Published in final edited form as:

Int J Drug Policy. 2012 May ; 23(3): 210–219. doi:10.1016/j.drugpo.2011.08.006.

Off the street and into “the cut”: Deterrence and displacement in NYC's quality of life marijuana policing

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Abstract

This paper examines the accounts of NYC marijuana smokers about the information and values underlying decisions about where to smoke. We do so to assess the deterrent value of NYC's “quality of life” policing of marijuana in public view. Participants indicated a general awareness of escalated marijuana policing and its attendant risks and almost universally spoke of avoiding public use in high-traffic locations and in the city's cultural and commercial centres. Beyond that, however, the deterrent value of aggressive marijuana policing appears limited. Individuals without access to private space reported outdoor marijuana use as a normalized peer group activity that has increasingly been displaced to marginal and interstitial public spaces that were collectively referred to by participants as “the cut.”

Keywords

Marijuana; Quality of life; Criminal deterrence; Drug market displacement; Broken windows

Introduction

Perhaps nowhere more strikingly than in New York City (NYC) has the array of law enforcement strategies referred to as zero-tolerance, tough-on-crime, broken windows, or quality-of-life been heralded as catalysts for dramatic city-wide crime reduction. Former mayor, Giuliani, and police commissioner, Bratton, have become internationally recognized figures in law enforcement policy and influential proponents of a policing strategy concerned with fixing the symbolic “broken windows” through which more serious criminality can enter a community. Despite the wide range of academic, political, and news media commentary that has followed out of NYC's adoption of quality of life (henceforth, QOL) policing strategies, the debate surrounding it has remained largely ideological.

Accordingly, this article contributes to a body of empirical evaluations of QOL policing grounded in classic criminological literatures on displacement and deterrence. We examine the context of public marijuana use in NYC, an offence for which roughly 50,000 New Yorkers were arrested in 2010—leading some to refer to NYC as the “marijuana arrest capital of the world” (Nadelmann, 2010). In providing a qualitative evaluation of QOL marijuana policing in NYC, we explore marijuana users' perceptions of QOL marijuana policing and their personal strategies for avoiding law enforcement. Ethnographic interview transcripts were coded and analysed to reveal the prominent sociological and social psychological themes characterizing marijuana users' micro-level, sociocultural interactions

with NYC's macro-level policing policy shift. More specifically, this article examines the following research questions:

1. To what extent are marijuana users in NYC aware of the policies and penalties associated with smoking in public places?
2. To what extent does concern with law enforcement inform the decision making process about where, when, and whether to use marijuana? What other user concerns might complicate this process?
3. To what extent do users desist from use when no private indoor spaces are available, and to what extent is use displaced to other locations?
4. To what extent do the stories, attitudes, and motivations communicated by a diverse sample of marijuana users suggest either accommodation or resistance to current QOL policy? What policy implications can be drawn from these findings?

Background I: NYC's broken windows and marijuana in public view

As a city experiencing dramatic real estate market growth in the past twenty years and some of the most stringent attempts by law enforcement to reclaim public space (NYPD, 1994), NYC has emerged as a flashpoint for debates over the benefits and inequities of a “tough on crime” (Mauer, 1999), “zero-tolerance” (Greene, 1999), “order maintenance” (Rosenfeld, Fornango, & Rengifo, 2007), or “quality of life” (Katz, Webb, & Schaefer, 2001) approach to policing. Proponents of QOL policies (e.g., Bratton & Knobler, 1998; Giuliani & Kurson, 2002) have often attributed the dramatic crime drops witnessed in NYC after the new policy implementation to the operation of Wilson, Kelling, and Coles’ “broken windows” hypothesis (Kelling & Coles, 1996; Wilson & Kelling, 1982). Now the subject of considerable academic and popular discussion and criticism (e.g., Harcourt, 2001; Herbert, 2001; Taylor, 2001), the broken windows approach to policing describes an effect by which “incivilities” of various types serve to create fear amongst law abiding citizens and promote a general atmosphere of lawlessness in which more serious crime can flourish. Fixing broken windows, as it were, thus comprises a policing emphasis on “taking care of the small things,” to quote then Chief of Police Timoney explaining QOL's expected “ripple effect” at a 1994 kick-off press-conference in Greenwich Village (cited in Onishi, 1994, p. 33).

The case of marijuana in public view (henceforth, MPV) has been one of the most controversial foci of QOL in NYC. New policies made lowest-level misdemeanours, possession of less than 25 g of marijuana “burning or open to public view” (New York Penal Code, 2011, article 221.10) arrest-worthy, subjecting accused offenders to extended transport and processing time in local precincts followed by detention at NYPD Central Booking, pending arraignment. These details were never publicized, however, and marijuana was not mentioned in the city's blueprint for QOL policing, Police Strategy No. 5: Reclaiming the Public Spaces of New York (NYPD, 1994). Not until March 5, 1996 did officials speak to the new consequences for QOL offences, including marijuana smoking, shoplifting, fare-beating, and graffiti. The *New York Times* journalist covering the story (Krauss, 1996, p. 6) reported that QOL arrests would be targeting what police officials called “chronic problem areas,” but cited only Times Square and Washington Square Park as examples. Arrests would be mandatory for accused offenders with outstanding warrants, without proper identification, and on parole. Those caught in a chronic problem area might expect the same, although Bratton had called on officers to “use common sense” when deciding whether to issue a summons or make an arrest, the *Times* reported, noting the New York Civil Liberties Union's quick criticism of the unconstitutional nature of “unfettered discretion” by law enforcement officers (Krauss, 1996).

QOL policing as implemented in NYC has been controversial on numerous other counts as well. Harcourt and Ludwig (2007) have presented analyses of changes in both misdemeanour and violent crime rates between 1989 and 1998, finding that increases in misdemeanour arrests were accompanied by increases in violent crime, likely due to the concentration of police resources on low-level offences rather than on more serious felony-level crime (see also: Harcourt, 2001). Other analyses of crime rates in NYC argue that the significant decrease in violent crime during the early years of QOL policing in NYC were attributable to rapidly waning crack cocaine use and distribution (Blumstein & Wallman, 2006; Eck & Maguire, 2006; Johnson, Golub, & Dunlap, 2006; Rosenfeld, Fornango, & Baumer, 2005). Amnesty International (1996) was quick to condemn the NYPD, issuing a 72-page report indicating that the first two years of QOL policing were characterised by rising rates of police brutality. Levine and Small (2008) have written about ethnic disparities in MPV arrest rates and about the arrest tactic known informally as the dropsy, by which law enforcement agents claim to have seen illegal drugs dropped on the ground or changing hands so as to justify a search (2008, p. 38; Nadelmann, 2010).

In a systematic analysis, Golub, Johnson and Dunlap (2006) looked closely at the spatial organization of QOL policing through the 1990s and found clear evidence of a shift away from the lower half of Manhattan, including Times Square and Washington Square, to high poverty, minority communities in the city's outer boroughs. In 2000, African-American, Latino, and whites represented 23%, 25%, and 38% of the resident population and 52%, 32%, and 15% of MPV arrests, both respectively (Golub, Johnson, & Dunlap, 2007). Although the vast majority of MPV arrests are dismissed, African-American MPV arrestees are 2.6 times more likely and Latinos 1.8 times more likely than white MPV arrestees to be detained for 24 h following the arrest (Golub et al., 2007). These findings seem to confirm the NY Legal Aid Society's criticisms of the "doing your gaol time up front" punitive logic at the heart of QOL policing (Flynn, 1998, p. B1). If detention of MPV and other QOL arrestees has been used selectively by law enforcement agents, it bears asking to what end. Indications that the NYPD and Mayor Giuliani perceived in QOL a profound deterrent mechanism for reducing not just crime rates but criminality itself surfaced shortly after the city's implementation of a QOL policing agenda.

In a 1996 speech, then Police Commissioner Bratton spoke of the importance of getting deeper towards the root of criminal behaviour. Using the analogy that policing persistent crime is analogous to preventing a medical epidemic, he explained:

Think of malaria; for years and years the response to malaria was to swat at all those mosquitoes. But we are never going to kill all those mosquitoes. What was generating all of those mosquitoes? Swamps. Not until people went in and drained the swamps did they start dealing effectively with the problem (Bratton, 1996).

Bratton's stated plan to attack crime at its ostensible root, in those geographical locations known for their disproportionately high crime rates, was just one of many comments made by NYC public officials indicating their belief that QOL policing was a powerful crime control initiative capable of actually deterring crime. In order to assess these claims, this paper examines QOL's deterrent efficacy within the specific context of MPV arrests.

Background II: deterrence and displacement

Following in the lineage of Bentham and Beccaria—the two chief theorists of a rational criminal justice system during the 18th century—many researchers have looked at the deterrent value of punitive sanctions. During the 1970s, in particular, criminologists sought to formalize the principal tenets of what has come to be known as the "deterrence doctrine"

so as to advance the scientific assessment of criminal justice policy. The rational principles underlying deterrence maintain the following:

- For social agents to be able to act rationally, their calculations must be informed by transparent and well publicized policies that are regularly and reliably upheld by the courts.
- Punitive sanctions deter crime when the perceived threat of punishment outweighs the perceived rewards associated with an illegal act.
- Specific punishments must be carefully tailored to the criminal rewards they are designed to deter; punishments more severe than required are inhumane.

Despite these clearly logical principles, findings from studies of deterrent effects have been largely contradictory, due in part to the difficulty of enumerating and measuring the multiple factors constituting extant models. A thorough review of the literature on criminal deterrence (Nagin, 1998) traces three distinct lineages in deterrence research and the difficult analytic task of estimating the contribution of any particular policy to that overall effect (i.e., its marginal deterrent effect). Interrupted time-series (e.g., Sherman, 1990), and ecological models (e.g., Levitt, 1996), Nagin reports, can effectively examine the changing crime rates in relation to police crackdowns and historical trends but often neglect important contextual variables. Perceptual studies (e.g., Paternoster & Simpson, 1996) focus on the individual as opposed to the place (i.e., the open air drug market or a city or neighbourhood). One recent study demonstrated the importance of tracking subjective perceptions about the certainty and severity of punishment as they change over time, or are “updated” in a learning process (Matsueda, Kreager, & Huizinga, 2006). An important qualitative study of young inner-city men's perceptions of stop-and-frisk police procedures in St. Louis (Gau & Brunson, 2010) demonstrated the extent to which a disregard for law enforcement legitimacy may also play a critical role in this process. Another study, looking specifically at low-SES urban teens in the American northeast, found no significant correlation between perceived certainty of punishment and marijuana use but, instead, a strong role for internalized norms, and peer and familial punishment in deterring use (Foglia, 1997).

Issues related to the perception of the speed, severity, and likelihood of punishment for marijuana use and/or possession remain current topics, as does the nature of marijuana-related offences more generally. The vast majority of studies examining the relationship between perceived certainty of punishment and self-reported criminality have found significant negative associations (see: Paternoster, 1987 for a review). Perceiving a greater likelihood of punishment, in other words, has been consistently correlated with lower self-report of criminal behaviour. After several decades of critique and methodological innovation, however, these findings appear more unequivocal than they once did, and that has held, in particular, for studies of marijuana prohibitions and punishments. Whilst some studies have shown reasonable inverse relationships between perceived certainty of punishment and marijuana use (Meier, Burkett, & Hickman, 1984), others show far weaker inverse correlations (Tittle, 1977), or even weak positive associations (Meier & Johnson, 1977), suggesting that, in certain contexts at least, perceiving a higher likelihood of punishment may actually motivate marijuana use. One interpretation of the mechanisms underlying such a contrary finding has been that marijuana use differs from other forms of criminality in that it is an expressive rather than an instrumental offence. Because marijuana use in the US has been associated with immigrant labourers and the counter-cultural movement of the late-1960s (Courtwright, 2001), its value as a medium for the expression of political and social opposition may negate the deterrent effect of prohibitive and punitive legal sanctions. Certain forms of crime, as Katz (1988) has argued, are often motivated less by traditional perceived returns (i.e. wealth) than they are by excitement, thrills, and the

pleasure of “getting over.” A large body of work on working class subcultures has also made it clear that crimes may be undertaken in the interests of status (Cloward & Ohlin, 1960), respect (Bourgois, 2003), or being cool (Pinderhughes, 1997).

Even this seemingly logical premise about the limited deterrent effect of policies targeting expressive crime has been contested, however, by those sympathetic to Andenæs (1974) classic distinction between sanction threats that have the backing of moral consensus and those upheld by law alone. Following Andenæs reasoning, the lack of public consensus on the moral status of marijuana use leaves deterrence the sole responsibility of policy and, thus, should result in greater marginal deterrence for such related sanction threats. In light of recent studies arguing that marijuana use in the most developed Western nations has undergone a process of normalization whereby it has become far more prevalent and far less oppositional (Hammersley, Marsland, Reid, & Britain, 2003; Measham, Aldridge, & Parker, 2001; Measham, Newcombe, & Parker, 1994; Parker, Aldridge, Measham, & Haynes, 1999), these remain important debates for policymakers. If smoking marijuana has become more socially accepted than it once was, its diminished status as both an expressive crime and a moral outrage might result in a greater deterrent effect for recent QOL marijuana sanctions. This, however, remains an open question.

Assessing the marginal effects of QOL MPV policing on the use of marijuana in NYC would clearly be a complex undertaking, for more reasons than these. Perhaps chief amongst them is the well-observed tendency for anti-drug crackdowns (Kleiman, 1988) to effectively deter ongoing drug use and distribution *within a crackdown area* whilst potentially displacing it to nearby locations (e.g., Caulkins, 1992). Forms of displacement documented in empirical literature vary considerably, as do the forms of criminal behaviour being studied. Although theft and robbery deterrence policies are the most widely studied, less common criminological foci, including check forgery (Knutsson & Kuhlhorn, 1992), juvenile delinquency (Hunt & Weiner, 1977; McDowall, Loftin, & Wiersema, 2000), and obscene phone calls (Clarke, 1992), have also been investigated.

Despite a rich literature, considerable debate still surrounds the topic of criminal displacement. Several studies indicate that prostitution does not, “just move around the corner” following a police crackdown, (Weisburd et al., 2006; Matthews, 1990), and the same has been found for drug markets turned police “hot spots” in New Jersey (Weisburd & Green, 1995). At the same time, research has demonstrated that drug dealers adapt quickly to police interdiction efforts (Adler, 1993; Johnson & Natarajan, 1995), and some have argued that drug sales may be less easily deterred (or more readily displaced) than other forms of criminality (Eck, 1993).

Studies examining drug market displacement have also begun to examine the consequences of crackdowns for individual drug users and the communities to which a displaced market may move after a police crackdown (Kerr, Small, & Wood, 2005). A number of studies have documented how intravenous drug users under increased pressure from police will rush to inject, before the drugs can be confiscated (Aitken, Moore, Higgs, Kelsall, & Kerger, 2002), resulting in less time spent preparing drug solutions, testing drug potency, sterilizing needles, and dressing wounds, and a greater likelihood of sharing equipment (Broadhead, Kerr, Grund, & Altice, 2002; Maher & Dixon, 2001). Few of these concerns apply directly to marijuana users, but, as with IDU's who have been shown to increase their risk of death in the event of an overdose by injecting in secluded places during police crackdowns, marijuana users aware of QOL marijuana policing may incur risks related to the use of abandoned buildings, construction sites, and back alleys for surreptitious marijuana use. In short, what might appear to be the strong deterrent effects of MPV policing, may be realized only within particular local areas, not in aggregate as a city-wide transformation.

Background III: layin' in the cut

Studies of drug related jargon or argot (Johnson, Bardhi, Sifaneck, & Dunlap, 2006; Lerman, 1967; Mieczkowski, 1986) have provided an important window onto the academic understanding of youth and working class subcultures. Particularly within the contexts of NYC's public housing, intermediary spaces share the generic designation, "the cut." Though the term and references to smoking, hanging, or laying *in the cut* were common in our participants' accounts, we have found little published work addressing the phrase's contemporary place within the African-American vernacular. The exception is Susanne Moore's 1995, *In the Cut*, a novel about an NYC English teacher and philologist who finds herself uneasily positioned between NYPD officers and a young, black student. Throughout the story, Moore's protagonist collects and glosses the idiomatic expressions of New York streets, as in the following illumination of "the cut," drawn from her conversations with a police officer:

A street word. A word used by gamblers for when you be peepin' he said. In the cut. From vagina. A place to hide. To hedge your bet. But someplace safe, someplace free from harm (Moore, 1995, pp. 178–179).

The high-traffic website, urbandictionary.com, provides a unique forum for popular definition of subcultural argot at which visitors can review definitions. The most highly reviewed entry on "the cut" there is succinct, defining the term simply as "out of sight," and offering the following example of current usage: "I was over in the cut so they could not find me." The third most popular definition makes explicit references to back roads and forested areas ideally suited to "smoking pot."¹

For this study, investigating terms from the argot of urban marijuana smokers—in particular, those preferring their marijuana rolled in emptied cigar shells to create "blunts" (e.g., Golub, Johnson, Dunlap, & Sifaneck, 2004)—was critical to understanding the spatial displacement that has resulted from NYPD's broad mandate for policing marijuana use and the attempts of our participants to locate alleys, stairwells, rooftops, and concealed park benches that, whilst public by legal definition, were not necessarily perceived to be *in the public view* by those frequenting them for the purposes of smoking marijuana.

Methods

Respondents for this work were recruited from a number of low-income neighbourhoods and police precincts in NYC, as part of a five-year longitudinal ethnography investigating the use patterns, subcultural affiliations, and markets surrounding marijuana use in NYC. Data for this paper were collected between 2003 and 2008, during some of the years of peak arrest rates for marijuana possession in NYC. In light of continued racial disparities in marijuana arrest rates in NYC and broad questions about the deterrent value of QOL policing, we returned to these data to analyse a group of five sets of questions posed to the ethnographic participants. A subsample of 90 participants between the ages of 15 and 45 who participated in both digitally voice-recorded interviews and more informal ethnographic observation was selected for this analysis. Marijuana using participants were initially recruited from a range of NYC neighbourhoods to constitute a diverse, multi-ethnic sample of varied age, gender, and socio-economic status. Regular, daily marijuana smokers and occasional or sporadic (e.g., once a month) users were all targeted for recruitment, to represent a broad range of marijuana consumption methods and styles. Recruitment sites included different music venues (e.g., hip-hop, punk nightclubs) and athletic activities (e.g.,

¹Both at: <http://www.urbandictionary.com/define.php?term=the+cut>.

skateboarding parks and basketball courts), resulting in an array of subcultural involvements amongst study participants.

Interview questions of focal interest concerned both arrest experiences and users' reasons for avoiding or using particular locations for smoking marijuana. Preferred smoking locations and locations of last resort were tabulated, as were all informal references to regularly frequented, covert outdoor locations. Awareness of current punitive measures and policies were not an explicit topic in ethnographic interviews but were inferred from responses to standardized interview queries about why users chose to smoke marijuana when and where they did. Answers to those interview items were coded within the five emergent categories of concern: Police discovery, family, community, safety (not arrest related), and children. Personal marijuana arrest stories were examined for geographical and procedural detail and for evidence of arrestees' own perceptions of the deterrent effect of the experience.

The interview segments included are drawn from verbatim transcripts and were selected for their ability to represent broader analytic themes and trends. Interviewees chose their own pseudonyms specifically for the project.

Findings

The following sections present evidence in parallel with the overarching research questions posed in the introduction. We move from questions about users' awareness of QOL policies to questions about marijuana's potential role as a mediator of social relationships, a status marker, an "expressive" crime, and a source of legal risk.

User perceptions of risk and consequence

When asked where they smoked marijuana and why they chose the settings they did, the vast majority of our participants (84 out of 90) clearly cited the police as a principal factor in their decision making. Many made indirect reference to the change in policing policy or to the severity of the risk; others referred explicitly to QOL policing strategies or the overnight detention at Central Booking that often awaits marijuana smokers arrested for MPV violations. For example, Chewy (31, African-American female) attested, "Nobody wants to go to Central Booking for weed." For many of our participants, the law enforcement risks for marijuana after the implementation of QOL policing were spoken of in matter-of-fact terms. Sarge (26, white female) reported that she would no longer "smoke too much in the street, or in parks any more. . . I'm not really interested in getting arrested for smoking weed." Dakota (27, white female) offered a similar explanation for her preferences: "I avoid smoking marijuana mainly on the street because I'm afraid of getting picked up by undercovers. . . A night in gaol is not necessary." For others, questions about their smoking habits provoked angry commentary. Roy Earl (26, Latino) opined: "Smoking outside is such a hassle, because the consequences are just too high. Preposterous. Ridiculous," and Sunshine (25, African-American female) echoed the sentiment: "If I'm going to gaol, I'm going to gaol for something important, not no blunt."

The awareness of the stakes in smoking marijuana in public amongst participants was further established by responses to another interview question, "What places do you avoid smoking and why?" Washington Square Park, in particular, was singled out by numerous individuals, including Monchi (26, Latina) who explicitly connected the new QOL MPV strategy with the harsh drug penalties enacted under former NY governor Nelson Rockefeller:

I used to live here before in 1995 and it was a walk out your door and light your joint kind of thing. Giuliani. . . revamped the Rockefeller thing at that time too. And

the video cameras. And the crackdown in the parks. And so you could not go to Washington Square [to smoke marijuana] any more.

Others offered a more empirically based appraisal of places to be avoided, suggesting that perceptions of the risks had been updated the hard way, through personal and vicarious experiences of arrest:

Ezy (17, Chinese male): I would say [I avoid smoking] anywhere that we know is hot. Anywhere that we know somebody has been caught before or we've seen detectives just run out and bust people for it. . .you know.

Most commonly, participants referred to the types of places, rather than specific neighbourhood locations in which they would feel at high risk of arrest. Many spoke of the streets and parks as no longer safe places for marijuana use. Others contributed less commonly mentioned locations to the list of hotspots, such as Sincere (21, Latino) who spoke of the danger of rooftops—"if the cops come you have nowhere to run"—and Michael Winterz (22, African-American male) whose list of locations to be avoided included, "schools and other institutions and public buildings, because I know I can get in trouble for it if I'm caught, you know."

Given the general awareness of strict law enforcement policy and the almost universal concern to avoid detection and arrest by police found amongst our participants, it is perhaps surprising that so many marijuana smokers continue to be arrested in NYC for MPV misdemeanours. Although more than 90% of our ethnographic sample expressed concerns about law enforcement when deciding where and when to smoke, and the majority indicated a general awareness that smoking in public in NYC involves potentially extended detention, many spoke of other, competing concerns that challenged their adherence to a "never smoke outdoors" policy.

Competing concerns—social and familial reputation

Even in the scant 7% of participants who did not mention police vis-à-vis their decisions about where and when to smoke there were ample indications that opportunities to smoke marijuana with friends are often constrained by other social pressures and values. One-third of our respondents cited family pressures and relationships as a primary reason for avoiding smoking at home, indoors. In our extensive interviewing we encountered no stories of young participants smoking at home with parent or grandparents. As John Doe (15, African-American male) explains, "Parents get upset if you smoke in the house or stuff, it's like, you know, it's against the law, and get that out of my house." For many of these respondents, the fear of detection by parents or grandparents appeared to trump even that of detection by police, and in several accounts nuanced explanations of the rationale for smoking outside of private apartments are offered, as in the following from 16-year-old Daffy Duck in response to the question, "Why do you smoke blunts where you smoke them?":

Because, like, like, my mother, she has friends who are like always outside. So, like say if I'm standing outside smoking, they're gonna think a bad thing about my mother: "Oh, she doesn't care about her child. She lets her child do whatever she wants," or whatever.

Extending the theme, Carlos, a 15-year-old Dominican-American, explained his preference for avoiding marijuana use at home and "on the block" where people know his mother: "I don't want everybody else to know. I know they know, but I don't want to endanger everybody else." Carlos is several years too young to be legally processed as an adult and, whilst he reported an interest in avoiding police, his strategy of smoking in what he calls a "deserted" place, through which "nobody passes" was motivated by a desire to protect family members including his "little cousins."

A number of other participants reiterated the same theme about the need to smoke away from family members and their acquaintances:

Michael (18, African–American male): I ain't trying to be seen. One, like I always try to uphold my reputation. I want people to think I'm a good kid, and all that. And also I just like to stay indoors. You know, because I'm trying to avoid being seen by other people, or anyone seeing me who knows my father, seeing me. Or family members. And, you know, all the cops too.

Ivan (20, Italian-American male): Obviously [I don't smoke marijuana] around parents, if they don't like it or if they don't know or if they don't approve. You know, you don't want to lose respect of them. Um, that's about it, I would think. I mean, not around little kids, obviously,

John Doe: [I don't smoke around] the people that I don't want seeing me smoke: Adults that my mom might know.

Competing concerns—getting up and getting over

Asked to discuss their reasons for smoking where and how they do, very few of our interviewees responded with clear statement about coolness, social status, “kicks,” or any other recognized obstacle to the deterrent efficacy of punitive sanction. For those amongst our participants born in the 1990s, it appeared that the marijuana blunt, in particular, had clearly become a commonplace of adolescent sociality, warranting little self-reflection or commentary on its “coolness.” For the older participants in our research, however, marijuana smoking stood, in several accounts, as a much more clearly defined marker of cultural and generational status.

38-year-old East Harlem resident, Pepper, clearly articulated the cultural authenticity which some smokers locate in the preparation and public consumption of marijuana. Asked to speak about the differences between blunts and joints and where she would avoid smoking either or both, Pepper responded with a three item list of off-limit locations and situations: In front of police, walking her daughter to school, and in the hospital. When at the hospital for her regular check-ups and AIDS medication monitoring, she explained, blunts were too strong smelling but “you can take a couple of drags on a joint.” Outside of the hospital, however, public use of a marijuana blunt, in particular, served as a positive marker of social and economic status:

[I smoke blunts] everywhere. Because you're not ashamed of them. You're not ashamed of a blunt walking down the street. They can see you. They be like, “that weed smelling good, man.” You know? In a joint, you don't smell that stuff. You smell like burnt paper. . . . Yeah, everybody be smoking blunts outside, you know. And you go outside with a joint, and they gonna be laughing. “Look there, she got a little joint.” Because sometimes you can't afford that dollar for that Dutch [Masters cigar]. And you got to get that sixty-cents for that [packet of] Mambo [cigarette paper].

For 30-year-old Jamaican–American How High, the decision to smoke in public (and to use cigarette rolling paper instead of inexpensive cigar wrappers) represented a kind of forum for inter-generational communication and respect:

Well the old-timers, they mostly sophisticated. They wanna be, you know, out there where they showing the kids respect and smoking it in Bambu [brand cigarette paper].

Beyond these two, more senior accounts, our interviewees made almost no explicit references to the expressive value of marijuana crime. The sole exception came from Ezy, a

17-year-old Chinese American, who spoke at length (and seemingly with great relish) about the cat-and-mouse game he had playing with law enforcement:

I don't want to jinx it but I've always been too nice for that [getting arrested]. They haven't been able to catch me. I mean, I've never spent the night in the booking facility. I've never been written a summons. I've always gotten rid of the evidence by the time the cops came or it was done already.

For Ezy avoiding detection required an attention to police movements and tactics and to learning which locations in his neighbourhood were “hot” and responding accordingly. Boasting of the ingenuity involved in avoidance strategies of this nature, Ezy claimed that he and his friends “actually smoke right by the precinct, because cops, you know, they think, who the hell is going to smoke right by the precinct?” Ezy made repeated references to the police as “pigs,” and, like several other Asian–American participants, represented law enforcement as largely ineffectual in its MPV policing strategies.

Competing concerns—being with friends

Listening to blunt smokers like Joseph, a 17-year-old Latino, explain the situational nature of smoking in public space, it is easy to fall back on racial and subcultural stereotypes of fashionable non-compliance. When pushed to explain why he smoked where he did, Joseph replied dismissively, “[Because] that's where we chillin' at.” Many of our respondents report that smoking marijuana in a group outdoors draws unwanted attention and stated strong preferences for avoiding such instances—only then to recount events in which circumstances make outdoor smoking desirable or unavoidable. Explaining the social-situational nature of decisions about smoking outdoors, Tricky volunteered:

When I was smoking blunts, it was a lot more about being social. And, um, I think that people that you are gonna smoke blunts with, anyway, they probably have a certain kind of mentality. And so, um, . . . you know, depending on the people involved. . . I wouldn't actually be against any kind of setting.

In the course of narrating his four arrests in NYC for smoking “in public view,” How High claimed to avoid all contexts in which he might be arrested yet again. When pushed on the subject, however, he softened his position, confiding: “When I'm outside and I see my peoples, yeah I smoke it in a group.” Thirty-eight-year-old African–American, Queen Moore, was perhaps most succinct on this point: “[I smoke blunts where and when I do] because I be with my friends.” Again and again, it is the prioritization of being with friends—the sociality of smoking marijuana—that emerged as the focal point in our informants' discussions about why, how, and where they choose to smoke marijuana. The quotes below suggest the range and extent of this theme:

Sheeba (32, Somali–American female): Who I'm with [influences where and when I smoke] a lot. You know, when I'm with like particular groups of friends, who all smoke weed, when we all get together, that's one of the things we do. . . in the streets and in apartments. And if we're smoking in the streets, it's because we're somewhere, you know; and, we don't always get together to hang out at somebody's apartment, you know. So, wherever we're getting together to hang out, we'll be like, oh, who's got the joint? Or the blunt.

Rain (34, African–American male): It's a social thing. As opposed to like some people [who] go to bars and socially drink, a lot of my associates socially smoke. So, that will fall into a club or a bar, or a lounge, somebody's house party. If I want to smoke, I'm that person that will politic with security to be able to smoke in a club.

Marley-One (28, white female): You know, it's social. Where people are gathered. [We smoke] where we are feeling comfortable. Where we're feeling like partying.

Interviewer: Why do you smoke marijuana where you smoke it?

Britney (20, white female): Because that's where we happen to be.

Gemi (19, Japanese-American male): Um, I smoke blunts, you know, whenever I'm around with the friends, you know, who I want to smoke blunts with. [It's] situational, you know, whenever you got the weed and whenever you got the cigar, whatever. You know, whenever the time comes around. It can be at any time, really, daytime, night time, in a quiet street, in a quiet park, in a room.

Specific deterrence: experiences of law enforcement

QOL marijuana policing's general deterrent effect is clearly mitigated by the complicating factors discussed above. Its specific deterrent value, however, might be presumed to be much higher, given the severity of punishment for a marijuana arrest—or the severity of the arrest process itself, at the least. Approximately 20% of our participants (sixteen of the eighty-two responding to our questions about criminal justice MPV experience) responded in the affirmative when asked whether they had ever been caught or arrested for smoking marijuana outdoors. Considerably more had near misses to recount or stories of friends and relatives who had been arrested. Several reported MPV arrests or first-hand knowledge of peers' marijuana-related run-ins with authorities expressed a common determination to avoid further arrest. For James, being stopped by law enforcement shortly after moving to NYC from California and threatened with weekend long detention left a strong impression:

Up until that moment, you know, everything about pot was sort of like innocent for me. Like I would walk around with it on the street. I would be more apt to smoke it on the street. But like now, I would never.

For several other former arrestees, however, cavalier narratives and admissions that they continued to smoke in public suggest a far weaker specific deterrent effect. Sunshine offered the following MPV arrest narrative:

Yes [I was arrested]. And that's why I no longer smoke in the street. . . [I was] walking along on a public street. And I was smoking a blunt. And I had a beer in my hand. And I did not see the cop walk past me until he started to call me. A plainclothes [officer] arrested me [at] like three o'clock in the afternoon. . . It was a blunt. It was just. . .down to the. . .last part of it. . . I went to a desk appearance and the judge told the officer to stop bringing bull in his court. [Laughter] They just let me go.

Sunshine's account of the arraignment judge's apparent contempt for 'bull[shit]' MPV charges like hers clearly served to establish her disregard for and lack of compliance with QOL techniques designed to remove incivilities like marijuana smoking from the public view. Despite clear indications in her interviews that she feels smoking marijuana is not worthy of arrest—"If I'm going to gaol I'm going to gaol for something important, not no blunt"—Sunshine confided that the option to smoke indoors often did not exist, and that many of her post-arrest smoking scenarios required "spending most of the time looking out for the police."

Looking closely at the discussions of smoking practises and preferences from those who had been processed for an MPV misdemeanour, Sunshine's experience appears commonplace. Steve (18, Russian–American male) told an outraged story of having been arrested and detained for an entire weekend in Central Booking for smoking marijuana in a park at age 16, despite the absence of evidence that he and his friends were responsible for the

marijuana smell in the air. Later, asked to discuss his personal prohibitions on marijuana smoking locations, he made clear that the decision to respond to QOL policing with increased vigilance (rather than actual desistence of public smoking) was the main deterrent outcome of his arrest.

Steve: [I avoid smoking in] public places. They're easy to get in big trouble.

Interviewer: You do smoke in the street and the park, though? Steve: Yeah.

How High reported four marijuana arrests; Omar counted six. When pressed on the reasons for their repeat offences, both narrated arrest experiences in which their cases were repeatedly dismissed, resulting in no additional fines, incarceration, or community service following their detention in Central Booking.

Bones (16, Latino) offered a similar statement about having “learned a lesson” about smoking in the street:

I would avoid smoking blunts in places like in the middle of the street, just because at one point. . . I was like that and didn't care. I was like, man, cops ain't worried about this. They got bigger things to worry about. . . . I was near my school and I was outside a grocery store, just sitting there with my friend, rolling up. And undercover cops were at the corner. And they were playing Usher, that song. So, we didn't think it was cops at all. And they just hopped out and caught me rolling up. . . . I learned my lesson not to just smoke up anywhere. Like to be careful, because there are cops out there [who] want to crack down on that.

However, at a later point in the interview Bones appeared to contradict this lesson learned:

I smoke blunts where I smoke them at because it's just where I'm at, usually. Like I can be. . . in my building and I'll just go to the staircase, just because I'm there. . . . Like if it's just me and my friend, we might just go to the park and smoke up a blunt.

Into the cut—accommodating QOL policing

Whilst a number of our participants, like Bones just above, sounded cavalier in listing the diverse settings in which they might smoke marijuana, most participants in the study expressed greater reservations about the use of outdoor locations, no matter how “quiet” the street or park may appear. Often, as in the brief interview exchange below, interviewees made strong statements about avoiding outdoor marijuana use but later explained how certain social-spatial scenarios might challenge outright abstinence in public locations:

Interviewer: So, you would never like smoke in a park during the day?

Dizzy D (20, Israeli–American male): No. No.

Interviewer: Okay.

Dizzy D: I mean, unless like no one, unless like definitely no one was around. But I'd have to be pretty sure.

Users without private residences of their own referred often to the value and relative shortage of “free houses” (i.e. private, indoor spaces without parental supervision), and their narratives document the widespread attempts by blunt smokers to locate and secure interstitial locales—what respondents referred to as “the cut,” or as “in-between,” “indoors–outdoors” and “controlled public” spaces. These semi-public, intermediary spaces took the form of stairwells, rooftops, lobbies, alleys, garages, isolated park benches, wooded areas, and tree-covered apartment “stoops.” As Ivan explained, the idea of smoking in the cut is to seek cover from potentially prying eyes:

I mean, you don't want to be like smoking out in the front yard or anything, like trying to attract attention or anything like that. So, yeah, it's more of like a covered area, I guess you could say. You're safe there. You're not gonna get in trouble.

The idea that cover can be taken in public runs throughout many of our interview transcripts. The confidence that one is safe, and won't get in trouble, however, is far rarer, especially for ethnic minority participants in our study.

Polo Sparks (14, Filipino male): Well, outside. Yeah. I mean, there's not a lot of parks around here. But different cuts where we go—so we can just—say there's benches somewhere in a quiet area, we'll smoke there, maybe.

For Iceberg Slim (15, Latino), having multiple cuts was necessary, allowing for greater flexibility:

Interviewer: Why do you smoke in the cut?

Iceberg Slim: I don't want to get caught.

Interviewer: And you know a lot of 'em around here? Like how many spots do you have?

Iceberg Slim: About five.

The criteria for a good “cut” appears to vary considerably in our participants accounts, but the basic sense of being out of the public view is consistent throughout. Dizzy D made the point clear:

If we are smoking outdoors, rarely will we just smoke like walking down the street at night. It'll be. . . in places where like we just wouldn't really be seen by, you know, people walking by, especially police. . . I mean, we'll be in public areas, but not within view of [the] public.

One significant problem with good cuts, some explained, is that they are often too popular amongst marijuana smokers to truly be covert. 17-year-old African–American Latino, Michael, for example, explained the mixed blessing of a popular riverside location for smoking:

I mean, [I smoke in] like decent cuts. Like right here near the river. You know, right here is a nice spot. Everyone smokes there. You got to put like a reserve [sign up] for that shit. [Laughs] Everyone's always there, but it's a nice spot. It's a nice view of the river and all that.

Less aesthetically pleasing and less commonly frequented locations may be an option for some, but those too come with their own disadvantages and potential risks. Carlos (15, Latino), spoke of the deserted location where he commonly smoked, noting its lack of foot traffic. “When they pass,” he explained, “it's in the daytime, because they're scared to pass in the night-time.” Michael elaborated further on the difficulty of locating a “decent cut,” speaking of the dangers of using “crackhead spots” when smoking outdoors. Asked what a crackhead spot was, he replied: “You know, like, fucking where they throw garbage down. In the middle of an alley, and it smells like shit. . . rats all over the place.”

Judging by the accounts collected, a good cut, once identified, may be kept secret by an individual or a peer group and frequented on a regular basis, sometimes leading to a sense of false security. Mikey, a 17-year-old African–American male, explained how the covert park location that he and his friends had used for some time was discovered by undercover law enforcement:

I got arrested. We was just smoking in our little tree house that day. We see these like group of guys or whatever and seem to be all together but they're talking to each other on their cell phones. So we didn't really pay any attention to them, like, you know, like no mind or whatever. So we start to roll up or whatever and then when we light up they just like come like you know, "smell that?". [T]hey took us to central bookings. First they took us to the precinct and then they did warrant checks. And I had a ticket [for subway fare evasion] that I didn't pay so I had to spend the night.

Mikey's reference above to a "tree house" is a figurative one, derived from the recent popularity of "tree" as subcultural argot for marijuana (see: Johnson, Bardhi, et al., 2006). More than a coded reference to a place for marijuana consumption, however, the term is a colourful example of subcultural argot—in seeming testament to the attempts made by marijuana users to temporarily domesticate the margins of public space for the purpose of smoking marijuana with friends.

In another story of a police intervention in an otherwise solitary scenario of marijuana use, 38-year-old African-American, female Diamond, described an event during which she and her boyfriend stepped out of her mother's apartment, where marijuana smoking was not tolerated, and into the hallway to smoke. Before they had time to hide the remains of their blunt, they were stopped by police officers who emerged, running, from the stairwell. A number of participants in our study refer to the stairwells of large (city subsidized) "projects" as private, although those, like Diamond, who have been stopped by police in or near them, know this to be untrue. The Frequently Asked Questions (FAQ) webpage for NYPD Police Administration informs visitors that a "vertical patrol is a process by which a Police Officer systematically and methodically checks each building one at a time, covering roof landings, stairways, and lobbies" (NYPD 2010). Readers are clearly meant to infer that it is "each building" in "public" housing complexes, or projects, that is subject to systematic vertical patrol by NYPD Housing Bureau officers—not the city's privately owned residences.

Although never referred to as an example of "the cut" in our interviews, the automobile was mentioned by a number of our participants with the economic means to possess such a luxury in a city known for its high insurance rates, high parking costs, and comprehensive public transportation. Cars figure centrally in a number of our respondents' accounts of arrest, consonant with recent publications on marijuana smoking practises documenting the importance of the car as a location for preparing (Kelly, 2005) and smoking (Lee & Kirkpatrick, 2005) marijuana. When the apparatus for smoking marijuana is consumed in the process of smoking, as in the case of joints and blunts, the moving car permits easier disposal of the incriminating remains. A 19-year-old Asian American male participant in our study, Arlos, recounts a story of being stopped whilst driving alone after smoking. After a search, he explained, "The police said they smelled it., But [since] I didn't have none on me. . . they didn't want to take me in. They said it would be a waste of time."

Cars, it should be mentioned, are not without their own unique risks for marijuana smokers. Twenty-year-old Latino, David, alluded to the balance of privacy and risk involved when smoking in cars:

We smoke inside of cars, but I hate driving stoned. And that's like, "Oh, no, we weren't sitting in here and smoking in the car, officer." You know?

The dual risks of driving impaired and being discovered in a vehicle that smells of marijuana make it yet another example of what several interviewees referred to as a kind of "last resort" location for marijuana use, and it is this sense of not just the covert nature of the cut

but its tenuousness and imperfection that most fully captures the generalized sense amongst our participants that ideal scenarios for risk-free marijuana use are near non-existent:

Interviewer: So you won't smoke in parks or anything like that? Acronym (15, white male): I mean that's like a last resort. It's not a favourable thing.

Salt Lick (20, white female): Outdoors, usually that's only if there's nowhere else you can go.

A-Zone: (16, white male) [I smoke blunts outside] because maybe that. . . kid who has the shed is, um, his parents are having people over. Or they don't want him to smoke that day. . . You know, for different reasons. . . we would smoke outside. . . We don't have anywhere else.

Interviewer: Just like a last resort, almost?

A-Zone: Um, yeah. But that last resort is common.

Discussion

In our findings, NYC marijuana smokers were, by the early years of the new millennium at least, largely cognizant of the shift that had occurred in the NYPD's policing of public marijuana use and possession. As Gemi put it succinctly, “the police are overseeing your ass.” The vast majority of marijuana users we spoke with stated concerns about being caught by police and expressed strong reservations about smoking openly in the street and in city parks. Judging by this almost universal regard amongst our participants for desisting from highly visible marijuana use, especially around high-profile and highly trafficked Manhattan locations like Times and Washington Squares, it can safely be said that QOL approaches to marijuana policing in NYC have succeeded in their explicit, public aims to remove signs of low-level criminal behaviour from the city's cultural, commercial, and tourism centres.

We argue, however, that this success owes far less to widespread abstinence in marijuana use than it does to a displacement effect. Marijuana users within our sample were almost universally undeterred from smoking in public, even when they had been arrested on MPV charges in the past. Instead, users spoke of the ways in which they assessed whether a quiet park corner, back alley, or garage was sufficiently out of sight or devoid of routine foot traffic to make it a suitable location for smoking in public, but safely beyond the public view. When referring to the informal array of interstitial spaces captured by the term, “the cut,” users’ perceptions of the certainty of punishment (as well as of the NYPD's working definition of “open to public view”) appeared both varied and uncertain. Some expressed faith in their ability to avoid detection until all evidence could be hidden or consumed; others spoke of using stairwells or rooftops where no one would see them.

As our ethnographic data confirm, however, being out of public view is no guarantee of being beyond the purview of MPV policing. Our participants were largely divided in their subjective appraisals of the likelihood of being arrested for smoking in the cut. For those who had their subjective assessments of risk updated the hard way, through direct experience of Housing Police vertical patrols, undercover policing, or bicycle mounted park patrols, evidence of a specific deterrent effect was surprisingly weak. Even where the punitive outcomes of a marijuana arrest were known first hand, or at least well understood, many of our project participants spoke of other concerns that made outright refusal to smoke outdoors a non-option. Many of the NYC marijuana smokers we spoke with were far more concerned with juggling a normalized desire to use marijuana with friends with the dual concerns to hide their marijuana use from their (grand)parents and to avoid arrest. Unlike existing analyses of deterrence that have focused on the expressive nature of certain forms of criminality—marijuana use included—or the desire for thrills, political resistance, and

social status that characterizes youth and drug subcultures, we found strong evidence that marijuana use has become less oppositionally charged and more a commonplace dimension of peer group sociality, particularly around urban hip-hop music subcultures. A large number of participants communicated variations on the same basic principle: Smoking marijuana is a commonplace of peer group socializing. For almost all of our younger participants, smoking indoors was the highly preferred option; it simply did not exist, at least on a regular basis, due primarily to social prohibitions and stigma. For many, being young or otherwise still co-resident with their parents or grandparents, having children, or sharing apartments with others who do not condone use of marijuana constituted primary motivations for outdoor marijuana use practises.

In 2001, an election year, NYC Mayor, Michael Bloomberg, rather famously went on record about his personal use of marijuana. When asked whether he had ever smoked it, he quipped: “You bet I did. And I enjoyed it” (Steinhauer, 2002). For some commentators, such as New York Times journalist Bill Keller (2002), Bloomberg’s attitudes towards smoking betray a contradictory “live and let live attitude towards private pleasure” on the one hand, and a “rich man’s paternalism” on the other. Whilst the latter phrase refers more specifically to Bloomberg’s on-going anti-tobacco platform, which has led to a several drastic tax hikes on cigarettes and a recent move making public use of tobacco in city parks and on pedestrian pavilions a QOL offence (Hartocollis, 2010). We argue that the same critique holds for MPV policing in NYC. Punitive sanctions that effectively discriminate between those with the economic and social capital to smoke indoors without offending family or neighbours and those without such access can only amplify the already pronounced socio-economic and racial disparities in the city’s concentration of QOL policing.

What this paper adds to the extensive debate on QOL policing of public marijuana use is a recognition that those most commonly arrested and processed for MPV offences are very rarely motivated by outright disregard for law enforcement or social order. For most, the value lying in social marijuana use with friends (and in keeping the stigma related to use away from oneself and one’s family) trumped the almost universal concern to avoid detection by police. For those who lacked a private space for their marijuana use, continuing to smoke covertly in outdoor locations remained an unfortunate fact of life—a “last resort that is all too common,” to paraphrase A-Zone.

Since 2008, when the last of the data for this project were collected, marijuana arrests in NYC have only continued to escalate, whilst remaining concentrated in ethnic minority neighbourhoods. In February, 2010, Governor Paterson signed into law a bill preventing the collection of personal information from those who had been stopped and frisked and found to be innocent of any offence (Baker & Moynihan, 2010). The NYPD and mayor’s office opposed the bill, arguing that an important crime fighting tool had been lost, and have further asserted that little harm results from NYC’s policing of MPV, as actual convictions are extremely rare and the majority of cases are dismissed (Dwyer, 2011). What our study indicates, however, is that MPV arrests involve a range of potential harms generally unaccounted for by city officials focused solely on court dispositions. As a number of our participants pointed out, the effect of strict MPV policing has served to push outdoor marijuana use to the inner-city margins and interstices—to those “crackhead” spots and other “cuts” deemed to be sufficiently beyond the public view by dint of their scary or unsavoury nature. Combined with the empirically uncertain effects of detaining low-level marijuana offenders in paddy wagons and Central Booking cells with more serious criminals, this establishes a context in which the risks of deleterious forms of psychosocial exposure may trump those involved with the actual marijuana use. Perhaps more significantly, the cynicism and contempt often expressed by those of our participants who had direct experience with an MPV arrest indicate that a fundamental tenet of quality of life

policing may have fallen by the wayside. In Wilson and Kelling (1982) formulation of the “broken windows” thesis, law enforcement agents were charged with abandoning their cars and returning to the streets, whereby they might foster more intimate and productive relationships amongst the communities they serve and protect. In light of the emphasis on undercover policing highlighted by our participant accounts and the well-observed racial disparities in MPV arrests, it would appear that the NYPD has done little to mitigate the popular perception that police unfairly target minorities with illegitimate policing techniques (e.g. Gau & Brunson, 2010). Given that QOL MPV policing's explicit goal to restore social order to high traffic and visibility public locations has already been largely realized, these secondary forms of risk—both to minority marijuana users and the NYPD's civic reputation—appear too great to sustain on-going MPV policing as it is currently practised.

Acknowledgments

Preparation of this paper was supported by a grant from the National Institute on Drug Abuse (1RO1 DA/CA 13690-03), and by the postdoctoral fellowship in the Behavioural Sciences Training in Drug Abuse Research programme sponsored by Public Health Solutions and National Development and Research Institutes (NDRI) with funding from the National Institute on Drug Abuse (5T32 DA07233). Points of view, opinions, and conclusions in this paper do not necessarily represent the official position of the U.S. Government, PHS, or NDRI. The authors gratefully acknowledge ethnographers, Flutura Bardhi, Doris Randolph, Anthony Nguyen, and Ricardo Bracho.

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