



Research paper

Production, perceptions, and punishment: Restrictive deterrence in the context of cannabis cultivation



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ABSTRACT

Background: American authorities have invested extraordinary resources to keep up with the growth in cannabis cultivation, and state-level cannabis laws have been changing rapidly. Despite these changes, little research on the relationship between criminal justice sanctions and grower behaviours exist, in particular research that examines restrictive deterrence – the altering of an illegal behaviour as opposed to desisting from it completely.

Methods: We examine restrictive deterrence in the context of cannabis cultivation by modelling the relationship between the threat of sanctions and the size of cultivation site and number of co-offenders. We use data from an anonymous web survey where participants were recruited through advertisements on websites related to cannabis use and cultivation. Negative binomial regression were used on 337 cases that contain valid data on size of cultivation site and 338 cases that contain valid data on the number of co-offenders.

Results: Our study found some evidence that the severity of state sanctions reduces the size of cultivation sites among growers who reside in the state. However, the number of contacts with the police had the opposite effect. In addition, we did not find a restrictive deterrent effect for the number of co-offenders, suggesting that different factors affect different decision points. Interestingly, objective skill and subjective skill had positive and independent effects on size of site.

Conclusions: Results suggest that state-level sanctions have a structuring effect by restricting the size of cultivation sites but further increases in sanctions or enforcement are unlikely to deter more individuals from growing cannabis. In fact, there may be some potential dangers of increased enforcement on cannabis growers.

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Introduction

Domestic cannabis cultivation in the United States has increased over the past three decades, as evidenced by the 5.2 million plants eradicated in 2006 and the more than 10.3 million plants in 2010 (Drug Enforcement Administration, 2013). While American authorities have been spending millions of dollars on the criminal justice response to this growth, sanctions are hardly uniform. State-level cannabis laws are dramatically disparate and have been changing rapidly. For example, in Maine, cultivation of 5 plants or less constitutes a misdemeanor offense, carrying a six month prison term, whereas cultivation of any amount in New Mexico is considered a felony offense carrying a nine year prison term (National

Organization for the Reform of Marijuana Laws, 2013). In the past fifteen years we have seen 21 states legalize medical cannabis use and small scale cultivation, and two states legalize recreational use and production of the drug (National Organization for the Reform of Marijuana Laws, 2013). Despite these facts, research offers little direction to policy makers as to how criminal justice sanctions affect grower behaviours.

This is not to say that researchers have completely neglected cannabis cultivation. On the macro level, there has been size estimates of the cultivation industry (Bouchard, 2007), assessments of the effects of potential legalization (Kilmer, Caulkins, Pacula, MacCoun, & Reuter, 2010), and examination of the success of eradication efforts (Potter, 2011; Wilkins, Bhatta, & Casswell, 2002). On the individual level, there has been descriptive work on the typologies of cannabis growers (Hough et al., 2003; Nguyen & Bouchard, 2010; Potter, 2010; Weisheit, 1992), co-offending behaviour (Bouchard & Nguyen, 2010; Malm, Kinney, & Pollard,

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2008; Malm, Nash, & Vickovic, 2011; Malm, 2006; Nguyen & Bouchard, 2013) and grower motivations (Hakkarainen & Perala, 2011). Yet, few studies have examined the factors that influence various characteristics of the cultivation site, especially factors associated with the criminal justice response to cultivation. This line of inquiry is essential because as policy surrounding cannabis use changes, law makers will be forced to consider factors that influence the supply side of the market.

The deterrence doctrine can help us understand how enforcement policy affects cannabis cultivation sites. Deterrence operates under the assumption that humans are rational and weigh the costs and benefits of their actions (Bentham, 1789; Cornish & Clarke, 1986). This rationality should lead to an inverse relationship between the certainty, severity, and celerity of official sanctions and the probability of committing an offense (Beccaria, 1764; Paternoster, 1987). The deterrence doctrine has a long history in criminology and, directly or indirectly, is one of the cornerstones of the criminal justice system (Piliavin, Gartner, Thornton, & Matsueda, 1986). The threat of sanctions can impact an individual in two ways: first, it can prevent a person from engaging in an offense – *absolute deterrence*; second, the threat of sanctions can alter an individual's behaviour by reducing the frequency of engaging in the offense – *restrictive deterrence*. According to Gibbs (1975:33), “restrictive deterrence is the curtailment of a certain type of criminal activity by an individual during some period because, in whole or in part, the curtailment is perceived by the individual as reducing the risk that someone will be punished as a response to the activity.”

Restrictive deterrence

The literature on absolute deterrence suggests that there is a marginal deterrent effect to the threat of sanctions (Nagin, 1998). In general, there is a modest inverse relationship between the perceived certainty of punishment and crime, but no real evidence of a deterrent effect for severity, and few conclusions regarding the celerity of punishment (Paternoster, 2010). While there has been a long history of examining absolute deterrence, restrictive deterrence remains a relatively understudied component of the deterrence doctrine. The dearth of studies omits an important subset of the population of offenders who do not cease offending but are nonetheless impacted by the threat of sanctions. Greater understanding to the varied responses to sanctions is an important tool for understanding offender decision making, law enforcement, and crime prevention policy.

Most studies on restrictive deterrence use interviews with offenders, mostly drug-related, and demonstrate support for the theory. Jacobs (1996) interviewed crack dealers, and found that dealers study buyer physical and verbal clues to ensure that they are not undercover police. These findings led Jacobs (1996) to extend Gibbs' (1975) conceptualization of restrictive deterrence. Gibbs posited that individuals not only respond probabilistically (reduction in frequency), but also particularistically. Particularistic restrictive deterrence refers to “a reduction in offense frequencies based on tactical skills offenders use that make them less likely to be apprehended” (Jacobs, 1996:425). Jacobs (1996) extended Gibbs' conceptualization of restrictive deterrence by moving beyond offending frequencies to include differential techniques to avoid arrest. This conceptualization is reminiscent of Eck's (1993) presentation of crime displacement. Eck argues that there are several ways in which offenders can adjust their criminal activities due to blocked opportunities: temporal, spatial, target, method, crime type, and perpetrator. Jacques and Allen (2013) drew on qualitative interviews with young, suburban, middle-class drug dealers to examine how political, moral, sympathetic, religious, and physical sanctions change offending behaviour. They found that political, moral and sympathetic sanctions led to restrictive behaviour while

the effect of physical sanctions operated indirectly, through fears related to drug consumption. Barratt, Barratt, Chanteloup, Lenton, and Marsh (2005) assessed whether perceptions of certainty, severity, and fairness of punishments outlined by the Cannabis Infringement Notice policy in Western Australia affected how cannabis users intended to obtain cannabis. They found that a significant proportion reported intending to change their behaviour to fit within the policy, including purchasing within the threshold and growing plants below the allowable number of plants.

Compared to qualitative studies, quantitative research on restrictive deterrence has produced mixed results. Only a handful of quantitative studies have examined restrictive deterrence. Paternoster (1989) analysed data from a sample of high school students to examine the relationship between perceived certainty and perceived severity of punishment on both the onset and the frequency of cannabis use, drinking alcohol, petty theft, and vandalism. Findings indicate that perceived certainty had some effect on absolute deterrence but perceived severity had no effect on absolute or restrictive deterrence. Gallupe, Bouchard, and Caulkins (2011) examined restrictive deterrence in a sample of drug market offenders and found that offenders who responded to arrest by changing their behaviours were re-arrested more quickly than offenders who did not change their routine. However, cannabis growers who did respond to restrictive deterrence by changing locations or increasing the number of plants were not re-arrested more quickly than growers who maintained their routine. The next section considers why cannabis cultivation is an excellent case study to examine restrictive deterrence.

Restrictive deterrence in the context of cannabis cultivation

The restrictive deterrence framework is especially useful in the context of cannabis cultivation due to several distinct features. First, data on cannabis seizures and trends indicate that growers' activities have been influenced by the threat of punishment by adapting their practices in order to reduce risks of detection (Bouchard, 2007). For example, the National Drug Intelligence Center (2009:4) noted “cultivators, particularly Caucasian groups, have relocated or established their operations indoors because of the reduced risk of law enforcement detection in comparison with outdoor grows, which are being increasingly targeted by vigorous outdoor cannabis eradication operations.” Similarly, Gallupe et al. (2011) examined a subsample of cannabis growers and found that growers responded to arrest by changing locations, and by altering the size of their cultivation site. Growers who increase the number of plants experience longer periods without arrest; however, these growers were more likely to start out as small-scale. They argue that small time growers are less likely to come to the attention of police and therefore, may be given the freedom to learn from previous experiences. Nevertheless, results demonstrate that growers are responsive to sanctions and react in ways that are consistent with restrictive deterrence.

Second, individuals are involved with cannabis cultivation for a wide variety of reasons, which may lead to a similarly varied set of responses to the threat of sanctions. Research into grower typologies suggest that a good number of individuals engage in cultivation for the intrinsic rewards or for the love of the plant (Weisheit, 1992; Potter, 2010). Other growers are engaged in large scale cultivation sites and garner considerable monetary rewards from cultivation (Nguyen & Bouchard, 2013). It is reasonable to infer that small scale plant lovers may be more susceptible to variations in plant limits but not be as sensitive to variations in sanction levels, especially given that the small size of their operation is unlikely to generate police attention in the first place. These issues, however, have not been systematically investigated in prior studies.

Third, scholars have suggested that certain types of crimes, such as violent crimes, are often unplanned and therefore are not

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