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CASES
IN
ETHICA
edited
by
Fritz
Allhoff
&
Alexander
Sager
FOCUS

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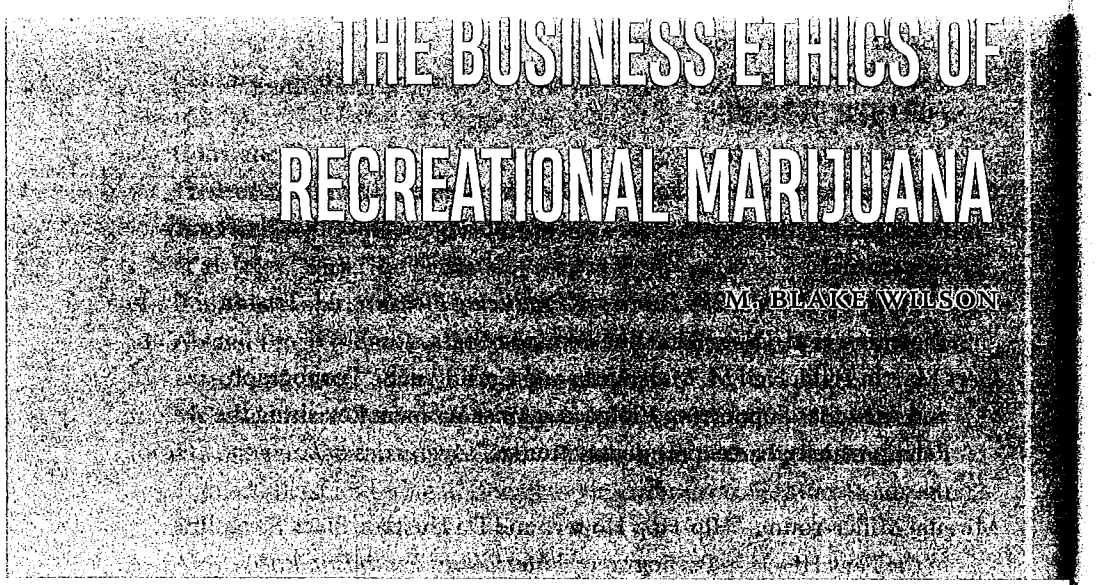

BACKGROUND

ON JANUARY 1, 2018, THE STATE OF CALIFORNIA BEGAN ISSUING licenses for the cultivation and commercial sale of marijuana, or cannabis, to adults for their recreational use. The licenses are the direct result of Proposition 64, better known as the Adult Use of Cannabis Act (AUMA). The AUMA was approved by the people of California on November 8, 2016, by a vote of 57 per cent to 43 per cent. These voters agreed that cannabis—a substance which has been illegal in the state since 1913 and remains illegal under Federal law—shall be legal for individuals to possess, use, and cultivate in small amounts (as consumers) and legal for their suppliers (as producers) to cultivate and sell in much larger amounts. Although permitted to grow up to six plants at home, most consumers will choose to act as cannabis consumers of the flowers of the plant (for smoking) as well as processed derivatives for oral consumption (or "edibles"). In 2017, *Fortune Magazine* predicted that Californians would purchase $7 billion of cannabis products in 2018, generating $1 billion in tax revenue for the state.[1] In fact, the numbers were substantially smaller: 2018 saw $2.51 billion in sales[2] and just over $345 million in tax revenues.[3] Still, California has emerged as the world's largest market for cannabis, which stands to surpass almonds, grapes, strawberries, and tomatoes as California's biggest cash crop. The prospects for investment, entrepreneurship, income, and wealth for producers are enormous.

For the past 20 years, California attorney Omar Figueroa has specialized in defending individuals accused of running afoul of the state's medical cannabis regulations. The author of *Cannabis Codes of California*, the first reference guide to the new and old regulations, Figueroa has also represented hundreds of individuals accused of violating state and federal criminal cannabis laws, and is currently advising many more who are attempting to comply with California's new cannabis licensing codes and regulations. The majority of these regulations have arisen from the AUMA's provision that regulation can be augmented by "legislative amendments" enacted by the elected members of California's legislature.

Figueroa is on the cutting edge of the regulation surge, although he is careful to stress that he and his fellow attorneys cannot legally represent the architects of the new cannabis industry as business attorneys; rather, they are practicing a kind of regulatory compliance law for their clients. "Even with Proposition 64," he says, "there are still lots of black and gray markets for cannabis." With that in mind, many of Figueroa's former criminal clients are seeking permits and licenses in order to avoid the threat of criminal prosecution and incarceration, but, as Figueroa emphasizes to his clients, cannabis remains illegal at the Federal level, and even the new California rules and regulations continue to subject cannabis users and products to a wide range of possible criminal sanctions. Although the new statutes designate many of the former felony cannabis offenses as misdemeanors, each misdemeanor can result in up to one year in jail. The new regulations also impose substantial punishments for environmental and workplace offenses, not to mention substantial civil fines that can become liens on property as a result of operating unpermitted grow sites.[4]

According to Figueroa, "Proposition 64 did not truly legalize cannabis. Cannabis would be legal if there were no penalties for possession, like coffee." In this sense, his services are not markedly different from his previous services to clients as a criminal defense attorney. When he was

acting in that role, cannabis cultivation and production were fully criminalized through massive efforts to eradicate the plant, and the combined law enforcement/prosecution effort resulted in cannabis-based convictions of over one million people in California alone, where 6,000 people are currently serving felony prison sentences for trafficking in the substance. During that era, producers and users spent time in jails and prisons but also huge sums of money on penalties, fines, and attorney's fees. Now, says Figueroa, they are employing marketing consultants and finding demographic niches. Figueroa's own experiences as well as those of his clientele set the stage for the story of this sea change not only in law and regulation, but also in the ethical challenges to both producers and consumers as cannabis moves from crime to commerce.

ANALYSIS

THE LEGALIZATION OF CANNABIS AND OTHER SUBSTANCES FOR recreational use raises a number of interesting issues for business ethics, including the role of property rights, the permissibility of governmental regulation of so-called "vice" (commonly known as paternalism), and the moral obligations of producers of intoxicants. There is no doubt that cannabis producers are meeting a tsunami of consumer demand for their product. But "meeting demand with supply" is no substitution for ethics. If a market in cannabis opens the floodgates for more dangerous drugs, or if the cannabis market itself does more harm than good, then ethicists have good reason to challenge the wisdom of making cannabis available in the produce department—right next to the carrots and cucumbers—at the neighborhood grocery store.

In the cannabis business story (*cannabusiness* for short), there are two categories of moral agents. The first category comprises *producers* of cannabis products and includes growers, wholesalers, and retailers, or anyone who is involved in cannabis in order to make a profit. Producers create and distribute cannabis products designed to be used by the second category: *consumers*. This second category also includes anyone who is not directly involved in the production of the product for commercial use and therefore includes the legislators who regulate the product as well as the end-use consumers. So, the first category consists of producers, and the second category includes everyone else. After all, it's "the public"—acting as a democratic majority—who made this happen through the ballot initiative process.

Moral agents have moral obligations, and there is a variety of moral obligations that govern all trade. Producers of cannabis products—or any other commodity, such as carrots—are obligated to sell products that conform with a general warranty of merchantability, to avoid false or misleading advertising, and to be liable to their consumers for damages if they sell an inherently defective product. Although cannabis is now legal in small amounts for recreational use in California as well as ten other states (plus the District of Columbia),[5] over two dozen more states permit it to be legally possessed with a doctor's recommendation. In these states, cannabis is permitted to be used as medicine, which clearly indicates a meaningful distinction between cannabis and carrots. As a producer of a pharmaceutical product, cannabis producers certainly have more ethical obligations to consumers (or, in this case, patients) than producers of carrots. They must, for example, ensure that dosage amounts are correctly indicated on the label of the product, and that the proper strain or variety of cannabis is being provided pursuant to the directive of the prescription. But this case study is not about medical cannabis: it's about cannabis as a recreational product, where it is presumably more like wine or coffee than antibiotics or opioids. So, from an ethical standpoint, is trade in recreational cannabis meaningfully different than trade in carrots?

One way to approach an answer to this question is to determine what kinds of *rights* are involved in commercial transactions generally, and then to inquire about cannabusiness rights in particular. According to legal philosopher H.L.A. Hart, "[r]ights are typically conceived of as possessed or owned or belonging to individuals, and these expressions reflect the conception of moral rules as not only prescribing conduct but as forming a kind of moral property of individuals to which they are as individuals entitled."[6] If people have a right to engage in a particular kind of behavior, then it is usually wrong to interfere with them when they choose to exercise that right. After all, rights are important, and rights should only be violated when there are substantial justifications for doing so.

One group of rights that is indispensable for most, if not all, commercial transactions is *property rights*, and property rights play a major role in business ethics. If producers have a property right to produce and sell carrots, and consumers have a similar right to buy and consume carrots, then respect for the property rights of carrot farmers and carrot consumers might be analogous to respecting the property rights of producers and consumers of other agricultural products such as recreational cannabis.

It is often said that property is protected by a bundle of rights. According to this theory, property consists of the group of rights or incidents "inhering in the citizen's relation to the physical thing, as the right to possess, use, and dispose of it."[7] Property is therefore the "set of government backed rights one has in the physical thing,"[8] and these rights are often termed "sticks" in the bundle.[9] A person becomes the full owner of a property when he or she possesses certain rights, or "standard incidents of ownership," in a mature, liberal legal system.[10]

In terms of property rights and business ethics, the actions and behaviors involved in trade can be evaluated from at least two ethical standpoints: consequentialist ethics and deontological ethics. The buying and selling of cannabis products can be evaluated from these two perspectives as well.

The consequentialist argument claims that cannabis ought to be protected by property rights and bought and sold like any other commodity, provided that those commodities produce good consequences. If the cannabis trade does not produce good consequences, then it—like any other commodity that produces more bad outcomes than good ones—can be heavily regulated or even outlawed because it is *harmful*. Strong property rights in both producers (the right to sell) and consumers (the right to buy) turn upon this empirical fact. Under this approach, the property right is granted (or not) based upon the observable and quantifiable outcomes in regards to the amount of welfare produced by it.

The deontological argument, on the other hand, justifies property rights independently of the outcomes. From this perspective, cannabis ought to be bought and sold like any other commodity because people have a right to engage in this kind of behavior. By ignoring the consequences of commodification, this approach focuses upon the individual rights of producers and consumers. If persons have such rights, then it is wrong to violate them through extensive regulation or criminalization. If persons lack such rights, then it is not wrong to regulate or criminalize this kind of behavior.

Let's look at the consequentialist argument in more detail. According to Bernard Williams, consequentialism "is the doctrine that the moral value of any action always lies in its consequences and that it is by reference to their consequences that actions, and indeed such things as institutions, laws, and practices, are to be justified if they can be justified at all."[11] The consequences aimed for by utilitarianism—the most well-known form of consequentialism—include "people's desires or preferences and their getting what they want or prefer."[12] The general rules governing these acts also form the basis for the operation of the institutions that govern commerce and industry.

John Stuart Mill famously wrote that utilitarianism—the most popular form of consequentialism—seeks to provide "the greatest good for the greatest number of people," and actions that succeed in providing such goods promote human welfare. From a moral point of view, consequentialists tell us that we ought to engage in those kinds of actions. Do property rights, in carrots or cannabis, help satisfy this moral *ought*? For consequentialists, society grants property rights to producers and to consumers only insofar as the general welfare is promoted. If the general welfare is not promoted, the consequentialist is obligated to *deny* these rights through extensive regulation or even criminalization because the actions and behaviors associated with legalization cause more harm than good. Of course, criminalization and regulation can themselves also create new harms, and consequentialists need to weigh the costs of those as well.

Unlike alcohol and cigarettes, which are subject to a variety of *paternalistic* controls (including restrictions based on age and areas of use), there are very few regulatory or paternalistic constraints on the marketing or the consumption of carrots. Consequentialists can claim this to be the case because carrots do not have the same potential for harm or abuse as alcohol, cigarettes, or cannabis. These items, along with knives, guns, and chainsaws, are certainly harmful under certain circumstances, and consequentialists can consistently regulate or outlaw them because of their potential for harm. In terms of cannabis, millions of people wish to buy and use cannabis recreationally, and many others wish to provide it to them. If negative social consequences (which would include concerns about harm as well as cannabis's possible status as a 'gateway' drug) are the result of the commercialization and use of cannabis, but those consequences are outweighed by positive consequences in terms of general welfare, then the consequentialist will lean towards property rights in cannabis. If the negative consequences are not outweighed by the positive, then society should not respect those rights.

From the deontological perspective, cannabis production and use are not tied into questions about the general welfare. Unlike consequentialism, where rights are determined only after considerations of welfare are made (here, it is said that the good precedes the right), deontologists *begin* their moral evaluation with rights, which are meant to be

foundational to any further considerations of welfare (here, the right precedes the good). Morality, for the deontologist, is not the result of welfare-promoting actions, but their basis. In terms of business ethics, the great deontological ethicist Immanuel Kant illustrated this principle with his story of the ethical shopkeeper.[13] Writing in the late eighteenth century, Kant tells us that an ethical shopkeeper does not overcharge an inexperienced customer, and sells his goods at an honest price, because it is the right thing to do, and not because he wants a good reputation or because he is required by law to do so. For Kant, the foundation of morality consists in treating others with respect because that is how we want to be treated in return, and we show respect for others by treating them as persons who possess certain rights simply by virtue of being persons and not as mere means to each other's ends. One of those rights, for Kant, is the right to hold and own property. This right is not the product, or consequence, of considerations about welfare or efficiency, and societies cannot take away this and other rights if their exercise fails to enlarge the aggregation of social welfare. If persons have a deontological right to truck and barter their possessions, then consequentialist considerations are irrelevant.

Whether derived from consequentialist or deontological justifications, the property right as it pertains to commerce can be thought of as an exercise in *economic liberty*, which can be defined as "the right to acquire, use, and possess private property and the right to enter into private contracts of one's choosing."[14] Like the other fundamental rights, particularly those involving bodily integrity, private property permits us to create what Paul Fairfield calls *moral spaces*, which are "demarcations in the social sphere" and "less metaphorical than many other rights."[15] Although all rights create a sphere or domain of noninterference, what is interesting about the private property right is the fact that it does so "in a more direct and literal way, establishing relatively unambiguous territorial distinctions between physical, intellectual, or personal domains and the realm of public affairs."[16] In other words, because private property rights are grounded in spaces, they are more directly observable and therefore more capable of expressing the moral agency of both the owner, who makes choices about their acquisition, use, and alienation of their property, as well as the agency of others.

The classic restriction on property rights involves the ownership of a knife: knife owners do not have the right to use their knife by sticking it in someone's back.[17] But in this case, *ownership* of the knife is irrelevant:

non-owners of knives are under the same duty not to harm others as owners. Owners, of course, have a strong exclusionary right to keep non-owners from their knife, but non-owners have an even stronger duty of noninterference (i.e., they must refrain from stealing it) as long as the owner/user is not violating their duty not to unjustly harm others with it. This illustrates the moral and legal maxim *sic utere tue ut alienum non laedas*, or "use your own property in such a manner as to not harm that of another."[18] Interestingly, both consequentialists and deontologists might agree with this maxim.

Let's return to carrots and paternalism for a moment. Carrots are perfectly legal: there are no restrictions on their possession or, for the most part, on their use. However, were someone to harm another by using a very large carrot as a club, or to harm themselves by intravenously injecting carrot juice, then the state can legitimately intervene in the first example, but probably not in the second. A law that prohibits the use of carrot juice in this manner is considered paternalistic, and paternalism is the practice of restricting a person's actions on the grounds that it is harmful to themselves, but not others—or, at least not *directly* harmful to others. Parents might tell their child "it's for your own good" when they deny that child a second bowl of ice cream, and the state similarly acts like a parent by purporting to know what is in their citizens' best interests. Seat belt laws, motorcycle helmet laws, and laws against drug use are all paternalistic. Can they be justified?

Interestingly, few of these laws punish violators for *actually* harming themselves: rather, they sanction behavior that has the *potential* for harm. For example, the state can mandate that motorcyclists wear helmets to protect themselves from being harmed by their own negligence, but also by the negligence of others. Street drugs such as heroin or crack are also potentially dangerous—even to an experienced user—for the same reason: the manufacturer or supplier might negligently provide a product that seriously harms the user in much the same way that a reckless driver can seriously harm a helmetless motorcyclist. But, by coercing the motorcyclist to wear a helmet—and coercing the drug user not to use—both actual and potential harms are reduced. Clearly, it's good for motorcyclists to wear helmets, and it's good for drug addicts to avoid dangerous street drugs. Paternalism, in this sense, protects persons from *both* themselves and others.

So, what's wrong with paternalism? Opponents argue that these laws violate the legal principle *volenti non fit injuria*—"to a willing person,

injury is not done." It stands for the idea that no one can claim that a harm was unjust when they have willingly consented to it. In civil law, *volenti non fit injuria* means that a spectator at a baseball game cannot sue the batter or the ball park owners after being hit in the head by a foul ball. In criminal law, it means that a person should not be held answerable to the state when they harm only themselves. It is also the basis for several other legal principles such as assumption of risk and informed consent. In the context of drug use—including the use of recreational cannabis—it means that persons are not unjustly injured when they voluntarily consent to engage in risky behavior. They may suffer harm, but the harm is not wrongful, and the agent causing the harm cannot be held liable for giving the user the opportunity to harm themselves. Purveyors of street drugs, legalized cannabis, chainsaws, and baseball contests might defend their actions on similar grounds.

The legitimacy of paternalism is closely tied to criminalization. What, exactly, is a crime, and when can states punish those who commit them? At first blush, it appears that crimes cause harms, but torts and broken contracts are also harmful—yet they are not categorized as crimes. Unlike torts, crimes entail punishment, and criminalization punishes behaviors that *are* categorized as crimes. In accord with the principle of *volenti non fit injuria*, legal philosopher Douglas Husak makes the claim that states may only punish behavior that *unjustly* harms others, and such behavior must be *malum in se*, or bad in itself. Harm to others is the product of behavior that is *malum in se*, and it constitutes one—and perhaps the only—justification for the imposition of punishment. The classic examples of conduct that is *malum in se* are murder, rape, and theft. Paternalistic laws typically do not punish conduct that is *malum in se*, but rather conduct that is *malum prohibitum*: conduct that is bad by virtue of it being against the law.

Husak argues that these kinds of laws (which would include motorcycle helmet laws as well as most drug laws) violate what he calls the *right against punishment*. For Husak, the right against punishment is derived from a general right not to be subjected to "intentional deprivation and censure through state action."[19] State punishments necessarily include the deliberate infliction of both hard treatment and the imposition of stigma, both of which conflict with a general right not to have these harms inflicted upon rightsholders. Such a right, Husak argues, is a fundamental one and on par with the rights of speech, religion, and privacy. Legally, these rights are protected by what the Supreme Court has labeled the *strict scrutiny* test: if legislation implicates fundamental rights such as speech, religion, or privacy, courts ought to strike down the legislation unless it is "necessary to achieve a compelling governmental objective."[20]

In regards to behavior that does not implicate these fundamental rights, states enjoy very broad powers to outlaw or regulate just about anything (including cannabis production and use) by adhering to the far less demanding *rational basis* test, which permits the state to implement a wide variety of legislation—even legislation that punishes, incarcerates, or even executes offenders—so long as the legislation is "rationally related to a conceivable public purpose."[21] If the right not to be punished was determined to be constitutionally fundamental (such a determination could be made by either the courts or the legislature), then the state would be required to satisfy strict scrutiny in order to maintain *any* legislation that punishes. A fundamental right not to be punished would therefore place the burden of proof squarely upon the state to justify laws that subject those within its jurisdiction to any punishment whatsoever.

It is well known that laws that are strict in theory are fatal in fact, and "precious few laws survive strict scrutiny."[22] For Husak, only certain kinds of acts are punishable, and the state's compelling interest in preventing violence or other harms satisfies strict scrutiny and justifies responsive punishments. *Malum in se* crimes would therefore survive strict scrutiny, but most (if not all) *malum prohibitum* conduct would not. Drug offenses, prostitution, and other so-called victimless crimes would clearly not satisfy strict scrutiny, and the right against punishment would probably vitiate most paternalistic laws as well—including, of course, laws that criminalize the production and use of cannabis.

Lastly, no discussion of cannabis legalization can escape the inevitable charge that it will lead to the legalization of drugs *tout court*. Can we legalize pot but consistently and reasonably continue to outlaw far more dangerous drugs? After all, what's to prevent further citizen-led initiatives, like Proposition 64, permitting the recreational use of crack, heroin, and LSD? Don't the same arguments for a market in pot support a market in PCP? Philosophers call this a *slippery slope* argument, and it is fallacious when it creates bogus causal links between unrelated things and events. It also plays upon a fear of the final link in the chain, which might be completely rational on its own, by fallaciously linking it backwards to an irrational fear of the first link. So, is there a slippery slope from the cannabis market to the methamphetamine market, or is

this a legitimate objection to the commercialization of cannabis in the first place?

Attorney Figueroa thinks the link is imaginary. Cannabis, according to Figueroa, is *sui generis*: as its own category—situated somewhere between mild intoxicant and euphoriant—cannabis is fundamentally different than alcohol and harder drugs such as methamphetamine and PCP. As a naturally occurring substance that is used by millions of people every day without harm to themselves or others, cannabis products are more like coffee, chamomile, and carrots than crack or cocaine. Whereas the long-term use of harder drugs can be fatal, there is no evidence that cannabis products promise similar fates for users. In terms of efforts at legalization, Figueroa reports that "we can draw the line at cannabis, and we don't need to open the floodgates to every other substance."

Perhaps not coincidentally, California also leads the nation in microbreweries, and Figueroa foresees a cannabis industry that echoes the microbrew phenomenon, where producers sell artisanal products directly to consumers without the middleman or distributional network that seems to lend itself to gray and black markets. And although there is widespread abuse of alcohol, most users learn to self-regulate their intake in the same way coffee users learn self-regulation. Time will tell whether California cannabis users will follow suit, and whether the state will pave the way towards further legalization of cannabis nationwide, or be the proving grounds for claims that the costs of legalization do not outweigh the benefits due to the decline in social welfare. The eyes of the nation's cannabis users, producers, and regulators are on you, California.[23]

NOTES

1 Grace Donnelly, "The Marijuana Tax Problem: Why Prices Could Increase 70% in 2018," *Fortune* (2017). It is estimated that the national market will grow to $30 billion by 2021. Debra Borchardt, "The Marijuana Industry Is Getting Supersized," *Forbes* (2017).

2 "The 2018 California Cannabis Marketplace in Review," https://bdsanalytics.com/the-2018-california-cannabis-marketplace-in-review/ (accessed July 18, 2019)

3 "California's Marijuana Tax Revenue Badly Misses the Mark," https://www.fool.com/investing/2019/02/24/californias-marijuana-tax-revenue-badly-misses-the.aspx (accessed July 18, 2019)

4 One such county, Humboldt, is proposing a $10,000 fine per day for unpermitted cannabis operations.

5 Those states are Alaska, Colorado, Illinois, Massachusetts, Maine, Michigan, Nevada, Oregon, Vermont, and Washington.

6 H.L.A. Hart, "Are There Any Natural Rights?" in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 83.

7 *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984) (quoting *U.S. v. General Motors*, 323 U.S. 373, 377–78 (1945)). See also Stephen R. Munzer, *A Theory of Property* (Cambridge: Cambridge University Press, 1990), 16.

8 Robert Meltz, Dwight H. Merriam, and Richard M. Frank, *The Takings Issue: Constitutional Limits on Land Use Control and Environmental Regulation* (Washington, DC: Island Press, 1999), 27.

9 Munzer, *A Theory of Property*, 16.

10 On one analysis, there are eleven such incidents: (1) the right to possess; (2) the right to use; (3) the right to manage; (4) the right to the income of the thing; (5) the right to the capital; (6) the right to security; (7) the incident of transmissibility; (8) the incident of absence of term; (9) the duty to prevent harm; (10) liability to execution; and (11) the incident of residuarity. See Tony Honoré, "Ownership," in *Making Law Bind* (Oxford: Clarendon Press, 1987).

11 Bernard Williams and J.C.C. Smart, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), 79.

12 Ibid.

13 Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Cambridge: Cambridge University Press, 1996), 53.

14 Randy Barnett, "Does the Constitution Protect Economic Liberty?" *Harvard Journal of Law & Public Policy* 35.1 (2012): 5.

15 Paul Fairfield, *Public/Private* (Lanham: Rowman & Littlefield, 2005), 124.

16 Ibid.

17 The example is from Robert Nozick.

18 1 *Blackstone's Commentaries* 306.

19 Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* (Oxford: Oxford University Press, 2008), 57.

20 See *Moore v. City of East Cleveland*, 431 U.S. 494 (1977).

21 *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241 (1984).

22 Husak (2008), 127.

23 Many thanks to Omar Figueroa for agreeing to be interviewed for this case study.

DISCUSSION QUESTIONS

(1) Do people have a right to use mind-altering drugs? If so, can others claim a right to supply those drugs to users? Are property rights important in either case?
(2) What kinds of issues should democratic majorities take into consideration when they criminalize or decriminalize drugs such as cannabis?
(3) Do illegal cannabis producers have a different set of moral obligations than legal ones?
(4) What amount of regulation of substances like cannabis or alcohol is acceptable in a free market?
(5) What kinds of facts would prove whether cannabis or other drugs are beneficial or harmful to society, and should those facts influence our understanding of their ethical production and use?

FURTHER READINGS

Jason Brenna and Peter Jaworski, *Markets without Limits* (New York: Routledge, 2016).
Omar Figueroa, *Cannabis Codes of California* (Sebastopol, CA: Lux Law Publishing, 2017).
Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* (Oxford: Oxford University Press, 2008).
Douglas Husak, *Legalize This! The Case for Decriminalizing Drugs* (New York: Verso, 2002).
John Stuart Mill, *On Liberty, Utilitarianism, and Other Essays* (Oxford: Oxford University Press, 2015).
Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
Michael Sandel, *What Money Can't Buy* (New York: Farrar, Straus, and Giroux, 2012).

4. OF PRICES AND PILLS: ETHICAL ISSUES IN PHARMACEUTICAL PRICING

BRYAN CWIK

BACKGROUND

CHRONIC MYELOID LEUKEMIA (CML) IS A TYPE OF CANCER THAT affects myeloid cells (the cells that form red blood cells, platelets, and some white blood cells) in the bone marrow.[1] CML primarily affects older adults (age 65 and older); in the United States, there are around 9,000 new cases a year, and approximately 1 in 555 adults are diagnosed with CML. Prior to 2001, the standard treatment for CML was with interferon therapy (synthetic versions of proteins made by the human immune system). CML is very debilitating and deadly; survival rates for CML were approximately three to five years.[2]

In 2001, a drug, imatinib, marketed under the trade name Gleevec, was introduced to treat CML. Dr. Brian Druker, a cancer researcher at the Oregon Health and Science University (OHSU) in Portland, Oregon, pioneered the use of imatinib for the treatment of CML. Imatinib was developed by scientists at a company that eventually became part of