Handout 8: Marijuana & the Ethics of Enforcement

[This handout draws from *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests* prepared by the ACLU]

While there should be **good reasons** in place for making a *law* that makes an action a crime, one of the reasons we think is because *laws are enforced*. There are many laws that there are no good reasons for, but if they are never enforced, there is no ethical problem. *Ethical issues* arise when laws are *enforced* and it is worthwhile to look at *how they are enforced*. **The recreational use of marijuana is illegal and laws against the use of marijuana <u>are</u> enforced.**

1 Introduction

The American Civil Liberties Union (ACLU) put out a report on usage and arrests rates for whites and blacks (these are the terms they use to refer), containing both text, video, and other media (e.g. images), titled *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*.

In thinking about this report, we can consider current marijuana legislation from an ethical perspective and ask certain key ethical questions:

1. Is current marijuana *legislation* fair?
2. Does current marijuana *legislation* generate harm or does it maximize happiness (consequentialism)?
3. Does current marijuana *legislation* respect the autonomy of persons (Kant)?
4. Is current marijuana *legislation* justified by certain religious-ethical positions?

But, we might also consider another set of questions:

1. Is the *enforcement* of marijuana legislation fair?
2. Does the *enforcement* of marijuana legislation generate harm or does it maximize happiness (consequentialism)?
3. Does the *enforcement* of marijuana legislation respect the autonomy of persons (Kant)?
4. Is the current *enforcement* of marijuana legislation justified by certain religious-ethical positions?

1.1 Some Statistics

Statistic #1: Whites and blacks have used pot at about the same rate.
Statistic #2: Blacks are more than three times as likely to get arrested for pot.
Statistic #3: In 2010 52% of all drug arrests were for marijuana.
Statistic #4: From 2001-2010 over 7 million people were arrested for marijuana possession.
Statistic #5: States spend $3,613,969,972 a year enforcing marijuana laws.
Statistic #6: Over 50% of Americans support the legalization of marijuana.

1.2 Impact on Specific People

The website stresses the importance of thinking about these statistics in terms of the people hurt by current marijuana legislation. It gives several stories about how specific people were hurt by punishments associated with marijuana use and possession:

1. Nick was arrested for marijuana possession, lost his license, and has taken the bus to work for three years.
(a) The bus takes 45 minutes whereas driving takes 15 minutes.

(b) Not being able to drive means he cannot take his daughter to daycare, doctor's appointments, and so forth. It means that this burden is placed on his wife, friends, and family.
2. Nick has had to pay close to $10,000 in court fees.
3. It has cost him a job.
4. It also meant that he couldn't pursue his goals of becoming a musician.

1.3 Call for Action

The website then includes a call for action. That page makes the following claims.

Claim #1. The Current implementation of marijuana laws is racially-based (unfair).
Claim #2. There is a powerful incentive for police to arrest individuals with small amounts of marijuana. The more arrests you make, the more funding you receive from the federal government.
Claim #3. Marijuana legislation makes our communities more dangerous as it directs attention away from violent crimes (negative consequences).

The page also asks you to write the following letter to Attorney General Eric Holder:

To Attorney General Eric Holder:

By funneling hundreds of millions of dollars to states to fight the failed drug war and including marijuana arrests in its measures of performance, the federal government is creating a harmful incentive for law enforcement to arrest low-level marijuana users, arrests which are made at staggeringly disproportionate rates by race. This utter waste of our tax dollars overcrowds our jails with low-level offenders and unfairly targets communities of color. We urge you to stop including marijuana possession arrests as a performance measure in the Justice Assistance Grant program, restrict the use of federal funds to make such marijuana arrests, and focus more on making our communities safer.

Signed,

2. The War on Marijuana in Black and White: The Document

The central report is *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*, a PDF of roughly 189 pages. This report has five key findings, details the effects of marijuana on specific people, has a section on how information was collected, and makes several recommendations.

2.1 The Five Findings

Finding #1: Marijuana arrests have risen and have accounted for half of all drug arrests in American in 2010.
Finding #2: There are extreme racial disparities in marijuana possession arrests as blacks are 3.73 times more likely to be arrested for possession.
Finding #3: While racial disparities in arrests have existed previously, disparities have increased.

The focus of the ACLU's report is on the disparity that exists between blacks and whites. Even though there is not a disparity in usage between blacks and whites, there is a disparity in the number of arrests. Per 100,000 people, 716 blacks are arrested in comparison to 192 whites. In addition, racial disparity has increased in the last ten years. This disparity exists not only on a national level, but on a state level. In addition, some counties have extremely high racial disparities. For example, per 100,000 people in Campbell, KY, roughly 5,750 blacks are arrested for marijuana possession in comparison to roughly 500 whites. There is another disparity against younger people (see Table 1):

Age	Arrest %
15 or under	6%
16-17	10%
18-19	18%
20-24	28%
25-29	15%
30-39	13%
40-49	7%
50 or over	3%

Table 1: Breakdown of Marijuana Possession Arrests by Age (2010)

Finding #4: Blacks and Whites Use Marijuana at the same rate.

If blacks used marijuana at a greater rate than whites, then there would be a factor explaining the disparity, i.e. since blacks use marijuana more, they are more likely to be arrested. However, an important finding in the ACLU report is that blacks and white use marijuana at the same rate.

> **Argument from Fairness of Laws**
> P1. Laws should *apply* to individuals equally, regardless of race, gender, or religion. That is, the enforcement of laws should also apply to individuals equally.
> P2. If a law cannot be applied equally, then either that law is morally wrong or its enforcement is morally wrong.
> P3. Current marijuana legislation does not *apply* to everyone equally as it is racially biased.
> C. Therefore, current marijuana legislation is morally wrong and/or its enforcement is morally wrong.

Note that this does not lead to the conclusion that marijuana ought to be legalized. While legalizing marijuana might be one way to remove the sort of injustice noted above, it is not the only way of righting that moral wrong.

Finding #5: States spent over $3.6 billion on enforcing laws related to marijuana possession.

Another way to argue against current marijuana legislation is by showing that the costs involved in enforcing marijuana legislation greatly exceed the benefits reaped from keeping people from using marijuana. Determining the exact cost of enforcing marijuana laws is somewhat difficult. The ACLU considers three different estimates.

ESTIMATE OF TOTAL COST	THREE KINDS OF EXPENSES
High Estimate: $6.032 billion **Low Estimate:** $1.196 billion **Medium Estimate:** $3.614 billion	**Police Expenditures:** police services related to training, salary, etc. **Judicial and Legal Expenditures:** court costs, legal fees on state, etc. **Expenditures relating to Corrections:** costs on local and county jails

STATE	POPULATION	POLICE	LEGAL	CORRECTIONS
Illinois	12,830,632	$126,770,856	$72,313,504	$22,347,420
Indiana	6,483,802	$19,019,174	$13,862,287	$5,599,443
New Jersey	8,791,894	$59,824,356	$50,239,964	$17,279,192
Pennsylvania	12,702,379	$42,185,656	$40,449,756	$18,113,114
New York	19,378,103	$312,838,848	$261,724,896	$103,886,848
United States	308,745,538	$1,747,157,206	$1,371,200,815	$495,611,826

CDQ#1: imagine that the funds for enforcing marijuana legislation have been given to you and so you have **3.614 billion** dollars at your disposal. Since you are a good utilitarian, you want to use this money to increase the most amount of happiness in the world (so, you can't keep the money!). With this money in your hands, one of your associates comes into the room and says "we need to use that money to keep marijuana users off the streets. Plus, if you don't enforce marijuana legislation, you are basically condoning its use. Also, you will have to let all of the people currently arrested for selling marijuana free. That is a lot of criminals you are letting go!" In a group, explain what you would do with this money?

Looking at things from the utilitarian perspective, an argument *against* current marijuana legislation & enforcement might run as follows:

> **A Utilitarian Argument against Marijuana Enforcement**
> P1. The cost of enforcing a piece of legislation ought to be proportional to the happiness it produces. That is, the more a piece of legislation costs, the more happiness it should produce.
> P2. The enforcement of marijuana legislation is extremely costly and not proportional to the happiness it brings about.
> P3. The happiness current legislation produces is relatively small.
> C Therefore, current marijuana legislation (or its enforcement) is morally wrong.

The contentious premise is **P3**. As the ACLU report noted that half of all arrests are related for possession, one question worth exploring is *what benefits are there in arresting people for possession?*

3. Recommendations

Arguments about the recreation use of marijuana often tend to only consider two alternatives:

Choice #1: the full legalization of marijuana for all individuals over age 18 (or 21)
Choice #2: keeping the current legislation and enforcement policies as they are.

However, to treat these two options as exhausting all possibilities and to say that if you don't accept one, then you must accept the other, is to commit the **fallacy of the false dichotomy**. In reality, there are a number of different positions you might take concerning marijuana legislation. Many of these alternative positions can be found in the ACLU's recommendations:

Recommendations for Law: Legalize Marijuana Use and Possession
1. *Depenalize* Marijuana Use and Possession
2. *Descriminalize* Marijuana Use and Possession

Recommendation for Police: Make marijuana possession arrests the lowest priority.
1. End racial profiling
2. Make police procedures fair and constitutional
3. Stricter rules pertaining to searches
4. Remove policies that offer incentivize arrests for minor offenses
5. Increase data collection and transparency
6. Create external agency to audit police departments