

READ FIRST: Jen's Page on US Drug Laws

Getting Started:

This week and next, you're going to develop, explain, and defend a normative claim of your own. Should any currently illegal drugs be legalized or decriminalized in the US? Which ones, and why or not? That's the question you'll be answering! This week, you'll use the discussion and the reflection to start trying out some of your ideas, and by the end of next week, you'll be ready to write your first essay.

In this page, I explain some facts about US drug laws, and describe some parts of our current justice system you might not be familiar with. Then, we'll look at what those facts mean for thinking about whether or not those laws should change! Next week, we'll work through different approaches and strategies for creating and defending a stance on a moral issue.

Vocabulary you'll Need:

You know a drug is something that alters your body or brain chemistry, so even things like caffeine and Tylenol are "drugs." For this discussion, though, we're talking about *scheduled illicit* drugs, which means drugs that are regulated or restricted by the government in some way, and whose use comes with criminal penalties. Over the past couple of decades, many countries and an increasing number of states have begun changing how they approach drug abuse in society. One option is legalization; another is decriminalization.

Legalization: means that production, sales, purchases, taxation, and use of a drug are fully regulated and monitored by a government agency. It becomes fully permissible under law to produce it, sell it, buy it, and use it, as long as the regulations are followed. This does not mean there are *no* rules about the drug! Cigarettes and alcohol are examples of legalized drugs. You aren't allowed to buy or use them if you're the wrong age, and you can't just use them anywhere or any time. You may face criminal penalties for violating the restrictions (such as driving while intoxicated). And there are restrictions on sales and manufacture --you can make your own beer, for example, but you violate the law if you try to sell it to people without a license.

Decriminalization: means that criminal penalties for possession of small amounts of a drug are reduced or eliminated. It is still fully illegal to produce or sell the drug, and those who do so will still face criminal penalties. In other words, you'd go to prison for dealing or manufacturing the drug, but you wouldn't face a harsh penalty if you're caught with a small amount.

Some cities in the US have decriminalized the possession of marijuana. **For example** (<https://www.kxan.com/news/local/austin/low-level-marijuana-offenders-can-now-avoid-charges-with-travis-county-class/>), where I live, in Travis County, Texas (Austin), possession of less than 2 ounces of marijuana has been *somewhat* decriminalized. It's just a Class B misdemeanor, punishable by 180

days in jail and a fine of up to \$2000. But a first offender caught with 2 ounces of marijuana or less can opt to take a 4-hour class on marijuana for \$45, instead of going to prison, and the criminal charge will be dropped. Second offenders might have to take an 8-hour class. This effectively relieves the courts, and keeps the county from having to jail approximately 3000 low-level offenders a year. Other cities have decriminalized marijuana in a different way: by simply not enforcing criminal laws against low-level possession. Police might be instructed not to pursue arrests for mere possession, instead focusing their time on violent crime or concerns.

Some states in the US, such as Colorado, have legalized marijuana altogether (some states have made recreational and medical marijuana legal; others have only legalized marijuana for medical use). That means only licensed agents can grow large quantities and sell it, and only people over 18 can purchase and consume it. And you still can't carry large amounts, nor take it over state lines. We'll go into more detail about these laws and their potential advantages, too!

Some countries have gone a step farther and decriminalized *all* drugs--Portugal, for example, assigns no criminal penalties for any drug use or possession in small amounts. Rather, people who are caught with small amounts of drugs are given opportunities to go into drug treatment and rehabilitation programs. This reflects Portugal's government's philosophy that drug abuse is primarily a *public health* problem, rather than a *criminal* matter.

Federal and State Drug Laws: What you Need to Know

First, you need to know that state and federal drug laws are completely separate. At the federal level, the US Drug Enforcement Administration (DEA) enforces laws around what's called a drug **schedule**. No, this does not mean 4:20pm; rather, it refers to differing levels of perceived potential for abuse for different drugs, and correspondingly harsher punishments for possession. Here's how that stands at the federal level:

DEA DRUG SCHEDULES:

From HIGHEST penalties to LOWEST:

Schedule:	Drugs Listed:
I. No currently accepted medical use and a high potential for abuse.	Heroin, LSD, marijuana, ecstasy (MDMA/molly), Quaaludes, mescaline/peyote, psilocybin (mushrooms), spice, K2, bath salts, GHB
II. A high potential for abuse, with use potentially leading to severe psychological or physical dependence.	Cocaine, methamphetamine, opium, <u>pentobarbital</u> , methadone, Demerol, Ritalin, Adderall, any opioid painkillers (hydrocodone, oxycodone, morphine, fentanyl, etc.)
III. Moderate to low potential for physical and psychological dependence.	Codeine, ketamine, anabolic steroids, testosterone
IV. Low potential for abuse and low risk of dependence.	Xanax, Soma, Ambien, Tramadol, Valium, Darvocet, <u>Modafinil</u> , Darvon
V. Lower potential for abuse than Schedule IV. Contains small quantities of narcotics.	Robitussin AC (with codeine), <u>Lyrica</u> , <u>Lomotil</u>

You'll notice that marijuana is listed at the *highest level* for punishment, alongside heroin, because the federal government considers marijuana to have *as high a potential for abuse* as heroin. You'll also notice that the federal government does not acknowledge *any* medical use for marijuana, and federal funding for research on the effects of marijuana is banned completely. That's pretty weird, considering several states have legalized it for medical and/or recreational use! What the hell is going on here? How do we reconcile conflicting state and federal law?

The short answer is: we don't! At least, not very well. Here's the longer answer:

The DEA has authority to enforce federal drug laws in any state. Technically, every marijuana dispensary in California and Colorado is in violation of federal law. Technically, the DEA could go in and shut every single one down, and be well within the purview of federal law.

The executive branch holds responsibility for enforcing federal laws passed by Congress, but they have a lot of leeway on *how* they do so. Each presidential administration issues instructions to the DEA through the DOJ (Department of Justice) about what priorities to pursue in enforcing the laws. The Obama administration specifically instructed federal authorities *not* to enforce federal marijuana laws that conflict with state laws. Under the Trump administration, those instructions were rescinded (taken back), and Jeff Sessions instructed the DEA to pursue the full extent of federal law. But we haven't seen any challenges yet. Perhaps (and this is only speculation on my part) because to do so would invite Congressional and Supreme Court review of federal marijuana laws--which might be controversial or unwelcome for some voters.

At the state level, the enforcement of drug laws varies widely, even county to county. Currently, most state drug laws adopt a similar drug schedule as that of the DEA (in the table above), which the obvious exception of marijuana. Let's focus on marijuana and cannabis laws for a moment.

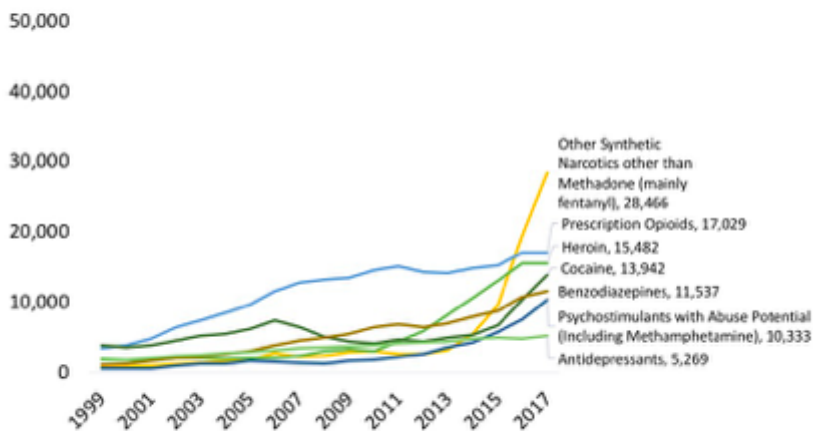
Marijuana/Cannabis Laws in the US:

I'm going to use some technical terminology around cannabis here, so let me get that vocabulary out of the way:

- **Cannabis:** this is the broad name for a taxonomic genus of plants that produces THC and CBD in varying levels. There are lots of different ways of growing *Cannabis* to emphasize high or low levels of THC.
- **THC:** tetrahydrocannabinol, the psychoactive substance that produces a high. Many peer-reviewed studies show desirable medical benefits associated with THC, such as for the treatment of glaucoma and chronic pain.
- **Hemp:** legal term for non-psychoactive cultivars of *Cannabis* used for manufacturing. This is a super-low-THC version of cannabis that's used to make paper, oils, cloth, rope, etc. Many states have recently adopted laws that make products derived from hemp legal if they contain less than .3% THC.
- **Marijuana:** legal term for psychoactive cultivars of *Cannabis*, contains more than .3% THC.
- **CBD:** cannabidiol, a substance produced by *Cannabis* plants that does not produce a high, but *might* have other medically desirable effects. The only FDA approved medical use for CBD currently is in a drug that treats some seizure disorders. It's illegal to make other health claims about it until it's been officially tested. Some weird things about CBD:
 - CBD can be derived from either marijuana or hemp, but only CBD derived from hemp is legal anywhere in the US, even though the two are indistinguishable.
 - *Purchase* of CBD derived from hemp is legal in the US at the federal level, as long as it's under .3% THC. And you can sell it all you want as long as you don't make any health claims about it! But lots of state laws still make *possession* of CBD illegal. It's a mess. Here's a great [article about what we know about CBD](https://www.pbs.org/newshour/science/is-cbd-legal-heres-what-you-need-to-know-according-to-science) [.\(https://www.pbs.org/newshour/science/is-cbd-legal-heres-what-you-need-to-know-according-to-science\)](https://www.pbs.org/newshour/science/is-cbd-legal-heres-what-you-need-to-know-according-to-science), if you're interested.

Here's a map from the [NCSL](https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx) [.\(https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx\)](https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx) breaking down what's legal by state:

Figure 2. National Drug Overdose Deaths
Number Among All Ages, 1999-2017



Source: : Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2017 on CDC WONDER Online Database, released December, 2018

Perhaps you notice that marijuana isn't on that chart. That's because there are no known or recorded deaths attributed solely to marijuana overdose. People can and do land in the ER if they ingest a great deal of THC all at once, but death from overdose is not something we've ever seen. You'll also notice that psychedelics, such as mushrooms and LSD, and empathogens, such as MDMA (molly), are not on this list. That's because deaths from overdose on these drugs are exceedingly rare--deaths associated with these drugs are usually the result of doing fatal things while *taking* these drugs. If you're not familiar with how drugs are classified, their effects, and relative risks, [this page \(https://adf.org.au/drug-facts/#wheel\)](https://adf.org.au/drug-facts/#wheel) is super helpful for a quick look!

You probably also noticed that deaths related to alcohol and nicotine products are not included on this chart. Draw your own conclusions about that.

All drugs on the DEA schedule we looked at come with some risk for substance abuse. But what about addiction? Recently, specialists have begun to change the way we think about addiction. A few years ago, the DSM V established the term "**Substance Use Disorder**" to take the place of vague terminology like "addiction" or "dependence." Instead of asking whether a particular *drug* is addictive, they say, let's look at how it affects the *patient*, instead. If a person's use of a drug is a problem in their lives, it doesn't really matter whether the drug itself "is addictive;" it matters that we help that person with their problems. In short, instead of asking whether a drug is addictive, ask: "Is this person's use of this drug disordered?," and "Are withdrawal symptoms medically life-threatening?"

So, is marijuana addictive? Don't ask that! Ask: can a person's use of marijuana be disordered? Obviously, the answer to that question is yes, same as with alcohol or cigarettes. We've all met that person who discovers weed and becomes a complete waste of space for a few months or even years. But you probably also know people who partake on weekends and experience no ill effects,

similar to alcohol use. On the other hand, some drugs come with a much higher potential for abuse: opioids are a prime example, as is nicotine.

In theory, the DEA drug schedule punishes drugs with a higher potential for abuse more harshly. But the data on abuse potential don't necessarily match the priorities of the DEA--this is something we need to think about when it comes to the morality of our drug laws. Why punish marijuana use, but not alcohol use? Why do people go to prison for one, but not for the other? What makes the two *morally* different?

Drug Laws and the Justice System:

Now, let's talk a little about how drug laws are enforced. What happens when someone is arrested for drug possession?

First, you're charged. Prosecutors at the local level get to decide whether they'll charge you and what they'll charge you with, and there is almost *no oversight* of their decision. This is called **prosecutorial discretion**: prosecutors have decision-making authority over whether you're charged and what charges will be filed.

Then, you're arraigned. At that time, you may or may not be offered cash bail; that's also different for each individual case. What you're charged with affects the bail amount. If you can't afford bail, you wait in jail until your trial.

At some point, you have a choice: do you plead guilty, meaning that you accept a conviction in exchange for a lesser charge or a lighter punishment, or do you go to trial? If you can't afford bail, you might be more eager to take a plea so that you don't have to wait in jail. At this point, the prosecutor will probably explain **mandatory minimums** to you. Mandatory minimums are sentencing guidelines adopted by many states that mandate a set amount of prison time for particular offenses, meaning that the judge and jury can't take any mitigating circumstances into account; if you're found guilty, you *will* do that minimum amount of time, *no matter what*. Remember this, it becomes important later.

OK, so imagine you've been picked up on possession of a small amount of some illicit drug. The prosecutor tells you they're going to charge you with the absolute maximum charge possible, which comes with mandatory prison time if you're found guilty. You cannot afford bail. Your trial will probably not happen for at least 3-6 months.

In fact, some people wait in prison for their trials for *years*. In New York, for example, many inmates have been in prison at Rikers Island awaiting trial for as long as 3 to 5 years, and one has waited *over 12 years*. In a few of these cases, they have been in prison awaiting trial *longer* than they would serve for their sentences if they were found guilty. But these people *have not been found guilty of a crime yet*. They simply cannot afford bail. This happens all over the US.

What do you have to lose by waiting in jail? A lot! Your job and your lease, at least. Your classes and financial aid. That makes a guilty plea look pretty damn attractive. The prosecutor can threaten you

with hefty charges and mandatory minimums. So, you might take a plea even if you're not guilty of the actual crime you plead to. Over 90% of drug cases end with a guilty plea instead of a trial, for exactly these reasons.

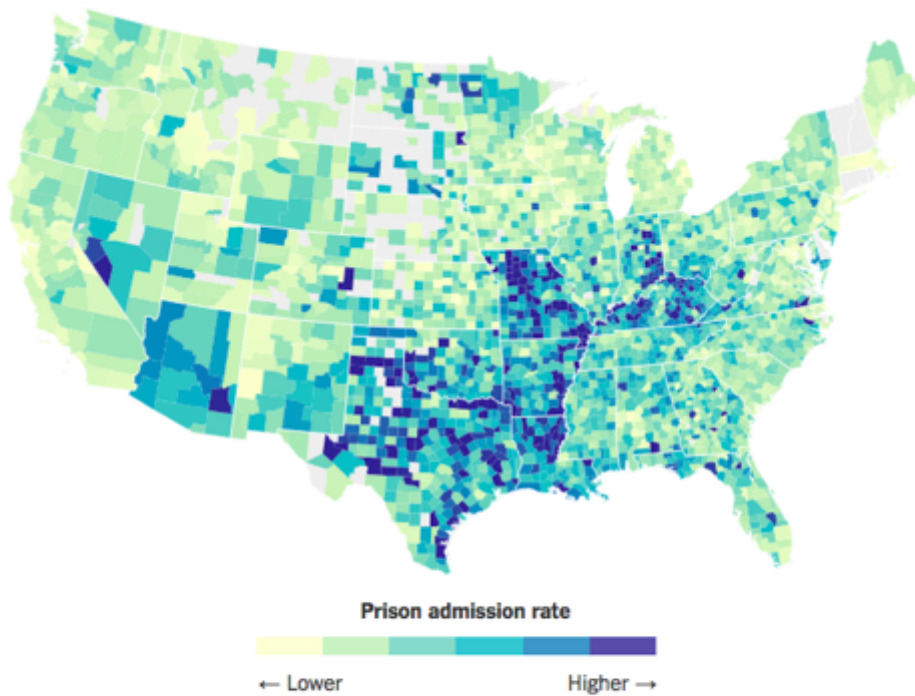
So what happens once you plead guilty? That counts as a conviction. You now have a criminal record. Now, think about this: in most cases, it's illegal to discriminate against people on the basis of race, sex, disability, and religion in this country. But it is NOT illegal to discriminate against people with a criminal record!

Here are several things you can lose if you have a drug conviction on your record:

- Landlords can deny you housing
- Employers can deny you a job
- You can lose federal education funding and be denied student loans
- Denial of child custody
- Lose 2nd amendment rights
- Can lose right to vote (felony convictions). In some states, until probation or parole is completed. In others, you have to petition the governor to have rights restored.

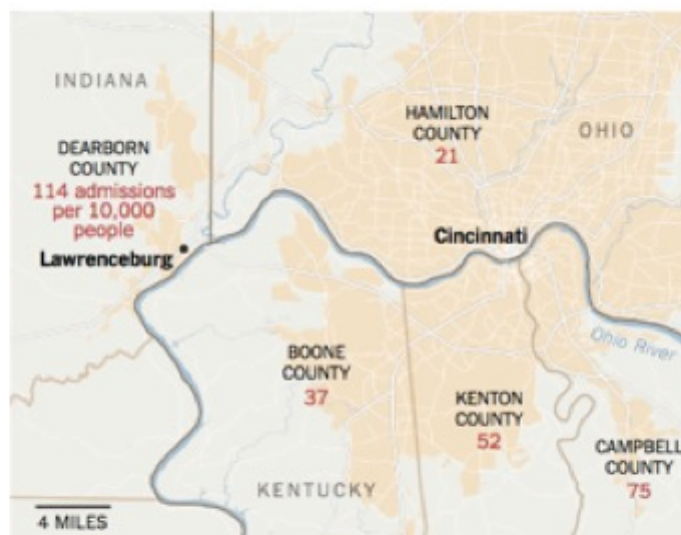
This creates some weird circular problems: the only places you can find to live are places that will rent to people with drug convictions. The only places you can work are places that hire people with convictions. So where do you think police are more likely to concentrate their enforcement efforts? Probably in neighborhoods where you can find this kind of housing and job! You might not be allowed to go to school to get a better job, and even if you can, that doesn't guarantee an employer will be willing to hire you, even if you've done your time. This follows you around *for the rest of your life*.

I think it's really important to point out here that what you get charged with and how long you spend in prison differs *greatly* from state to state. Here's a map of prison admissions rates:



Analysis of the National Corrections Reporting Program by The New York Times and John Pfaff, Fordham University

And the rates differ even *more* from county to county! In the top three counties for drug convictions and prison sentences for drugs in this country is our Indiana's own Dearborn County:



Source: New York Times analysis of the National Corrections Reporting Program

Notice that little old Dearborn County has way higher prison admissions! Why? Because Dearborn County prosecutors have been instructed by county officials to go for the maximum in every case. A

person busted for the same crime just a few miles away would get a drastically lower sentence:

From The New York Times. Sept. 2016.

			
	Scott Huy, 36 Sold 6.8 grams of heroin	Dakota Fraley, 22 Admitted to 10 burglaries	Donnie Gaddis, 41 Sold 15 oxycodone pills
Likely sentence in Brooklyn	0 to 3 years	4 to 7 years	Drug treatment
Likely sentence in Cincinnati	2 to 5 years	4 to 5 years	Up to 6 months
Likely sentence in San Francisco	0 to 3 years	2 to 4 years	Drug treatment
Actual sentence in Dearborn County	35 years	31.5 years	12 years

Source: Court records in Dearborn County, Ind. and Hamilton County, Ohio; Philip Stephens, Hamilton County Public Defender; Jeff Adachi, San Francisco Public Defender's Office; Lisa Schreiberdorf, Brooklyn Defender Services. Photos: Dearborn County Sheriff's Office. Note: Sentences reflect actual time expected to be served.

Now look at Donnie for a minute: this guy lived in Cincinnati. Police set him up to drive out to Dearborn County, where he sold 15 oxycodone pills to an undercover officer. He got 12 years. Notice that this crime had no victim--the officer didn't use the pills. If he'd done the same thing in Cincinnati, he'd be able to erase the conviction after he completed a rehab program. Instead, because he drove a few miles, he will spend a mandatory minimum of 12 years in prison--the judge was not allowed to take into account the fact that the pills were sold to an officer. Laws have changed recently across the country to reduce mandatory minimums, but some states, such as Florida, do not allow those reductions to take effect retroactively. People will have to serve their entire sentence, even if the laws have changed in the meantime.

Why is this important? I think it's important to look at these disparities in order to highlight parts of our justice system that may operate in an inconsistent and arbitrary manner. I'm going to use the word **arbitrary** approximately 7,032 times this semester. It means *without a good reason, random, or for no good reason at all*. The fact that Donnie sold the pills may indeed be a crime, but the prison sentence he received was based on where he happened to be standing when he got caught--that seems *arbitrary*. But as we've been saying, shouldn't moral decisions be based on *good reasons*? Does what county you happen to live in count as a good reason to put you in prison longer than someone who does the same thing in the next county over? I would say no! What do you think?

Among the readings for this week is a piece by Michelle Alexander. She points out that the US justice system not only imprisons far more people per capita than any other country, we imprison Black and African American people far more per capita than any other race. Blacks and African Americans do *not* use drugs more than people of other races. Data show, in fact, that people of all races use drugs at approximately the same exact rates. But:

- Black and African American people make up 35% of those arrested for possession, 55% of those convicted and 74% of those imprisoned.
- 12% of US population is black or African American, but black and African American people make up 37.7% of prison population.
- Black and Hispanic people are up to 5 times more likely to get stopped by police than whites.
- White men have a 4% chance of prison; Hispanic men, 16%; and black men, 29%
- There are more black men in prison today than there were black men who were enslaved before the Civil War.

How does this disparity come about? If it's not because black and Hispanic men use drugs more than white men, what's the deal? Alexander points out that it's about how the laws are *enforced* that have established a long-term pattern of disparity. She argues that even if we need to leave many drugs illegal, the way we enforce drug laws today is unjust and ought to be changed.

Moral Questions about Drug Legalization and Decriminalization:

While you're listening to other people's ideas and looking through the readings this week, a few major questions will come up:

- How are our resources best used in fighting drug abuse? How do we maximize good in society: by arresting and jailing people? By reducing the harm that drugs do in society? By educating and rehabilitating drug abusers? Some combination?
- What causes more harm in society: drug use or the enforcement of drug laws? Which costs us more?
- What should the main goal of government be: protecting individual freedom, or protecting society from harm?
- When is it justifiable to restrict individual freedom?
- Do we have good moral reasons for punishing drug use?
- Do we have good moral reasons for keeping some drugs out of people's hands?
- Even if we think drugs should be illegal, are our current drug laws just? Are the punishments appropriate and morally justified?

In the readings, you'll see an argument from Husak in favor of decriminalization of most, if not all drugs, and an argument from Marneffe against legalization of "harder" drugs like heroin. And Alexander will argue that, even if we need to keep drugs illegal, drug laws in the US are unjust as they are currently enforced. Ultimately, you will use what you learn this week and next to develop your own position on the issue. Are there any drugs you think should be either legalized or decriminalized? Are there any drugs you think should not be legalized or decriminalized? Which ones, and why?