



Moral Aspects in the Decriminalization of Marijuana

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Definition Clarity

- Prohibition
 - maintain the status quo of strict legal sanctions against illicit drugs
 - Decriminalization
 - maintain a legal ban on the sale of drugs with a reduction in criminal sanctions for possessing small amounts
 - Legalization
 - legalizing the sale and use of some drugs with some form of governmental regulations
- (MacCoun, 1993)

Drug Law Development

- 1909 - International Opium Commission
 - The first international anti-drug initiative convened to stem the tide of opiates originating in Asia
 - Resulted in two opium wars between the UK and China
- 1925 – League of Nations (2nd Int'l Opium Commission)
 - Subsequent treaties sought prohibition of opium, cocaine, & cannabis
- 1961 – United Nations establishes Int'l Narcotics Control Board
- 1971 – U.S. “War on Drugs” initiated under Richard Nixon
 - Set U.S. drug policy as we currently know it

Bewley-Taylor, D. R. (2002). *United States and International Drug Control, 1909-1997*. Continuum International Publishing Group.



Dutch Cannabis Policy

- 1976
 - Non enforcement of possession or sale of marijuana up to 30 g
 - Technically, still illegal but told not to enforce the law
- 1995
 - Lowered the quantity to 5g
 - Due to domestic & international pressure



Dutch Coffee Shops

Legal to exist under the following rules:

1. No advertising
2. No hard drug sales on premises
3. No sales to minors
4. No sales transactions exceeding the legal quantity
5. No public disturbances

– 1999 ~ 1200 coffee shops in Netherlands

Examples of a Coffee House



Comparison of Netherlands & the United States

Surveys indicate:

- Similar use of Cannabis, with U.S. edging the Netherlands out
- The Dutch use more than their neighboring countries
- Consistent/sharp increase in use from 1984-1986



Comparison of Netherlands & the United States

Was it due to increased access & promotion?

Commercialization essentially

- Unlikely the increase was due to the Dutch policies alone
- The United States, Canada, & Norway also saw the increases during this time period
- Maybe due to social norms changing

(MacCoun & Reuter, 2001)



Recent U.S. Changes

- 2012 Amendment 64 of Colorado
 - Possession, sale, and home cultivation of marijuana is legal up to 1 ounce for people 21 years or older
- 2012 Initiative 502 of Washington
 - Established a regulated & taxed system for marijuana cultivation and sales

(Reiman, 2013)

A close-up photograph of several vibrant green cannabis leaves, showing their serrated edges and prominent veins, positioned at the bottom of the slide.

Global Changes

- 1990s
 - Italy, Switzerland, Germany, Spain, & Belgium
 - Shifted their policies in the direction of the Dutch
- 2000s
 - Portugal decriminalized
 - England reclassified
 - Uruguay is beginning legalization process

(Reinarman, Cohen, & Kaal, 2004)

Current Use Data

2012 – 18.9 Million Users in the U.S.

Represents Over 7% of the U.S. Population

Kott, P., Hedden, S., Aldworth, J., Bose, J., Chromy, J., Gfroerer, J., & Virag, T. G. (2013). 2012 National Survey on Drug Use and Health.



Number of U.S. Cannabis Related Incarcerations 2004

- Federal Prisons - 11,630
- State Prisons - 33,186
- Total Incarcerations - 44,816

Harrison, P. M., & Beck, A. J. (2004). Bureau of Justice Statistics. *Prison and Jail Inmates at Midyear*, 3.



Number of U.S. Cannabis Related Deaths for 2010

None

Jones, C. M., Mack, K. A., & Paulozzi, L. J. (2013). Pharmaceutical overdose deaths, United States, 2010. *JAMA*, 309(7), 657-659.

The Marijuana Circus

- The panic caused by the fear of drugs and the subsequent legal drama that our marijuana policies create occupy the forefront of American culture.

Szasz, T. (1987). 9 The Morality of Drug Controls.

http://youtu.be/bM_vLk1I6G4



The Marijuana Circus

ADULTS ONLY!

The Sweet PILL
that MAKES LIFE BITTER!

WOMEN CRY FOR IT—
MEN DIE FOR IT!

"REEFER MADNESS"

SEE

DRUG-CRAZED ABANDON

YOUTHFUL MARIHUANA VICTIMS

WHAT ACTUALLY HAPPENS!

This poster features a man with horns and a woman holding a large marijuana leaf. It includes a circular inset showing a man and woman smoking together.

SIN

DEGRADATION

VICE

INSANITY

DEBAUCHERY

A VICIOUS RACKET WITH ITS ARMS AROUND YOUR CHILDREN!

THE TRUTH ABOUT . . .

MARIJUANA

THE SMOKE OF HELL!

"DEVIL'S HARVEST"

This poster depicts a green devil-like figure and a woman. A large marijuana cigarette is shown with smoke rising from it. The text is arranged in a dramatic, accusatory manner.

DOPE-CREATED ECSTASY AVALANCHING INTO FRIGHTFUL PERVERSIONS

MAKES BEASTS OF MEN & WOMEN

THE BURNING QUESTION

ADULTS ONLY

This poster features a close-up of a man's face with a cigarette in his mouth and a woman in a bikini-like outfit also smoking. The background is a mix of red and black.

The Marijuana Circus

- The result of the circus.....
- Federal, State, and Local Agencies Spent \$40B on Drug Prohibition Efforts in 2010.

Miron, J. A. (2010). The budgetary implications of drug prohibition. *Harvard University*.



The Circus



What if Marijuana Were Removed?



How Does Decriminalization Affect the Circus?

- The United Nations Estimates Narcotics Account for \$60B in Revenue for Mexican Cartels

United Nations Office on Drugs and Crime [UNODC]. (2012). *UN World Drug Report 2012*. Vienna: United Nations Department of Public Information.

- 85% of the Mexican Cartel crime is related to narcotics

Hope, A., & Clark, E. (2012). *Si Los Vecinos Legalizan: Reporte Técnico*. Instituto Mexicano para la Competitividad A.C.

- *60% of Cartel Narcotic Revenue is Derived from Marijuana

Office of National Drug Control Policy. (2006). *National Drug Control Strategy*. Washington, DC: Office of National Drug Control Policy.

* This figure is disputed

Parallels to the United States Prohibition of Alcohol

- Alcohol Prohibition of 1920-1933 led to:
 - Increased black marketing of booze
 - Unregulated bootleggers & moonshiners
 - May have increased deaths due to toxic product



Marijuana Prohibition

- Has led to Mexican cartels doing the same thing
 - U.S. officials say ~60% of cartel revenue is from marijuana
 - It is estimated that one cartel will lose \$2.8 billion dollars due to recent legalization in Colorado & Washington



Same Tactics Used

- 1914 Speech by Rep. Richmond Hobson
 - Booze made “red men” savages
 - Liquor would make a “Negro” a brute that would commit unnatural crimes
- 1937 Speech by Harry Anslinger-Bureau of Narcotics Chief
 - People were driven insane or to murder after using marijuana
 - Blamed it on Mexicans selling to U.S. white teens

Hokey Research?

- Both alcohol & marijuana claims were based on invalid medical research
- Alcohol was first made available “legally” again by a prescription
 - Sound familiar?



2 Immediate Results of Ending Alcohol Prohibition

- States could regulate products
 - Quality Control
- Taxation



Would the end of Marijuana Prohibition be the same?

- Medical marijuana saved California's economy
- Colorado
 - Estimates \$60 million in state and local revenue and savings by 2017
- Washington
 - Predicts \$2 billion over the next 5 years



Cautions

- Must be careful not to overtax
 - Run the risk of black markets/smuggling

– (McLaughlin, 2012)



Decriminalization Pros and Cons

Social Pros

- Prohibition is government intrusion into freedom of choice
- No more harmful to a person's health than alcohol or tobacco
- Proven medical benefits
- Reduce crime and violence (U.S. and U.S.-Mexico border)

Social Cons

- Belief that marijuana ingestion is immoral
- Abusive use can be harmful to a person's health.
- Second-hand smoke can be harmful to others.
- Allegations of being a gateway drug
- Possible harm to others (driving while intoxicated)
- Broken families

Decriminalization Pros and Cons

Law Enforcement Pros

- 872,000 arrests last year- resources of the criminal justice system, including the crowded state prisons and courts, might be better used elsewhere
- Drug busts of youth carry harsh penalties that cause social harm with lifelong consequences.
- Avoids placing kids in prison with professional felons.

Law Enforcement Cons

- Individuals involved in illegal buying and selling of the drug are more likely to be involved in other crimes, so society is safer with marijuana offenders incarcerated.
- Law enforcement agencies construed as supporting drug use.

Decriminalization Pros and Cons

Fiscal Pros

- One of America's top-selling agricultural products, new tax revenues could exceed \$1 billion just for California.
- Lift the U.S. economy out of recession
- About \$8 billion saved annually on enforcement

Fiscal Cons

- No significant reasons against U.S. legalization of marijuana.
- Health care costs which society must bare.

Legalized Medical Marijuana States and DC

- Alaska
- Arizona
- California
- Colorado
- Connecticut
- DC
- Delaware
- Hawaii
- Illinois
- Maine
- Massachusetts
- Michigan
- Montana
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- Oregon
- Rhode Island
- Vermont
- Washington



Is Smoking Marijuana Wrong?

- Moral Question: What is the object of the act of smoking dope?
- “Object,” meaning the proximate state of affairs an actor is interested in realizing what he’s doing.



Is Smoking Marijuana Wrong?

- Recreational- to get high
 - Not to feel anxious or depressed, to lose motivation, impair their long-term memory, or contract bronchitis
 - They believe that these effects may occur, they accept them as unwelcomed side-effects, but they don't choose them.

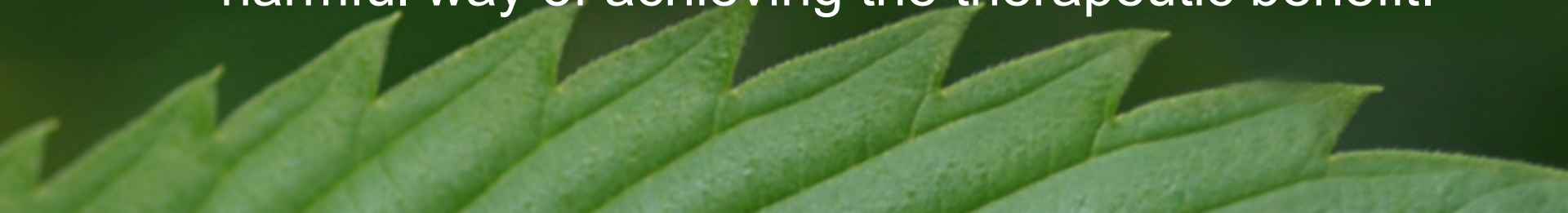


The “High”

- Euphoria (the “high”)- pleasurable state of consciousness entailing an alteration of one’s perceptions and faculties of cognition.
- Dulls intelligence (dope)
- Deteriorates short-term memory
- The intention is to alter their cognitive state.
- Impairing our ability to make choices
- More difficult to make good choices

Is Smoking Marijuana Wrong?

- Therapeutic- to heal or prevent dysfunction, including serious pain
- Should it be smoked?
 - Assess the benefit and burdens of the proposal
 - Due to harmful effects, including intoxication, there must be a serious reason for adopting it as a treatment.
 - Should be no other reasonably accessible less harmful way of achieving the therapeutic benefit.



Are Deterrents Moral?

- Deterrents (incarceration) are based on the idea that behavior can be controlled through the imposition of fear.

Beyleveld, D. (1979) Identifying, Explaining and Predicting Deterrence, *The British Journal of Criminology*, 19, 3, July, 205-224.

- Through deterrence, the force of law is used to support the legitimacy of a moral stance.

Elliott, B. (2003, September). Deterrence theory revisited. In *Australasian Road Safety Research, Policing and Education Conference*, Sydney.

Moral Test

- On what moral grounds can we justify spending such a vast amount of resources to criminalize behavior that appears to have no direct harm to participating individuals?



Is Smoking Marijuana Wrong?

Term “harm reduction”

“we must accept that drug use is here to stay and that we have no choice but to learn to live with drugs so that they cause the least possible harm”

Ethan Nadelmann,

Director of an Influential Drug Reform Policy Center in New York City

Harcourt, B. E. (1999). The Collapse of the Harm Principle. *The Journal Of Criminal Law And Criminology (1973-)*, (1), 109. doi:10.2307/1144164

Harm Principle

- Enforcement is justified by the harms associated with drug use
- Focused on designing policies which reduce the overall harm associated with drug use and drug interdiction policies
- In the writings of John Stuart Mill, the harm principle acted as a necessary but not sufficient condition for legal enforcement.

Does marijuana use wrongfully injure others?

Ample research shows marijuana does not cause users to engage in crime.

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.



Sins of Omission

- In their “haze”, will marijuana users damage society by their inaction?
 - A failure to contribute to society
- Some describe these contributions as morally virtuous but not morally required.
- Others see the contributions as moral duties and the failure to perform them as morally wrong.
- However, is the failure to contribute to society sufficient ground for criminal punishment?

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.

Morality Alone

- What constitutes a life worth living?
 - An ethical question debated over the years
- How can we jail those whose answer differs from the government?
 - John Walters (Drug Czar of Bush Administration) argued that marijuana "destroys the soul" and that the extreme "moral poverty" of its users requires "stiff and certain punishment" (p. 287).

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.

Morality Alone (cont.)

- Criminal law has been used to enforce morality for morality's sake
 - Two problems with this view
 - Many doubt that conduct can be immoral if it neither risks nor produces harmful effects.
 - Illegitimacy of enforcing the moral code of some upon others who disagree with it in the absence of harm to others.

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.

Immorality of Harm to Oneself

- An act harmful to self-interest may represent poor judgment rather than criminal intent.
- Is marijuana more harmful than alcohol or nicotine? (both legal, but regulated)
 - If marijuana is not more harmful, then throwing only some people into the criminal justice system while leaving others free to indulge their no-more-important pleasures cannot be justified on grounds of danger to the user alone.

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.

A Moral Right?

- Declaration of Independence
 - An inalienable right to the pursuit of happiness
 - Protection for those seeking affective (rather than cognitive) benefits
 - A relaxant, social lubricant, antidepressant, or palliative
 - The right to pursue happiness in one's own way is worthy of respect.

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.

Other Moral Rights at Stake

- Right to control one's body
- Right to freedom of thought
- Right to privacy in one's home
- Right to the pursuit of happiness

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.

Criminalization

Loss of liberty through civil disabilities:

- Ineligibility for government grants and contracts
- May forfeit land, house, and bank accounts
- Public housing
- Driver's licenses, occupational licenses, & voting (state)
- College students are stripped of their federal student loans
- Youth – mandatory expulsion under zero tolerance
- Immigrants face deportation
- Parents risk losing children
- Public mark of societal condemnation

Blumenson, E., & Nilsen, E. (2010). Liberty Lost: The Moral Case for Marijuana Law Reform. *Indiana Law Journal*, 85(1), 279-299.

Utilitarianism

- An act is morally right if and only if it brings about the best balance of utility
- In other words, an act is right with desirable consequences and wrong with undesirable consequences.



John Stuart Mill

- Mill considers “utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being” [16].
- Marijuana legalization, in short, cannot be based solely on the right to self-determination and freedom of tastes and pursuits; the social consequences of the drug are indispensable, and the prohibitionists rightly identify their importance.



What Does Kant Have To Say?

The “Categorical Imperative”

- act only on that maxim whereby thou canst at the same time will that it should become a universal law

Kant, I; translated by James W. Ellington [1785] (1993). *Grounding for the Metaphysics of Morals 3rd ed.* Hackett. p. 30.

- if a law is to be morally valid...then it must carry with it absolute necessity

Pojman, L. P., & Tramel, P. (2009). *Moral Philosophy* (4th ed.). Indianapolis: Hackett Pub. Co..

What Does Kant Have To Say?

The “Categorical Imperative”

- As there are exceptions to the marijuana laws, and use does not cause harm in all cases then criminalization does not meet Kant’s standard for a moral law.



Categorical Imperative

- Do an act if and only if it does not treat any person merely as a means, but always also as an end in itself.
- In other words, an act is wrong when it treats someone merely as a means (it violates someone's autonomy through coercion, deception, manipulation, trickery, etc.).



Summary

- Criminalization has historically been based in a deontological point of view that use is **WRONG** in all cases.
- Recent moves toward decriminalization show willingness to look at the issue from a more teleological perspective that takes a more utilitarian approach.



Audience Poll

- Insert Poll



Recommendation

- Decriminalization (On Teleological Grounds)
 - Follow Dutch law
 - Regulated
 - Similar to alcohol
 - Age restriction
 - Amount



Questions to Ponder

- Is it morally permissible to use marijuana?
- How should it be regulated by law?
- Should it be fully legalized and sold openly without regulation?
- Should it be legalized and regulated?
- Should it be decriminalized?



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