

# CANNABUSINESS ETHICS

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## ABSTRACT

Cannabusiness ethics is fundamentally about creating an industry culture of social equity by encouraging best practices from within the industry organically. At its heart, it is about corporate responsibility that helps the bottom line and communities alike—by best practices in business leadership more fully defining the meaning of “success” and the legacy we leave.

## ESSAY

Through marijuana legalization, there now exists an opportunity to redress the historic harm done to families and communities affected by decades of drug policy and a criminal justice system that disparately impacts Black and Brown people.<sup>1</sup> In Massachusetts, for example, this objective is central to the Cannabis Control Commission’s social equity programs, developed “in response to evidence which demonstrates that certain [people and communities] have been disproportionately impacted by high rates of arrest and incarceration for cannabis and other drug crimes as a result of state and federal drug policy.”<sup>2</sup> What does this goal, broadly referred to as social equity, mean in practice? The answers to this question provide a more vivid and practical understanding of what the concept means in the cannabis space and why it should matter.

In this scattered and complex era of marijuana legalization, social equity is a concept which strengthens the fundamentality of positive multidirectional feedback loops that invest in and grow the power and wellbeing of communities. “The criminalization of marijuana is rooted in a deeply racist history and has devastated minority communities.”<sup>3</sup> It reveals “a broader domain in which harsh legislation, prosecution, and incarceration combine to harm and stigmatize minority populations, while a pervasive ideology of color blindness discourages serious discussion of inherent racial

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<sup>1</sup> *Equity Programs*, CANNABIS CONTROL COMMISSION, <https://mass-cannabis-control.com/equity-programs/> (last visited Oct. 16, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> Michael Vitiello, *Marijuana Legalization, Racial Disparity, and the Hope for Reform*, 23 LEWIS & CLARK L. REV. 789, 789 (2019).

bias in the criminal justice system.”<sup>4</sup> Prosecutors in Los Angeles County alone recently moved to dismiss or reduce an estimated 50,000 marijuana convictions after California legalized marijuana.<sup>5</sup>

How many children were raised without fathers because of now-decriminalized marijuana offenses thereby disrupting families and impacting the course of their lives? This is why Carl Hart argues that the National Institute on Drug Abuse (NIDA) within the National Institutes of Health should fund studies “that focus explicitly on race – for example, trying to understand the long-term consequences of marijuana arrests on black people, especially as they relate to disrupting one’s life trajectory.”<sup>6</sup> Altria’s recent \$2 billion acquisition of a soon-to-be controlling stake in a Canadian cannabis company<sup>7</sup> further illustrates the emerging cannabis industry’s potential for entrenching asymmetrically strong and tenacious force and why empowerment and engagement are so vital to the public interest.

Social equity eludes one given definition, as with social justice in general, in the context of community well-being and public health considerations in environmental policymaking, also known as environmental justice. Environmental justice, a term well established in legal scholarship over the past twenty-five years, has a special application for the same communities and, overall, in situations of community disempowerment. This is because it “operates at the intersection of race, poverty and the environment, and offers hope” through “a new paradigm for community leadership and control.”<sup>8</sup> Environmental justice is a window for considering legislative and regulatory agendas, as well as business investment, entrepreneurship and governance. To conceive of social equity is to, as with environmental justice, challenge the notion of a theoretically rational silo of an arm’s length transactional relationship or marketplace.<sup>9</sup> In more existential terms, spirituality shares “a recursive relationship that runs in both

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<sup>4</sup> Doris Marie Provine, *Race and Inequality in the War on Drugs*, 7 ANN. REV. L. & SOC. SCI. 41, 41 (2011).

<sup>5</sup> Alene Tchekmedyan, *Prosecutors Move to Clear 54,000 Marijuana Convictions in California*, L.A. TIMES (Apr. 1, 2019), <https://www.latimes.com/local/lanow/la-me-ln-la-county-marijuana-convictions-20190401-story.html>.

<sup>6</sup> Carl L. Hart, *Pot Reform’s Race Problem: The Fight Against Marijuana Prohibition Must Put Racial Justice at the Center*, THE NATION (Oct. 30, 2013), <http://www.thenation.com/article/pot-reforms-race-problem>.

<sup>7</sup> Paul R. La Monica, *Marlboro Owner Altria Invests \$1.8 billion in Cannabis Company Cronos*, CNN BUS. (Dec. 7, 2018), <https://www.cnn.com/2018/12/07/investing/altria-cronos-investment-marijuana/index.html>.

<sup>8</sup> Luke W. Cole & Caroline Farrell, *Structural Racism, Structural Pollution and the Need for a New Paradigm*, 20 WASH. U. J.L. & POL’Y 265, 265 (2006).

<sup>9</sup> Charles R.P. Pouncy, *The Rational Rogue: Neoclassical Economic Ideology in the Regulation of the Financial Professional*, 26 VT. L. REV. 263, 324 (2002) (suggesting that that the paradigm of the rational free-thinking person “interferes with the individual’s ability to see herself in the context of a given transaction or economic decision as a whole person with ethical principles, spiritual values, and personal goals, as opposed to merely business goals . . .”).

directions” with social justice.<sup>10</sup> This is because spiritual principles, however defined,<sup>11</sup> may inform business ethics by examining what it means to be “successful,” individually and organizationally.<sup>12</sup>

Issues of the environment and social justice have procedural and substantive dimensions, consistent with the premise shared in community lawyering.<sup>13</sup> Procedurally, the concept recognizes that even a seemingly just outcome will not be accepted as such when stakeholders most directly affected by it come to feel that they have been marginalized or that they have not had a meaningful voice in the deliberative process – that their interests were not fairly considered, and frequently that the compositions and organizational culture of bodies driving the decision-making process fall

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<sup>10</sup> John A. Powell, *Lessons from Suffering: How Social Justice Informs Spirituality*, 1 U. ST. THOMAS L.J. 102, 102 (2003); Stephanie M. Wildman, *Revisiting Privilege Revealed and Reflecting on Teaching and Learning Together*, 42 WASH. U. J.L. & POL’Y 1, 21 (2013) (“Spirituality was a driving force in the 60s civil rights movement. Maybe it is not too trite to think about love and spirituality as connected to an end to all forms of oppression.”).

<sup>11</sup> For a high-level comparison of the meaning of spirituality in business school pedagogy, see Evan A. Peterson et al., *Beyond Black Letter Law: Spirituality in the Business Law Classroom*, 24 J.L. BUS. & ETH. 51, 52-53 (2018). As the authors write:

There is no single recognized definition of spirituality. Paloutzian and Park noted that spirituality encompasses efforts to achieve a range of existential life goals, including the cultivation of relationships with others and the search for meaning, potential, and fullness. Altaf and Awan defined that spirituality encompasses the direction, meaning, or satisfaction derived from completing a task of personal or social benefit. Mitroff and Denton equated spirituality with the general sensation of connection between one’s complete self and others. Miller and Miller described spirituality as a key to successful functioning in life, comparing it to one of the four cylinders of an engine. McGinn identified over thirty different definitions of spirituality within the existing literature. Nash and McLennan asserted that many definitions of spirituality within the literature included references to:

- the recognition of forces greater than the individual.
- conceptualizations of the inner self.
- references to the quest for meaning in everyday life.

Paloutzian and Park identified further definitions of spirituality within existing research, including:

- a relationship with a Higher Power that shapes the means through which people function in the world.
- the search for existential meaning.
- the methods through which people relate to the ultimate conditions of their existence.
- a personal understanding of the Sacred.

*Id.* (citations omitted).

<sup>12</sup> *Id.* The authors also write about a “need for spirituality in the business profession” supported by studies suggesting an increase in both employee quality of life and business efficiency. *Id.* at 61.

<sup>13</sup> E.g., Alice Kaswan, *Environmental Justice: Bridging the Gap between Environmental Laws and “Justice,”* 44 AM. U. L. REV. 221 (1997). Similarly, see *Equity Programs*, CANNABIS CONTROL COMMISSION, <https://mass-cannabis-control.com/equityprograms> (last visited Nov. 20, 2020) (“Equity is the recognition and accommodation of differences through fairness to prevent the continuation of an inequitable status quo.”).

short of reflecting their diversity or interests.<sup>14</sup> The indignity and impacts of systemic marginalization are behind why empowerment is such an important concept in both environmental justice and social equity in the emerging cannabis marketplace.

Substantively, consider a case study of initial community disempowerment against a superficially impenetrable industrial and government structure that involves the proposed Palmer Renewable Energy facility in Massachusetts. As envisioned, the facility was to be a waste-stream incinerator, and it was sited and permitted as a renewable energy facility without community participation, credible health risk, or impact analysis.<sup>15</sup> The project's administratively-authorized designation as renewable energy allowed it to bypass a more rigorous environmental notice and comment process that included an alternatives analyses, despite significant projected emissions of air toxics and other pollutants and commercial truck traffic, for an industrial zone directly bordering an administratively-designated environmental justice community with several nearby public schools and prevalingly high rates of childhood asthma.<sup>16</sup> Ultimately, the proposal was defeated through dedicated community outreach and strategic direction by a local community group, Arise for Social Justice, and pro bono representation that included Conservation Law Foundation.<sup>17</sup> What is perhaps most interesting is that the tide of opposition and greater scrutiny over the project happened after the occurrence of factors such as politically courageous resistance by state public health officials who interceded in the process by drawing attention to cumulative health risks and calling for a health impact assessment. The project's defeat followed these challenges to the administrative and land use process, which caused delay and investment uncertainty, drying up capital.<sup>18</sup>

On the other hand, consider community benefits agreements (CBAs):

A [CBA] is a contract signed by community groups and a real estate developer that requires the developer to provide specific amenities and/or mitigations to the local community or neighborhood. Site-specific [CBAs]

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<sup>14</sup> Benjamin Rajotte & Vikram Kapoor, *The Goals of Good Process: Lessons from Mass Claims*, HARV. L. & POL'Y REV. (June 17, 2016), <http://harvardlpr.com/2016/06/17/the-goals-of-good-process-lessons-from-mass-claims>.

<sup>15</sup> Letter from Benjamin Rajotte and Michaelann Bewsee to Daniel Hall, Solid Waste Section Chief, Massachusetts Department of Environmental Protection (Nov. 18, 2009) (on file with the Springfield Institute).

<sup>16</sup> *Id.*

<sup>17</sup> Jenny Rushlow, *CLF Applauds Springfield Zoning Board of Appeals Decision to Rescind Building Permits for Biomass-burning Plant in EJ Community*, CONSERVATION LAW FOUNDATION (Jan. 27, 2012), <https://www.clf.org/blog/clf-applauds-springfield-zoning-board-of-appeals-decision-to-rescind-building-permits-for-biomass-burning-plant-in-ej-community/>.

<sup>18</sup> Benjamin Rajotte, *The Emerging Landscape of Health Impact Assessment*, 38 ZONING & PLANNING L. REP. 1 (2015).

ensure that particular projects create opportunities for local workers and communities. Often, however, these projects change the city's development paradigm; when decision makers realize what well-considered projects with specific benefits attached can bring to the community, the city enacts community benefits policies that set the stage for lifting thousands of people out of poverty.<sup>19</sup>

A case study involving construction of an ice-sports center in the Bronx illustrates advantages that a CBA provides in practice. There, the developer engaged the community as active stakeholders early on in the project and, as a result, agreed to:

- Living wages for all workers in the project;
- Targeted and local hire for construction and operations jobs;
- More than \$8 million in contributions to a community fund;
- A grant program for local businesses that employ large numbers of local workers;
- Local contracting, M/WBE utilization, and local procurement requirements;
- Extensive green building measures and community consultation on environmental issues;
- Priority community access to the project's athletic facilities; and
- Formal structures for community-based oversight and enforcement of CBA commitments.<sup>20</sup>

Consider recent sentiments by Robert Bullard, an early pioneer in bringing critical attention to pernicious environmental harms facing these communities. "We have a long way to go to dismantle the institutionalized and structural racism that is so embedded in every institution in our society."<sup>21</sup> There are exponentially greater opportunities for experimentation on a grand scale affecting millions of lives in answering the question of what social equity means, and a huge social opportunity cost in letting them go to waste. We are at a moment before the power of the marketplace becomes more consolidated, costs are sunk, and the status quo is further stratified. Some of the greatest opportunities for navigating future directions, and in thinking about and iterating the business ethic of a cannabis economy concerned with social equity, start now.

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<sup>19</sup> *Community Benefits 101*, P'SHIP FOR WORKING FAMILIES, <https://www.forworkingfamilies.org/page/community-benefits-101> (last visited Aug. 14, 2020).

<sup>20</sup> *Delivering Community Benefits through Economic Development: A Guide for Elected and Appointed Officials*, P'SHIP FOR WORKING FAMILIES, 1, 7 (2014), [https://www.forworkingfamilies.org/sites/default/files/publications/1114%20PWF%20CBA%20Handout\\_web.pdf](https://www.forworkingfamilies.org/sites/default/files/publications/1114%20PWF%20CBA%20Handout_web.pdf).

<sup>21</sup> Tara Lohan, *Dr. Robert Bullard: Lessons From 40 Years of Documenting Environmental Racism*, THE REVELATOR (Apr. 17, 2019), <https://therevelator.org/bullard-environmental-justice>.

