Marijuana Legalization and the Philosophies of Policymaking

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A majority of Americans, including most Republicans and Republican-leaning individuals, support the legalization of marijuana, motivated by prohibition's racialized enforcement and the economic, social, and medical benefits of legalization. However, American political institutions have vehemently opposed proposed relaxations of marijuana restrictions. This move is greatly influenced by the power of utilitarianism in conventional decision-making calculus. However, utilitarianism unjustly imposes personal beliefs of success and happiness over the entire population, is inadequate to take moral and ethical considerations into account, and, writ large, fuels bad policy decisions. Using marijuana legalization as a case study to examine the failures of utilitarianism highlights its inadequacies more broadly and suggests new paths toward ethical policymaking.

Introduction

Despite the overwhelming majority of Americans supporting the federal legalization of marijuana, with 67 percent supporting legalization as of 2019 (Daniller) and all but 5 states decreasing restrictions on marijuana, almost nothing has been done on the federal level in decades. While the MORE Act, officially named the Marijuana Opportunity Reinvestment and Expungement Act of 2019, seeks to remove marijuana from the federal controlled substances list — effectively decriminalizing the drug — and expunge the records of those with past marijuana-related offenses, the bill is unlikely to pass the Republican-controlled Senate, with Skopos Labs estimating it has a four percent chance of being signed into law (Gehlen; GovTrack). This is clearly incongruous with the polling presented earlier. More, although marijuana legalization is split along party lines in terms of legislative efforts in the federal government, with Democrat legislators favoring relaxing restrictions and Republicans

legislators starkly opposed, the majority of Republican and Republican-leaning voters (55 percent) are in support of legalization (Daniller).

Thus, it is critical to understand what is driving such a large faction of our government away from supporting the legalization of a substance which will, by most accounts, be extremely beneficial in an array of manners. While one could dismiss this as the result of aggressive lobbying by the tobacco industry and others, though indeed a factor, it is more powerful to name the fundamental differences underpinning this divide. Upon doing so, it becomes evident that the divide on marijuana policy highlights the utilitarian thinking that underpins U.S. policymaking. Specifically, policymakers justify prohibition by accounting for the purported negative effects of marijuana use. While in name utilitarianism seeks to maximize happiness, not a bad idea at face-value, the issue with the framework becomes apparent when considering how it fails to grapple with problems with morality. Specifically, from a moral outlook, marijuana should be legalized because of its medical benefits, the harmful and racialized impact of policing its use, and a Lockean understanding of free will. Thus, the failures of utilitarianism in policymaking, made apparent by its contradiction of popular opinion and morality, demonstrate not only the need to reevaluate marijuana policy but to evaluate the role and necessity of utilitarianism in policymaking as a whole.

Marijuana Use and Legalization

To begin, there are a number of reasons why, from a purely practical perspective, marijuana should be legalized. First, marijuana prohibition has unquestionably failed in its stated goals. Prohibition was intended to decrease use, and thus decrease the perceived consequences of marijuana use. However, prohibition has failed on both counts. "Marijuana use has increased drastically during its prohibition. Today, 22,000,000 Americans use cannabis each month, and even more consume it on a less frequent basis," say Prof. David Nathan, Dr. H. Westley Clark, and Prof. Joycelyn Elders, an expert medical team of a former surgeon general and experts on substance abuse and cannabis. Worse, prohibition has increased the potential negative effects of marijuana use since marijuana's high spot on the federal drug schedule prevents regulation of cannabis products, increasing the risk of consuming products that are lethally contaminated or impure (Nathan, et al.). Additionally, legalization would provide a massive economic stimulus. According to a study done by the right-libertarian Cato Institute, policy to decriminalize marijuana would save the government $17.4 billion a year, with one half coming from reduced spending on enforcement and the other from the newfound ability to tax revenue on legal cannabis products (Miron & Waldock). Along with providing an economic boost, marijuana has proven and unproven medical benefits. It is widely accepted in the medical community and by the government that marijuana products have caused largely

positive results across many trials for a wide range of treatments (Grinspoon; NCCIH; CDC). Some of a long list of examples include significant pain reductions in cancer patients, reducing nausea in cancer patients, and alleviating neuropathic pain (Farrell, et al.).

Nevertheless, legalization raises both moral and ethical questions as well. One issue is the aforementioned contradiction between popular support and legislative gridlock for legalization. Governments have an ethical obligation to justify legislation that goes against the will of the vast majority of its constituents, as is the case with marijuana legalization. Second, while possession of marijuana can be punished by up to one year in jail (Working to Reform Marijuana Laws), punishments are not doled out uniformly; instead, marginalized communities are disproportionately affected by such punitive policies. "Black and white Americans use marijuana at similar rates, but black people were 3.7 times more likely to be arrested than white Americans for marijuana possession in 2010" (Lopez (b)). While the scope of racism in the criminal justice system is much larger than just marijuana, allowing one facet of racism (marijuana criminalization) to persist is unjustifiable. The ethical position would be to prevent arrests from a victimless crime and expunge the records of those who have been affected by morally bankrupt policies of criminalization.

Finally, should a wide swath of practical and moral benefits for legalization still not be enough, we can turn to a philosophical evaluation of marijuana criminalization. John Locke — a philosopher whose work laid the foundations for the American Revolution and founding documents — should guide our understanding of marijuana legalization. Writing on the extent of legislative power over property, Locke stated that

> *"The supreme power cannot take from any man any part of his property without his own consent: for the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires, that the people should have property … they have such a right to the goods, which by the law of the community are their's [sic], that no body [sic] hath a right to take their substance or any part of it from them, without their own consent: without this they have no property at all; for I have truly no property in that, which another can by right take from me, when he pleases, against my consent."*

In Locke's earlier musings on the state of nature, he argued that

> *"All men may be restrained from invading other's rights, and from doing hurt to one another, and the law of nature be observed."*

In these two quotes, Locke creates a goldilocks zone for laws restricting individual freedoms: namely, that legislation should not restrict property under the condition that it does not impede upon the rights of others. For this reason, the government, at least to some extent, has the

burden to provide substantial evidence that marijuana possession, which it does not, impedes upon the rights of others — especially since such Lockean principles were the foundation of the Constitution in the first place.

So, given that marijuana legalization is popular as well as practically and morally defensible, why does it remain illegal at the national level? There are two conceivable explanations. The first is that those in government are unduly influenced by parties that, for selfish reasons, do not wish to see marijuana legalized. This is certainly possible, as industries like tobacco could see a decline in sales from marijuana legalization measures. However, while the industry has and indirect vested interest in the outcome of marijuana policy, the scope is rather limited, and, so, the research is mixed on where they stand on legalization (Barry). Instead, the more pressing issue is that politicians are informing their decision from an ethical perspective that does not present in favor of legalization. Most prominent among these is the theory of utilitarianism.

Utilitarianism in U.S. Policy

"The utilitarian doctrine is that happiness is desirable, and the only thing desirable, as an end."

Here, John Stuart Mill, one of the most influential philosophers in the development of utilitarianism, is communicating that, in the doctrine of utilitarianism, the ultimate desirable goal in life is to be happy. Importantly, Mill describes happiness as an end rather than a means. Describing happiness as a means would be more in line with a hedonistic philosophy, which argues that whatever brings the most immediate pleasure should be done. Indeed, a hedonistic framework would support marijuana legalization. However, hedonism is an equally, if not more, faulty outlook, as "scientists have found that the more we experience any pleasure, the more we become numb to its effects and take its pleasures for granted" (Dalai Lama and Tutu). In the case of utilitarianism, happiness as an end informs policymaking by arguing against measures that could threaten our future well-being. Thus, utilitarian policymakers inform their decisions by maximizing the perceived net positive effect on well-being, generally of their constituents. This typically means mitigating consequences such as death, adverse health outcomes, etc. Also, policymakers may use their personal beliefs to inform their understanding of this end goal of happiness. For example, politicians who adhere to classical liberalism, a majority of the American government, might believe that accelerating the growth of individual wealth and production would net positive utility and this would inform their utilitarian decision.

So, what are these concerns in the case of marijuana and how valid are they? Regarding health, the primary concerns lie in the fact that evidence is still lacking on the long-term effect of marijuana use. However, if this were the primary concern, the government would authorize studies on the effects of marijuana; yet, this remains illegal due to marijuana's placement on the drug schedule. Especially given that the studies that have been authorized have favored marijuana legalization, this argument is massively disingenuous. Moreover, marijuana laws have become almost impossible to enforce except in overpoliced urban communities and there is substantial risks of impure products in illicit markets (Kleiman). A second is the "gateway drug" argument, claiming that increased use of marijuana results in increased use of more dangerous drugs which have proven negative health effects. This argument has been repeatedly proven to be fallacious: the use of marijuana correlates with hard drug use but does not cause it. Rather, "people who are more vulnerable to drug-taking are simply more likely to start with readily available substances such as marijuana, tobacco, or alcohol" (National Institute on Drug Abuse). In this regard, there exists as much logic behind criminalizing alcohol as continuing to criminalize marijuana. The final common argument against legalization falls under the category of personal belief. Many argue that marijuana use results in a decrease in individual productivity and success. Informed by their beliefs, conventional policymakers assert that being wealthy and productive is key to happiness. Whether this assertion is correct or not, it is clearly out of step with the teachings of Locke on freedom and liberty. Basing governmental policy on unfounded personal beliefs is illegitimate since those whom the policy affects may not share the same beliefs. While politicians may believe financial success is key to happiness, their constituents may seek happiness in other forms. In conclusion, examining utilitarian policymaking renders it increasingly clear that making decisions based purely on some manufactured, incomplete picture of long-term effects is an incorrect approach for creating moral, equitable marijuana policy. The status quo framework on prohibition creates a host of negative outcomes, preventing the economic, medical, and philosophical benefits of legalization and cementing the issues of racialization within current policy.

However, the failures of utilitarianism go far further than marijuana policy. When policymakers employ utilitarianism in calculating outcomes, "Knowing aggregates and averages, [they] proceed to calculate the utility payoffs from adopting each [policy]" (Goodin). But as Professor Robert E. Goodin, one of the top international figures in political science, explains, one of utilitarianism's great failures is that the predictions made are flat-out wrong. "They cannot be sure what the payoff will be to any given individual or on any particular occasion. [Available information] is just not sufficiently fine-grained for that." In the case of marijuana, for example, while initial data presented in favor of the gateway drug theory, subsequent analysis proved it wrong, but people still latch onto the line of reasoning to justify harmful policies. The potential impacts of being incorrect in other spheres of policymaking, such as foreign policy and economic policy, can be far more disastrous. A second critique is that

utilitarianism fails to be morally equitable. "Utilitarianism with its "greatest happiness principle" completely neglects the spiritual dimension of human life" (Cleveland). Professor Cleveland explains this in the context of property ownership, noting that even if it was net better to redistribute wealth, for example with restorative policies for emancipated slaves after the Civil War, utilitarianism focuses on the rights of the property owner. An immoral framework has allowed for numerous atrocities committed by the U.S. government. One such example is the use of enhanced interrogation. While the CIA believed that the potential lives saved by uncovering intelligence outweighed the suffering of interrogated individuals, it ignored the moral implications of excusing torture if they viewed it as justified. Combining this with the explicit warnings of Locke, not only marijuana criminalization but a large portion of our political system gets called into question.

Conclusion

It now becomes our responsibility to find a better framework for evaluating policy, one that is morally justifiable and empirically desirable. We do this by evaluating our actions by a set of moral guidelines and principles. We should seek an ethical rulebook in direct contrast to the effects-based, consequentialist style of utilitarianism. While these alternative theories are a large topic of debate in and of itself, one theory in particular offers initial promise: deontology. Deontology posits that we should judge an action based on whether it is "right" or "wrong" rather than its effects or consequences. Largely influenced by the work of Immanuel Kant, "deontological theories all possess the strong advantage of being able to account for strong, widely shared moral intuitions about our duties better than can consequentialism" (Alexander & Moore). While each actor is free to adopt their own deontological viewpoints, restructuring the framework by which we evaluate policy can engage the ethical debates necessary for responsible policymaking.

Works Cited

Adams, Mike. "Federal Marijuana Legalization Is A Lock – But How, When?" *Forbes*, Forbes Magazine, 10 Dec. 2019, www.forbes.com/sites/mikeadams/2019/12/10/federal-marijuanalegalization-is-a-lock--but-how-when/#1f1cd89b2b6f.aheard/417/util.html.

Alexander, Larry, and Michael Moore. "Deontological Ethics." *Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Stanford University, 17 Oct. 2016, plato.stanford.edu/entries/ethics-deontological/.

Anomaly, Jonny. "Nietzsche's Critique of Utilitarianism." *The Journal of Nietzsche Studies*, vol. 29, Spring 2005, pp. 1-15, *Project MUSE*, muse.jhu.edu/article/182316.

Barry, Rachel Ann, et al. "Waiting for the Opportune Moment: The Tobacco Industry and Marijuana Legalization." *The Milbank Quarterly*, vol. 92, no. 2,

2014, pp. 207–242. *JSTOR,*
www.jstor.org/stable/24369965.

Bayertz, Kurt and Thomas Gutmann. "Happiness And
Law." *Preprints of the Centre for Advanced Study in
Bioethics*, 2011, University of Munster,
www.unimuenster.de/imperia/md/content/kfg-norm
enbegruendung/intern/publikationen/bayertz/11_bay
ertz.gutmann__happiness_and_law.pdf.

CDC. "Marijuana and Public Health: Therapeutic
Benefits." *Centers for Disease Control,* 02 Jan. 2018,
www.cdc.gov/marijuana/nas/therapeutic-benefits.ht
ml.

Cleveland, Paul A. "The Failure of Utilitarian Ethics in
Political Economy: Paul A. Cleveland." *The
Independent Institute*, 01 Sept. 2002,
www.independent.org/publications/article.asp?id=16
02.

Dalai Lama, and Desmond Tutu. *The Book of Joy: Lasting
Happiness in a Changing World*. Penguin Random
House, 2016.

Daniller, Andrew. "Two-Thirds of Americans Support
Marijuana Legalization." P*ew Research Center*, 14
Nov. 2019,
www.pewresearch.org/fact-tank/2019/11/14/america
nssupport-marijuana-legalization/.

Farrell, Michael, et al. "Should Doctors Prescribe
Cannabinoids?" *British Medical Journal*, vol. 348, 2014.
JSTOR, www.jstor.org/stable/26514577.

Gehlen, Bobby. "Landmark bill legalizing mairjuana at
the federal level passes House committee." *ABC
News*, ABC News Network, 20 Nov. 2019,
abcnews.go.com/Politics/housejudiciary-passes-bill-l
egalize-marijuana-federal-level/story?id=67174950.

Goodin, Robert E. *Utilitarianism as a Public Philosophy*.
Cambridge University Press, 1995,
https://doi.org/10.1017/CBO9780511625053.

Grinspoon, Peter. "Medical Marijuana." *Harvard Health
Publishing*, Harvard Medical School, 10 Apr. 2020,
www.health.harvard.edu/blog/medical-marijuana-20
18011513085.

Heard, Andrew. "Human Rights: Chimeras in Sheep's
Clothing." *The Challenge of Utilitarianism and
Relativism to Human Rights*, 1997,
http://www.sfu.ca/~aheard/417/util.html.

Herzog, Don. "Against Utilitarianism." *Without
Foundations: Justification in Political Theory,* Cornell
University Press, Ithaca, 1985, pp. 110–160. *JSTOR,*
www.jstor.org/stable/10.7591/j.ctt207g6t3.7.

"Legalization of Recreational Marijuana."
EliteWritings.com,
elitewritings.com/essays/philosophy/legalization-of-
marijuana-and-the-utilitarianism.html.

Locke, John. *The Second Treatise of Government*. 1690.

Lopez, German (a). "Support for Marijuana Legalization
Is at an All-Time High in a New Poll." *Vox*, Vox, 14
Nov. 2019,
www.vox.com/policy-and-politics/2019/11/14/209648
02/marijuana-legalization-pewgallup.

--- (b). "The Case for Marijuana Legalization." *Vox*, Vox,
14 Nov. 2018,
www.vox.com/identities/2018/8/20/17938392/marijua
na-legalization-arrests-racism-violencedrug-cartels.

Kleiman, Mark A. R. "The Public-Health Case for
Legalizing Marijuana." *National Affairs*, National
Affairs, Inc. and the American Enterprise Institute,
Spring 2019,
/www.nationalaffairs.com/publications/detail/the-pu
blic-health-case-for-legalizing-marijuana.

Miron, Jeffrey A. and Katherine Waldock. *The Budgetary
Impact of Ending Drug Prohibition.* Cato Institute,
2010,
www.cato.org/sites/cato.org/files/pubs/pdf/DrugPro
hibitionWP.pdf.

"MORE Act of 2019 (S. 2227)." *GovTrack.us*,
www.govtrack.us/congress/bills/116/s2227. Accessed
07 December 2020.

Nathan, David L, et al. "The Physicians' Case for
Marijuana Legalization." *American Journal of Public
Health*, vol. 107, no. 11, pp. 1746–1747, American

Public Health Association, Nov. 2017,
www.ncbi.nlm.nih.gov/pmc/articles/PMC5637675/.

Nathanson, Stephen. "Act and Rule Utilitarianism."
Internet Encyclopedia of Philosophy,
www.iep.utm.edu/util-a-r/.

National Research Council. "Overview of Current
Marijuana Policies." *An Analysis of Marijuana Policy*,
U.S. National Academies Press, 01 Jan. 1982, U.S.
National Library of Medicine,
www.ncbi.nlm.nih.gov/books/NBK217602/.

National Institute on Drug Abuse. "Is marijuana a
gateway drug?" *Marijuana Research Report, National
Institutes of Health*, 08 Apr. 2020,
www.drugabuse.gov/publications/research-reports/
marijuana/marijuana-gateway-drug.

NCCIH. "Cannabis (Marijuana) and Cannabinoids: What
You Need to Know." *National Center for
Complementary and Integrative Health*, National
Institutes of Health, Nov. 2019,
www.nccih.nih.gov/health/cannabis-marijuana-and-
cannabinoids-what-you-need-to-know.

Pradhan, Simanchala. "Critique of Hedonism." *IOSR
Journal Of Humanities And Social Science*, vol. 20, no. 3,
Mar. 2015,
www.iosrjournals.org/iosr-jhss/papers/Vol20-issue3/
Version-6/H020366065.pdf.

Resing, Charlotte. "Marijuana Legalization Is a Racial
Justice Issue." *American Civil Liberties Union*, 22 Apr.
2019,
www.aclu.org/blog/criminal-law-reform/drug-lawref
orm/marijuana-legalization-racial-justice-issue.

Riley, Jonathan. "Utilitarian Ethics and Democratic
Government." *Ethics*, vol. 100, no. 2, 1990, pp.
335–348. *JSTOR*, www.jstor.org/stable/2381000.

Robb, Robert. "Robb: On Marijuana Legalization, It's
Locke vs. Bentham." *AZCentral*, 03 Aug. 2016,
www.azcentral.com/story/opinion/oped/robertrobb/
2016/08/03/marijuana-legalization-locke-bentham/87
963428/.

Mill, John Stuart. "On Virtue and Happiness," 1863.
Accessed from "John Stuart Mill's Classic Essay on
Virtue and Happiness." *ThoughtCo*,
www.thoughtco.com/virtue-and-happiness-john-stu
art-mill-1690300.

Taylor, Steve. "Why Hedonism Doesn't Lead to
Happiness." *Psychology Today*, Sussex Publishers, 26
Aug. 2017,
www.psychologytoday.com/us/blog/out-the-darknes
s/201708/why-hedonism-doesntlead-happiness.

"Working to Reform Marijuana Laws." *The National
Organization for the Reform of Marijuana Laws*,
norml.org/laws/item/federal-penalties-2.