

Handout 6: The Ethics of Medical Marijuana

[This handout relies on "Handout for "The Ethics of Medical Marijuana: Government Restrictions vs. Medical Necessity" by Peter A. Clark]

1. Introduction

We have already discussed certain problems associated with using Ritalin, a chemical substance that is prescribed as a drug, for treating individuals with ADHD. In that case, a drug is prescribed to treat individuals with a certain disorder. In addition, we discussed using PEDs in the context of professional athletics. In both of these cases, there was a tension between respecting the free choices of persons as long as they do not hurt anyone and restricting their freedom in order to eliminate harm. In "The Ethics of Medical Marijuana: Government Restrictions vs. Medical Necessity", we look at a different but related issue. This article considers whether it is morally acceptable for the government to prohibit the use of certain substances for the purpose of treating various health issues. In particular, it examines whether government restrictions on medical marijuana is morally acceptable. There are two issues to pay attention to in thinking about this topic:

The Empirical Issue: Can marijuana be used as a treatment for pain, nausea, vomiting associated with chemotherapy, etc.?

The Ethical Issue: Assuming that marijuana can be used as an effective treatment, is legislation prohibiting its use or prescription ethically justified?

In this course, our focus is the ethical issue although this issue depends upon the empirical issue being decided. Another way of thinking about the debate is as a debate between whether marijuana should be a Schedule I or Schedule II drug. The Drug Enforcement Administration (DEA) makes a distinction between Schedule I and Schedule II drugs (there are also Schedule III, IV, and V substances). Here are the definitions:

Schedule I Drug : substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. Schedule I drugs are the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence.

Examples: heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote

Schedule II Drug substances, or chemicals are defined as drugs with a high potential for abuse, less abuse potential than Schedule I drugs, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous. Some examples of Schedule II drugs are:

Examples: cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin¹

The key factors that go into classifying drugs are: (i) its **accepted medical use** and (ii) **its potential for abuse or dependency**. In other words, drugs with medical use and little potential for abuse get scheduled as

¹ <http://www.justice.gov/dea/druginfo/ds.shtml>

a IV or V, those with some medical use but can be abused are scheduled as a II or III, and drugs with no medical use and pose potential for abuse as I. Here is why this matters from an ethical point of view:

- (i) Marijuana (cannabis) is a Schedule I drug
- (ii) Schedule II drugs can be prescribed for medicinal purpose²
- (iii) There appear to be some medical uses of marijuana
- (iv) The federal ban on medical marijuana violates the physician-patient relationship
 - (iv.1) *patients have the right to information concerning and to pursue all available treatment options*
 - (iv.2) *physicians have a duty to relieve the pain and suffering of a patient*

According to Clark (p.41), here is how the Federal Government (Clinton Administration) argues for the continued illegality of medical marijuana:

The Argument from Efficacy, Gateway, and Negative Social Consequences

P1 Marijuana is unproven in terms of safety or medical efficacy.

P2 Marijuana is a gateway drug and so is dangerous as it leads to the use of other more dangerous drugs.

P3 Legalizing marijuana for medicinal purposes would have bad social consequences as it would lead to increased recreational usage of marijuana.

P4: Legalizing marijuana will send the wrong message to children about drug usage.

C Therefore, marijuana should remain illegal.

Here are the rejections of each of these premises:

O1 Marijuana **is proven** in terms of safety or medical efficacy.

O2 Marijuana **is not a gateway drug** and so does not lead to the use of other more dangerous drugs.³

O3 Legalizing marijuana for medicinal purposes **does not** have bad social consequences as it would lead to recreational usage.

O4: Marijuana will not send the wrong message to children about drug usage.

If **P1** or **P2** or **P3** or **P4** are false, then it the argument for keeping classifying marijuana as a Schedule I drug is weakened. And, if there is no compelling reason to keep medical marijuana illegal, then it appears that **such laws are unethical** since they (i) deny patients who are suffering a treatment option without good reason and (ii) it violates the physician-patient relationship as it prevents physicians from administering a therapy that could help his/her patient.

² Schedule II substances: Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act [21 U.S.C. 353(b)]. Prescriptions shall be retained in conformity with the requirements of section 827 of this title. No prescription for a controlled substance in schedule II may be refilled. <http://www.deadiversion.usdoj.gov/21cfr/21usc/829.htm>

³ With respect to **P1** and **P2**, Clark points out that medical literature issued by the White House found that marijuana does have some, limited medical efficacy and there is no evidence to support the view that marijuana is a gateway drug.

2. Medical Uses of Marijuana (P1)

Q1: Is marijuana safe (P1)?

Q2: Are there any medical uses for marijuana (P1)?

Q3: Is marijuana a gateway drug (P2)?

Q4: Will the use of marijuana lead to increased recreational usage (P3)?

Q5: What message would the legalization of marijuana give to young people (P4)?

3. Ethical Analysis

Every human action has two distinct effects: (1) an *intended good effect* and (2) a (foreseen) *unintended evil effect*.

In the case of medical marijuana, the *intended good effects* are **the therapeutic effects** while the foreseen but *unintended evil effects* are (1) the negative health effects (lung damage, etc.), (2) the use of harder drugs (gateway), and (3) increased recreational use of marijuana.

Since all human actions have some unintended evil effects, Clark contends that we must follow the **ethical principle of double effect** when determining whether an action is morally accepted. We follow this principle when our actions meet **ALL of the following four** conditions:

Condition 1. The **primary goal** of the action must not be morally evil.

Example #1: *killing an innocent person to create misery* in the world **does not** meet the above condition

Example #2: *killing a person to create more happiness* in the world **does** meet the above condition.

Condition 2. The unintended evil effect must not be the *means* of producing a good effect.

Example #1: *killing a person to create more happiness* in the world **does not** meet the above condition.

Condition 3. The evil effect should not be intended, but is to be tolerated

Clarification: We don't want *both* the good and bad effects to occur, we just *tolerate* the bad effects as it accompanies good effects.

Example #1: *killing an innocent person to create more happiness* in the world involves a bad effect of killing someone who doesn't deserve it; we don't want that to occur, but we tolerate it. This **would** meet the above condition.

Condition 4. There must be a proportionate reason for doing the action.

Clarification: Basically, (i) do the *good benefits* outweigh the *bad effects* and (ii) there is no other option that might give us more good with less bad.

According to Clark, the principle of double effect applies to the case of whether it is ethical for the government to restrict physicians from prescribing marijuana to patients.

Condition 1 ... is met because the **primary goal** of the action itself is not morally evil. Rather it is to help treat certain conditions (e.g. pain, nausea, etc.) that cannot be treated as effectively by other means.

Condition 2 ... is met because the good effect of relieving pain is not by **means of** the evil effect (the harm that comes from smoking marijuana is not what produces the good effects, it just accompanies it)

Condition 3 ... is met as the evil effect (harm from smoking marijuana) is **not intended but tolerated** (we don't like the negative effects but we will tolerate them for the good they produce)

Condition 4 ... is met since the good effects outweigh the bad and there is no better option. That is, since even though marijuana smoke is toxic and causes lung damage, this effect is outweighed by its medical value AND there is no better equivalent (in terms of effective and cost) but less harmful alternatives for marijuana.⁴

Clark can thus argue as follows;

Clark's Argument for Making Medical Marijuana a Schedule II Drug

P1: If allowing physicians to prescribe medical marijuana meets the four conditions of the principle of double effect, then that action is morally acceptable.

P2: The government should not make morally acceptable actions *illegal*.

P3: The government currently makes prescription of medical marijuana illegal (remember it is a Schedule I drug).

P4: The prescribing of marijuana to terminally ill patients meets the four conditions.

C: Therefore, marijuana should not be a Schedule I drug (it should be a Schedule II drug).

4. Further Issues

There are further issues associated with keeping marijuana a schedule I drug:

1. People who need marijuana will be forced to the black-market; this could lead to legal prosecution and further health issues. If we wish to reduce harm, we ought to allow for appropriate regulation.
2. Failure to allow physicians to prescribe marijuana would violate the principle of nonmalecence ("above all, do no harm") as they would be failing to offer an effective therapy.

And, of course, there are some things we haven't established in saying that marijuana should not be a schedule I drug:

1. It hasn't been shown that laws keeping marijuana illegal for *recreational* purposes are unjust or wrong.
2. It hasn't been shown that *if* some new, inexpensive medical alternative were to become available, then laws prohibiting the use of marijuana would still be wrong.

5. Reading Questions

⁴ Physicians believe that prescribing marijuana will relieve pain better than FDA-approved medications.

Q1: Is marijuana safe (P1)?

Negative effects: rapid heart-beat, loss of coordination, impaired immediate memory, critical thinking skills, (vehicle safety),

Smoked marijuana: hard to determine exact dosage, effects of tar and smoke on respiratory system, lung damage, contaminants that can cause infection (these can be avoided by *vaporizing* and *sterilization*)

Q2: Are there any medical uses for marijuana (P1)?

Medical: Treatment of nausea, pain, neurological and movement disorders (little evidence of this), chemo-cancer,⁵ loss of appetite, loss of weight, related to AIDS, glaucoma

Q3: Is marijuana a gateway drug (P2)?

No, the White House's own commission says there is no evidence that *giving this drug to sick people* will lead to harder drug use (p.41).

Q4: Will the use of marijuana lead to increased recreational usage (P3)?

Top of p.50 no correlation between availability of drugs on the street and prescription drugs

Q5: What message would the legalization of marijuana give to young people (P4)?

There are a couple of responses here (p.50):

Answer #1: The message that will be sent that it morally acceptable to use marijuana when sick.

Answer #2: The message that will be sent that it morally acceptable to use marijuana whenever.

Answer #3: The message that will be sent that it morally acceptable to prescribe marijuana to help people who are suffering.

Even if there is a problem, how might we deal with it?

Answer: public education

⁵ 44% of oncologists reported that they had recommended to at least one patient (p.43)