

Module 6: Gluttony: Illegal Drug Use and the War on Drugs

Introduction

Of all of the vice related crimes in the United States the most attention is given to the war on drugs. As with prostitution and gambling, the laws concerning drugs have changed radically from total legalization to massive prohibition. Though “vice squads” spend a great deal of time fighting the war on drugs what exactly is the vice involved? Neither lust, nor anger, nor greed seem to fit. Perhaps the closest of the major vices that fits drugs is gluttony. Gluttony is formally the vice of excessive eating, but the overconsumption of food for pleasure is similar to the overconsumption of drugs for pleasure. I say overconsumption since some of these drugs are allowed for medicinal purposes (most commonly morphine) when taken in amounts to eliminate pain. The vice of drug use doesn't seem to be in using them when you are sick, but it does seem a vice when using them just to feel better than normal. In this module we will look at the history of our drug laws, the arguments against allowing people to use drugs, and the arguments for allowing people the liberty to use drugs. Perhaps more than any other topic in the course this one brings together elements of liberty, paternalism, libertarianism, virtue ethics, and utilitarianism. We will begin with a history of drugs.

NOTE: Distinguishing “drug use” from “drug abuse” is not always easy. For example, doctors are sometimes reluctant to prescribe Schedule III narcotics (such as hydrocodone, morphine, or opium) for patients with severe pain due to chronic or terminal illness, such as cancer, out of fear that the patients will become addicted. Similarly, patients are sometimes reluctant to take them for the same reason. As a result, patients with chronic pain sometimes do not get the medications that would allow them to function normally. In pharmaceutical sales training for Schedule III products such as fentanyl, an anesthetic used to treat breakthrough cancer pain, sales representatives are carefully taught to explain to physicians the difference between use (can allow a patient with illness or condition to function more normally) from abuse (used by non-patients to “feel good.”)

Part 1: History and Science of Illegal Drugs

Given what has been said about liberty, privacy, the harm principle, and paternalism there should be a considerable amount to say about the question of criminalizing drug use. Before we can determine if drug use should be criminalized, we need to have a basic understanding of various drugs, their historical uses, effects on users, and reasons why society deemed them “immoral” and then illegal. To this end, I will provide brief summaries on marijuana, opium, morphine, heroin, cocaine, speed, LSD, and XTC. Much of this information is drawn from historical documentation. In addition to the historical account, I have provided some general scientific information of the effects of these drugs. It is important to remember that the science of these drugs is sketchy as very little independent research has been done (or permitted) and much of the research that has been done is often disputed. I will begin focusing on the drugs individually. Then, after this individual account, I will fill in the details of the federal U.S. drug laws, which are mentioned in the assigned textbook readings.

Marijuana

History in Brief: Perhaps the drug that garners the most attention when it comes to recreational use is marijuana. There are many non-drug related uses of the marijuana plant. Among them were the production of rope and clothing. However, our interest is in its use as a drug. Historically there have been several uses, among them: Ancient cultures would burn marijuana in tents at social gatherings and it was used in China and India as medicine (cramps, appetite, and pains). India's Goddess Shiva was said to have given marijuana to man as a recreational gift. Marijuana was made known in Europe by Napoleon's troops who brought it back from their campaigns in North Africa. England's Queen Victoria used it to ease the pain from cramps. In colonial America, it was encouraged as a cash crop for rope, sails, medicine and clothes. In 1887 (at the 100 Year Fair in America) a Turkish sultan sent a large gift of bongos with pot to fair visitors, and the marijuana habit begins to catch on.

During the U.S. prohibition of alcohol, marijuana becomes most popular legal drug and is used frequently by jazz musicians. During the Great Depression, marijuana becomes associated with cheap Mexican labor (who took jobs from local laborers). As a result, the first marijuana laws appear in southwestern states and are used as a pretext to arrest and deport cheap Mexican laborers. The first national law regulating marijuana was in 1937 when Congress passes the Marijuana Stamp Tax. This law was fashioned after the Machine Gun Act. After the First World War, America had no gun laws, so people (and gangsters) were free to wander the streets with machine guns. Since the Second Amendment would prevent a law banning machine guns (at least that's what they thought then) Congress instead passed the machine gun act, which required that you have a stamp on your gun showing that you paid a tax on that gun. The trick was that they only provided the post office with a handful of stamps each year so most people could not get them and therefore could be arrested for not paying a tax on their machine gun (rather than arrest them for having a machine gun). The Marijuana Tax Stamp was similar in that if you had marijuana but did not have a stamp for it, you could receive a 5-year jail penalty for “tax evasion.” However, this time Congress built into the law that in order to

obtain a stamp at the post office, you needed to bring in your pot to get it. Of course, once you showed your stash (which did not yet have a stamp) you were promptly arrested for violation of the law. As you can see, this was a “catch 22” situation as there was no legal way to get the stamp without breaking the law. But the intent of the Tax Stamp Act was to ban marijuana, since at the time it was thought that the Constitution's “life, liberty, and pursuit of happiness” guaranteed Americans to use drugs recreationally (Oh, how things have changed!).

A national propaganda war declares that marijuana causes suicide, murder, sex and insanity. Movies are made to reflect the “evils of marijuana” such as the film *Reefer Madness*. These claims were not scientifically demonstrated. For instance, Mayor LaGuardia of New York established a blue ribbon scientific panel to study the effects of marijuana. The panel concluded that marijuana was not addictive, it was not a problem with school kids, and was not a cause of crime. Shortly after this study, the federal government ends open marijuana testing (you now need government approval to use marijuana in a study). In the 1960's Timothy Leary gets the Supreme Court to overturn the Marijuana Tax Stamp Act. In 1970 Congress bans marijuana on the grounds that it has no medicinal purpose. Today, at least 11 states officially allow medical use of marijuana (and more states are pushing similar laws). Despite these state laws, the federal government still arrests people in these states citing federal drug laws.

Science in Brief

- Marijuana has not been proven to be addictive.
- Marijuana use causes relaxation.
- Marijuana use causes an increased appetite.
- Marijuana can cause paranoia.
- Marijuana does not directly cause death or overdose.
- Some studies indicate that long-term use can impact quickness of mind.

Part 2: Opium/Morphine/Heroin

History in Brief : Opium, morphine, and heroin all derive from the same plant and have similar effects that differ in degree. Opium has been used medicinally from the time of Alexander the Great. It was found to be an effective painkiller. Opium's recreational use grew rapidly once people began to smoke it (which increases the speed and intensity of the effect). Smoking opium became popular in China , and opium dens were common in cities around the world. Opium smoking became such an epidemic in China that the government attempted to ban the practice. However, England made a fortune by producing and selling opium to the Chinese, and thus went to war with China and won the right to sell opium there.

Opium was a common ingredient in household medicines. It was even used medicinally to stop babies from crying. In the USA , the first national law concerning opium was the 1906 Food and Drug Act, which required the labeling of any product with opium in it. As a result of the labeling of opium products, the use of opium began to decline. Opium smoking in the United States was associated with Chinese

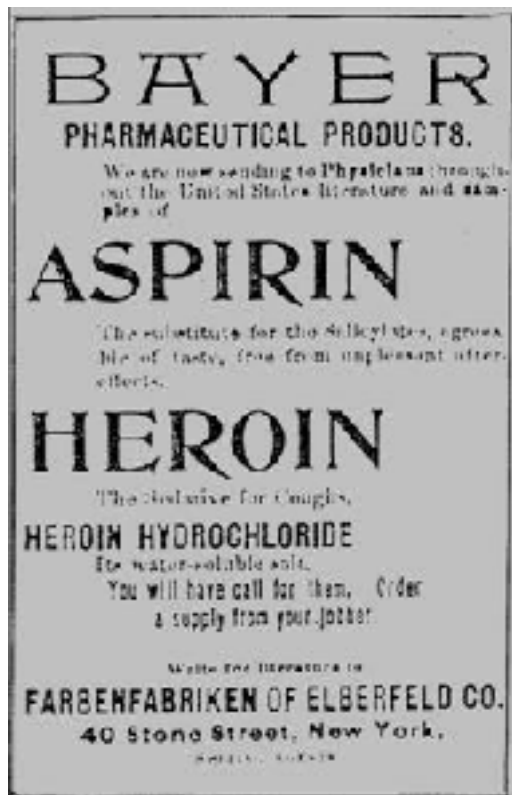


immigrants, mostly men in the west who were here to work on the railroads. The opium dens here were run mostly by Chinese men (there were few Chinese women in the U.S. at the time). This led to a concern that opium was being used by Chinese men to seduce white women into “white slavery and prostitution.” As a result, the first laws banning any drug in the U.S. were a prohibition in western cities against opium smoking, which was essentially aimed at Chinese men.

Morphine was invented from opium as a potent medicine. It quickly became a standard painkiller used around the world. However, morphine use led to addiction. Despite the known addictive nature of morphine, it was actually prescribed by doctors to alcoholics on the grounds that a morphine addict was better than an alcoholic. Where alcoholics have a propensity to be loud, violent, and aggressive, morphine addicts are quiet, withdrawn, and passive. Like most other drugs morphine became restricted to prescription only in 1914 and became illegal in 1970. However, morphine is still used as one of the most common and effective pain killers in modern medicine.

Like morphine, heroin was invented as a more potent form of opium (far more potent than even morphine). During the American Civil War heroin was thought to be an important medical breakthrough for two reasons. **First**, heroin (the “hero's drug”) was an effective painkiller at a time when thousands of men were having legs and arms amputated by use of a hacksaw. **Second**, heroin was thought to be an improvement over morphine because it could be injected rather than eaten. At the time it was thought that the cause of morphine addiction was the “taste” of morphine as it went through the

digestive tract. Therefore, since heroin was injected directly into the bloodstream it would be less addictive. This mistake led to the first American drug epidemic, which was heroin addiction by Civil War veterans.



During alcohol prohibition, heroin (and morphine) were widely used by middle class women, as drinking for women was socially unacceptable. Heroin and morphine became the drugs of choice for women (in part due to the discrete nature of using the drug). Heroin was so popular amongst women that it was made available for \$2.50 in the Sears & Roebuck catalogue. For your \$2.50 you received by mail several doses of the drug along with a syringe and ornamented carrying case. Heroin was also used in household medicines. For instance, as the 1897 advertisement reveals, Bayer aspirin had heroin as a central ingredient. Like opium and morphine, heroin became restricted to medical prescription only in 1914. Then, in 1919 the Supreme Court ruled that doctors could only prescribe it as a treatment and not just to maintain an addiction. As a result of this decision, doctors were the largest group of people arrested for violating drug laws. The violation was “mis-prescribing it” and resulted in an effective ban as doctors were afraid that

any prescription for these drugs could lead to a jail sentence if a court found it was not legitimate medicine. This led to a massive increase in crime as addicts could not obtain the drugs cheaply and conveniently from their physician. In 1970, heroin was banned outright. The use of heroin declined from 1970 until the later 1990s when the drug resurged in popularity.

Science in Brief

- Highly addictive (heroin is one of the most addictive of all drugs; morphine is also very addictive).
- Overdose will kill (euthanasia with a morphine drip is very common today).
- Use causes serious weight loss.

Amphetamine (Speed)

History in Brief: Speed is a product of the 20 th century. Initially it was developed as a sinus treatment (Benzedrine) and was referred to as “popping bennies.” From here it became used recreationally and also work related as it enabled people to work longer and

harder. During the Second World War, Hitler was said to use amphetamines as much as five times a day. It was also given to German troops to increase the effect of the Blitzkrieg. Even today it is used by truck drivers to enable them to drive long hours. The U.S. Air force issues “go” pills (a form of amphetamine) to aid pilots in long military flights. Many of those arrested for using speed have been housewives who use it to help complete housework faster and maintain a high energy level. Athletes have been found to use it to increase performance in football, bicycling, and even horseracing.

Science in Brief

- Speed is highly addictive.
- Speed causes euphoria, confidence, ability to work long hours at even repetitive tasks (resist fatigue).
- Speed overdoses are common (use can “explode” the heart by ripping a hole in it).

Part 3: Cocaine

History in Brief: Cocaine is derived from the South American coca leaf. This leaf has been used traditionally by the local populace. Sucking on a few leaves provides locals with an effect similar to having strong coffee. In the 1860s German scientists find the active ingredient in the coca leaf and name it cocaine. Three years later cocaine comes to the USA in wine and other products. People do not know what cocaine is but they buy more products with it. The most famous product containing cocaine was Coca-Cola.

Sigmund Freud used and prescribed cocaine (though he later became addicted and stopped using it). Cocaine was also given to African-American workers to enable them to work longer hours. The first laws against cocaine appear in southern states when police report that African-American men who use cocaine take more bullets to stop than normal men. It became widely publicized that African-American violence towards whites was caused by cocaine (the biggest fear was that it motivated the rape of white women). As a result southern states banned cocaine and then put cocaine on the list of drugs regulated in 1914 which eventually became illegal in 1970. By and during the 1980's, cocaine was the most popular drug in America .

LSD

History in Brief: LSD was created during World War I but was not produced on a wide scale until the Cold War began at the end of World War II. The CIA widely experimented with LSD using it both on agents and civilians (usually without their consent) in an attempt to determine LSD's effectiveness for mind control, brainwashing, and interrogation purposes. In one of the more public instances, CIA-funded researchers would pay college students to take LSD and undergo mock interrogations and reprogramming experiments. During the 1960s Timothy Leary among others advocated using LSD to expand your minds (he is famous for his book *Turn On, Tune In, Drop Out*). At the time LSD was not used by other drug users (cocaine and heroin users) but was embraced by baby boomers in great numbers during the 1960s. The drug was legal during this time but its association with anti-war protestors and hippies helped motivate its ban in 1970.

Science in Brief

- LSD may have uses in psychotherapy.
- LSD likely has negative effects on brain for long-term users.
- LSD is non-addictive.

Ecstasy (XTC)

History and Science in Brief: XTC was first manufactured and used in marriage counseling on the west coast of the U.S. in the 1970s. XTC creates feelings of closeness that aided couples in therapy. Soon after this use, bars in the southwest begin selling it. XTC is potentially lethal as it causes a large release of serotonin in the brain which leads to “down” days afterwards. XTC use is also linked to deaths from dehydration and heat exhaustion (usually as part of the “rave” scene). As XTC appeared after the 1970

Controlled Substances Act, it was the first drug that was left to the classification system set up by that act. Early in the 1980s XTC was classified as a Schedule I substance which ended all medical research on the drug. XTC went on to become a widely used drug in the rave scene since the 1990s.

Part 4: Brief History of Drug Regulation

Several laws were made mention of in the previous section that deserve further explanation. I will omit the details of local and state laws, which began to change before the federal laws, and focus only on the major federal laws.

1906 Food and Drug Act

This is the first law that impacts drugs on a federal level. This law was in response to the “snake oil” sales of “cure-alls” which promised to cure most everything but did not provide a list of ingredients. Some of these cure-alls consisted of large amounts of morphine or alcohol. As a result, Congress passed the Food and Drug Act in 1906, which required the labeling of all ingredients in these patent medicines and cure-alls. Predictably, the result was a huge drop in the use of these substances once people knew what it is they were consuming. For example, one cure-all intended to cure tooth aches in children consisted almost entirely of cocaine.

1914 Harrison Tax Act

By 1914, various groups wanted to ban various drugs. Congress and most Americans at the time thought that a ban of any drug was unconstitutional as our constitutional guarantee of liberty gave us the right to consume any product we wished (which is why the prohibition against alcohol required a constitutional amendment rather than merely a law). The plan was to ban drugs by making them nearly impossible to obtain. The law required that you must pay a tax on drugs. To ensure that the tax was collected, you had to get the drugs from a doctor via prescription (all prescriptions were therefore registered with the tax office which enabled the government to track which doctors were prescribing which drugs). It is interesting to note that there was no agreement as to which drugs would be included in the tax act. Various regions pushed for different drugs. One of the candidates was caffeine. In the end the Harrison Act included opium, heroin, and cocaine (but not marijuana). The law required that (for tax purposes) doctors must keep records and only prescribe these drugs for “medical necessity.” In 1919 the Supreme Court ruled in *Webb, et. al. v. United States* that addiction was not a disease; as a result doctors were told there was no “medical necessity” for these drugs. Since all doctors prescribing these drugs had provided records of these prescriptions, thousands of doctors were then arrested for prescribing these drugs to addicts to maintain their habits. Constitutionally, this was questionable as regulating the medical practice is thought to be a state issue.

1970 Controlled Substances Act: (Nixon's Drug War)

By 1970 the prevailing view that the constitution guaranteed us the liberty to use drugs had changed. As a result, Congress, with President Nixon's support (FBI Chief Hoover informed Nixon that the way to attack the “new left” was to arrest them on drug charges since the protests and anti-war speech were legal), passed the Controlled Substances Act of 1970. This act was more than just a banning of particular drugs, but also took the power to determine the legal status of future drugs out of the hands of the president,

Congress, and courts. Instead, the power to determine the legal status of drugs was given to the DEA. New drugs never go to Congress for a vote; they are simply classified via “*Scheduling*” without debate by the DEA.

Scheduling

WEBLINK: Details about scheduling can be found at:

<http://www.usdoj.gov/dea/pubs/scheduling.html>

Each drug is scheduled by the DEA as it is “perceived.”

Schedule I

Any drugs that have a “high potential for abuse” and that have “no currently accepted medical use in treatment in US” and whose “safety is not proven for medical use” are schedule I drugs. They include:

- Heroin
- Methamphetamine
- Marijuana
- LSD

In addition, no research can be done on Schedule I drugs without government approval.

As you can see it is very easy for a new drug to be classified as Schedule I. Any new drug that is “perceived” by the DEA as likely be abused and that is so new that there is no currently accepted medical use for it and that you can't prove to be safe gets a Schedule I rating. Once a drug becomes a Schedule I drug, how could you prove it is safe, develop a medical use for it, and show that the perception of abuse is false since you cannot do any research without government approval? When we combine this with the historical facts that many of the motivations for making these drugs illegal stem from racial factors (Chinese and opium smoking, Mexican migrants and marijuana, African-Americans and cocaine), it becomes difficult to justify our current drug laws. However, philosophers can employ moral arguments that may justify the legal prohibition of these drugs. We will begin with the case against drug use.

As we have seen there is a long history of taxing drugs. This continues as, despite our laws prohibiting drug possession, sale, and use, some states (including North Carolina) still have laws taxing illegal drugs. Yes, this means that though you aren't supposed to have any drugs around, if you do have them you are required to pay a tax on them. The state tax law even prohibits state officials from turning you in for drug possession if you pay the drug tax. The following information is taken directly off of the official State of North Carolina website:

<http://www.dor.state.nc.us/taxes/usub/substance.html>

What is the unauthorized substances tax?

The unauthorized substances tax is an excise tax on controlled substances (marijuana, cocaine, etc.), illicit spirituous liquor (“moonshine”), mash, and illicit mixed beverages.

Who is required to pay the tax?

The tax is due by any individual who possesses an unauthorized substance upon which the tax has not been paid, as evidenced by a stamp.

When is the tax due?

The tax is payable within 48 hours after an individual acquires possession of an unauthorized substance upon which the tax has not been paid, as evidenced by a stamp.

Do I have to identify myself when I pay the tax?

No. Individuals who purchase stamps from the Department of Revenue are not required to give their name, address, social security number, or other identifying information.

What should I do with the stamps that I receive after I pay the tax?

The stamps must be permanently affixed to the unauthorized substance. Once the tax due on an unauthorized substance has been paid and the stamps affixed, no additional tax is due even though the unauthorized substance may be handled or possessed by other individuals in the future.

Will the Department of Revenue notify law enforcement if I purchase stamps to affix to my unauthorized substances?

No. Notwithstanding any other provision of law, information obtained pursuant to the unauthorized substances tax law is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of the unauthorized substances tax law. Revenue employees who divulge information regarding stamp purchasers to law enforcement shall be guilty of a Class 1 misdemeanor.

How are unauthorized substances tax collections used?

Seventy-five percent (75%) of the money collected is returned to the state or local law enforcement agency whose investigation led to the assessment. The remaining twenty-five percent (25%) of the money collected is credited to the General Fund.

If I purchase stamps, will I then be in legal possession of the drugs?

No, purchasing stamps only fulfills your civil unauthorized substance tax obligation. You will still be in violation of the criminal statues of North Carolina for possessing the drugs.

What number can I call to get an application for stamps or more information on the unauthorized substances tax?

1-877-308-9103

The state even provides tax rates for these drugs. The following is again taken directly from the State of North Carolina website:

<http://www.dor.state.nc.us/taxes/usub/usubrates.html>

Unauthorized Substance Tax Rates

Substance	Tax Rate	Minimum Quantity Before Tax is Due
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Marijuana stems & stalks that have been separated from the plant.	\$.40 for each gram or fraction thereof	More than 42.5 grams
Marijuana other than separated stems and stalks	\$3.50 for each gram or fraction thereof	More than 42.5 grams
Cocaine	\$50.00 for each gram or fraction thereof	7 or more grams
Any other controlled substance that is sold by weight	\$200.00 for each gram or fraction thereof	7 or more grams
Any other controlled substance that is not sold by weight	\$200.00 for each 10 dosage units or fraction thereof	10 dosage units
Any low-street-value drug that is not sold by weight	\$50.00 for each 10 dosage units or fraction thereof	10 dosage units
Illicit Spirituous Liquor sold by the drink	\$31.70 for each gallon or fraction thereof	No minimum
Illicit Spirituous Liquor not sold by the drink	\$12.80 for each gallon or fraction thereof	No minimum
Mash	\$1.28 per gallon or fraction thereof	No minimum
Illicit Mixed Beverages	\$20.00 on each 4 liters and a proportional sum on lesser quantities	No minimum

In addition to this information, there is even an official state tax form for you to submit to ensure you've paid taxes on the drugs you have. It can be found online at <http://www.dor.state.nc.us/downloads/BD-1.pdf> or you can view a copy of that form [here](#).

Part 5: The Case Against Drug Use

Employing **paternalism** (from Aristotle or Dworkin) we find **three** relevant arguments providing a moral reason for the state to criminalize drug use.

1. Drug use can kill you.

This means that a liberty to use drugs is equivalent to a liberty to kill yourself. If the state can restrict suicide then so also can it criminalize using drugs.

2. Even if drug use doesn't kill you it is clearly bad for you.

Using these drugs causes health problems for you directly, or, drug use can lead you do to other dangerous things while high that may harm you. Being high on drugs also places you at risk to be victimized by other people without the ability to resist. For instance, many people are sexually assaulted while high and may be unaware or unable to resist such an assault.

3. Even if your use of drugs does not cause you harm or death, we can still say on strong paternalistic grounds that you are better off not using drugs.

This not only means that you are better off avoiding the risks of harm, but that you are in some ways a better person, or more likely to benefit from not using drugs.

All three of these arguments are based upon **paternalism**. Of course if we reject paternalism, then we will reject all three of these arguments. This rejection of paternalism would not end the debate as even if we adopt a view of liberty like Mill's Harm Principle; there is still the question: “ **Does allowing a person to use drugs constitute a harm to others?** ”

Many will argue that drug use does constitute a harm to others such that even on a harm principle account of liberty, drug use is not strictly self-regarding and therefore state criminalization is permissible. The next **nine arguments** against drug use are grounded in the idea that allowing drug use constitutes endorsing **harm to others**.

4. Allowing people to take drugs leads to an increase in accidents which often harm others.

People on drugs are not in full control of their faculties. They take risks they would not normally take and do things they would not normally do. Imagine: What if the person driving your child's school bus was high? Any drug which affects a person's coordination or mental capacity negatively will result in an increase in accidents, which will harm innocent people. Mill is a utilitarian. It seems a simple claim that the costs in terms of accidents outweighs any pleasurable benefit from drugs.

5. Allowing people to take drugs leads to an increase in violence and abuse of family members.

It is clear that many of these drugs will make people more prone to violence and less likely to reason. Many drug users “flip out,” and often hallucination and paranoia facilitate violence that would not occur but for the use of drugs. Again, on a utilitarian

account, the costs of violence and abuse outweigh the benefits of drug use.

6. Allowing people to take drugs leads to decreased productivity on the job, which affects the economy.

This is a straightforward utilitarian account under which the loss to productivity outweighs the benefits of drug use. Two historical examples of this are the impact of millions of opium addicts upon the Chinese economy, and the effect drug use had in lessening the fighting ability of American troops in Vietnam . During the war many troops were not fit for duty because of their drug use. In addition, people who use drugs often end up losing their jobs, which makes them a burden to the public welfare system.

7. Allowing people to take drugs will increase the harm caused to fetuses by pregnant drug users.

Perhaps the most widely known term for this is “crack babies,” but this goes beyond any one drug. Drug use by pregnant women can cause serious birth defects which not only harm that child but also cost society small fortunes to care for children that are unable to lead normal lives due to their parents' drug use.

8. Allowing people to take drugs leads to an increase in crime generally.

Drug use supports a system of drug production and sales that leads to gang wars, drug murders, political assassinations (there have been several in drug producing countries), and even robberies, thefts, and assaults by drug users attempting to earn more money to buy drugs.

9. Allowing people to take drugs facilitates the spread of diseases like AIDS.

People who use drugs often share needles, which spreads diseases. In addition, other drugs encourage people to engage in sex (sometimes unknowingly) which also spreads disease.

10. Allowing people to take drugs increases poverty.

Drug users spend an enormous amount of money on drugs, often at the expense of their kids' needs. People who spend so much and become unable to support their families or even themselves become a burden on the public welfare system, which constitutes a harm to the taxpayer. Mill himself thought that if people's activities left them unable to live up to their obligations to others (say, caring for children), then that activity was a harm to others.

11. Allowing people to take drugs will get them addicted. Becoming addicted to drugs is an impairment upon future liberty.

Remember, Mill himself said we could not let someone sell themselves into slavery because that too would impair a person's future liberty. If, as Mill says, the purpose of the harm principle is to enhance liberty, then the harm principle should oppose drug use on the grounds that drug addiction limits liberty.

12. Allowing even rational adults to take drugs will ensure that drugs become more available such that children will obtain access to them.

Not only does allowing people to take drugs ensure easier access to drugs by children, but it also sends the wrong message to children that drug use is OK.

Part 6: The Case for Drug Use

The previous 12 arguments cover most of the reasons given against letting people take drugs. Each of the 12 are grounded either in **paternalism** or a desire to prevent **harm to others**. Many of them rely upon a utilitarian calculation under which even if most people do not cause harm to others, those who do will cause sufficient harm to outweigh the benefits of letting everyone take drugs at will.

Now, we can make the case that liberty does justify our ability to take drugs. This case for drug use must do two things: **First**, it must rest in a coherent conception of liberty that will defend drug use as beyond the state's power to criminalize. **Second**, it must respond to all 12 of the above arguments. One of the best conceptions of liberty that one can employ to defend drug use is the harm principle. As such, a case can be made that on a harm principle account of liberty, rational adults are justified in using drugs. As we are familiar with the harm principle, we can move directly to offering a response to the 12 arguments against drug use.

We can chart these 12 arguments and the response as follows:

Analysis of Drug Prohibitions			
<u>Paternalism #1 - 3</u>	<u>Alcohol #4 - 7</u>	<u>Harm Reduction #8 - 10</u>	<u>Other #11-12</u>
Use can kill Use not healthy Better off without	Harm to fetus Increased accidents Violence/abuse Productivity loss	Crime Poverty Disease	Addiction Access by minors
Relies on paternalism; Legalization would lead to safer drugs; decrease overdoses	Likely contradiction to argue these while accepting alcohol	Legalization would lower crime and lower costs to that of coffee and tobacco. Needle exchange reduces disease.	It is not clear that addiction or access by minors will rise significantly; Kids already have access.

Paternalism #1–#3

The first three arguments against drug use depend upon paternalism. Though this may be acceptable in a theory of liberty like Aristotle's, Mill clearly rejects paternalism in favor of the harm principle. As a result, these arguments are irrelevant to anyone who accepts the harm principle. Furthermore, to the paternalist it could be argued that allowing people to take drugs will make drugs safer to take.

Think about it this way: when you buy your crack from Charlie, the local crack house manager, what is Charlie's interest in making sure the product he sells you is safe? The answer is very little. If you become ill because Charlie's crack is made improperly (or because he cut it with baking powder or something worse), there isn't much you can do as

Charlie is the only source in your area and you can't very well sue him. Yet, if you were free to buy your crack at Wal-Mart (or in bulk at Sam's Club), then you can be certain that it was produced with quality controls and is labeled for its potency and so forth. Wal-Mart would have a direct interest in ensuring it was the safest (as safe as crack can be) product on the market; otherwise, they could be liable.

Although this example is clearly extreme, there is historical evidence for the claim. During prohibition of alcohol, much of the product was produced by gangs such as Al Capone's. The quality was poor as little care was put into making it. When the ingredients were not all available, people would simply improvise (one might recall the *Simpson's* episode where Homer makes booze in his bathtub as a historically-based example of this time period). Many people died during Prohibition, not from drinking too much, but from drinking poor quality liquor that was made improperly or had impurities in it. Since Prohibition, alcohol is much safer as every bottle is labeled for alcohol content, and every manufacturer has a financial interest in product safety.

Alcohol #4-#7

Hey, who thinks that drinking is immoral?

(I've asked this in class and found very few hands go up).

Most students, and Americans in general, find nothing immoral about drinking. At one point Americans did think drinking was immoral; this view became so common that we amended the Constitution to prohibit alcohol by law. Though we are not going to debate the morality of drinking, it is of great importance to note how most of us do not think alcohol is immoral. The acceptance of alcohol does present a major problem for those arguing against drugs. Drug use is often criticized on the grounds that it causes: Harm to fetuses, increased accidents, increased violence and abuse, and a loss of economic productivity (arguments 4-7).

However, there is a serious conflict between the acceptance of alcohol and the use of these arguments against drugs. Concerning harm to fetuses, three words come to mind: **fetal alcohol syndrome**. According to the National Organization of Fetal Alcohol Syndrome, "FAS is the leading known cause of mental retardation and birth defects." It seems that alcohol causes tremendous harm to more fetuses than drugs do, yet we do not seem persuaded that this is a good reason to oppose drinking. So it seems hypocritical to apply the reasoning to drugs after rejecting the same reasoning for alcohol. What this shows is that pregnant women shouldn't drink or do drugs. If harm to fetuses does not provide a reason to oppose drinking, then nor does it provide a reason to oppose other drugs in general.

WEBLINK: Learn more about fetal alcohol syndrome (FAS) at:

<http://www.nofas.org/>

What about accidents, violence, and productivity? Alcohol is a leading cause of accidents, domestic violence, and loss of worker productivity. Still, we do not find that this is reason enough to oppose drinking. Why then would it be a reason to oppose drug use? It seems clear that acceptance of alcohol makes it very difficult to argue against drugs based upon harm to the fetus, increased violence, accidents, or decreased

productivity. This is not to suggest that these things are not harms to others; they are. However, Mill mentions that even if something is a harm, that only means society “ **may** ” prevent it (not that it “must” prevent it). As a result, the counter to arguments 4-7 is not that they do not cause harm (though we might dispute the likeliness of any particular person committing the harm as Mill does not think that just because 1 in 10 will act badly that this is a sufficient justification to prevent all 10), it is a **consistency argument** . If we accept the harms from alcohol as acceptable harms, then we must allow drugs the same level of harm before we claim they are wrong and people should be stopped from using them by force of law.

Harm Reduction #8–#10

Each of these arguments revolves around the harm to others caused by drug use. In each case a defense can be offered that, though these harms may exist, the harms can be reduced by allowing people to use drugs. In other words, the prohibition of drugs makes each of these harms worse than they would be if drug use was allowed. This is a utilitarian defense, as it does place drug use in the sphere of other-regarding actions that the harm principle would allow us to restrict, but claims that of the two options—allowing or prohibiting drugs—the harms of prohibiting drugs are worse than the harms of allowing drugs. Since we must choose either to allow or prohibit drugs, allowing them has the greatest utility value in terms of harm reduction. With this in mind, we can examine each of these arguments individually.

Crime: There are two ways in which drug use causes crime.

- **First**, drug use causes crime on the supply side where drug lords and street gangs will commit crimes such as murder in order to maintain their market position.
- **Second**, drug use causes crime on the demand side where, for instance, drug users will steal in order to obtain the funds to purchase their drugs.

Beginning with the supply side we might ask: “Why do people kill in order to sell drugs?” The answer is the huge profit margins made in the sale of drugs. What costs a foreign producer \$200 can end up being sold for \$20,000 on the streets of America . With a profit margin like this it isn't difficult to see why people are willing to commit crimes to maintain their ability to make this amount of money (compared to working for \$7 an hour, the temptation is obvious). As a result of this profit margin, we see gang wars, assassinations, and other crimes.

Yet, what would happen to the price of drugs if drug use were allowed? The price would drop dramatically as the whole reason for the markup is the fact that drugs are illegal. To make a comparison, the costs of manufacturing and shipping cocaine, opium, or marijuana are about the same as **coffee** or **tobacco**. If your profit for selling cocaine was the same as selling coffee, would there be an incentive to kill your competition? It would seem that by allowing drugs we reduce the harms of crime associated with the supply of drugs.

There is historical evidence for this claim in the alcohol prohibition. When alcohol was

prohibited, nationwide the cost of alcohol skyrocketed as it was now a black market product. Gangs like Al Capone's sprung up to supply this black market product and reap the huge profits for doing so. This led to the largest crime wave America had seen as gang wars erupted over the black market in alcohol. This crime wave lessened when prohibition ended as there was no longer a profit to be made in black market booze.

Now, on the demand side of crime a similar argument can be made. Why do drug users steal to obtain money for drugs? Because drugs are so expensive. If the price drops to 10% of what it was (and the actual price drop may be greater), then drug users can afford their supply for less money which provides them less incentive to commit crimes. Why do we not see a huge crime wave of tobacco smokers robbing convenience stores to obtain their tobacco? The answer seems to be that tobacco is affordable.

So too if drugs were allowed and the price dropped to a level comparable with tobacco, we would see a drop in crime on the demand side. Or, to reverse the example, imagine if nationwide tomorrow the price of tobacco jumped to \$100 a pack, wouldn't we expect to see a rash of tobacco crimes? As a matter of fact with the recent increases in tobacco taxes, state governments are already reporting an increase in black market tobacco smuggling. As a result, there is an argument that if we want to reduce the harms of crime, the solution is to allow drugs rather than prohibit them.

Poverty: Just as allowing drug use would decrease the costs of drugs and reduce crime, a similar claim can be made that this would also reduce poverty. Just as the poor can afford a smoking habit without sinking into poverty today, they could afford a drug habit if drug use were allowed. The claim is that by prohibiting drugs, you are making more people poor as they continue to feed their drug habit. Only now they spend much more due to the high black market prices.

Disease: The leading method by which drug users spread disease is the practice of sharing needles. There are "needle exchange" programs in some cities and in other countries that reduce the spread of disease by offering to exchange any needle for a clean one. These programs reduce the harm by drug use as users use their own clean needles rather than sharing. Yet, in America these programs are rare and frowned upon because drug use is prohibited, and these programs "make it easier" for people to use drugs. We might further imagine (as was true in the days before drug prohibition) that if drugs were allowed people would get their needles included when they bought their drugs. This would eliminate the need to share needles, but it will only occur once drug use is accepted. By prohibiting drug use we set up a scenario in which clean needles are not easily available, which encourages drug users to share needs which spreads disease. Once again the claim is that prohibition makes the harms worse, whereas allowing drug use would be a better policy in terms of harm reduction.

Other #11–#12

At least two of the arguments against drug use do not fall into any of the above categories. They are: **addiction** and **access by minors**. Still, there is an argument to be offered in each case that these are not good reasons to restrict our liberty to use drugs.

Access by Minors : Protecting children from accessing things that are bad for them is a

great concern. However, as a point of fact it fails to pan out as a reason to restrict drug use. For instance, imagine when you were 16. Suppose we gave you seven days and \$100. Could you have obtained one of the illegal drugs mentioned at the beginning of this module? By and large most of us could have. If, as a fact of the matter, children already have easy access to drugs, then allowing drug use by adults would not have such an effect on kid's ability to obtain drugs.

Of course, it could still be argued that we send the wrong message by allowing adults to take drugs, but this too is problematic for two reasons. First, just because allowing an adult to do something sends the wrong idea to children, this is not necessarily a reason to restrict it. For instance, we allow adults to drink. Yet we do not use the "bad message" argument against alcohol. Second, if adults are allowed to do something, this may make kids less likely (not more) likely to do it. Kids often seek out the things that "they aren't supposed to do" whereas if mom and dad do it, it just isn't "cool."

Addiction: One of the essential claims is that drug use leads to addiction; hence we should prevent drug use in order to prevent addiction. This claim can take many forms, some of which I will respond to here (still playing devil's advocate for drug use). The strong claim is that drug addiction is like slavery. Since Mill himself said we could not let someone sell themselves into slavery, Mill must also oppose drug use because drug addiction limits future liberty just like slavery. This may be a compelling argument, but can we really say that drug use is like slavery? Even users of highly addictive drugs like cocaine rarely become addicts. Only a small percentage of those who use drugs become addicts. Furthermore, even drug addicts can quit the habit, which is certainly easier than trying to free oneself from slavery.

Even if we reject the comparison to slavery, we can certainly accept the fact that addiction to drugs is not only bad for the addict but additionally, addicts are most likely to harm others through their use of drugs. Still there is an empirical question here: will allowing people to take drugs necessarily lead to a huge increase in the number of addicts?

Of course we may initially think it would, but consider the following case. Imagine that tomorrow morning drug use is no longer restricted such that the Wal-Mart pharmacy was stocked with all of the drugs that an adult could want. How many people do you envision waiting outside the store when it opens? Of course, some people are there for other things so don't count them. We can also discount any current drug users who are there to buy drugs as they are simply switching their source from Charlie the dealer to Wal-Mart. We are only interested in the number of first-time drug users; are there a lot? We might ask this question a different way. How many of you, not currently using drugs, are just waiting for drug use to be legalized before you start? I've asked this question for a few years now and only found two students amongst hundreds who said they would start using drugs. The addiction argument seems weaker than initially thought because most people who want to use drugs already do, so that it is *not* at all obvious that massive numbers of people will start to use drugs should they become legal!

At this point I have offered twelve arguments against drug use and offered a response to each argument. In order to defend drug use we are required to adopt:

1. A view of liberty like Mill's harm principle that rejects paternalism (thereby rejecting arguments 1-3).
2. Support the use of alcohol (if we do not defend the liberty to drink, then the arguments 4-7 apply against drug use too).
3. An additional acceptance of consequentialism that enables us to accept the “lesser of two harms” idea of harm reduction (8-10)
4. A factual view about the consequences of drug use is needed to resist arguments 8-10, 11, and 12.

This is no easy task. If any one of these things is not present, the defense of drug use on a harm principle account seems to fail. Of course, there may be other arguments offered in defense of drug use that rely on other principles, but the ones offered above are among the most compelling. Even if we accept the principles and facts that allow a defense of drug use, there is still a further argument against drug use. We will see this appear in my summary of some relevant articles in the next section. Before we move on you should consider the following video concerning the “war on drugs”

Part 7: Articles on Drug Use

Below are short descriptions of five different articles on drug use. The first three articles are provided; the last two are summaries.

Milton Friedman(Nobel Prize winning Economist)

WEBLINK: [*Milton Friedman - An open letter to Bill Bennet*](#)

Friedman, in a letter to William Bennett (summarized below), offers an account similar to what has been said previously. In short, he claims that the goal of limiting drug use is correct (in this sense he admits drug use is immoral), but holds that the means to limit drug use (the "war on drugs"--spending billions a year on more police, jails, higher prison terms, and use of the military in foreign countries) actually makes the problem worse.

For instance, Friedman argues that had drugs been decriminalized in the 1970s (as he and others advocated), crack would never have been invented. Crack, he argues, was only invented because the war on drugs made the cost of cocaine so high that developing a cheaper version would lead to even more profits. The effect of the war on drugs, according to Friedman, is that there is more money spent than ever, more people in jail than before (America imprisons a higher percentage of its citizens than any other country--the reason is tougher drug laws), more addicts, more violence, and narco-terror in drug producing countries. (For instance, a large portion of Columbia is not controlled by the government but by rebel terrorists who are funded by the huge profits they make in the drug business.)

Friedman argues that a policy of making drugs similar to alcohol and tobacco (legal and regulated) will best reduce the harms associated with drug use and best support freedom, which the war on drugs denies through granting police more power and limiting civil rights.

William Bennett: (Drug Czar under Presidents Reagan and Bush Sr.)

WEBLINK: [*William J Bennett - a response to milton friedman*](#)

Bennett rejects Friedman's arguments on the grounds that allowing drug use is no solution to the problem. Drug legalization is, in fact, surrendering to the problem. Bennett admits that the drug war is very costly, but he thinks that it eliminates hidden costs, which Friedman has overlooked. This is a direct rejection response to the defense of drug use presented above.

Bennett points out that the combination of allowing drug use, reducing the cost of the drugs, and reducing the dangers of drug use (as it is manufactured consistently) is setting the stage for a huge increase in addiction. In addition, as all the incentives not to do drugs (it is really dangerous, really expensive, and very illegal) would disappear, we should expect an explosion of new drug use. Bennett also responds to the comparison drug prohibition to alcohol prohibition by claiming that when alcohol prohibition ended, its consumption jumped 350%. Imagine the social costs of an increase of 350% in drug use? Hospitals overwhelmed with overdoses, massive jumps in the accident and death rate

associated with drug use.

Another argument Bennett responds to is the argument that we should treat addicts rather than imprison them. Bennett thinks that treatment only works when the addicts want treatment. (Many of them do not voluntarily enter treatment and forced treatment has a poor success rate.) Bennett also claims that the connection between drug use and crime is also more complex than has been presented.

Bennett does admit that legalization might decrease crime on the supply end. However, he claims that most drug users who commit crimes do not commit crimes to support drug habits, but are instead career criminals who committed crimes before using drugs. This means that lowering the costs of drugs will not alter their motive to commit crimes such that allowing drug use does not lower the crime on the demand side as these people will continue to commit crimes for other reasons.

Bennett advocates a deterrent effect of the drug war. By making drugs more expensive, more dangerous, and by punishing drug users and dealers, we deter others from using. Furthermore, in a nod to Aristotle, Bennett claims that the state "has a responsibility to craft and uphold laws that help educate citizens about right and wrong." Perhaps Bennett and Aristotle would agree that real freedom requires virtuous people, and using drugs is not a virtue.

Nadelmann--"The Case for Legalization"

WEBLINK: [Nadelmann - The case for Legalization](#)

Nadelmann thinks that current drug policies have failed and will continue to fail.

For instance, it is not possible for our military to stop all drug production in other countries. Furthermore, even with the coast guard, DEA, border patrols, and police, we can only stop a small percentage of the drugs being smuggled into this country. As evidence Nadelmann points out that despite the war on drugs, drug prices are constant, drug purity is up, drug availability is up. In fact, Nadelmann thinks that the war on drugs encourages the development of more potent compact drugs as it is easier to smuggle a compact potent drug like cocaine than a bulky drug like marijuana. The pressure put on smugglers by the war on drugs encourages them to ship these more potent compact drugs and also provides forms of the drug like crack to boost profits and minimize risk.

Nadelmann asks us to consider a government war on alcohol and tobacco (both of which are very harmful to users and many others). We reject this sort of war because we realize that it will fail, it will violate our liberty, it will give rise to a black market, it will increase crime, people will ignore the law, and it is silly to arrest tobacco farmers or put them out of work. Further, a war on tobacco and alcohol only increases the "forbidden fruit" motive for kids to try these drugs. It would also involve a massive amount of drug testing, searches, wire taps, and informants. ("I saw my neighbor smoking on his back porch arrest him!") There would also be corruption of government officials and police who will be bribed by the criminal element with their illegal fortunes from the tobacco and booze trade.

Consider our current war on drugs. Who really benefits from it? The two main groups are law enforcement (who are given more funding and more of them are employed) and drug

kingpins (who make more money as more is done by law enforcement to drive up the price). The victims of the war on drugs are the drug users, addicts, and low level dealers who are most likely to be arrested and are often involved in the drug trade just for the money.

Just how expensive is the war on drugs? Nadelmann (who wrote this in the late '80s) points out that the government spent \$10 billion on the war on drugs in 1987. (This number is much higher today.) There is also the prison factor. For instance, in 1988 one third of all federal prisoners were in jail on drug-related charges. American courts and prisons are clogged with drug offenders, and with increased sentences for possession and trafficking this is only increasing. Nadelmann offers a solution: end drug prohibition. Doing so would mean billions in taxes coming into the government instead of the government spending billions in what amounts to a subsidy to increase drug dealers' profits. Today, millions of alcoholics work and support themselves; by ending prohibition millions of drug users could do the same. (There was an interesting case of a woman who was a heroin user who successfully managed to be a school principal for years, even winning awards for her work. The only reason she was caught is that her dealer bragged about selling heroin to the school principal.) Certainly many drug users can support themselves and lead successful lives rather than have their lives destroyed by a drug offense. (For instance, one arrest for marijuana possession can cost you your school loans and bar you from many future jobs.)

There is also a consistency argument for the end of drug prohibition. We know alcohol and tobacco cause harm and create addicts, yet we allow them. Why not set a standard of harm that is acceptable and apply that standard to all drugs rather than arbitrarily allow some and not others. Mormons and Puritans, according to Nadelmann, are the most consistent as they abstain from all drugs, including alcohol and tobacco, but also abstain from coffee and chocolate (as they have addictive properties as well and affect the body to a lesser degree, but in a similar fashion). Nadelman also offers an interesting comparison between a gun dealer and a drug dealer: Both sell a product that many people use safely, yet we know that a percentage of those who buy the product will cause great harm to themselves or others. Yet we do not arrest the gun dealer, so why arrest the drug dealer?

Wilson -- "Against the Legalization of Drugs"

As a member of national council for drug abuse prevention in 1972, Wilson had direct experience shaping early drug policy. During that time heroin was the drug of concern. Wilson points out that the war on drugs does make a difference. The war on heroin in the 1970s stopped the growth of heroin use and it declined in the 1980s. Furthermore, the war on cocaine in the 1980s led to its decline in the 1990s. Ending prohibition will expand the use of these drugs. If we reduce the price of a Porsche by 95%, will people buy more? So too, by ending prohibition and decreasing the price, drug use will skyrocket.

For example, in England there was a national policy of prescribing heroin to addicts (to reduce the crime and harms associated with the black market). During the same time America, which had more heroin addicts than England, took a hard line on heroin users and dealers. The result was heroin use stagnated and then declined in the US while heroin

use exploded in England (as addicts would share their supplies with others, creating new addicts). The cause of the increase in England was an increase in the supply of heroin and a lack of enforcement against users.

The war on drugs is not about ending drug use. Winning the war on drugs is a matter of controlling the drug problem. Ending drug prohibition will lead to an epidemic. Granted, some areas are out of control due to drugs today, but even in these places the people do not call for an end to prohibition, they call for more enforcement. Nadelmann tries to argue that legalization of drugs will lead to a great tax benefit for society that will cover the costs of drug use. However, there is a dilemma here. To cover the high costs of drug use, the tax on drugs would have to be high. But the higher the tax, the more black market crime we will have. Furthermore, many legalizationists call for treatment as the option. Treatment only works when addicts want treatment, most addicts do not want to be treated; they only seek help when they crash and once stabilized they start their habit again.

Legalization would also hamper education efforts: "unlike tobacco, cocaine will not give you cancer or emphysema... everybody is doing cocaine, but you should not?" One of the other tactics of legalization arguments is to compare illegal drugs to tobacco and alcohol. This comparison fails because tobacco and cocaine are both harmful to your health, but we treat them differently because cocaine also destroys the humanity of the user. (We might interpret this as the impact on the brain and personality of the cocaine user.) Similarly, alcohol is clearly harmful, but not nearly as much as crack. Alcohol only appears more harmful because of its common usage. Nadelmann and other legalizationists point out that the harms of alcohol are worse than cocaine. Wilson thinks this is due to the fact that legal drugs are commonly used much more than illegal drugs.

Husak--from *Drugs and Rights*

Just because something is dangerous is not a reason to prohibit it. There are all kinds of activities people do that are very dangerous (mountain climbing, for instance), yet we do not restrict them. Comparing the empirical data, we find that nicotine causes more deaths than all other drugs combined. Even when we examine the risks per weekly user, we find that nicotine yields 83 deaths per 10,000 users compared to 29 deaths per 10,000 weekly users of cocaine. Compare this to 4,200 motorcyclists who died, and it is clear that the rate of cyclists who die is higher than the rate of cocaine users. An accurate comparison is that drug use is roughly as dangerous as mountain climbing, and less dangerous than attempting to climb the Himalayas . Drug use may also be less dangerous than driving race cars or boxing, both of which are accepted activities.

As for the addiction argument, very few people who try, or occasionally use, a drug become addicts. Less than 5% of recreational cocaine users become addicts, and addiction can be broken. Much of our knowledge of drugs is not based in fact, but upon media portrayals. For much of the media their official policy is to portray drugs as negative. (The federal government actually provides incentives for TV shows to portray drugs negatively.) If an episode carries an anti-drug message, then the network is credited for a public service announcement, meaning they can sell more commercial time rather than use it for public service announcements as required by law. The facts are that most

cocaine users (77%) are employed and leading normal lives. The idea that everyone who uses drugs becomes an addict, loses their job, and cannot lead a normal family life is contrary to the facts.

Now that we have examined the history of drugs, general arguments for and against the use of drugs, and some major authors' views on the subject, we can return to some unfinished business. Two issues deserve further mention. First, what would Mill conclude about drug use? Second, even if we reject the full legalizationist arguments for drug use, there is still a consistency issue with regards to marijuana (and any drug with similar effects) that deserves further examination.

Part 8: Mill on Drug Use and Marijuana Consistency

John Stuart Mill and Drug Use

As we have seen Mill and his harm principle play a central role in defending drug use. But as we have seen before, what Mill says and what the harm principle might lead us to conclude are sometimes different. What might Mill say about drug use? There are at least two cases that seem to apply; depending upon which case we apply we get a different reading of Mill on this issue.

1. There is the case of selling oneself into slavery. We examined this case earlier so I will make little mention of it here. If we accept the analogy between the loss of liberty when one sells oneself into slavery and the loss of liberty when one takes drugs and becomes addicted, then Mill would conclude that drug use is wrong.
2. The more likely case that Mill would apply to drug use is the case of the unsafe bridge. As we recall, if someone is walking towards an unsafe bridge such that a *risk* of death or injury could result by their crossing, then we are justified in temporarily stopping them in order to inform them of the risk. Therefore, in the case of drug use, the state, like the citizen, may justifiably stop people from using drugs in order to warn them of the danger. (This would be equivalent to drug education.) Once warned of the *risks* of drug use, the state, like the citizen in the bridge case, would not be justified in preventing someone from undertaking the risky behavior.

Thus, the case of the bridge applied to drug use suggests that Mill would favor drug education warning of the danger of drug use, but that Mill would oppose a prohibition on drug use. Of course, this might vary depending upon the drug. For instance, a non-addictive drug with minimal risk of harm would definitely be defended. However, if a drug were to addict a majority of those who try it and if the risk of harm was, for instance, nearly always lethal, then Mill would conclude that this drug is not acceptable. The reason being that Mill clearly says that once warned, liberty allows you to cross a dangerous bridge, but Mill indicates that liberty would not allow you to cross “the bridge of certain death,” as that would eliminate your future liberty.

Thought Question: Restricting All Due to a Few?

If responsible people can act without harming others, but some people who are irresponsible will harm others, then are we justified in restricting the activity for everyone? Mill seems to say no. Do you agree? We have all been in situations where a liberty was revoked because “some few ruined it for everyone.” Is this reasoning a justifiable restriction of liberty?

What about Marijuana? (Consistency revisited)

Of all the drugs that are currently prohibited, marijuana is the one most frequently advocated as an acceptable drug. Thus far we have focused on drugs in general, often shifting from drug to drug. Now, I will offer a consistency argument comparing marijuana

and the two accepted drugs of alcohol and tobacco. The essential axiom of this argument is as follows:

If X is acceptable and Y is not, then it must be the case that Y is somehow worse than X.

This is a statement of consistency, which says if one thing is accepted and another isn't, that there is something that makes one worse than the other which justifies our allowing one and prohibiting the other. Now, plug in marijuana as **Y** and alcohol or tobacco as **X**. Our current policy is precisely this: alcohol and tobacco are acceptable and marijuana is not because it is in some way worse. This forces us to ask in what way is marijuana worse than alcohol and tobacco?

There are three relevant criteria that I can think of to test this difference. The **three criteria** are:

- the addictiveness
- the harm to others
- the harm to the user

Addiction. In terms of **addiction**, which drug is the most addictive? Clearly, tobacco is the most addictive drug. Alcohol is only addictive to certain users, and it is not clear that marijuana is addictive at all (it is, as they say, “habit forming” like chocolate). Therefore, in terms of addiction, it is tobacco that is worse than the other two and likely alcohol worse than marijuana. Thus, there are no grounds to claim marijuana is worse due to addiction.

Harm to others. In terms of harm to others which drug is the **most harmful** ? We might imagine three establishments on the same downtown street. The first is a drinking bar where people drink alcohol, the second is a smoking lounge where people buy and smoke tobacco, and the third is the marijuana brownie bar where people consume marijuana (to avoid the “secondhand smoke” issue). Imagine the same number of people in each bar and even make them the same “class” of people. Now, ask yourself, which establishment is going to have the most fights and other problems? Then, ask yourself, which group of patrons will most likely get in a car accident on the drive home? Finally, ask yourself, which group of patrons is most likely to abuse their wife/husband/kids when they get home? It is quite clear that the tobacco user is the least likely in each case. It is also clear that the alcohol users are the most likely to cause harm in each case. The marijuana users are not likely to get in fights and abuse their families (angry violent potheads are not a common phenomenon). Of course, being high does impair driving, but not as much as alcohol (though your instructor recommends you not drive under the influence of either substance). Thus, in terms of the **harm to others** , it is alcohol that is worse than the other drugs.

Harm to the user. In terms of **harm to the user**, which drug is the most harmful? This is a difficult empirical question, but perhaps we can think of it this way:

- How many years of smoking tobacco regularly until you encounter life-threatening health problems? The answer is likely several decades.
- How many years of drinking regularly until you encounter life threatening health problems? Again, the answer is going to be decades (we don't see

lots of 30 yr olds dying from their drinking and smoking habits in college).

- How many years of smoking marijuana regularly until you encounter life threatening health problems? This answer is not clear as people do not die from marijuana use (unlike those who overdose from drinking, people do not overdose on marijuana).

Certainly, **there are effects** . Many claim that marijuana use slows the brain function, ages people prematurely, can damage lungs when smoked, and it contributes to munchie consumption which may lead to weight gain. However, it is not clear that marijuana use will harm you more than alcohol and tobacco use. In fact, it may be more dangerous to you to eat a Big Mac for lunch each day than to use any of these substances (heart attacks occur years before lung cancer or sclerosis of the liver). In other words, it is not obvious that marijuana is more harmful on a user than alcohol or tobacco.

If these are accurate depictions, then we have a consistency problem. Given the harm to the user, harm to others, and risks of addiction, marijuana is not worse than the drugs we do allow. As a result, we have an inconsistent policy which says that X is accepted, Y is prohibited, but X is actually worse than Y! Now, what is the solution to this consistency problem (if it truly exists as presented)? The solution is **either** end the prohibition of marijuana *or* prohibit alcohol or tobacco. (Prohibiting either one will resolve the consistency problem, think about it and you should see why.) Keep in mind this is only a comparison of recreational uses and ignores the potential medicinal or industrial uses that marijuana may have which further its beneficial value compared to tobacco and alcohol.

Paternalism Revisited

Finally, we should revisit the question of paternalism as mentioned by Dworkin. If you recall, Dworkin made a compelling case that Mill (and other utilitarians) should allow paternalism in some instances. He required that they balance the harms prevented by state paternalism against the harms caused by limiting liberty. Dworkin did mention mountain climbing as a dangerous activity that *should not* be prevented because prevention caused more harm than it prevented. Suppose we accept Dworkin's argument and allow for paternalism in some cases (with the burden of proof upon the paternalist to justify state interference with liberty). What should we then conclude about drug use? Is paternalism enough to justify criminalization of any or all drugs?

Thought Question: Is recreational drug use a vice?

Certainly excessive use of any drug is a vice. However, what about the occasional recreational drug user? Imagine Jones comes home after a hard work day and kicks back with a couple of beers to relax. Jones gets a little buzz from drinking every now and then, but is not a heavy drinker. Next imagine that Smith comes home after a hard work day and kicks back with a joint to help him relax. Smith gets a little high from smoking pot every now and then, but is not a heavy user. Is Smith's recreational drug use a vice? If so, then wouldn't Jones recreational drug use be a vice too?

Assignments

Activities so far

As you proceeded through Module 6, you should have participated in the following online activities: poll questions and readings.

If you have not, please make sure you go back and complete these before proceeding. Further activities for this unit are listed below.

- WEBLINK READING : Details about scheduling
- WEBLINK READING : Fetal alcohol syndrome
- WEBLINK READING : “Milton Friedman—An Open Letter to Bill Bennett”
- WEBLINK READING : “William J. Bennett—A Response to Milton Friedman”
- WEBLINK READING : “Nadelmann: The Case for Legalization”
- Poll Question: Is the state justified in prohibiting everyone due to some people's abuses?
- Poll Question: Do you think marijuana is worth than alcohol and tobacco?
- Poll Question: Should marijuana be legalized for recreational use?
- Poll Question: Is Paternalism itself a justification to criminalize drugs?
- Poll Question: Is occasional recreation drug use a vice?

Discussion Exercise and Poll

The following case is taken from Duke Law's website, shown below. The case is currently being reviewed by the Supreme Court and a ruling is expected during summer 2005. Read the case below and answer the questions which follow.

WEBLINK: <http://www.law.duke.edu>

Ashcroft v. Raich

In 1996, California voters passed the Compassionate Use Act, which provides seriously ill Californians “the right to obtain and use marijuana for medical purposes” once a physician has deemed the use beneficial to the patient's health. The Compassionate Use Act, however, directly conflicts with the federal Controlled Substances Act (CSA), 21 U.S.C. § 801 et seq., which makes the manufacture and possession of marijuana illegal.

Raich is a California citizen who has used marijuana for the last five years under the Compassionate Use Act. She has been diagnosed with more than ten serious medical conditions, including an inoperable brain tumor, a seizure disorder, and several chronic pain disorders. According to her physician, Raich has tried “essentially all other legal alternatives” to marijuana with no success. Due to Raich's condition, she is unable to cultivate her own marijuana. She relies on her caretakers, John Doe Number One and John Doe Number Two, to grow it for her. Her caretakers allege they use only products originating within California to produce the marijuana.

Fearing raids and prosecution by the government, Raich the United States Attorney General John Ashcroft, seeking injunctive and declaratory relief based on the alleged unconstitutionality of the CSA. The district court denied Raich's motion for a preliminary injunction, stating Raich failed “to establish any likelihood of success on the merits.”

The Ninth Circuit Court of Appeals reversed, holding the application of the CSA to Raich was likely unconstitutional and that she made a “strong showing of the likelihood of success on the merits.” The court reached its holding by relying on the Supreme Court decisions in *Lopez* and *Morrison*. Following *Lopez*, the court found that Congress could regulate Raich's activities under the Commerce Clause only if her activities “substantially affected interstate commerce.” Applying the four-factor test established in *Morrison*, the court held that “the intrastate, noncommercial cultivation and possession of [marijuana] for personal medical purposes” probably did not substantially affect interstate commerce and therefore the CSA, as applied to Raich, was likely unconstitutional.

The legal question for the court is whether the Controlled Substances Act, 21 U.S.C. § 801 et seq., exceeds Congress's power under the Commerce Clause as applied to the intrastate cultivation and possession of marijuana for purported personal “medicinal” use or to the distribution of marijuana without charge for such use?

In the Summer of 2005 the Supreme court ruled 6-3 in favor of the government in this case. This meant that the federal power to regulate interstate commerce allowed federal drug laws to trump state medical marijuana laws even if that marijuana was never sold or transported across state lines.

Questions for discussion

1. Should the federal government be able to overrule the state and arrest Raich for drugs?
2. Does non-profit medical use of marijuana “substantially affect interstate commerce?”
3. Do you support the medical use of marijuana when prescribed by a physician?

Post your answers to the Module 6 Discussion Forum.

Quizzes

Just a reminder, There are four quizzes in the course. Each quiz is worth 10 points. These quizzes are designed to ensure that you are keeping up with the reading assignments. The quizzes occur at the end of every even numbered module (2, 4, 6 and 8). Quiz questions are drawn from a random test bank, so it is unlikely any two students will encounter the same set of questions. You are free to use any materials you wish to aid you during the quiz however, quizzes are timed so you have only 20 minutes to complete and submit the quizzes. Quizzes are available 3 days prior to the due date giving you a total of 4 days in which to take the quiz.

The third quiz appears at the end of this module.

Paper

Now that you have completed module six and the paper exercise you should begin working on your Argumentative Essay Paper. Complete instructions on this paper are provided to you in the syllabus. The due date is listed in the course calendar. Be sure to read the "How to write a philosophy paper" document linked below for further tips on writing this paper.

[How to write a philosophy paper](#)

