

Handout 7: Marijuana and Morality

[This handout draws from Husak's *Legalize This!*]

We think that there should be **good reasons** in place for making a certain behavior a crime. For in stating that action is a crime, we commit ourselves to punish (or rehabilitate) individuals who do such actions. When we punish individuals, we interfere with their freedom and their ability to pursue their own happiness.

Since the recreational use of marijuana is illegal (in most states), there should be good reasons supporting both the laws and their enforcement. While several reasons are cited (e.g. drugs endanger young people, increases crime, reduces ambition, jeopardize health, break up marriages, increase teenage pregnancy, worsen education, and decrease religious faith), one argument sometimes given is that **using marijuana is immoral and therefore should be illegal**. Let's set aside all of the issues relating to health and social policy and focus on a single argument that we will call the *argument from immorality*:

The Argument from Immorality against Recreational Drug Use #1

P1. The criminal law should punish people who behave immorally.

P2. Drug use for recreational purposes is immoral.

C. The criminal law should punish people who use drugs for recreational purposes.

One further caveat, while the arguments here will talk about drug use more generally, we will just focus on the ethics behind the illegality of recreational marijuana. We'll put aside the question of whether harder, more dangerous drugs should be prohibited.

1. P1: Legal Moralism

Let's consider **P1**, or the position sometimes called "legal moralism". There are a number of different ways to reject P1.

O1: Skepticism. There is no such thing as morality (it is a superstition); we don't believe in punishing people on the basis of superstitions; therefore, it cannot be used to justify a law nor can it be a useful guide to formulating laws.

O2: Necessary but not sufficient. Morality is *relevant* and *necessary* for making an action illegal but *not sufficient*. That is, while we might say that *laws should only prohibit immoral actions*, this does not mean *there should be a law prohibiting every immoral action*.

Example #1: Not every immoral act is illegal, e.g. lying, cheating, being rude, being unfaithful, swearing at a child, etc.

O2 shifts the burden of proof on those advocating the criminalization of recreational drugs. What this means is that the mere immorality of marijuana usage is not enough to prove that it should be illegal. What is needed to defend criminalizing a drug is some additional reason beyond it being an immoral action.

1.1 P1*: Legal Moralism Again

One way for the legal moralist to respond to O1 and O2 is to remove any terms that explicitly refer to morality:

The Argument from Immorality against Recreational Drug Use #2

P1. The criminal law should punish people who behave other than how they should.

P2. We should not use drug use for recreational purposes.

C. The criminal law should punish people who use drugs for recreational purposes.

But replacing the word "immoral" with "should" does not improve this argument. For consider that "should" can be interpreted in the moral sense (and then the O1 and O2 apply, or in the prudential sense as in when we say that John should not wear shorts to the funeral or eat cereal with his hands. What we mean by this use of should is that it is unwise, lacking in taste, or potentially risky. Using "should" in the prudential sense, however, opens it up to an objection similar to O2:

O2*: Necessary but not sufficient:

What is prudent is perhaps necessary for making an action illegal but not sufficient, i.e. if John wants to jump off his two-story roof into a pool, but it is raining outside and the jump is a good distance, John's action is not prudent but it shouldn't be illegal.

2. The Argument from Serious Immoral Action

We said that O2 shows that since many immoral actions are not illegal, the mere fact that marijuana usage is immoral does not mean that it too should be illegal. However, an individual supporting the prohibition of recreational marijuana might say that marijuana usage is *not merely immoral*. Rather, the recreational usage of marijuana is *seriously immoral* and all **serious immoral actions should be made** illegal, e.g. murder, torture, rape, incest, etc. The argument from immorality thus gets *revised* as follows:

The Argument from Serious Immoral Action against Recreational Drug Use

P1. The criminal law should punish people for actions that are **seriously** immoral.

P2. Drug use for recreational purposes is **seriously** immoral.

C. The criminal law should punish people who use drugs for recreational purposes.

While revising the argument in this way makes **P1** more plausible. The problem for this argument is that it makes **P2** less plausible (see below). What **P2** says is that drug use for recreational purposes is *so* immoral that it warrants punishment. But here is an objection to P2:

O3: There are no good reasons to support P2

If P2 is true, there ought to be some good reason (or set of reasons) to support it. But, there are no good reasons. Therefore, we should not accept P2.

A defense of **O3** requires considering a variety of reasons used to support P2 and showing how they are all flawed. So, what are some **reasons** used to support P2? That is, what are some reasons used to support the claim that *recreational drug use is so seriously immoral that it warrants punishment?*

First, P2 is true because **recreational drug use violates some fundamental human rights**. For example:

Reason #1: it violates someone's right to *life*, e.g. murder

Reason #2: it violates someone's right to *security*, e.g. assault or rape

Reason #3: it violates someone's right to *property*, e.g. theft

Reason #4: it violates someone's right to *freedom*, e.g. capricious censorship

The problem with appealing to the violation of basic human rights is that the personal use of recreational drugs does not *directly* appear to violate any of them. An individual uses drugs recreationally appears to only be harming themselves.

CDQ#1: In using drugs, are drug users violating anyone's fundamental human rights? Are they really only harming themselves? Even if they are harming others, is that harm so great that it warrants punishment? Can we paint all drugs with a broad brush? That is, are users of heroin as opposed to marijuana guilty of the same immoral action?

Second, P2 is true because the **majority of people** think it is true. That is, since the majority of people oppose the legalization of marijuana, this is evidence that people think that it is **seriously** immoral. There are, however, at least three problems with this proposal:

O1. The majority opinion does not determine the truth. This argument is not valid:

Bandwagon Fallacy (Argumentum ad Populum – “Appeal to the People”)

P1: Most people believe p.

P2: Therefore, p is true.

O2. The results of polls are partially determined by the question asked.

a. The majority of people will say that drug usage is **morally wrong (for them)**,

b. Fewer people will say that drug use is **morally wrong and should not be tolerated**

c. Even fewer people will say that drug use is **morally wrong and should be severely punished**

O3. There ought to be a **strong consensus** about immorality of drug usage if it is going to be used as a reason to support criminalization and punishment.

O4. *Even if* the majority should decide whether marijuana should be legal, and even if people think that it is *drug use is seriously wrong*, polls about the legalization of marijuana indicate that Americans favor its legalization

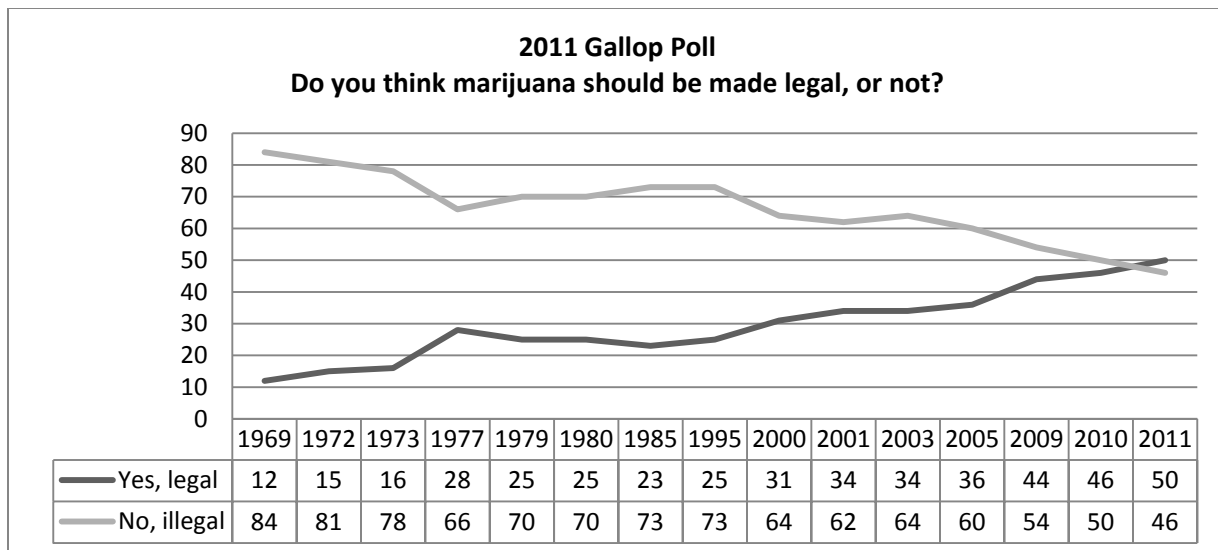


Figure 1: From 2011 Gallop Poll: <http://www.gallup.com/poll/150149/Record-High-Americans-Favor-Legalizing-Marijuana.aspx>

Third, we might say that religion, God, or a religious text states that recreational marijuana usage is seriously immoral. There is a strong correlation between having a religion and supporting criminalization of marijuana. A majority of individuals who say they have **"no religion"** support the legalization of marijuana, whereas Protestants (Christians) oppose the legalization of marijuana by a 69-26 margin.

O1: Separation of Church / State. Religious belief should not be used as a reason to punish drug users and law should not presuppose that we all belong to the same religion.

O2: Not all Religions or Religious People Oppose Drug Use. Not all religions have clear statements about the use of marijuana. Some religious texts like the Bible don't say anything about the immorality of drugs.

O3: Taking the Moral High Ground. Husak argues that those who support prohibition are acting immorally as they punishing individuals without excellent reasons for doing so.

Prohibitionists pretend to occupy the moral high ground in debates about illicit drug use. Unlike their opponents, they profess to stand up against immorality [...] The moral high ground should not be conceded to those who favor prohibition (Husak, p.122).

Why those that support Drug Prohibition are Acting Immorally

P1. Whenever we choose to let the State punish an individual for an action, we should have excellent reasons for why that action should be a crime (otherwise our support (either explicit or implicit) of the State is immoral).

P2. While it may be the case that drug use is immoral, there are not excellent reasons for making recreational drug use a punishable crime.

C. Therefore, those supporting recreational drug prohibition are acting immorally.

3. Summary of Key Points

Recall at the outset, we said that there should be good reasons in place for making a certain behavior a crime and for punishing that behavior. In addition, if we are going to say that an action is immoral and its immorality can be used as the basis for punishing another individual, then there should be good reasons supporting that it is, in fact, immoral. Against the **Argument from Immorality against Recreational Drug Use**, the above has objected that:

O2: Just because an action is immoral does not mean it should be illegal, and

O3: There are no good reasons to think that marijuana usage is so immoral that it warrants punishment.

Even if you reject the Argument from Immorality, it is important to keep in mind that there are several considerations:

Consideration #1: There might be compelling reasons not to allow young people to use marijuana

Consideration #2: There might be indirect factors that might make it prudent to make marijuana illegal, e.g. if its *illegality* reduces crime, increases ambition, reduces teen pregnancy, increases intelligence, increases religious faith, reduces the number of divorces, and so on.