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Land and Law in Marijuana Country: Clean Capital, Dirty Money, and the Drug War's *Rentier* Nexus

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Abstract

Despite its ongoing federal illegality, marijuana production has become a licit, or socially accepted, feature of northern California's real estate market. As such, marijuana is a key component of land values and the laundering of "illegal" wealth into legitimate circulation. By following land transaction practices, relations, and instruments, this article shows how formally equal property transactions become substantively unequal in light of the "il/legal" dynamics of marijuana land use. As marijuana becomes licit, prohibitionist policies have enabled the capture of ground rent by landed interests from the marijuana industry at a time when the price of marijuana is declining (in part due to its increasing licitness). The resulting "drug war *rentier* nexus," a state–land–finance complex, is becoming a key, if obscured, component within marijuana's contemporary political economy.

Keywords

rent; property; risk; legality; War on Drugs; marijuana

"You have to make your money make money," Seth¹ explains. We're standing in his soon-to-be-renovated kitchen, washing and chopping vegetables from his garden, prepping breakfast for a crew of trimmers who are busy manicuring pounds of marijuana at the dining room table. Making "money make money" in the old capitalist spirit requires circulation, which is not a simple task for those in illegal economies. Some growers avoid it, opting instead to fill 55-gallon drums with cash, dig a hole, and bury the loot, a sort of socially sedimented deposit that conjures northern California's lawless placer gold mining days. Other growers, like Seth, continually seek to reinvest and expand their illegal operations or launder their money into legal markets for legitimized capital-building purposes. Both efforts are risky and require sophistication. For Seth, money out of circulation is a liability, leading to either hoarding or conspicuous consumption, like his "souped-up" neighbors in the latest model trucks. Conspicuous, in the marijuana industry, is not what one generally wants to be.

Looking out the window at his marijuana farm, I ask Seth how he keeps the money moving. Laughing, he says facetiously, "I got a thriving construction business and a booming farm. No one *else* has a job, but *my* business is booming!" Of course, it is a rare day that Seth

¹Names and identifying details have been changed to protect the confidentiality of informants.

works construction or sells any other agricultural product besides marijuana. “The construction business has always kept it easy to move [money] around Even when we were working in full construction mode,” he continues, referencing a period prior to the last housing and construction bust, “80 percent of the jobs were cash. Right off the bat, even then, I’m having to figure out how to deal with loads of cash, even before dealing with the weed.” When construction went bust with the mortgage crisis starting in 2008–09² (following the long deflation of the county’s other core industry—timber), Seth transitioned into full-time marijuana growing to pay off two mortgages on houses he is now unable to “flip,” or renovate and resell, at a higher price. Utilizing the money-moving skills learned in the quasi-formal contracting business, he constantly endeavors to reinvest and launder, to grow and legitimize wealth with an ever-expanding toolbox: expense and payment declarations, paper trails, credit building; product expansion and innovation, employee salary and equity options; investments in other marijuana “grows,” fixed capital improvements. Seth pithily sums up the contradictions of his position: “I’m a blue-collar guy trying to be white collar in an outlaw world.” (field note, August 2011)

With marijuana, as with any agricultural product, land is a primary capital input. If successfully transacted, land also becomes a primary means of moving money into the legitimate market, thereby transforming hoarded wealth into circulating capital—laundering via land. In this article, I focus on “il/legal” (Nordstrom 2007) land transaction practices in the marijuana economy and the historical configurations they support in a northern California county. Il/legal indicates the tight linkages (in practice, concepts, relations) and cultivated separation of legal and illegal social realms and economies. As Willem van Schendel and Itty Abraham (2005) show, by overlaying “the legal” with “the licit,” or socially acceptable, we can productively explore the messiness of il/legality as it manifests in legal-yet-illicit (e.g., corruption) and illegal-yet-licit (e.g., some forms of international migration) formations.

Janet Roitman (2005) shows how licitness is given meaning and social substance through the networks of relations and practices involved in the “prevailing modes of governing the economy” (Roitman 2006:250), where governing is “among” rather than “over,” and is a form of “economic regulation” emanating from nexuses that include and exceed the state and its laws. In this article, I outline an economic realm and its broad terms of governance (Roitman 2005:188) that cohere around marijuana-related licit land transactions, which centers on the dynamics of land tenure, value formation, and risk distribution. This article explores the relations and practices (Heyman and Smart 1999) of this illegal-yet-licit realm of action and the ways that various actors negotiate life at the cusp of the il/legal.

The argument is as follows: drug prohibition is, among other things, a policy arena that generates risk-based premiums for illegal activity. The government either captures these premiums from producers via asset forfeiture and seizure, or producers capture them from customers through sales. As marijuana becomes increasingly licit, despite its ongoing illegality,³ it becomes an accepted land use and form of land valuation, thus enabling a set

²In Seth’s county, residential construction permits (US Census Bureau, n.d.), median home prices (Humboldt Economic Index, n.d.), and construction employment levels (California Department of Transportation, n.d.) from 2005 to 2009.

of land–finance actors to extract “risk-based rents” from the marijuana industry. Thus, state prohibition produces ground rent and land–finance actors increasingly capture it. The resulting formation is a land–finance–state complex, or the “drug war’s *rentier* nexus,” which comprises a system of legal(ized) (see Galemba and Thomas, this issue) laundering that funnels money into protected, legitimized, inalienable circulation. This nexus is composed of a set of practices and legal instruments, the effect of which is to distribute less risk to those who remain at arms length and legal denial away from the plant and its production. As prices of wholesale marijuana drop, the rentier nexus is one among many formations jockeying for position to capture prohibition-inflated rents as they deflate toward the cost of production. In sum, instead of framing the licit-yet-illegal as a contradictory and temporary phenomenon, this article explores what systems of governance, capital accumulation, and social power are created in marijuana’s licit-and-illegal present.

This article is based on 17 months of field research, from June 2011 through October 2012 in northern California, involving participant observation and interviews with approximately 90 stakeholders within and surrounding the marijuana commodity chain. It builds upon works done by anthropologists analyzing the domestic War on Drugs (see Bourgois 1996; Campbell 2010; Garriott 2011; Sharff 1996), which have largely focused on consumers, institutions, distribution networks, and “hard” drugs. This study focuses on marijuana, on which the anthropological literature has been largely silent (Marshall, Ames, and Bennett 2001), and its production, with the aim of exploring a set of unique productive relations within the American political-legal system. Agrarian studies have explored the complex dynamics of U.S. production (Benson 2011; Dudley 2000), particularly in California (Guthman 2004; Mitchell 1996; Walker 2004; Wells 1996), yet it has neglected marijuana as a crop, despite it being one of the largest cash crops in America (Gettman 2006). This silence on marijuana’s production is mirrored in California’s policy debates where, despite policies concerning medical distribution and consumption, production persists in a legally hazy realm. As U.S. prohibitionism undergoes its strongest challenge since the ending of Prohibition, this article seeks to understand an aspect of this unique moment of liberalization and its promises of a new system of freedom and power.

Marijuana Country

California’s Humboldt County has long stood at the epicenter of U.S. marijuana production; if not always in bulk, certainly in spirit. While most marijuana was imported from Central and South America and Southeast Asia prior to the 1970s, Humboldt’s notoriety grew with the development of sinsemilla (seedless) growing techniques and an original (and mythicized) kush strain brought back from Afghanistan by two countercultural brothers. Prices escalated when annual marijuana eradication efforts began in 1983. As knowledge, genetics, and economic networks accumulated, this county became one of the largest, most developed marijuana wholesale production economies in the world (Corva 2013). Over the ensuing three decades, as timber sales declined, a complex system of social relations around

³Marijuana’s “illegality” is nebulous. Marijuana is still illegal, even under state and local law, but California state law allows for a medical defense. Therefore “illegal” can be read as quasi-legal, quasi-illegal, or, perhaps, unevenly il/legal.

marijuana production emerged, eventually becoming the core industry around which life was organized in broad sections of the county (McCubbrey 2007; Raphael 1985).

As unemployed timber workers and landowners were lured into the marijuana industry, substantial relationships began to develop across once-opposed social groupings. Numerous interviewees spoke of the long-standing opposition of “rednecks” and “hippies,” a conflict that began when one long-time local, a “traitor” to some, subdivided a ranch into 40-acre parcels that were then sold to his countercultural compatriots, giving back-to-the-landers a beachhead in this logged-over county. The redneck–hippie template is a pattern indexed in multiple county struggles: local–newcomer; building inspector–homesteader; sheriff–pot grower; logger–environmentalist; logging magnate–labor agitator; and, in a revisionist twist, homesteading pioneer–Native American “intruder” on “private” lands (Widick 2009).

In 2007, the decaying historic political–economic alliance between county government, timber, and real estate splintered and marijuana’s central role became subtly apparent. The signal moment came at a county Board of Supervisors meeting (October 9, 2007) concerning the passage of an emergency moratorium on conversion of Timber Production Zones (TPZs) to residential land uses. These conversions were central to a bankruptcy restructuring plan proposed by Pacific Lumber Company, a prominent and controversial timber company at the center of early 1990s redwoods activism. Labeled by critics as a “rural McMansion” development strategy, the conversions were opposed by an ascendant coterie of environmental sustainability- and regulation-minded officials, a sharp change from prior decades when the county government and timber companies marched in lock step (Harris 1995). The county’s emergency moratorium on TPZ-residential conversions sparked the ire of Humboldt’s rural property owners, leading to the formation of Humboldt Coalition for Property Rights (HumCPR), an organization dedicated “to preserving the rural lifestyle that has been the historic tradition of Humboldt County.” (HumCPR, n.d.) Their founding demand supported unfettered TPZ-to-residential conversions as a fundamental property rights issue. The crux, a county supervisor explained to me (Field note, September 2011), was this: under extant Department of Forestry rules, TPZs could have been converted into residential zones with minimal oversight and costs. If the county oversaw conversions, significantly higher taxes and fees could be levied, along with more stringent regulations and zoning rules. Since TPZ values were premised on its potential for residential conversion, if conversions became more costly or less likely to be approved, TPZ property values would have declined significantly.

Timber companies, developers, and conservative property rightists found (perhaps) unexpected support among landowning marijuana growers. TPZs provide ideal land on which to cultivate marijuana and a tax haven for land-owning growers—timber lands are primarily taxed on the timber extracted, not the value of the land itself, thus placing TPZs outside the normal property taxation system. Growers never have to pay taxes on timber they do not intend to harvest. Further, when sold, the lands can be valued at their potential as a residential land use— not as a less-valuable TPZ—allowing growers a triple bonus of high land values, low taxes, and minimal regulation. The threat to property values by the county’s conversion moratorium became the point of unity between the timber industry, landowners, and land-owning marijuana growers.

As the timber industry declined, along with its influence over county government, and the timber-dependent real estate industry found itself searching for new land values, especially after the housing bust, land-owning marijuana producers emerged as a critical, if tacit, player in Humboldt's political economy. With the moratorium conversion, HumCPR consolidated a process begun decades prior when the two "sides" of the hippie-local divide first came together in the marijuana trade. Unified by a common interest to protect property values, land-owning growers, countercultural back-to-the-landers, land speculators, realtors, lenders, timber companies, and libertarian conservationists reformed as HumCPR, united under a property rights banner, despite significantly different motivations for this commitment.

This economic-political process undergirded marijuana's movement from a covert licitness among producers to a general licitness as its economic role became (tacitly) apparent. Prior to exploring these illegal-yet-licit dynamics further, I first turn to a schematic exploration of how ideal conditions of prohibition—conditions in which what is *illegal* is also *illicit*—produce a particular dynamic of relationships around marijuana and land.

Legalized Laundering: Risk and Price Production in Illicit-Illegal Conditions

As a crop, marijuana price is based on many factors—weather, preservation methods, growing cycles, market destination, strain type, etc. To this mix, prohibition should be added: supply-side interdiction and eradication policies are ostensibly intended to increase prices by creating market scarcity, which presumably decreases consumption (Boyum and Reuter 2005). Prohibition produces risks that effectively subsidize marijuana's price—a risk-based premium. Yet, price-producing risks are not a built-in actuarial calculation or a known fixed cost, like insurance or taxes, that result directly from the state's impact on production (via seizures, etc). Rather, risk itself has as much to do with actual threats to crops as it does with a complex social matrix of risk perception, estimation, and management through which prohibition's effects resonate. Correlatively, prohibition is at its strongest when illegality and illicitness are consonant—when risk resonates not just through formal law but throughout society as a complex social calculation of values (e.g., freedom, familial and community relationships, property) and costs (e.g., criminal stigma, formal economy alternatives, robbery potential) that are rooted in context (e.g., rumors, local histories, social difference, paranoia, fear). Price is one effect of this calculation, and is a barometer of prohibition's power to align social unacceptability with what is legally impermissible. In this way, supply-side tactics are less a supply-constricting price mechanism as they are a socially rooted, risk-producing price mechanism that aims to regulate—not stop—the flow of certain commodities.⁴ Unlike taxation, where the state takes a distribution of profits and has a marginal price effect, prohibition becomes a market-shaping power that determines prices to the degree illegality and illicitness are consonant. As a market mechanism, risk-based premiums are not simply tacked on to prices, but they come to shape and determine prices as they amplify the relative magnitude of marijuana's value vis-à-vis other commodities (Coronil 1997:48). Who captures these subsidies—

⁴For example, one county deputy, after displaying a catalogue of reconnaissance photos of marijuana grows in the county, estimated that, at best, officials would pursue 2 percent of the total (field note, September 2011).

producers or government—is a story elaborated in the everyday of busts, trafficking, laundering, and seizures.

A key moment of risk production emanates from government seizure (accompanying raids, court actions, legal arguments, property dispositions, community and reputation effects, local–historical dynamics, policing techniques, and so forth). Civil forfeiture laws allow the government to seize assets of those suspected of violating criminal law. The onus of proof lies on the individual to prove the property was never involved in commission of a crime or bought with illegal proceeds. It is a difficult decision for a suspected criminal to combat asset seizure, one forfeiture attorney explained (field note, December 2011). If one fights it, the state often threatens criminal prosecution. If one forfeits the assets, though, there is a greater likelihood that criminal charges will be dropped. Further, in the case that forfeiture is challenged in California, the assets can be “adopted” by, or transferred to, federal prosecutors who not only have a lower standard of evidence for forfeiture but can (recursively) share forfeited assets with local and state governments to encourage them to cooperate with federal officials and the drug laws they enforce.

Real property (land), however, is not subject to the same procedures for asset seizure. Land is more difficult and often less desirable for law enforcement agencies to attain, placing it in a different relation to seizure procedures than movable property—and landowners and leasers in a more secure position than lessees, who only possess movable property. Nevertheless, even for landowners who occupy their land, the effect of losing all movable property is often enough to drive them into bankruptcy and real property loss. To encourage uncontested, rapid forfeiture of all assets the government seeks, a *lis pendens* is often placed on the property, indicating that if the property is sold before forfeiture or criminal cases are resolved, the property may still revert to the government, regardless of its new owner, effectively making property sale and refinancing impossible.

This system of governmental seizure renders the funds and belongings of growers—their accumulated and hoarded wealth—perpetually alienable and illegitimate. Once seized, the state can then recommodify and funnel these illegal funds and assets—funds inflated by state-induced risks—back into formal circulation (via auction). Under illegal-and-illicit conditions the state both generates and captures illegal funds in a feedback loop. If laundering is the cleansing of dirty money and its recirculation into formal markets, the prohibitionist state functions as a self-generating system of legal(ized) drug money laundering.

Between Licit and Illegal: Risk-based Rents and the Drug War’s Rentier Nexus

If rent during production is a cost incurred for the ability to produce, marijuana prohibition can be seen as a form of rent-setting, a legally imposed rent levied upon illegal production. In this sense, the state is a kind of supreme rent-setter, or collective landlord (Coronil 1997) that establishes the terms of occupancy of national territory and the rents charged for that occupancy. Yet, as marijuana is an agricultural commodity and land is a necessary component of production, how does marijuana relate to the more traditional production of

ground rent and the social institutions that arbitrate it? When marijuana is illicit, risk-based rents only enter into land market valuations on an individual basis, as when the buyer and seller both know the property will be used illegally. Conversely, when marijuana is *licit* and offers the most profitable, or “highest and best,” land use (two aspects that go hand-in-hand in much of northern California), risk-based rents are increasingly transferred into *general* land market valuations. Rents, that is, can be captured in licit-yet-illegal conditions not only by the government and drug producers and purveyors (through the sales–seizure mechanism), but also by land market actors who can capture ground rent and value land based on legally prohibited yet socially accepted uses.

In order to understand this, a rubric for the production of ground rent and land values is needed. First, as Fernando Coronil (1997) points out, we must understand land not as a thing but, rather, as a social relation, and its valuation as a social process (see also Harvey 1982). All land, Coronil argued, is not created equal. To the degree that one landed entity is able to reap more profit than the general rate within a given industry, that entity can claim differential rents. In agriculture, differential rents depend on varying productive capacities of the land, which result from variations in natural conditions or levels of invested capital improvements. “Natural conditions,” however, are not just soil, ecology, and climate—they are also the social relations that govern land use and determine the type, intensity, and mode of productivity allowed. Similarly, “capital improvements” are not only built infrastructures and soil amendments but also the relations that support cumulative knowledge (about seeds, strains, growing techniques, microclimates) and market infrastructure (market density, transportation pathways, regional notoriety). Accepted land uses, knowledge accumulation, and market infrastructure—bases for differential rents—are made audible and amplified in conditions of licitness, thereby creating the potential for differential rents.

While differential rents and their capture are dynamics internal to the marijuana industry, marijuana as a land use competes with other potential land uses. Rent extraction is based on the socially determined highest land use possible (for example, high-priced, high-turnover marijuana; not cheaper, slower-growing timber). In terms of *general* land valuation, prohibited marijuana can be the highest possible use only in conditions of social licitness. Thus, *all* property transactors in northern California where marijuana is the highest possible *licit* land use (whether in urban areas amenable to indoor marijuana growing or rural tracts of land available for outdoor growing) are able to extract ground rent as a result of marijuana’s production. In this way, in many parts of post-industrial northern California, the marijuana industry has come to be the prime driver of land values.

Ironically, marijuana’s acceptance as a land use allows rent to be captured in formal sales, leasing, and financing mechanisms, thus delivering the benefits of licitness to landed interests—not to those who forged licit conditions by discussing, selling, politicizing, and producing marijuana. If licitness allows for this appropriation of rent, it is also an expropriation of the lives lived under the drug war. This human history, as well as marijuana’s economic value, is the object of an appropriative process of the movement of marijuana into legalized circulations.

For Coronil, rent extraction is a measure of the social power of landed capital, which includes not just realty and finance market actors, but also the state to the degree that it shapes modes of accumulation and land use. This state–land–finance complex, or rentier nexus, prevents the full commoditization of land, ostensibly acting as a “lag” or “parasite” on the emergence of an ideally rationalized market in which land is marketable like any other commodity. Yet, to the degree that the rentier nexus becomes central to price determination, it is not a “lag”; rather, it is central to marijuana’s commoditization and value form, a disposition that emboldens the rentier nexus’s capture of social and political power.

Until recently the consonance of illegality and illicitness, a complex and uneven articulation, has produced a broad social matrix of risk that has amply supported marijuana prices. As marijuana becomes more licit, the distribution of rents shifts from producers (and government) toward landed capital. Yet, as licitness increases, actual and perceived risks—and the rents based on them—decline, leading to a drop in marijuana’s wholesale price.⁵ As prices decline, the land–finance apparatus (along with a maturing medical marijuana industry) is well positioned to capture rents from a product that has been hyper-inflated since the War on Drugs’ inauguration. Indeed, land–finance actors wield more *relative* power as they capture an increasing portion of a shrinking pie.⁶ In these licit-yet-illegal conditions in the marijuana market, where prohibition fails but persists, the land–finance–state complex both creates and captures the rents of the marijuana industry. Thus, the drug war’s rentier nexus is born.

“Not This Girl’s Story”: Mutual Benefit, Nonmutual Risk

Kaya had fled to California from Ohio in 2003, leaving behind a marijuana possession charge and an abusive relationship. She arrived homeless with no money, but vowed to be self-reliant, a vow that deepened when she found herself settling on an 80-acre, illegally subdivided ranch, surrounded by pot growers. The woman who owned the land would pass away, throwing the property into the hands of her children, who let it slide toward foreclosure. When the attorney general’s eradication team, Campaign Against Marijuana Planting, raided the ranch, Kaya narrowly escaped being busted. Every plot around her, all of them illegally subdivided, was raided, but she had luckily closed her gate that morning and her indoor plants were out of view. After the busts, as the last remaining tenant, she negotiated a job as ranch manager from the deceased owner’s children. “I learned a shit ton and I spent half that time being scared of being myself and being alone. If-I-fall-down-and-break-my-leg kind of alone—that was scary.” She also learned how to “get crazy”—carry a gun, evict illegal tenants twice her size, cut illegal water lines, threaten trespassers and “guerrilla growers.”⁷ “Definitely being able to live there and grow there gave me a step up in the world,” she explains. Eventually she found herself moving to live with a new man, a

⁵For a more complete picture of downward price pressures, add to this: quickening flows of horticultural information and genetics; technological innovations in growing techniques and cycles; maturation of other bioregions; increased numbers of market entrants due to increasing licitness and region-specific economic crises; and pressure on wholesale marijuana prices by medical marijuana distributors–purveyors.

⁶This is not to say that the retail price of marijuana has declined; rather, there is a distribution of risk-based rents away from producers (who have seen sharp wholesale price drops) toward other licit rent extractors, including landed interests, out-of-state transporters, and medical intermediaries.

⁷This is a term indicating marijuana cultivators who grow on public land or other people’s private land.

“big grower” who came from a wealthy Connecticut family. She became an active partner in his marijuana business but only received temporary, relationship-dependent remuneration—vacations, dinners, a refurbished house, food, a bed. By the time she had taken over most daily operations and staff supervision, he was taken over by cocaine. She walked out when he accused her of not pulling her weight.

It was at this juncture that Kaya sought out property of her own. She describes her transition to becoming a property and business owner:

I like to be responsible for my finances and know what’s going on with my business. I’m not going to be 40 and break up with my husband of 10 years without a skill set and two kids hanging off me that I don’t know how to fucking take care of. Not it. That’s somebody else’s story, not this girl’s. (interview, August 2011)

This next section navigates through the practices, relations, and legal–economic instruments that shape encounters with the rentier nexus. While it relies on Kaya’s story, it also draws from several local publicized court cases and personal interviews with a range of individuals, including a forfeiture attorney, several realtors, three large landholder landlords, two renters, two tenant farmers, and several owner-occupied landowners.

Kaya continued:

I was going to build my business on a lot and live in a double-wide [trailer] down by the river. It was back in the day when they were giving shit away. This was in the day before real estate began to go down. I did a no-income loan. I didn’t have to state my income and I didn’t have to have them look into anything. They just didn’t care. “Approved! Approved!” I was way in over my head. I was in the middle of all of that when [the property market] came crashing down. I had a balloon payment and I couldn’t make it work and I was 24 hours away from them foreclosing and I sold it. A lot less than I bought it for but a friend bought it. I didn’t make anything [on the property] but there was \$20,000 in cash that I was able to put down as payment on the place I have now. (interview, August 2011)

With this money, she entered into an “owner-carry” mortgage. This mortgage occurs when the owner finances the buyer’s purchase and retains title rights until the buyer fully repays the debt. Only then does the title transfer to the buyer. There are no banks involved and no correlative review, filtering, and documentation processes. One realtor explained the tightening of loan terms and screening since the mortgage crisis:

It’s all owner-carry these days. You can’t get a loan anymore. The owner acts as the bank, they hold the mortgage. In the case of foreclosure, they can take the property back. People pay it off pretty quickly [in the pot industry], even though interest rates are generally higher. You don’t have to provide any [proof of] income, no credit. You just have to give them money. (interview, September 2011)

Other interviewees explained that these deals can include a percentage of marijuana profits or a harvest portion, in addition to or in lieu of payments. While these side payments are indefensible in court, in this highly embedded transaction, a buyer’s trustworthiness and credit, in the broad sense, are at stake.

When Kaya had trouble paying the first mortgage after her interest rates spiked, she went to a private “hard money” lender who denied her a loan. A hard money loan is for a majority of the property’s purchase price and the lender then has rights to the title until the buyer pays off the entire loan. Most of these lenders charge 7 percent to 15 percent on loans, which is significantly higher than the market rate and in questionable relation to California usury laws, in exchange for quick financing and ample shade from regulatory oversight. “At 15 percent you gotta grow a lot of weed [to keep up payments]. You [have to] want a piece of land badly enough.” Kaya comments (interview, August 2011). These lenders customarily claim first position, which is a stipulation that they be paid prior to other lenders if the debtor defaults (or the property is seized). One highly successful hard money lender works in partnership with a broker for seller-speculators, and this broker, well-situated between lenders, buyers, and sellers, effectively came to dominate one county’s rural marijuana land market. While many realtors represent marijuana-related buyers, sellers operate through select brokers, preferably ones that can enable the financing of the deal through a hard money lender outside the banking system. Because the title transfers from the seller to the escrow company, and the hard money lender assumes responsibility for the loan, it releases the original seller-speculator from all liability and risk (from seizure, for example). Through practices like these, an apparatus of lenders, speculators, owners, and brokers emerges as an integral part of the marijuana industry.

As with any agricultural commodity, access to money, credit, land, and loans—finance capital, in short—is critical to one’s entry into the business and a primary factor in determining the scale and intensity of farming. Agricultural supply and demand is not based simply upon the individual decisions of growers, but is fundamentally connected to the terms of the credit system (Dudley 2000; Henderson 1999). People are growing more (and prices are thus declining in part) because of the increasing pressures to pay creditors. As the cases of Seth and Kaya illustrate, marijuana is closely entwined with the forms, terms, and sources of credit-making— access to credit for Kaya and the effects of loose credit supply in the housing market for Seth.

Titling practices are also a key element of this land transaction system. The title stipulates a property’s legal standing and ownership rights. In owner-carry or hard money loan situations, a deed of trust is executed whereby a third party, usually a title company, holds the title in escrow and only hands over, or reconveys, the title to the buyer-borrower once the loan is paid in full. In the case of bankruptcy (which often results from a police raid, asset seizure, or arrest), the title is generally conveyed back to the original owner if she or he can demonstrate ignorance about the illegal activities on the land, thus offering a significant advantage over grower–buyer–borrowers whose involvement is more evident. This was the case in a land deal involving a thousand acres of former timberland purchased by a corporation of 40 people through an owner-carry sale. The subdivided parcels were raided by 450 law enforcement officials: 10,000 marijuana plants and \$160K in cash were seized, and the president of the corporation was charged as the head of a large-scale criminal enterprise. Unfortunately, for the land purchaser–growers, under the escrow terms their property and improvements reverted back to the original landowners—long-time logging families turned land speculators (Walters 2008).

Those who employ land–finance practices are systematically more shielded from risk in the case of seizure and more able to reap the benefits of land-as-laundering. Ultimately, during forfeiture proceedings, retention of property rights depends upon one’s knowledge of illegal activity on that property. Certainly, linking direct producers to knowledge of illegal activity is relatively easy; therefore they consistently lose rights to and possession of movable or real property (which incentivizes growing on public, timber, or somebody else’s private lands). Regarding owners: those in leasing situations have the hardest time in claiming “no knowledge,” as landlords are expected to maintain properties; those in owner-carry situations have less difficulty in proving no knowledge as terms can be set in the escrow agreement that shield the lender-owner; hard money lenders have the easiest time in proving no knowledge— they are more of a lien claimant against the title, rather than a title holder, and in the case of forfeiture are often able to recover their funds. At the most protected level is the general body of non-marijuana landowners and institutional actors dependent upon land transactions who receive maximum benefit (high property values) and zero risk from a marijuana-inflated property market.

While land transaction practices formally distribute risk equally among buyers and sellers (as codified in legal documents), the substantive distribution of risk results in inequalities. Those who are least able to leverage legal and land-finance instruments and practices to distance themselves from the plant are the most vulnerable to having their wealth rendered illegitimate by the state. They do not have secure access to land, cannot convert cash into value-seeking capital, and do not have the capacity to insulate themselves from the risks of illegality. Conversely, those who are separated from the plant by legal documents, market processes, and intermediary actors retain varying levels of protection. They have secure access to land, are able to transform cash into value-seeking capital, and can insulate themselves from the risks of illegality. The practices and instruments of legal property transactions, then, designate a status of legitimacy, formality, and diligence that helps to structure inequality within prohibition-rent extraction systems. Power is found in a predictable spot: among the possessors of money, property, and protective legal accouterments.

There is no concrete barrier between growers, owners, and financiers, however. Growers have a route open to climb the ownership ladder and mitigate risk through protective land–finance practices. Many remain renters or tenant farmers, though, being unable or uninterested in leveraging the investment for a land purchase. Greenhouses and rental plots, if productive, can, conversely, serve as launching pads to accumulate liquidity to purchase property. One grower-turned-landlord owns several land parcels, employs tenant farmers, and runs a contracting business to launder money. He worked for wages on high-risk “guerrilla grows” on private timber and public park lands until he had saved enough to rent his first land parcel. (interview, October 2011)

After purchasing property, some owners become property speculators. One realtor explained how many of the marijuana land sellers entered the business:

Most of them were involved [in marijuana] but have now become land developers. They’ve made enough money that they can just buy a property and sell it for a

profit to growers. A lot of people that got into it took it one step further, formed LLCs [limited liability corporations], did the legal subdividing, built the roads, kind of setting it up for growing. (interview, September 2011)

The LLC structure for land development and speculation in the marijuana economy was brought to public attention with the 2007 arrest of Joshua Hedlund, a Humboldt-born grower-developer. Hedlund had purchased more than 7,000 acres of former timber property in Humboldt and Trinity counties under the auspices of an LLC. Hedlund then subdivided these properties and sold them to buyers who signed a document agreeing not to grow marijuana. Despite this, “grows” were continuously spotted on the property, according to the Drug Enforcement Administration, and Hedlund ultimately admitted to knowingly receiving partial payment in marijuana or marijuana-originated funds (Levine 2009). A similar technique was developed over the course of nine years by two land developers who set up false land deals on a 60-home development to launder money. The houses were used to grow marijuana and the owners were given financing in exchange for a portion of their profits (Greenson 2009).

Even for those that enter the real property market, inequality is structured by unequal access to information and experience. One land broker explained:

Most people that walk through my doors are uneducated in how this transaction goes down. A lot of people enter into shady deals, thinking they are gaining ownership but don't get it. What matters is what happens to the title. You can “sell” your land without ever letting others actually own the title—it's all a money game. The after-effects are what I see. Someone purchases a property but never looks to see if the title is included. (interview, October 2011)

In the shaded real property market, confusion and manipulation are commonplace. In one case, a prominent logger and timberland owner illegally subdivided and “sold” land parcels after he had become frustrated with conservation-based legal actions to prevent subdividing. The subdivision “owners,” many of whom were growing marijuana, had no legal right to the property—no defensible title existed—and the parcel's transformation into residential and (marijuana) farm usages, along with all the improvements—structures, roads, water lines—were illegal. In this case, illegal activity spanned the muddled property transaction process (from illegal subdivision and titling to growing marijuana to conservation easement violations), and left those without information and experience property-less (Quinones 2011).

Throughout the course of fieldwork, the manipulation of property agreements was told to me in stories of exorbitant rental fees (\$40K for 6 months on a small, unimproved lot) and the extortionate alteration of leasing terms during the growing season (a \$2K per-plant mid-season levy by one owner). One veteran grower related that some parcels are raided based on tip-offs from the title-holder to the police. By bankrupting their buyer prior to the completion of their land payments, the title-holder reaps all the prior payments *and* retains ownership of the land itself.

Despite its illegality and shaded dynamics, marijuana growing has increasingly become intertwined with property transaction systems in northern California—systems that are formally equal, substantively unequal, and quite licit. Yet, as marijuana becomes broadly accepted, there is a growing effort to regulate and tax marijuana, a reform that could drastically rework the system of risks, rights, and rewards of the drug war’s rentier nexus.

The Prohibitionists, Preservationists, and Industrialists

In 2010, a measure to tax and regulate marijuana, Proposition 19, made it to California’s ballot. Humboldt residents, particularly those in rural areas where the dynamics detailed in this article are most salient, voted overwhelmingly against “legalizing” marijuana. One could argue that these results show a calculated self-interest on the part of Humboldtians—industrial formalization would herald rationalization, cause prices to drop, lead to unfettered competition, and destroy a democratic, yeoman farming sector as scale and barriers to entry increased. Indeed, regulation would likely reorganize accumulation and rework the industrial division of labor, taxation would replace seizure, and the legitimacy of the state and disposability of producers would be affirmed. The regulatory state would replace the juridical–punitive state as the coordinator of land use, and laws prohibiting land use would be replaced by regulations on how land *can* be used—at least until federal authorities responded. Legalization would not mark the “emergence” of a marijuana industry but, rather, a *transition* of the marijuana sector from a prohibited to a regulated one.

A struggle in 2011 in Humboldt over the content of countywide regulations for medical marijuana production illustrates the tensions of this transition. The struggle can be characterized as one between those who wanted to birth a full-fledged, scaled-up industry with close, detailed government oversight and those who wanted to protect small farmers and to retain a self-regulating autonomy. “Industrialists,” the former, charged “preservationists,” the latter (my terms), with being out of step with economic inevitability; preservationists charged industrialists with attempting to ruin the local producer economy and way of life. Debates raged over issues ranging from farm size limits to inspections; public safety to environmental standards; and branding to intercounty trade agreements.

Amidst these debates, most striking was the silence of the super-majority that defeated the legalization ballot a year prior. It is likely that some of this majority were traditional law-and-order or moralist prohibitionists, but, based on my field research and the political economy at the time, many were supportive of marijuana’s licit–illegal state. With the defunding of state drug enforcement bodies, the reclassification of marijuana from a misdemeanor to an infraction, the protective, nebulous cover of medical marijuana laws, and the deceleration of prison growth and arrests for marijuana offenses, the wager was that the consequences of “illegality” were much less than the predations of the regulated, competitive market, particularly for white rural inhabitants.⁸ Better to risk a bust than to be consolidated out of the industry altogether. The question that continues to divide the prohibitionists (of sorts) from the combined preservationists and industrialists is this: Is

⁸. Marijuana arrests decreased by 85 percent in 2011 because of the downgrading of marijuana possession to an infraction, yet this reduction is uneven: cannabis-friendly Oakland discovered that 90 percent of its 2011 arrests were of black and Latino people, even though they constitute only a little over half the population (Winston 2013).

marijuana a developing, soon-to-be-legal industry in need of regulatory oversight, or is it an industry best left alone even if it is harshly, though selectively and infrequently, policed? The answer to this question will determine the mode of accumulation and who will capture the prohibition-inflated value of marijuana.

Conclusion

The drug war cloaks marijuana in a garb of “crime,” a purportedly explanatory moral–social rubric that says little about the stakes, relations, and conditions behind marijuana’s continuing prohibition, or the effects of its increasing licitness within this system. By reframing marijuana as an agricultural commodity, not just a drug or a medicine, this article reveals a system of relationships required to produce marijuana. While the drug war enables the system of capital accumulation, inequality, and risk explored here, a rationalized, legalized market contains its own less stark forms of structural violence, risk, and inequality. The fact that marijuana production is one of the last refuges of the noncorporate farmer, that street dealing is nearly the only access point for income in many communities, or that medical marijuana is one of the few medications allowed to be self-provisioned does not require one to be *anti*-legalization. Instead, it could just as easily lead to a more radical critique of the economic, medical, and social systems that restrict society’s access and relationship to nature, economic security, and medicine.

The argument herein suggests hemispheric and global applications. The War on Drugs positions the United States as a sort of global “collective landlord,” employing a territorial strategy (Harvey 2005) of governance that sets the terms of global land use, authorizes interventions to protect its terms, and sustains global power formations with land–finance–state relations similar in dynamics to those explored here (e.g., Ballvé 2012; Corva In Press; Mullings 2003; Schneider and Schneider 2009). Marijuana’s role as the most widely produced and traded illegal “drug” should not be underestimated in this respect.⁹ It is this global system of American interventionism, not just American prurience and bias, against which legalization advocates are struggling. To understand this is to understand the intransigence of an ostensibly “failed” and “irrational” War on Drugs. Indeed, it is only a failure if we look at what it *does not* do versus what it *does* do, the relations it establishes, the practices it operates through, and the rationality it makes intelligible.

As of this writing, the federal government continues to wage an offensive against the medical marijuana industry in California. This does not just shut down an alternative and largely activist-driven circuit of capital accumulation for marijuana, but it also tacitly (and firmly) emboldens an existing accumulation circuit, which is a licit–illegal system rooted in the drug war’s rentier nexus. If a licit–illegal present appears as a holding pattern where law opposes social practices, then a conventional theory of legitimacy crisis may see this moment as a “transition” to a new legal(ized) regime, in which case market competition

⁹Marijuana comprises nearly half of global drug trade value (United Nations Office on Drugs and Crime 2005); approximately 50 percent of domestic drug arrests (Drug War Facts 2013); 82 percent of the increase in U.S. domestic drug arrests between 1990 and 2002 (Boyum and Reuter 2005); and two-thirds of global “drug users” (United Nations Office on Drugs and Crime 2012). As a pillar of the global and domestic War on Drugs, the stakes of legalizing this single commodity are high for the ongoing execution of the global drug war.

would likely induce a race to capture prohibition rents. Yet, such a transition from licitness to legality, if it comes, will not likely be in the form expected. One might ask, then, what relations, practices, and political economic formations comprise this licit-*and*-illegal—not licit-*yet*-illegal—moment, regardless of whether it is a prelude to full legalization. The forms of political control, capital accumulation, and social power that form in these times best indicates what comes after. For the time being, the slow, shaded unfolding of land, law, and liberty continues in the hills of marijuana country.

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