## CP

Counterplan Text: The United States should legalize marijuana.

It’s mutually exclusive. Rehab mandates reforming drug abusers. Legalization is grounded in the retributive idea that drug users don’t hurt anyone, so they don’t deserve punishment. **Bradley 12**[[1]](#footnote-1)

From the ever-expanding number of federal criminal laws to prison sentences that are too numerous or too long, there are many promising bases for criticizing overcriminalization. One such basis, however, has yet to be fully exploited for its potential to limit overcriminalization: the fact that **too many** criminal **offenses** today **are** malum prohibitum offenses—that is, they criminalize conduct that is **morally innocuous—and do not contain** an adequate mens rea (**criminal**-**intent**) element. These offenses often capture conduct that would otherwise be natural and even desirable in business, commerce, accounting, or everyday life. The primary instances discussed throughout this paper are strict liability regulatory offenses (referred to as the “central case”).[[1]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization%22%20%5Cl%20%22_ftn1) In order to limit the growth of laws criminalizing morally innocuous conduct—a development which, in turn, would curb overcriminalization—the U.S. legal community would be well-served to explore the concept of retribution and the manner in which it provides an account of how punishing those convicted of criminal offenses is morally justified. Indeed, punishment without a firm basis in retribution is unjust and therefore should be avoided. Using the principle of retribution to critique overcriminalization may seem paradoxical for two separate reasons. The first arises from widespread and sometimes grotesque misunderstandings of retribution, such that it is often caricatured to mean lock up as many people as possible for very long times. In truth, however, retribution has no built-in tendency toward severity. The second criticism arises from the fact that retribution is a justification for punishment and not a theory about substantive criminal law. But what justifies also limits. **Retribution offers solid** moral **bases for opposing overcriminalization.** Criticisms and Confusion: Toward a Proper Understanding of Retribution Confusion about retribution, and about the moral justification for punishment more generally, is rampant. Almost nothing in standard first-year criminal law casebooks gets it right.[[2]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization#_ftn2) Scholarly literature is scarcely more helpful. Legislative reformers rarely understand it and, by all accounts, never accord it the central place that it needs to occupy if the institution of punishment is to be adequately justified. High state court authority is just as confused. This widespread misunderstanding is one reason why retribution is so neglected today. Indeed, if retribution really did mean what people seem to think it means, then it ought to be neglected. But **retribution is not**lex talionis, the law of retaliation—**“an eye for an eye**”[[3]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization%22%20%5Cl%20%22_ftn3)—as many think it is. To apply the “eye for an eye” norm non-metaphorically, a polity would have to be willing to do whatever its most depraved members might do. Probably no society has so abandoned moral constraint in the pursuit of criminal justice. It is true that “eye for an eye” is found in the Bible and was apparently meant to serve as a practical guide for the ancient Israelites, but biblical scholars have explained that the “eye for an eye” axiom was not an authorization of punishment or even a command to exact a like penalty. It was instead meant to limit retaliatory acts by kin and friends of the victim to no more than the loss incurred.[[4]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization%22%20%5Cl%20%22_ftn4) The historical prevalence and perennial allure of retaliatory excess—vendettas, blood feuds, lynchings, and the like—no doubt had much to do with the emergence of public systems of criminal justice. According to Oxford legal philosopher John Gardner, it was “for the elimination of these modes of retaliation, more than anything else, the criminal law as we know it today came into existence.”[[5]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization%22%20%5Cl%20%22_ftn5) Even so, society must distinguish between this—what Gardner calls the “displacement function” of criminal law and punishment—and its critical moral justification. For there is no necessary connection, either logically or practically, between a practice’s origins and its critical moral worth. It is easy to see, too, that the “displacement function” cannot morally justify defining some conduct as a crime or imposing criminal punishment on anyone. Notwithstanding some historical kinship with retaliation, retribution properly understood as a critical moral proposition is not about domesticating popular hatred for a known criminal. It is not about channeling repugnance toward a particularly heinous crime. It is not state-orchestrated revenge. Retribution is not driven by anger, hatred, or any other emotion; it is distinct from community outrage. It is perhaps admissible to hold that these pacific tendencies are one desired effect or function of punishment, but that is not to say that retribution’s tendency to pacify the passions of victims of crime and their communities constitutes a moral justification for punishment: It certainly does not. Mob-conducted lynchings and similar acts of cruelty and injustice are also capable of pacifying community outrage for (real or perceived) wrongdoing, but civilized society condemns such conduct. Against the Transfer Justification of Punishment H.L.A. Hart, one of the leading legal philosophers of the 20th century, famously argued that society may impose punishment on an offender only where society has been “harmed.” He identified two types of harms: where the authority of law is diminished and where a member of society is injured.[[6]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization%22%20%5Cl%20%22_ftn6) Hart's first category could be mistaken for an awkward description of the retributive view described here, but his view of crime and punishment was very different from the one that is considered in this paper. Hart’s second harm—that a member of society is injured—points toward a deeper investigation of the moral relationship between the institution of punishment and private rights. Hart is scarcely alone in holding this view. Richard Swinburne has argued that the state enjoys authority to impose punishment for criminal harm only where it serves as a proxy for the individual victim,[[7]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization%22%20%5Cl%20%22_ftn7) and he said that this was a retributive viewpoint. Swinburne and Hart apparently imagine a state of nature similar to that described by John Locke: a notional place where individuals hold a natural moral right to punish those who harm them.[[8]](http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization%22%20%5Cl%20%22_ftn8) When these individuals band together to form a civil society, these thinkers (Swinburne, Hart, and perhaps Locke) suppose that they transfer their natural authority to punish to the emergent political authority, so the state punishes as agent or delegate of the community—conceived as an aggregate of individual rights-bearers, now standing down. This whole line of thought is mistaken. Civil society does not punish as transferee or delegate of the victim. Civil society punishes in its own name for its own sake because civil society itself is the victim of each and every crime. Indeed, central political authority and its authoritative directives for the common good—laws—are a necessary precondition to and are conceptually derived from the institution of punishment. There are two additional compelling arguments against the transfer justification of punishment theory. First, as a matter of contingent fact, criminal acts often do involve an injustice to one or more specific persons: the defrauded elderly lady, the black-eyed assault victim, the hapless pedestrian whose car was stolen. But **many crimes lack any** such unwilling, **particular**ized **victim. Among these offenses are** many public morals laws (**drug possession**, gambling, and prostitution); offenses against the state (including treason, espionage, and lying to the grand jury); and “quality of life” crimes (littering and public intoxication)

## Generic Solvency

The counter-plan turns overcrowding, crime, and spending.

**Evans 4**:[[2]](#footnote-2)

Prisons are desperately overcrowded. **Why** is this? The answer becomes clear when you recognize that **eight out of ten people** **in prison are there for drug-related crimes**, and half of them are non-violent offenders, at least according to the 2003 Connecticut Department of Corrections Report on Overcrowding. In short, **if not for drug laws, we would** **not have overcapacity** in our prisons. The purpose of drug laws is to prevent people from using these drugs. Clearly, it’s not working, because people are still using drugs. Going to prison is not a deterrent; in fact it’s just causing unnecessary problems. Just like the failed prohibition of alcohol in the 1920’s, which only produced more crime and corruption, drug laws today are creating more crime than they are preventing. According to the book Social Problems by D. Stanley Eitzen and Maxine Baca Zinn, “**punitive drug laws encourage organized crime** by making importation, processing, and distribution of illegal drugs extremely lucrative **and** people selling illicit drugs **will** often **corrupt the police**.” Like today’s drugs laws, Prohibition failed because, so long as there’s a demand, people will find a way to fill it. They’ll make money doing it, and bribe every official along the way. By making it illegal, we lose our ability to regulate its use to minimize the harm and protect the innocent. Many people would say these laws are a good idea because drugs are bad for you. Perhaps, but if that’s reason enough to make something illegal then why can I buy a bottle of alcohol, a pack of cigarettes and a McDonald’s Happy Meal? As much as we don’t want people to harm themselves, we recognize that it’s not necessarily a threat to society, and hence, not a crime. If anything, **drug use is a victimless crime,** but the laws against it make victims out of users. Drug laws are causing other problems besides overcrowded prisons. They affect minorities more than they do white people. Drugs that are considered black, such as crack, carry much harsher sentencing than drugs that are attributed to white users. Human Rights Watch reported that blacks are incarcerated nearly twice as much as whites for drug offenses, even though there are five times as many white drug users. The system is overworked, overcrowded, and desperately unjust. By legalizing drugs or decriminalizing them we also eliminate the need for the crime and violence that is currently being used to import them into this country. Legal drugs would be cheaper, allowing people to pay for them without sinking to prostitution or mugging. **We** have a way to **lower crime** and racism, provide significant human rights boons to a portion of the population, **and have a** whole **new tax base**. It’s criminal of us not to take advantage of such an easy step up. Drug laws at this point are doing more harm than good. So why are we throwing people in jail? The answer is to be found by looking at who really benefits from this policy. Running prisons is big business. It’s also something that the government is increasingly privatizing, putting our civil rights in the hands of for-profit companies. The Corrections Corporation of America is one of the largest privately held companies that run prisons across the country, according to Yahoo News. They house about 63,000 inmates in 20 states and the District of Columbia. At their last stockholders meeting they told investors that the demographic producing many prisoners -- males between 18 to 24 years old -- is growing and should create more demand for its services. According to Reese Erlich, author of Prison Labor: Working For the Man, many prisons, privately run and otherwise, are making money by putting their inmates to work. It’s not quite slavery, but prisoners who refuse to work lose privileges and don’t get time off for good behavior. The work they do for much below minimum wage takes jobs away from citizens who aren’t imprisoned, and when laws prevent these cheap, prison-made goods from being sold in America, the prisons just export them to foreign countries. If we want to make a profit off of drugs, **we could** be **sell**ing **them legally.** Not only would this make up from the lost tax base from the smaller prisons, but we could insure safer drugs through regulation. **The revenue** alone **could pay for** rehabilitation of addicts, with enough left over to go to **public schools**. When alcohol was illegal, there was no way to regulate it, so some unscrupulous people sold tainted good, such as wood alcohol, which can blind or kill you. Right now, this is the situation for drugs, where it’s common for sellers to cut their wares with something cheaper to stretch out their stock. Drugs don’t have to be as dangerous as there are. **After a** two year **exhaustive study** in Canada to determine the benefits of legalization, **marijuana was found to have no more negative effect than alcohol** or cigarettes, and with stringent government standards it could become much safer. Of course, marijuana is not the only drug, but I think that we need to be consistent in our public policy. We need to examine closely the effects of all drugs, see how we can make them safer, and see if there is a way to prevent them from overcrowding our prisons.

## Overcrowding Solvency

Legalization solves prison overcrowding. **Devine 12** writes[[3]](#footnote-3)

**Legalization would** also **decrease** prison **over-crowding.** According to a 2004 study, **1.4 million prisoners in the U**nited **S**tates **were held because of** drug-related **marijuana** related charges. **That was 55 percent of** the **total** population of **prisoners**  at the time. With prisons continuing to overcrowd and more and more money being spent on maintaining prisoners, **legalization would make room for prisoners who commit more serious violent crimes** and decrease total government spending.

## Cartel Solvency

Legalization solves cartel violence. **Devine 12** writes[[4]](#footnote-4)

**Legalization would** also **drastically decrease** drug **violence caused by** the **importation of illegal drugs.** This year alone, **500 people have died in Mexico because of** drug **cartels that transport marijuana. Legalizing marijuana would eliminate the market for the cartels and subsequently eliminate the cartels** themselves **and the violence they create.**

## Growth Solvency

Legalization solves growth (no pun intended). **Love 11**[[5]](#footnote-5)

Legalizing marijuana will save billions in law enforcement, incarceration and legal expenses while generating billions in tax revenue. **Harvard economist** Jeffrey **Miron found that legalizing marijuana would save** state and local governments $5.3 billion and **the fed**eral government **$2**.4 **billion**, for a total savings of $7.7 billion. Taxing marijuana at a rate similar to alcohol will raise $6.2 billion in revenue. Marijuana, California’s biggest cash crop with $14.1 billion in sales, was [estimated](http://www.time.com/time/nation/article/0%2C8599%2C1884956%2C00.html) to generate $1.3 billion in tax revenue in California alone. **A whole economy will develop** around marijuana once it is legalized. **Legitimate shops and growers will enter the** legal **market** and compete for business. Trucking companies, rather than drug smugglers, will transport marijuana. Shops selling marijuana and bars where people smoke marijuana, similar to hookah bars, will open, **hire workers and pay** income and business **taxes.** Legalization has massive support amongst economists.Milton Friedman, Nobel Laureate George Akerlof and **500** other **economists signed an open letter** to the president, Congress, and state legislatures, **urging lawmakers to legalize marijuana.** Legalizing marijuana will decrease the need for welfare in America. Sadly, blacks and Latinos are more likely to be imprisoned for marijuana than whites; blacks are five times more likely to face prison time for marijuana possession that whites. **When an American is jailed for marijuana, he can’t work** to feed his family **and instead costs the** American **taxpayer $30,000 every year he is behind bars.** When marijuana is legalized, fathers will be released from prison and will be able to re-enter the workforce and provide for their families, thus reducing the need for welfare.

## Racism Solvency

Legalization solves racism in the criminal justice system. **Huffington Post 12**[[6]](#footnote-6)

Amendment 64, Colorado's ballot measure that seeks the **legalization** of marijuana for adult use and regulation of the drug similar to that of alcohol, **is picking up** a new **endorsement from the** local **N**ational **A**ssociation for the **A**dvancement of **C**olored **P**eople. The Denver Post reports that at a Thursday morning conference, [the NAACP's Colorado-Wyoming-Montana local branch is expected to announce its support of Amendment 64](http://www.denverpost.com/news/ci_21378892/colorado-marijuana-initiative-gets-naacp-endorsement), not because the group necessarily favors marijuana use, but because members say **current marijuana laws lead to a disproportionately high number of people of color being incarcerated** or otherwise negatively affected. "Marijuana prohibition policy does more harm to our communities than good," said Rosemary Harris Lytle in a statement, president of the NAACP-Colorado-Montana-Wyoming State Conference. "That is why we have endorsed Amendment 64 which presents a more effective and socially responsible approach to how Colorado addresses the adult use of marijuana." The NAACP provided this data in a press statement about marijuana arrests in Colorado: African-Americans made up roughly 4% of the population in Colorado in 2010, but they accounted for about 9% of marijuana possession arrests and 22% of arrests for marijuana sales and cultivation. The numbers in Denver are particularly staggering. **According to** a report prepared by **the Denver Police Department** for the the city's Marijuana Policy Review Panel, **African-Americans accounted for more than 31**.5**% percent of arrests for** private adult marijuana **possession, despite making up less than 11% of the city's population.** Colorado, Washington and Oregon all have marijuana legalization initiatives on the ballot this November and earlier this month, a local NAACP group already endorsed the Oregon measure, [according to Oregon Live](http://www.oregonlive.com/politics/index.ssf/2012/08/regional_naacp_conference_endo.html). "Our nation's long, tragic, failed war on drugs had taken a disproportionate toll on people of color," [Oscar Eason, Jr., president of the NAACP Alaska-Oregon-Washington State local conference said in a statement](http://www.oregonlive.com/politics/index.ssf/2012/08/regional_naacp_conference_endo.html) about the Oregon ballot measure. "We need to end the drug war immediately and replace it with a common sense approach." Back in 2010, the [California branch of the NAACP endorsed the state's marijuana legalization initiative](http://articles.cnn.com/2010-07-07/politics/naacp.marijuana.support_1_international-faith-based-coalition-bishop-ron-allen-marijuana-laws?_s=PM:POLITICS), Proposition 19, and local NAACP president Alice Huffman had strong words in support of the ballot measure. "We have empirical proof that the application of the marijuana laws has been unfairly applied to our young people of color," [Huffman said to CNN](http://articles.cnn.com/2010-07-07/politics/naacp.marijuana.support_1_international-faith-based-coalition-bishop-ron-allen-marijuana-laws?_s=PM:POLITICS). "Justice is the quality of being just and fair and these laws have been neither just nor fair." Proposition 19 was later rejected by California voters. The local NAACP is joined by other politicians and public figures who are voicing a more common point of view -- that the drug war has been a failure.

## Politics NB

Counterplan avoids the link to politics. Legalizing marijuana is popular in Congress.

**Seitz-Wald 2/8**[[7]](#footnote-7)

In 1973, Oregon rode the hippie wave to became the first state in the country to decriminalize possession of small amounts of marijuana. Within five years, eight other states had followed, but momentum soon lagged, and then reversed in the Reagan era. Lately, however, it’s beginning to feel like the ’70s again, with **numerous polls showing a majority of Americans in favor of legalizing marijuana and** the **recent referenda in Colorado and Washington** to **do just that. Earl Blumenauer** voted on that first decriminalization bill 40 years ago in Oregon — as a “child legislator,” he jokes — and now that he’s in Congress representing the state, he thinks we’re approaching a moment where things are about to speed up very quickly for drug policy reform advocates. “It’s just come to a head,” he told Salon Thursday afternoon. “This is largely going to be resolved in the next five years.” Blumenauer**, along with Colorado** Democratic **Rep.** Jared **Polis, introduced legislation** this week **to make the federal gov**ernment **treat cannabis like alcohol** and let states decide whether to keep it illegal. And **they think they have a real chance of getting somewhere** this time. This is hardly the first time lawmakers have introduced legislation to decriminalize or legalize marijuana in Congress. Massachusetts liberal Democrat Barney Frank and Texas libertarian Republican Ron Paul worked together on a number of legalization bills, but both have now left Congress and passed the torch. “They were very busy people with financial reform and running for president, and I think we have an opportunity this time for some added focus from a number of members of Congress,” he said, noting Frank was a lead author of the Dodd-Frank Wall Street reform bill and Paul was busy being Paul. **“I think we are in a position now to have** a group of **members of Congress** who are able to spend a little more time and energy in a **focus**ed way **on this.** I think we’ve got a little bit more running room; I think **our coalition is broader, and we’ve got people who have not normally been involved in this,” he added**, pointing to more conservative members from Colorado who now care about marijuana after the state legalized it in the fall. On top of **his and Polis’ bills** (which **tax marijuana and end the federal prohibition on it**, respectively), he said he anticipates “about a dozen” different pieces of legislation dealing with drug policy reform moving forward. With “a number of folks” already working together in an informal working group, he explained, “We’ve got more people working more systematically.” He declined to elaborate on other members, saying they would be making public statements in the coming months.

1. Gerard Bradley. “Retribution and Overcriminalization.” Heritage Foundation. March 1st, 2012. http://www.heritage.org/research/reports/2012/03/retribution-and-overcriminalization [↑](#footnote-ref-1)
2. Amanda Evans. Legalizing Drugs Is A Solution To Overcrowding In Prisons. 11/29/2004. B.A. In Journalism From Housatonic Community College. [↑](#footnote-ref-2)
3. Parker Devine (probably a stoner). The Paly Voice, student newspaper at Palo Alto High School (CA). “High time to legalize weed,” December 13th, 2012. http://palyvoice.com/2012/12/13/opinion-high-time-to-legalize-weed/ [↑](#footnote-ref-3)
4. Parker Devine (probably a stoner). The Paly Voice, student newspaper at Palo Alto High School (CA). “High time to legalize weed,” December 13th, 2012. http://palyvoice.com/2012/12/13/opinion-high-time-to-legalize-weed/ [↑](#footnote-ref-4)
5. Robert Love (student at the LBJ School of Public Affairs). “Reducing the Deficit with Drugs.” LBJ Journal. May 4th, 2011. http://www.lbjjournal.com/op-ed/misc/reducing-deficit-drugs [↑](#footnote-ref-5)
6. Huffington Post. “NAACP Backs Marijuana Legalization in Colorado.” October 23rd, 2012. http://www.huffingtonpost.com/2012/08/23/naacp-backs-marijuana-leg\_n\_1824351.html [↑](#footnote-ref-6)
7. Alex Seitz-Wald (staff writer). “Why Congress might legalize marijuana (this time).” Salon.com. February 8th, 2013. http://www.salon.com/2013/02/08/why\_congress\_might\_legalize\_marijuana\_this\_time/ [↑](#footnote-ref-7)