Weeding Out Public Opinion: A Study of Marijuana

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The divide between Generations X/Y and the Baby Boom Generation is growing on issue of marijuana. The younger generation seems to be more tolerant of cannabis than their parents. In the past forty years we have seen a steady increase in Public Opinion data favoring legalization; and now it is not a question of if but when it will be legalized. Recent studies by Gallup and other polling firms verify these findings, but the real questions seem to remain unanswered: What is going to happen when the majority of Americans favor legalization of marijuana? Will the Federal government continue to pursue its current drug policy on marijuana or adhere to public opinion? Based on the outcomes of these questions, I look to further the research done by the political science community over the past forty-years on government responsiveness to the public. Using research from Paul Burstein, which speculates on the impact of public opinion on public policy, I hope to provide additional evidence that our democratic institutions are less responsive to public opinion than we had previously thought using the issue of marijuana. Looking at polling data from the 1970s to present day, this paper outlines (1) how public opinion polling trends on marijuana have failed to shape public policy, (2) what implications previous research can tell us about why this issue has received low government responsiveness, and (3) how major drug policies under the Federal government have created controversy within local and State politics. From this analysis we can draw conclusions about what will happen to marijuana in the near future.

Public opinion polling as we know it today, dates back to the 1930s, its increasing popularity among politicians, news organizations and political interest groups have shown its effectiveness and accuracy. Early pioneers of polling like George Gallup envisioned a day where public opinion would actually play a part in political outcomes. And although Gallup’s dream has come to fruition, academic researchers in recent decades have begun to question how much of a role public opinion actually plays in public policy making. A number of political scientists including Jeff Manza believe research and theory about the impact of public opinion on policymaking since the 1930s have produced decidedly mixed views (Manza, 2002). Among these mixed views is the belief that social, political, and technological changes have influenced how much affect public opinion has on policymaking.

In an article written by Paul Burstein titled, *The Impact of Public Opinion on Public Policy* he addresses this very question, how much impact does public opinion have on public policy? The author begins by providing a number of statements that are universally accepted within the political science community, “(1) Public opinion influences public policy; (2) the more salient an issue to the public, the stronger the relationship is likely to be; and (3) the relationship is threatened by the power of interest organizations, political parties, and economic elites.”(Burstein, 2003) From this study and additional research within his article, he ultimately concludes that public opinion does indeed have a significant impact on public policy, three-quarters of the times its impacted is gauged. Using this article we might infer our democratic processes appear to be working quite well, because more times than not, the government acts in accordance with public preference. However we will see three years later, the same author strike down his original estimation. The significance of this article provides the criteria for gauging whether policy change should occur or not. Using universally accepted claims and applying them to the issue of marijuana will give us the ground work to understand why opinion has not changed policy on cannabis and what has prevented the public from getting what they want. Before we can do that, we need to realize why this estimate was too high, how this impacts the way we look at the issue, and what data will be used.

Author Paul Burstein, three-years after his original article, The Impact of Public Opinion on Public Policy concludes that his original estimate on government responsiveness was too high. In his 2006 article titled, *Why Estimates of the Impact of Public Opinion on Public Policy Are Too High* Burstein points out that a number of empirical studies by social scientists overestimate the impact of public opinion on public policy due to sampling bias. Moreover, pollsters are focusing on salient issues, and it is these issues on which the government is most likely to respond. While less salient issues have no polling data at all, making it difficult to gauge whether the public has any impact on policy making for less significant issues. In essence we do not have data on all issues which are enacted upon. We cannot accurately measure how much impact the public has on policymaking, because on a number of issues, we have no polling data to compare legislative action to. Not to mention non salient issues, which people are not interested in tend to create conflicting responses, random guessing, and insincere response bias. In an attempt to correct this sampling bias and find an accurate depiction of government responsiveness, the author conducts his own study.

Burstein randomly samples 60 congressional bills and tries to find public opinion polling data on them. Of the 60 bills randomly selected, only 36 bills (60%) held polling data. When we look at the congressional outcome of these bills compared to what public opinion favored, we see that only 18 (50%) of the 36 bills with opinion data available are passed in lockstep with the public. Meaning that of the bills we have polling data on, congress only followed public opinion trends half of the time. And when we use all 60 bills this number drops to 31%.

If we believe Burstein's methods are correct and more accurately describe the true nature of government responsiveness, this means our original estimation that the public impacts policy making three-quarters of the time, is too high. Our more conservative estimation would reduce this by one-quarter. Now it might be frightening to believe that politicians only care what the public thinks half of the time they create policy, but this might not necessarily be the case. Just because the public does not impact decision making frequently does mean the public is losing half the time.

Depending on your view of how congressional representatives should behave, this might not mean they aren’t listening, but rather it could mean the difference between them acting as trustees or acting as delegates. On the one hand, research has shown us that “limits on individuals’ cognitive capacities mean that on most policy issues the public has no meaningful opinions” (Schattschneider, 1960) in other words, much of the public does not hold any strong opinion on issues which are unimportant them. Therefore because the public does not have opinions on low salient issues some believe it is the job of representatives to decide what is best for their constituents. On the other hand, some argue that representatives should act as delegates, and responsiveness really does matter because we often “gauge the quality of democratic governments by the responsiveness of public policymakers to the preferences of the mass public.”(Manza and Page, 2002) Under Burstein’s position, government responsiveness does matter, and reflects the quality of democracy based on how much of a role the public plays in policy making.

If we decide that the later is the case, and government responsiveness does matter, before we can validate the claim, that government responsiveness is low and our democracy is not working as well as we thought; first we must present a case which proves such a conclusion. We must look at the issue itself, how it is being gauged and on what basis we come to this conclusion. In other words, if we want to get an accurate depiction of government responsiveness without sampling bias and conclude that our estimates of public opinion on policymaking are too high we need to fulfill some necessary criteria. (1) There must be available public opinion data on the issue, in addition to data of congressional action and how representatives voted. (2) The public must hold a real opinion on the issue; rather the issue must be salient enough for the public to have formed an opinion on the matter. And (3) the issue must hold support from political elite, powerful interest groups, or politicians themselves. An explanation of each will allow you to understand why I have chosen these criteria.

The first requires data for both polls and congressional action, because then we can prove that the representatives knew (or data was available) what the public preferred before voting on the issue. The second criterion is important not only to show that the public held genuine opinion on the subject but also that the issue is salient enough to create popular opinion. Moreover that the public feels strongly enough on an issue to enact legislation and that the data is reliable enough to believe it. And finally the issue must be supported by individuals in power, or rather in some cases not opposed to it. Moreover, where is support coming from and what politics are involved.

Using these criteria we can present a case in which representatives knowingly chose to vote against reliable polling data and political interest. Ultimately this furthers Burstein’s hypothesis by using a case study to provide additional proof that government responsiveness is lower than anticipated. With the assumption that his methodology is correct and sampling bias has led us to overestimate the impact of public opinion, what might we conclude? Burstein argues two claims, “One empirical and one interpretive. First, if survey organizations asked about less-important issues, we would find opinion having less impact on policy than extant work suggests. Second, if opinion does have less impact, that means democratic procedures and institutions are not working as well as we thought.” (Burstein, 2006) But how much evidence do we have that his conclusion is true? I hope to advocate his position, by superimposing the issue of marijuana using universally accepted criteria, salience and political interest using the extensive polling data available. By proving that the issue of medical marijuana is both highly salient and is supported by political interest but has failed to change government policy, we can conclude that Burstein’s argument may hold some legitimacy.

Before we continue to dive into Paul Burstein’s argument, there are a number of things that must be brought into the picture, in order to paint a better depiction of how all of this fits together. First and foremost we must be aware of why the issue of marijuana is so difficult to accurately gauge through polls. Secondly we must look back at the history of public opinion on marijuana to reveal public preference, and get an idea of how much that opinion has shifted over time. This also requires us to examine the new contemporary problems and sub-issues within marijuana itself, problems like medical marijuana, Food and Drug Administration’s research restrictions, drug law enforcement on the Federal level, asset forfeiture laws, and constitutional law. These issues allow us to view where criticism is coming from, which political interest groups advocate marijuana, and why there was a shift in the first place. By putting these issues into perspective we are able to contrast government responsiveness on the Federal and State level, and ultimately draw a connection between public polling trends and future prospects of marijuana.

Though Public Opinion polling dates back to the 1930’s, the oldest data that could be found on marijuana is from 1969. Most likely this is because the public was not concerned about marijuana or even aware of the drug until after the 1960s. Drug use during this decade was extremely low. Gallup first conducted a study on marijuana use in 1969; the results showed only 4% of Americans said they had tried marijuana. Contrasted with today’s figures, showing 40% has tried marijuana (Robison, 2002). This suggests there was no real need to gauge public opinion until it became a national controversy.

However there is some speculation regarding the accuracy of this data because of social desirability response bias and sampling bias. Some respondents might not have wanted to admit drug use because it had been deemed taboo within society. Old films like Reefer Madness (1936) and Assassin of Youth (1937) propagate these views by depicting crazed dope fiends committing debauchery and murder, all because they smoked marijuana. Respondents naturally desire to answer in a way that seems favorable to others, regardless of whether the answer is true or not. This is a problem of accuracy for a number of issues like income, drug use, and sexual behavior (Mortel, 2005). Marijuana is among these issues; therefore respondents will most likely down play their frequency of use if they admit to such use at all.

Marijuana use is likely much higher than the Gallup polls indicate. Evidence of this fact comes from another Gallup poll only a year later in 1970 when they asked college students, “have you ever tried marijuana?” this time 42% said yes, and of those who had tried marijuana, 66% said they had used it within the last 30 days. This poll may present a more accurate depiction of marijuana use during the 1970s. The fact that social desirability response bias causes a number of difficulties in producing accurate polling data, might not only tell us that data collected on marijuana forty-years ago was underestimated, but also that this same trend could be true today.

Sampling bias regarding marijuana use may also be skewed by pollsters’ extensive use of LAN lines rather than cell phones. A study done by Pew Research Center suggests there is a growing cell phone polling bias that seems to favor republicans, often an older demographic (Keeter, 2008). The author of the article, Mark Blumenthal concluded in the study that, “calling only landline phones introduced a "small but real" bias…” (Blumenthal, 2010) This may suggest that because pollsters often call more landlines than cell phones, the younger demographic is being under represented. And according to the Drug Policy Information Clearinghouse Fact Sheet, ages 18-25 are shown to most frequently use marijuana compared to all other age brackets (31.9% of all marijuana users, with 12-17 coming in at second with 20.8%). This same age bracket is also most likely to own a cell phone as their only means of communication, and could mean they are being underrepresented within polling numbers, providing additional difficulties in accurately estimating the true value of marijuana users. Because of the problematic nature in gauging marijuana through polls, we ought to realize that this data will most likely show conservative estimates favoring legalization and use. The data available, however inaccurate, still gives us a starting point to finding trends and public preference.

One of the most apparent trends definitively preferred by the public is medical marijuana. In a 2010 study by Pew Research Center, individuals were asked the question, “Do you favor or oppose your state allowing the sale and use of marijuana for medical purposes if it is prescribed by a doctor?” 73% of Americans said they favored this in their state. This polling data suggests a clear public preference by an overwhelming majority. But this view on medical marijuana has not been a recent occurrence. According to a study by Roper Center for Public Opinion Research conducted in 1998, 57% of the American public favored medical marijuana and this is a very conservative estimate compared to other studies done that same year by the ACLU and the Family Research Center, which held estimates at 70% in favor (ProCon, 2011). In fact even the elderly demographics ages 45 and older support medical marijuana. In a 2004 study by AARP respondents were asked, “Should adults be allowed to legally use marijuana for medical purposes if a physician recommends it?” 72% answered yes. These polls show clear public preference from a number of different interests.

Additional polls confirm these findings. A study conducted by Associated Press and CNBC asked Americans how strongly they felt about the issue of medical marijuana, the survey asked, “Do you favor, oppose or neither favor nor oppose legalizing the possession of small amounts of marijuana for medical purposes?” The respondents were sorted by how strongly they held their opinion on the issue. Data results concluded that 38% strongly favored, 22% somewhat favored, 11% neither favor nor oppose, while only 10% somewhat oppose, and 18% strongly oppose. Although the first study is significant because it shows overwhelming public preference, the later study is even more so because it shows that only a small number of respondents felt indifferent about medicinal marijuana, and that a majority of the public felt “strongly” enough to form a reliable opinion. Because a majority of respondents held a “strong opinion” regardless of response, suggests high enough salience for Americans to hold valid opinions on medicinal use. But before we can conclude that the government has failed to respond to public opinion, we must not only validate political support for the issue but also examine the relationship between medical marijuana, and Federal drug policy.

The root of medical marijuana as we know it today first took hold in California when Proposition 215 passed by popular ballot initiative in 1996, essentially removing state-level criminal offences for possession, use, and cultivation of cannabis to patients with written consent from a doctor. Since then 15 other states have medicinalized the drug, including Alaska, Arizona, Colorado, District of Columbia, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington (ProCon, 2011). And legislation for medical marijuana is being lobbied in states like Illinois, Massachusetts, New Hampshire, New York, Ohio, and Texas just to name a few. But if States are allowed to pass medical marijuana legislation on a local level what is the problem? Under the Controlled Substances Act (CSA) (21 U.S.C. § 811), the federal government does not recognize the difference between medical and recreational use of marijuana (Payne, 2010). And the whole reason these state laws are possible has been through popular ballot initiatives passed by direct democracy voting within local government. But this was never a problem until the development of medical marijuana dispensaries, ‘weed’ doctors, and ‘care givers’ became a national controversy.

Marijuana laws differ from state to state. For instance, how each state distributes marijuana to its patients, what the regulations on cultivation are, and what approved conditions allow for medical cannabis are different in every state. Some states like New Jersey and District of Columbia are more strict and do not allow personal cultivation of marijuana but rather patients must buy it from state sponsored non-for-profit dispensaries (ProCon, 2010), while other states like California and Colorado are more relaxed about their marijuana laws, for instance in Denver, Colorado the number of marijuana dispensaries outnumber Starbucks (Uvalle, 2011). “Caregivers” in these states are able grow marijuana for a number of patients and allows them the freedom to grow larger amounts of crops. This has created a demand for dispensaries which grow and sell marijuana to patients with the recommendation from a doctor. Local government dictates who can open a dispensary, where they can open shop, and how many licenses are available. But this has created a conflict between states rights and Federal law. Because so many dispensaries are opening, the number of marijuana doctors, and chronically ill patients is sky rocketing. As Jon Stewart noted, what had been considered the healthiest state (Colorado) in the country rapidly became one of the sickest” (Ferguson, 2010). Ultimately some of these places have begun masquerading as caregivers but acting as state-sanctioned drug dealers. This has caused the Federal government to begin raiding dispensaries for not abiding by Federal law. And under the Bush administration the message was “watch out – we have the authority to go after everybody.” (Johnston, 2009) But when President Obama took office, the message created an even more ambiguous situation.

 The Obama Administration’s new stance on medical marijuana, which seemed to end the policy debate over the issue, was to stop the frequent raids. Attorney General Eric Holder at a press conference issued a statement that the Obama Administration will stop pursuing caregivers, and medical marijuana clubs if they play by the rules, “The policy is to go after those people who violate both federal and state law, to the extent that people try to use medical marijuana laws as a shield for activity that is not designed to comport with what the intention was of the state law” (Grim, 2009). While this ended the presidential policy debate over medical marijuana, it still left the issue in murky waters because medical marijuana was still an illegal drug. On the one hand Federal law makes no distinction between medicinal and recreational use. But on the other, the Obama administration has unofficially sanctioned legitimate medical marijuana dispensaries. Ultimately this presents a problem for doctors, patients, and care givers who are abiding by state law but can still be prosecuted under Federal law.

U.S. Supreme Court decision Conant vs. McCaffrey in 2003, upheld the right of doctors to discuss the risks/benefits of marijuana and allowed them to give written approval/endorsement to state government recommending the drug for purchase in local ordinances where medicinal use is legal. But Doctors cannot however, prescribe the drug for medical use. Under this ruling the courts can still take legal action if marijuana has been recommended without a justifiable reason. But a “justifiable” reason can range from Alzheimer disease, certain types of cancer, HIV/AIDS, Glaucoma, Multiple Sclerosis, Crohn’s disease, Hepatitis C, extreme nausea, insomnia, ADHD, and chronic pain. This is a very broad list ranging from life threatening illnesses like AIDS to mere back pain or intense menstrual cramps. And while discretion is placed entirely in the doctors hands, open interpretation raises questions and causes concern for both doctor and patient alike.

Merely recommending cannabis places them in danger, because possession of any amount of marijuana according to Federal law is punishable by up to one-year in jail and a fine of $1,000 (LaMance, 2011). The Controlled Substances Act makes no distinction between medical and recreational use, so by advising patients to use marijuana doctors are placing their patients at risk even if they believe a patient would benefit from its use. Because of this, doctors and other medically related fields have begun to back pro marijuana legislation. This political support will not only help lobby legislation in favor of medical marijuana, but the community has started to speak out on a number of important issues related to their political agenda that concern the marijuana issue.

These struggles include pressure by medical associations to change the status of medical marijuana from a Schedule I controlled substance (the same scheduling as LSD, psilocybin, heroin, and other narcotics) to a more appropriate schedule (Smith, 2008). But also these organizations have moved to question on what facts the Food and Drug Administration have based their claim that, “smoked marijuana has no currently accepted or proven medical use in the United States and is not an approved medical treatment”(Harris, 2006). Medical Associations want to further study the plant, for future scientific research. But regulations regarding not only the classification of marijuana but FDA and DEA approval have created problems for a number of researchers. In a resolution by the Medical Student Section, urging the AMA to support the reclassification of medical marijuana, Author Sunil Aggarwal writes, “Given marijuana’s proven efficacy at treating certain symptoms and its relatively low toxicity, reclassification would reduce barriers to research and increase availability of cannabinoid drugs to patients who have failed to respond to other treatments…Preclinical, clinical, and anecdotal reports suggest numerous potential medical uses for Marijuana unfortunately, research expansion has been hindered by a complicated federal approval process, limited availability of research-grade marijuana, and the debate over legalization”(Aggarwal and Chaudhuri, 2008). Doctors would not be held back by these restrictions under less stringent regulations.

They want to politically support and encouraging doctors to have an honest conversation with their patients, and be allowed to offer all possible options. They are also fighting to persuade the Food and Drug Administration to allow privately funded researchers in order to perform their own tests on marijuana and discover new medical possibilities. The authors continue in the resolution saying, “Despite these obstructions, the accumulated scientific data regarding marijuana’s safety and efficacy in certain clinical conditions and its increasingly accepted medical use in treatment can no longer be ignored.”(Aggarwal and Chaudhuri, 2008) Suggesting the FDA does not have all of their facts straight. Although the Federal government continues to obstruct marijuana research, this has not stopped the medical community from pledging their support for pro-medical marijuana legislation; organizations like the National Academy of Sciences’, American Medical Association, and American Academy of Family Physicians.

But why has the Food and Drug Administration chosen to ignore international studies like those that have been conducted in Holland, or Germany (Hazekamp and Grotenhermen, 2010), which tout wonderful therapeutic qualities of smoked and vaporized marijuana. What is this issue all about, why has the FDA been so stubborn on developing medical marijuana? Some scientists believe pressure from the Drug Enforcement Administration has caused them to intentionally overlook recent studies and refuse continuous appeals by researchers. An article published in 2006, by National Public Radio author Joanne Silberner, talks about this relationship between the two organizations saying, “(The) FDA is bowing to powerful political pressure…The Drug Enforcement Administration (DEA) and the Office of National Drug Control Policy have long held that marijuana should not be legalized for any reason” (Silberner, 2006), suggesting that this battle over medical marijuana might be more about politics and ideology than science. This is because the DEA and law enforcement officials have big incentives to keep it illegal.

Although the Drug Enforcement Administration’s official stance suggests that, “Marijuana is a dangerous, addictive drug that has no medical value” (Justice.gov, 2011). Much of the reason they are so against the drug probably does not have much to do with health effects of smoking marijuana, but instead stems from the money aspect of keeping marijuana as an illicit drug. There are several ways local and federal law enforcement agents have been benefiting from marijuana including high arrest rates for drug abuse offenders, federal anti-drug grants, and asset forfeiture laws.

In an article by The Wall Street Journal, author Justin Scheck, interviews a California Sheriff about why they have begun to spend more time busting marijuana grow operations than patrolling the streets, and it has nothing to do with how dangerous, or addictive the drug is. Shasta County Sheriff Tom Bosenko explains that “If he steps up his pursuit of marijuana growers, his department is eligible for roughly half a million dollars a year in federal anti-drug funding, helping save some jobs. The majority of the funding would have to be used to fight pot. Marijuana may not be the county's most pressing crime problem, the sheriff says, but ‘it’s where the money is” (Scheck, 2010). These kinds of incentives continue to increase the amount of marijuana arrests, and have led advocates of law enforcement to pursue strong anti-marijuana policies, because there is simply more money in it for local and federal agencies if it stays illegal. Though these anti-drug grants have no doubt increased the number of marijuana arrests, this has not been the only reason.

The number of arrests first started to rise under the Nixon Administration, at the start of the ‘War on Drugs.’ Although these numbers continued to rise well into the Bush, and Clinton years, it was not until the rapid escalation of the ‘War’ by Reagan did funding for narcotics units and Federal agencies dramatically increase. In 1981 at the start of Reagan’s Presidency, the Drug Enforcement Administration’s total budget was 219.5 million ($219,500,000). Only six years later in 1987 that number had jumped to 773.6 million ($773,600,000), and by 2009 spending had risen to 2.6 billion ($2,602,000,000). That is nearly a 4000% increase from its original budget (Justice.gov, 2011). And as more money continued to pour into these types of organizations the more incentive there was to keep arresting users and drug traffickers. The combined influence of federal leadership, in the form of political initiatives, law enforcement grants, and civil asset forfeiture provisions, redefined law enforcement priorities virtually overnight (King, 2008).

According to former DEA agent Jack Cole, Reagan was sending the message to these agencies, “If you arrest enough users you will frighten them away, and without users there will be no dealers.” At roughly the same time politicians were telling police officers, “Just do your job better. Arrest more people and we will back you up a hundred percent. We will pass the harshest laws ever conceived (mandatory minimums and ‘three strikes, you’re out’). ‘Lock them up and throw away the key’ and our problem will be solved” (Cole, 2009). And lock them up they did, but unfortunately the problem was not solved. Ultimately this policy became a money maker for law enforcement, and allowed narcotics units to grow in size and funding.

 The ‘War on Drugs’ had become a self-perpetuating and continuously expanding policy, their belief was that as arrests increased for drug abuse offenders, drug use would decrease – but this was not the case. Since 1988, drug use within the United States has stayed static at 6-8% (Whitehousedrugpolicy.gov). Although drug arrests were on the rise, half of them were for marijuana alone. According to Jack Cole, “By 2004 we had quadrupled the yearly arrest figures of 1970, to where we were now arresting 1.9 million nonviolent drug offenders each year, with nearly half of those arrests for marijuana violations. And because Mr. Reagan said arrest users, 88 percent of the marijuana arrests were for possession.”(Cole, 2009) The greatest problem however was times when law enforcement agencies were faced with budget cuts due to economic down turn. This forced them to look to new avenues of funding for increasingly large agencies. This problem was solved by a series of drug asset forfeiture laws, which allowed high potential for abuse.

So what is asset forfeiture? According to Justice.gov the DEA uses this set of laws “To ensure that criminals do not benefit financially from their illegal acts, federal law provides that profits from drug-related crimes, as well as property used to facilitate certain crimes, are subject to forfeiture to the government” (Justice.gov, 2011). Essentially it allows the government to seize property, suspected to be in connection with illegal activity. Under 18 U.S.C. §982, and 21 U.S.C. §881 of federal law, if law enforcement officials are able to prove by probable cause a connection between the property in question and illegal activity, they have the legal authority to confiscate said property (Justice.gov, 2011). However there are two types asset forfeiture, one is criminal and the other is civil.

Criminal asset forfeiture has historically been used to punish criminals for an actual crime. Under this basis, criminal forfeiture requires a conviction, following which the state takes action against the convict’s assets in question. Civil forfeiture on the other hand does not require a conviction and takes legal action against the property itself, not the owner, as though the property had violated the law. Because it is not against the actual owner of the property, but the property itself, the owner becomes a third party in the case. If the government is able to establish probable cause, the property can be seized. And what is worse is that the ‘preponderance of the evidence’ falls upon the owner to prove otherwise. Much different from traditional legal standards in the presumption of innocence, that suggests someone is innocent until proven guilty. Even those who are innocent often have a hard time fighting these asset forfeiture cases, and sometimes the item seized is not worth the time and money to fight it.

This is why civil forfeiture cases are so appealing to law enforcement officials, and such a threat to those concerned about abuse or circumvention of Constitutional protections (Henchey, 1999). These concerns are very real. In fact, property is seized everyday from innocent people who are never even convicted. According to a report by the Pittsburgh Press, “at least 90 percent of the property that the federal government seeks to forfeit is pursued through civil asset forfeiture. And although forfeiture is intended as punishment for illegal activity, over 80% of the people whose property is seized under civil law are never even charged with a crime”(Dunn, 2010). This is a staggering statistic that suggests unprofessionalism and blatant abuses within asset forfeiture laws. But a majority of these abuses began after 1984 with the passage the Comprehensive Crime Control Act.

The Comprehensive Crime Control Act created a federal asset forfeiture fund that allowed both federal and local agencies to share the proceeds from forfeited items under the “equitable sharing” provision. Immediately following the passage of the Act, federal forfeiture cases dramatically increased. The amount of revenue deposited into the Department of Justice Assets Forfeiture Fund, for example, “soared from $27 million in 1985 to $644 million in 1991.”(Dunn, 2010) This provided a new source of revenue when the budget was tight. Some agencies were even able to function independently from federal funding and work off asset forfeiture proceeds alone. All of this meant better facilities, and more available spending for the budget. But that does not always mean the additional spending is warranted. According to author Bradley Balko of Reason magazine, “In 2005, the district attorney in Montgomery County, Texas, had to admit that his office spent forfeiture money on an office margarita machine. The purchase got attention when the office won first place in a margarita competition at the county fair” (Balko, 2010). This demonstrates how extra money can be misallocated and wasted on football tickets, office parties, and personal expenses rather than necessary equipment.

This potential for abuse is compounded by the strong financial incentive that law enforcement has to make seizures, since they benefit directly from forfeited property (Dunn, 2010).These incentives not fund law enforcement, but increase job security with every arrest, seizure, and incarceration. If drug arrests are high, people will continue to think there is a drug problem, further funding and perpetuating the problem. The money coming from federal grants and asset forfeiture is dependent upon high arrest rates. If marijuana was legal, arrest rates would sharply decline because almost 52% of drug arrests are for marijuana alone. In 2009 there were 1,663,582 drug arrests made, and of those 858,408 of them were for marijuana (Drugwarfacts.org, 2011). If marijuana becomes legal all of the money that had been pouring into stations as a result of drug asset forfeiture and federal grants for high drug arrest rates would become all that more difficult to receive. This has become a big motivation for police agencies across the country to keep cannabis illegal, and explains why political support for marijuana within the law enforcement community (among other ideologies) is so low. Although I would say a good majority of officers prefer anti-marijuana laws, not all law enforcement officials would agree. Members of Law Enforcement Against Prohibition (LEAP) are actually for legalization of marijuana. This organization represents a divide in ideology and policy regarding how to deal with the nation’s drug problems.

LEAP is an organization of law enforcement officials in favor of total legalization, placing all drugs under the same kind of regulations as alcohol and tobacco. Their belief is that by regulating drugs through state intervention, we can take the power and money away from drug dealers, and the Mexican drug cartels that are making enormous profits from illegal drugs (Kilmer, Caulkins, Bond, and Reuter, 2010). But also reduce the amount of harm our drug policies are doing to society, in regards to arrest rates and prison overcrowding. This group is significant because of their dedication to pro-marijuana legislation but also their first hand experience in dealing with drug policy and fighting the ‘War on Drugs’. The organization travels around the country presenting conferences and seminars about prohibition. They even hold guest speakers on the dangers of prohibition at public schools. Their main message suggests America’s current drug policy has failed meet any of its goals, and realization that the ‘war on drugs’ is not working.

Former DEA agent Jack Cole said it best when explaining his own opinion on the war, “The U.S. policy of a “war on drugs” has been, is, and forever will be, a total and abject failure. This is not a war on drugs, this is a war on people — our own people — our children, our parents, ourselves.” (Cole, 2009) The drug war was designed to protect our children and our selves by reducing drug use, production and distribution. But not only has the ‘war on drugs’ failed to meet any of its goals, it has created additional problems. And while the heaviest burden seems to be paid by convicted drug offenders, racial minorities, and taxpayers (King, 2008); the political and monetary benefits for certain groups by enforcing such a policy keep it that way. These incentives may tell us a little more about why medical marijuana is not legal under Federal law.

Another member of LEAP, Officer Howard Wooldridge uses his field experience as a police officer to explain problems within our drug policies. Wooldridge tells us why he no longer believes in prohibition and what has led him to believe our current policy is not working, “I was part of a process called Civil Asset Forfeiture. This process was intended to take away the money and property of drug dealers. As the property officer, I deposited thousands of dollars our officers took from people…In looking back I am mightily ashamed of what I did.” Officer Wooldridge continues by explaining why he was ashamed saying, “In about 80% of the cases no drugs were ever found in the vehicles and the owners of the money were never charged with a crime. Being in possession of 900 or 1200 or 2,000 dollars in cash gave our officers "probable cause" to believe the owners were drug dealers and the money came from drug sales. No doubt some were drug dealers. No doubt some were not. I was part of the process which took money from law-abiding citizens” (Wooldridge, 2002). Not only does this raise a question of cost and benefit from these laws, one of the biggest problems might come in the form of budget issues, regarding certain agencies, were these asset forfeiture laws to be reformed. Some stations are dependent upon this ‘racket,’ they become addicted to or dependent on the money they receive from these laws, leading them to continue a cycle that perpetuates abuse and high arrest rates. And as law enforcement organizations grow, it creates a situation where maintaining the current strategies for raising money are necessary to support future growth. Now we will discuss what threat medical marijuana poses to law enforcement’s current funding strategies. For this reason it is important to remember why law enforcement officials continue to rally against pro-marijuana legislation.

 Because the Drug Enforcement Administration and other local departments are dependent upon a steady source of income from asset forfeiture, and Federal grants to lull their budget concerns. Keeping marijuana illegal aids them in high arrest rates, allowing greater opportunity to take advantage of both types of revenue sources. So why is medical marijuana illegal? Did the Obama Administration not clarify the policy debate on the issue by ending raids on medical marijuana dispensaries? And why has the Drug Enforcement Administration been pressuring the Food and Drug Administration from approving medical marijuana as a legitimate option for doctors?

 All of these questions seem to be relevant to the TIME magazine article *How Marijuana Got Mainstreamed* by author Andrew Ferguson. The article talks not only about marijuana going mainstream but also about the rapid expansion of medical marijuana dispensaries in Colorado and California, the slow transformation of medical marijuana’s archetypal pot-smoker, and how these trends are leading to the increasing acceptance of marijuana in society. Author Andrew Ferguson talks in particular about changing titles, and descriptive language used to describe cannabis. Verbiage used by the counter-culture like “getting high” and “stoned” is no longer used within the medical marijuana community. The author writes on this saying, “Medicate? The medical-marijuana industry relies heavily on such genteel euphemism. To medicate is to smoke pot, and no one in the industry calls pot, pot anymore; it’s medicine now. Dealers are called caregivers, and the people who buy their dope or medicine, are patients…The euphemisms are an important element in the larger movement to bring marijuana use out from the shadows” (Ferguson, 2010). This change in verbiage uses medical language, and socially accepted terms often used to describe other prescription drugs. This strategy attempts to change the context in which we view marijuana – no longer as a narcotic, but a prescribed medicine. The mentality promotes marijuana as a socially acceptable drug.

This strategy to reinvent pots image according to the article, can be attributed to Hungarian-American business financer “George Soros, patron of countless liberal organizations, began funding pro-legalization groups in the early 1990s, with instructions that they redirect their energies toward "winnable" issues like medical marijuana. It was a savvy tactic. Even when polls showed strong resistance to making pot legal, large majorities of Americans supported making it available to patients for pain relief. “If we get medical access, we're going to get legalization eventually,” activist Richard Cowan said in 1993. ‘The cat will be out of the bag.” (Ferguson, 2010) This is a popular idea within the medical marijuana community. That once medical marijuana is legalized, full blow legalization is soon to follow. This analysis is based off social science experiments like Colorado and California where marijuana has gone from being a prohibited substance to one that is, in many places, widely available to those who claim an ache or pain. And apparently this is a frightening idea to the FDA and DEA. There are countless cases of scientists going through a rigorous application process to further private research on marijuana, only to be denied DEA and FDA approval (ACLU.org, 2007) The biggest problem to researchers is that the federal government owns a monopoly on medical marijuana research, and the only place they currently allow federally funded marijuana research is in Mississippi at the National Institute on Drug Abuse (NIDA). And from the studies done, they have found that “smoked marijuana has no currently accepted or proven medical use” (Harris, 2006). But this is certainly not true based on international studies of the plant in countries like Germany, Holland, and Spain (Taron, 2009).

The issue of medical marijuana seems to be a case where the Food and Drug Administration is bowing to political pressure by the Drug Enforcement Administration. The DEA does not want research to be done on medical marijuana, fearing that the facts will show contradictory information than traditional anti-marijuana rhetoric, that this research will reveal real medical uses, and start initiatives toward FDA approval of medical cannabis. Ultimately this might lead to dangerous legalization initiatives in states like California, or Colorado. Initiatives like Proposition 19 in California which failed with 46.5% of the vote (sos.ca.gov, 2011) would have allowed the legalization, regulation, and taxation, of marijuana for individuals over 21 years of age. Law enforcement is concerned that once one state legalizes, the others are soon to follow. Thoughts like these are one reason I believe Law Enforcement Agencies are so concerned about marijuana becoming legal though a slow push towards medical marijuana, and the relaxation of regulations. Not a giant leap from current policy.

Trying to press for legalization of marijuana is too early in the policy debate. Looking at data from 1988 compared to 2010 we can see that marijuana advocates still have a long battle ahead of them, and although the numbers have shifted significantly, they still have not reached majority opinion yet. A New York Times Poll done in 1988 first asked the question, “Do you think the use of marijuana should be made legal or not?” the poll results indicated that only 16 percent of respondents replied yes, marijuana should be legal. This is in shocking contrast to the polling results we see from modern day pollsters. Public Policy Institute of California conducted a study asking Americans the same question again, but thirty years later in December of 2010, this time 49 percent of respondents believed marijuana should be legalized. And although a majority of Americans do not yet prefer legalization of marijuana according to Gallup pollster Jennifer Robison, there seems to be a growing trend toward legalization than should continue in the future (Robison, 2002).

An article by The Huffington Post titled, *Marijuana Legalization: Not If But When* by, author and Executive Director of Drug Policy Alliance Ethan Nadelmann, suggest that momentum is growing within pro-legalization states and that marijuana will eventually be legalized. However the most interesting part of this article was how politicians have been reacting to this issue and the growing population of young voters. “There's now solid and increasing evidence that marijuana legalization is an issue that young people care about a lot -- and that putting it on the ballot increases the chances that they'll actually vote. Both major parties have no choice but to pay attention, especially when the political allegiances of young voters are very much up for grabs” (Nadelmann, 2010). These young voters are particularly important not only because ages 18-29 have shown a surge in voter turnout within the last two election cycles, but also is the only age group to show an increase in turnout rate (2.1%). While turnout rate for all other age brackets have declined (McDonald, 2010). This trend is important to both liberals and conservatives because studies have shown that that the younger demographic tends to lean Libertarian or Democrat (Keeter, 2008); according to a 2009 Gallup poll, there has been a decline in GOP/Republican party affiliation within nearly every demographic (Jones, 2009). It is on this basis that Republican Party leaders might want to rethink their strategy regarding the marijuana issue considering medical marijuana is overwhelmingly preferred by the public, and could be a strategy to attract younger voters in a declining GOP.

California Democratic Party Chairman, John Burton said it best, in an interview with Ethan Nadelmann. When asked the question, “what would bring out young, first-time Barack Obama voters again, Burton responded with one word: ‘Pot” (Nadelmann, 2010). This response holds significant implications for future politics, and talking points. Where traditionally advocating marijuana in the past has meant political suicide; some politicians have begun to change this trend.

Republican governor Gary Johnson of New Mexico for example has been one of the most outspoken critics of the war on drugs, and advocate of marijuana legalization not because of medical benefits but because of the negative effect it has on the public, justice system, and national drug policy. “U.S. officials need to welcome the debate on marijuana regulation. It's probably the only practical way to weaken the drug cartels -- something both the U.S. and Mexico would benefit from immeasurably” (Johnson, 2010). The most interesting part of his hold agenda against government intervention and for marijuana, reflects his conservative ideology. This raises eye brows on both sides of the political spectrum because the issue of marijuana has traditionally been a liberal/libertarian one. But he advocates this position as a republican conservative. This may prove to some, that support for marijuana is not merely a one sided issue, nor is it political suicide. “Both Democrats and Republicans will need to re-think this issue when Gary Johnson, the former governor of New Mexico who has championed marijuana legalization and "harm reduction" drug policies for other drugs, runs in the Republican presidential primaries next year” (Nadelmann, 2010) Johnson represents a rare opportunity for the GOP to appeal to younger voters, something Republican Representative Ron Paul has been trying to do for years now.

 On the other hand, some politicians try to ignore the issue of marijuana altogether. For instance Meg Whitman, the 2010 Republican candidate for California governor, “did not actively campaign against Prop 19, most likely because she did not want to alienate young voters who don't identify as Democrats but who do feel strongly about legalizing marijuana” (Nadelmann, 2010). Though Meg Whitman outright opposed Proposition 19, she chose to deliberately overlook the issue because she did not want to lose younger voters. Although she lost the race in California, this type of political maneuvering has begun to change the way politicians view the issue, how they talk about the drug, and what stance they take on medical marijuana and legalization.

While full-blown legalization is a long way off, decriminalization of the drug seems to be a much more popular move for many politicians. For instance California’s Governor Arnold Schwarzenegger just a month before the ballot initiative, Proposition 19 came up for vote, the Governor signed a piece of legislature that decriminalized possession of marijuana to a mere traffic ticket. The fine has been set at $100 for possession of up to one once (28 grams) of marijuana and there will be no arrest record (Smith, 2010). Essentially Schwarzenegger was sending a message undercutting any kind of urgency towards legalization. This same type of decriminalization process has been policy for a number of years in places like Colorado, Massachusetts, and Oregon (norml.org). Politicians seem to prefer this type of policy because it does not remove the criminal aspect of marijuana but reduces penalties for possession, in addition to saving the state money on incarceration. These types of stances on marijuana have become popular within the political arena, and will be important to politicians who are trying to appeal to the younger demographic. It is because of this growing support, among Americans and young voters that may change the policy debate over marijuana for upcoming elections, and the 2012 presidential primaries.

These politicians demonstrate how public opinions trends can sometimes shape political events, and change the course of political legislature. And indeed, states seem to do a better job of responding to the public because they have more direct access to public opinion. But policy change can sometimes be difficult even when there is overwhelming public support toward the issue. Even with cases of public referendum, and direct democracy voting, pushing too hard against the federal government can be dangerous. According to the United States Attorney General Eric Holder, “The Department of Justice strongly opposes Proposition 19. If passed, this legislation will greatly complicate federal drug enforcement efforts to the detriment of our citizens…We will vigorously enforce the CSA (Controlled Substances Act) against those individuals and organizations that possess, manufacture or distribute marijuana for recreational use, even if such activities are permitted under state law.”(Hoeffel, 2010) It is no surprise that the Drug Enforcement Administration and Justice Department are all in favor of enforcing the status quote. And in all reality, the Federal government would most likely sue the State of California (similar to the case regarding Arizona immigration laws) and declare the law unconstitutional under the Supremacy Clause, suggesting that Proposition 19 violates the Controlled Substances Act. But if a state passes a legalization initiative through direct democracy voting, should the state be require to follow federal law, or allow public preference of citizens to dictate the law.

The people, not politics dictates public policy, for this reason it is important to remember how we view our politicians, as delegates or trustees. This distinction tells us the basis by which we measure how effective our democratic institutions are working, do we believe public opinion should impact policy making to a great extent, or do we believe our representatives know best. By looking at public opinion data and comparing case by case, we can estimate how much of an impact public policy makes base on legislative action of congress. But before we can rely on this data (scientific aspect), we must make sure the data is reliable, the issue is salient, and public preference is not threatened by the power of interest organizations, and political elites. Using these criteria we can present a case where representatives chose to vote against reliable polling data and interest organization.

Now let us asses the validity of our argument, based on the over whelming number of polls on marijuana and the stability of medical marijuana as an issue, leads us to believe it is both salient and reliable. However there are a number of issues which conflict in regards to political interests. Medical marijuana seems to be threatened by the Federal government’s utter refusal to allow states to control their own drug policies, and FDA approval of marijuana research. These organizations pose a threat to public preference, and do so because they directly benefit from marijuana as an illegal drug. But this does not mean medical marijuana does not have political support, There are countless organizations like Marijuana Policy Project, Drug Policy Alliance, National Organization to Reform Marijuana Laws (NORML), Law Enforcement Against Prohibition (LEAP), American Civil Liberty Union (ACLU), Americans for Safe Access (ASA), National Academy of Sciences’, American Medical Association, and American Academy of Family Physicians. And this is just to name a few! Even FOX news noted how sophisticated medical marijuana lobbying has become (Vlahos, 2005). Support for medical marijuana, and marijuana in general has created pro-legalization trends within polling data across the country.

Ultimately this has become a zero sum game where Federal authority comes at the cost of state power, Federal funding at the cost of individual liberty, and political interest at the cost of public preference. Although these battles are a zero sum game, the only way to change such an issue is through small political battles. Medical marijuana advocates must continue to fight for public preference through legislation proposals, political interest groups, pro-marijuana lobbyists, and political funding. Neither American public opinion on marijuana nor marijuana policy was not shaped by one critical event; rather, it has been an accumulation of slow changes in social norms and policy. As new controversies enter the public sphere, like medical marijuana, States rights versus Federal law, Mexican drug cartels, and the war against drugs, these sub-issues become the battle field, as political interest fight this zero sum game. But without the initial research, and development of public opinion polls which helps us and politicians determine important issues, we would never be able to gauge the public’s impact on policy making nor would could we measure how well our democratic institutions are working.

Therefore it is critical to realize the importance of all three criteria – available data, importance, and political support. We can collect all of the data in the world but if the issue is not salient or important, no one will care to fight for an issue of insignificance. If the issue is salient, and politicians know what the public prefers but no one is there to fight and pledge support, all of the research and data collection will fall on deaf ears. Only when we fulfill all three criteria can we present a credible argument against current policy, and conclude that our democratic institutions are not functioning as well as we had previously thought. Under this assumption we conclude that Medical marijuana very well might be one of these issues. And as we can see, within the State level – this argument is legitimate. However because there is such conflict between political interests, and organizations regarding our nation’s current drug policy, the only conclusion that can be made is an inconclusive one. Although medical marijuana is a salient issue which shows clear public preference toward legalization of medical marijuana, the significant political battle between Law Enforcement and pro-marijuana organizations may explain why such a policy of medical marijuana has not already been supported by the Federal government.

The information given by specialists, and my own historic analysis of public opinion’s influence on public policy changes and vice versa leads me to believe that as the number of Americans who favor marijuana continues to grow, the more reluctant the Federal government will become on the issue of marijuana. Burstein’s conclusion of public opinion suggests the only reason policy has not changed already has been due to lack of effective democratic institutions. But not all hope is lost; ultimately as the newer generation grows up, views on marijuana will continue to shift towards liberalization and legalization of marijuana. It is not a matter of *if* but *when* the Federal government will have to reexamine its own policy on marijuana. Without public support, a war on drugs will be impossible to rationalize in the future. Abraham Lincoln said it best, speaking of public opinion saying, “No policy that does not rest upon some, philosophical public opinion, can be permanently maintained.”

As we can see from the analysis of this paper, using the case study of marijuana, I argue that our democratic processes are not functioning as well as we had previously thought, and Paul Burstein’s concerns about the impact of Public opinion on Public policy are legitimate. However, more research needs to be done on this subject using a variety of different case studies for us to fully conclude that American democratic institutions only listen to public opinion half of the time, and no more than three quarters of the time its impact is gauged. I can only hope that this estimation will frighten some, and inspire others to question my methods and continue to examine the relationship between public opinion and its impact on public policy making.

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