another important point of the study was that in recent years, there was more and more tolerance of the public towards certain types of drugs, namely in the case of legalizing marijuana. The first note to be made about the legalization of marijuana and any drug in general is that it would be more appropriate to talk in this particular context about decriminalization rather than legalization: decriminalization means that possession of marijuana above a certain established quantity would constitute a civil offense rather than a criminal one, and punishment would be a fine, not imprisonment. Legalization, on the other hand, refers to the removal of all criminal sanctions on the sale and production of an illegal drug⁸. It is important to notice the terminological difference as in the United States marijuana has been historically regulated as a major psychoactive drug since its powerful emergence in the 1960s and has been for a few years the center of libertarian debates.

These debates over marijuana stem first and foremost from its medical use: a 1999 report of the Institute of Medicine showed that short-term marijuana use appeared to be suitable for treating specific conditions, such as pain or AIDS wasting, if the patient failed to respond to traditional medication⁹. Still, the report did not encourage the long-term use of marijuana, as it held potential health risks and its administration would thus remain imprecise¹⁰.

⁶ Cass Elisabeth, *Crime and Justice in America*, class attended during Spring semester of 2011, at the University of South Florida

⁷ Nielsen, Amy L., *Americans’ Attitudes toward Drug-Related Issues from 1975-2006: The Roles of Period and Cohort Effects*. *Journal of Drug Issues*, Vol.40, Issue 2, Spring 2010, pg.484

⁸ Gaines, L. K., Miller, R. L., *Criminal Justice in Action*. Wadsworth, Cengage Learning, 2010, pg. 69

⁹ Institute of Medicine, *Marijuana as Medicine: Assessing the science base*, Washington DC National Academy Press, 1999, pg. vii

¹⁰ Inciardi, *The war on drugs III*, pg.300-301. Institute of Medicine, *Marijuana as Medicine*, Washington DC National Academy Press 1999, pg.8

By 2005, eleven U.S. states (Alaska, California, Colorado, Hawaii, Maine, Maryland, Montana, Nevada, Oregon, Vermont and Washington) had authorized marijuana smoking for the relief of pain and discomfort or the control of nausea and weight loss when prescribed by a physician.

Nevertheless, the state regulations soon clashed with the federal system: the Supreme Court ruled in its 2005 *Raich v. Ashcroft* decision that the legalization of marijuana at state level could not overcome federal regulations, the result being that federal prosecutions in this field can be carried out in the aforementioned states. The practical consequence of this decision remains for now unclear, as the federal government presently conducts only 1% of the marijuana prosecutions in the United States¹¹.

Another major argument in legalizing marijuana refers to the economic gains of such a decision¹². First, the pressure, and implicitly costs, in the criminal justice system would be alleviated¹³ through a great decrease in the number of drug offenses brought forth, resulting in less overcrowding of the courts and prisons for marijuana-related offenses, currently very numerous. Marijuana is the most commonly used illicit drug, used by 81% of current illicit drug users¹⁴. Second, costly drug-control programs would be eliminated and furthermore the state would be able to collect taxes out of the controlled sale of marijuana. The economic argument, however, might be brought down by political and historical considerations regarding the impossibility of bringing the states to work together in this matter under a federal regulation, as legalization at a federal level still remains an impossible outcome because of political and historical factors.

The explanation for this need of a federally regulated commerce is that there would be too much discrepancy between states individually controlling sale of legalized drugs within their territory. However, such a federal regulatory system could not come to be in place, not only because of the United States' history with marijuana criminalization, but also because of the tensions between states and political parties failing to cooperate towards better policies¹⁵.

The debate over legalizing marijuana continues to social aspects such as the danger of increasing consumption and abuse. While it has not been proved that in the states which have already legalized marijuana consumption has soared, and the vast majority of those who sample marijuana do not become frequent users¹⁶, obtaining the drug would arguably become easier as is the case with other legal drugs such as alcohol or tobacco, which would particularly jeopardize the health of minors. The hidden problem however is that marijuana is already available to teenagers, as "most high school seniors said they could

¹¹ Murphy, D.E., Drug's users say ruling won't end their efforts, NY Times, July 4 2001, p.A21

¹² Cass Elisabeth, Crime and Justice in America, class attended during Spring semester of 2011, at the University of South Florida

¹³ Inciardi, McBride, Debating the Legalization of Drugs in Handbook of Drug Control in the United States, NY Greenwood Press, 2009, pg.285-289

¹⁴ Trevino R.A., Richard A.J., Attitudes toward drug legalization among drug users, American Journal of drug and Alcohol Abuse, 28(1), 2008, pg.92

¹⁵ LaGrange, Joshua C. Law, Economics, and Drugs: Problems with Legalization under a Federal System. Columbia Law Review, Vol. 100, No.2, March 2000, pg.523

¹⁶ Vitiello, M.. Legalizing Marijuana: California's Pot of Gold?. Wisconsin Law Review, Issue 6, 2009, pg.1377

obtain the drug fairly easily or very easily”¹⁷, so legalizing marijuana would perhaps not have such a dramatic effect¹⁸.

The debates over the legalization of marijuana could obviously go on forever, from all points of view – economic, social, legal – without arriving to a definitive, precise conclusion. In this case we could consider that it is one of those instances where the effects cannot be known until the situation is truly met. Still, questions remain. Is this situation truly possible to meet? Could legalization happen? Are the United States ready to make such an important change with highly difficult to predict consequences? Time only will tell in the case of this very controversial and intricate issue. Nevertheless, it can be argued that the legalization of marijuana is not an outcome to be foreseen in the near future, even though the larger public might agree to it.

4. THE AMERICAN YOUTH AND THE CURRENT DRUG CONTROL POLICY

Public health in general and the health of teenagers in the context of drug abuse in particular is indeed one of the most important concerns in the current drug control policy, remaining one of the core reasons for the enforcement of drug policies. To better understand the efforts made to protect children and teenagers from the harmful effect of substance abuse, we should first observe how prevention is integrated in the drug control policy.

The overall national policy for the control of drug use in the United States is coordinated by the White House Office of National Drug Control Policy (ONDCP)¹⁹. Its strategy is divided in three priorities, as following²⁰. The first priority is stopping drug use before it starts, which includes primary prevention, research-based, programs. The second priority is healing America’s drug users, through intervention and drug-abuse treatment, including drug court programs providing treatment, mandatory testing and vigorous aftercare to help sustain the recovery. The third priority is disrupting the market, meaning attacking the economic basis of drug trade on the “supply side”.

The efforts of prevention among children and teenagers fall under the first category. The prevention programs include not only “traditional” drugs but also alcohol and tobacco. The goal of any prevention program aimed at young people is to lower the numbers of new ATOD²¹ users or to delay the first use of alcohol and tobacco toward an age at which they are considered adults [book 1, pg.389]. ATOD prevention programs that have been shown to work include several important elements that children and teenagers should develop.

First, the peer-refusal skills, which represent the individuals’ ability to resist social pressure concerning drinking, smoking or using any drugs, are taught in programs that

¹⁷ Office of National Drug Control Policy, *Marijuana Myths & Facts: The Truth Behind 10 Popular Misperceptions* (2004).

¹⁸ Shayne Jones, Forensic Psychology, class attended during Spring semester of 2011, at the University of South Florida

¹⁹ Gaines, L. K., Miller, R. L., *Criminal Justice in Action*. Wadsworth, Cengage Learning, 2010, pg.383

²⁰ Biglan, Mrazek, Carmine, Flay, *The integration of research and practice in the prevention of youth problem behaviors*, *American Psychologist*, 58, pg.433-441; ONDCP, *National drug control strategy: Update*, February 2003

²¹ alcohol, tobacco and other drugs

train children how to say no in uncomfortable social circumstances. This kind of skill training has been shown to reduce the rate of tobacco smoking, marijuana smoking and alcohol drinking by 35-45%²². Then, children can also receive training in social skills and personal decision making, which refer not only to social interacting and improving interpersonal relationships but also to making decisions in a careful, targeted way. Prevention programs using this kind of social skills training have been shown to reduce the likelihood that a young person will try smoking by 42-75%²³.

Finally, the DARE²⁴ program, developed in 1983 by the LAPD and the LA United School District, is the best-known program in the United States and has rapidly expanded in all fifty states, in all Native American schools administered by the Bureau of Indian Affairs, the US Department of Defense schools worldwide and also in school systems in many foreign countries. This program combines the efforts of teachers, principals, students, parents, as well as police officers who come in school sessions²⁵ to teach basic drug information, peer-refusal skills, self-management techniques and alternatives to drug use.

Prevention in schools is certainly very present at all levels, however college becomes a more challenging level. College implies meeting a very wide range of people, of different backgrounds, ethnicities, social groups and nationalities, which means that the parameters used in previous school prevention programs might be different. College years pose a major challenge to prevention programs as this period is seen as a kind of rite of passage, with expectations of heavy alcoholic drinking and some illicit drug use²⁶. Surveys have shown that most students have been exposed to alcohol (73%) and marijuana smoking (42%) in high school²⁷, this prior exposure thus making drug use likely to be repeated in college. There is a very strong need to change the culture of alcohol and drug use in college, partly through ATOD prevention programs, as such a perception of college life does nothing more than encourage abusive behavior through false expectations students may construct, especially in the context of newly acquired freedom and independence.

One might wonder in this context where are situated the teenagers that refrain or quit using drugs such as marijuana. A study made on high school seniors of all genders and ethnicities has shown that 50% of those having used marijuana over the previous 12 months wanted to reduce or eliminate marijuana use, however the reason was not difficulty in obtaining the drug, but rather concerns about getting arrested (45%), and an important number of users stated they wished to discontinue marijuana use because they did not find it enjoyable²⁸. Other mentioned reasons included the concern with the risk of addiction, loss of control, the belief that the use of marijuana would lead to the use of stronger

²² Best, Flay, Towson, Ryan, Perry, Brown, Kersell, d'Avernas, *Smoking prevention and the concept of risk*, Journal of Applied Social Psychology, 14, pg257-273

²³ Botvin, *School-based and community-based prevention approaches in Primary Prevention of tobacco smoking*, Journal of School Health, 53, pg.416-419

²⁴ drug abuse resistance education

²⁵ Cavazos, *What works: Schools without drugs*, Washington DC: Department of US Education, 1989, pg.38

²⁶ Levinthal, C. F. *Drugs, Society and Criminal Justice*. Pearson Education, Inc., 2008, pg.398

²⁷ Johnston, O'Malley, Bachman, Schulenberg, *Monitoring the future national results on adolescent drug use: Overview of key findings, 2006*, Bethesda MD National Institute on Drug Abuse, Table I, 2007

²⁸ Terry-McElrath, O'Malley, Johnston, *Saying No to Marijuana: Why American Youth Report Quitting or Abstaining*. Journal of Studies on Alcohol and Drugs, 69, no6, November 2008, pg.803

drugs, and general concerns over physical and psychological damage. This data is a good example of what could influence and contribute to an ATOD prevention program, and more studies of this type would be useful as the research data in this domain is quite poor²⁹.

We can conclude from this information that the current drug policy is still facing challenges and can be greatly improved by more accurate and actual research. At the same time, there are very well structured programs set in place that can benefit from such improvements but already represent a major prevention tool, particularly by enforcing social bonds and decision-making.

It is also worth considering the fact that deterrence through strict legislation might be another important prevention factor, perhaps a rather simple tool but quite an efficient one, and it is an idea particularly important in the context of the marijuana legalization debate – as seen before, it is not obtaining the drug more or less difficultly which would influence teenagers, but rather the risk of facing more serious legal punishment.

5. CONCLUSION

Having explored several theoretical and practical aspects of the United States' drug control policy through this paper, we can see that even though attitudes towards drugs have shifted quite radically throughout several periods, drug control policies have retained quite a strict and exhaustive control over dangerous substances, even during the most tolerant periods of public opinion.

The future of American drug control policies remains somewhat uncertain in the light of legalization debates over medical marijuana, however the strictness that it has proved until present days can make us doubt of the success of legalization. Indeed, the current drug control policy in the United States, even though in a more balanced phase, giving as much importance to rehabilitation and treatment as to the punitive aspect, is still a “zero tolerance” policy, and there is little chance for any drug decriminalization.

Finally, concerning the American youth in the context of the current policy, we can notice that ample prevention is being set up, and even if the programs could be improved, it appears to have positive results in conjunction with the deterrent legislation currently in place.

The United States' current drug policy is facing certain social challenges that can be explained through the fluctuating flow of historical social attitudes towards drugs and drug use, but it has arrived at a crossroads point between the two extremes that could likely lead to a more balanced future policy. It is important to remember that there is no easy answer when it comes to drug control policy, but learning from past successes or failures could lead to a more efficient and balanced legislation.

²⁹ Terry-McElrath, O'Malley, Johnston, Saying No to Marijuana: Why American Youth Report Quitting or Abstaining. *Journal of Studies on Alcohol and Drugs*, 69, no6, November 2008, pg.796

REFERENCES

- Gaines, L. K., Miller, R. L., *Criminal Justice in Action*. Wadsworth, Cengage Learning, 2010.
- Levinthal, C. F. *Drugs, Society and Criminal Justice*. Pearson Education, Inc., 2008.
- Mieczkowski, Thomas. *Drug Policy and KO*. *Journal of Crime & Justice*, Vol.32, Issue 2, 2009.
- Nielsen, Amy L., *Americans' Attitudes toward Drug-Related Issues from 1975-2006: The Roles of Period and Cohort Effects*. *Journal of Drug Issues*, Vol.40, Issue 2, Spring 2010.
- Vitiello, M., *Legalizing Marijuana: California's Pot of Gold?*. *Wisconsin Law Review*, Pages 1349-1389, Issue 6, 2009.
- LaGrange, Joshua C. *Law, Economics, and Drugs: Problems with Legalization under a Federal System*. *Columbia Law Review*, Vol.100, No.2, March 2000.
- Terry-McElrath Y.M., O'Malley P.M., Johnston L.D., *Saying No to Marijuana: Why American Youth Report Quitting or Abstaining*. *Journal of Studies on Alcohol and Drugs*, 69, no.6, November 2008.
- Cass Elizabeth Cass, *Crime and Justice in America*, class attended during the Spring semester of 2011, at the University of South Florida.
- Shayne Jones, *Forensic Psychology*, class attended during the Spring semester 2011, at the University of South Florida.
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