

Legalization and Prohibition

Breaks, Continuities, and the Shifting Terms of Racial-Capitalist Governance

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Keywords: Ethnography, Law, Social Practice, Political Economy, Neo-prohibition

Introduction

I quietly entered the board of supervisors meeting just as the sheriff heaped praise upon his retiring deputy, a man who had spent the majority of his career, 25 years, eradicating marijuana in this rural Northern California county. Having seized “well over 1 million illegal marijuana plants and billions of dollars’ worth of illicit drugs,” according to the sheriff, the deputy was honored as a “bulldog” and a patriot. Whether on local news or a cable TV series, he trumpeted marijuana’s dangers for years. Once the deputy tearfully thanked the board for their recognition, the sheriff presented his latest report on marijuana eradication and enforcement efforts, highlighting seizure statistics, interagency collaborations, and the positive effects of the Drug Awareness and Resistance Education (DARE) program on the county’s youth. That day was the 17th time county supervisors voted to renew a “state of emergency” declaration on cannabis cultivation. At least one supervisor was getting antsy, asking the sheriff what, if anything, this enforcement approach to cannabis had yielded. Municipalities in the supervisor’s district were opting to regulate recreational and medical cannabis and the county’s virtual prohibition was becoming untenable. The sheriff, suddenly on defense, retreated into a rhetoric of concern for “the children,” the future of the county, whose interest must be defended by continuing moral and legal enforcement against cannabis, a plant the sheriff once called “public enemy #1.”

This scenario unfolded in 2019, three years after California legalized recreational cannabis and 23 years after voters approved medical marijuana. It highlights the fraught coexistence of prohibition and legalization, which appear as differing, even opposed, ways of governing cannabis. Yet, together they comprise the everyday terms of cannabis governance. In the US, international treaties and federal laws prohibit; state laws might prohibit, decriminalize, medicalize, or commercialize; counties, tribal governments, and cities might opt in or out of state or federal rules; and any number of agencies—water boards, planning commissions, natural resource bureaus, drug enforcement agencies—may intervene across these jurisdictions, civilly or criminally, wielding federal, state, or local

codes, depending on its mandates. The closer one looks, divisions between prohibition and legalization are fuzzier than they seem. In this chapter, I will argue that cannabis research needs to attend to the differences *and* the continuities between prohibition and legalization. Doing so illuminates the degree to which the transition to legalization *substantively* alters or maintains the power relations that secured prohibition itself.

What dynamics are unique to—and shared by—prohibition and legalization? Under prohibition, rich social worlds developed, even if they were severely constrained by socio-legal forces. Similarly, legalization holds many liberalizing potentialities, even as it calls forward new, often hidden and mundane, forms of power over people and nature. Though clearly different, each policy regime can functionally, discursively, and materially sustain power relations in ways that evacuate the regime shift of meaning. These continuities illustrate the potentials and limits of legalization within liberal-capitalist societies. In order to expropriate value from laboring humans and nature, capitalist societies depend upon the structured devaluation of people and places (Gilmore 2007; Harvey 1996; Massey 1984), whether through moralizing labels, criminal sanctions, designations of waste, or racialized sorting. These mechanisms of devaluation are often shrouded by “universal” liberal precepts like justice, private property, sobriety, productivity, and moral comportment (Hill 1996; Hirschman 1997; Losurdo 2014; Thompson 1975)—the violation of these precepts justifies devaluation (e.g. as criminals, derelicts, waste, racialized inferiors) and conceals the necessity of these inequalities for capitalist production. If this dynamic of liberal capitalism exists across prohibition and legalization, how might prohibition’s crude power mechanisms show up in legalized settings, perhaps in new garb?

I approach this matter in two ways. I investigate how each regime works by looking at its *effects*—administrative techniques, everyday practices, subjectivity formation, the enabling or limiting of capacities, territorial configuration, and so on. Then, I explain the role that each policy regime plays in its historical-social context, a role that may mark a departure from or symmetrical rearticulation of one another.

Throughout, I draw on ethnographic research I have conducted since 2010 in Northern California, a period and place that saw a drastic transformation in the social circulation of cannabis, as it was inducted into formal legal, political, and economic relations. Ethnography has value in assessing the messy overlay of prohibition and legalization. In attending to the everyday rhythms and practices that coagulate meanings and cement social relations, ethnography assembles from the ground up realities that other analytic modes can miss. For instance, to know prohibition through enforcement statistics, public statements of officials, and writings of advocates and detractors—not to mention ideas of criminal deviance that structure many of those accounts—would not only miss how those accounts travel and are reproduced to varying effects but also obscure the whole range of alternate, unofficial understandings that people create in otherwise illegible, inaccessible, or illegalized realms. Ethnography helps to see *between* analytic concepts into the place where meanings, structures, and relations come together in social life (Geertz 1974; Asad 1986; Munn 1990). Prohibition and legality are not given. They are produced, are reproduced, achieve effects, and make visible and invisible elements of reality to differently situated people. By understanding the multiple perspectives that constitute social reality (Haraway 1988), ethnography depicts what prohibition and legalization are in any given time and place. It is through ethnographic methods that the insights of this article became clear, where the intricacies of legalization and prohibition and their messy convergence revealed themselves in the daily rhythms of social life.

Prohibition

Prohibitions, according to many (Douglas 1966; Freud 1913; Lévi-Strauss 1949), are moments in which social strictures override individual behavior, forming a foundation for social interaction. Yet, prohibitions do more than restrict—they generate collective forms of life (Foucault 1990). Cannabis

prohibition does not simply proscribe behavior, it generates administrative apparatuses, innovates conceptual vocabularies, shapes social relations (e.g. in the family, between ethnic groups, among “strangers”), and much more. If one views prohibition as simply repressive, one misses what it has produced. Though some regard the War on Drugs as a failed attempt to control, it constantly *succeeds* in producing social dynamics. Even if prohibition officially ends, the patterns it established linger, with varying afterlives (Garriott 2011). In short, prohibition *is* what it generates.

In liberal capitalist societies, ideologically premised as they are on the free barter, truck, and trade of goods, prohibition is a unique mode of governance. It creates and regulates market action not through regulatory code but through juridical action. The placement of prohibited realms beyond regulatory reach enables them to develop their own social systems, with their own symbolic codes, languages, ethics, circuits of knowledge, and such. Prohibition also requires a governance apparatus for its material-discursive administration. In California’s Emerald Triangle,¹ eradication teams made cannabis visible and material (Polson 2018). Enforcement statistics and prohibition-mandated researchers made it knowable in official ways. A primary governing mechanism of supply-side cannabis prohibition was price (cf. Roitman 2005). Designed to discourage consumption, prohibition inflated prices by inducing risks (Polson 2013), thus attracting people into production, effectively calling into formation the very thing it sought to prohibit. Price, as a central organizing force of social life, organized everyday practices and subjectivities in market terms—they were “marketized.” Even as people continued acting out of communal, political, or (counter)cultural motivations, increased prices (and risks) pushed people to conceive of themselves in market terms—buyers, sellers, utility-maximizers (cf. Corva 2008). Prohibition’s marketizing force even colored political expression. Cultivators and activists opposed prohibition primarily in free-market, often libertarian, political registers of hemp, property, and civil rights. In the Emerald Triangle, prohibition’s government-at-a-distance (Rose and Miller 1992) emerged within particular political-economic dynamics. Amidst the decline of the 150-year-old timber industry, cannabis provided livelihoods to rural residents, serving as a sponge for the unemployed and a means of government-shaped redistribution at a time of decreasing access to welfare. Instead of entitlements or worker protections, this “shadow Keynesian” system of governance operated via risk, reward, and the omnipresent possibility of incarceration and loss of freedom and rights (Polson 2018).

In California’s Sierra Foothills, prohibition operated in different yet generative ways. Amidst several decades of exurban residential expansion, prohibition served to conjure spatial imaginaries of a nostalgically rural and implicitly white refuge from urban, racialized, and criminal danger. In Calaveras County, the sheriff propagated this imaginary through high-profile anti-cannabis policing and eradication practices and consolidated it into institutional-political power. The sheriff’s actions projected an exclusionary imaginary of rural defense—of moral values and property values—that appealed to exurban in-migrants and wedded them to both cannabis prohibition and continued residential development. In doing so, the sheriff spearheaded opposition to other county factions, which were advancing an alternative political-spatial imaginary centered on conservation, tourism, and transparent deliberative government. This worked until the 2008 mortgage crisis brought this developer-driven, police-defended imaginary into crisis. At that time, medical marijuana activists found political traction in challenging the sheriff’s power, effectively halting prohibitionist techniques and reworking the fabric of exurban life to incorporate cannabis (Polson 2020).

These two examples show the importance of understanding the specific techniques and apparatuses that comprise prohibition as well as the political-economic projects to which they are bound. It is possible to imagine other directions in the study of prohibition. One might attend to the ways individuals and communities live under prohibition (August 2012; McCubbrey 2007; Weisheit 1990) or how prohibition creates certain modes of land tenure and value capture (Carrier and Klantschnig 2006; Halvaksz 2007; Polson 2013). One might also attend to the organization of productive relations, specifically to the role of race, ethnicity, and tribal status (Polson 2016; Polson and

Petersen–Rockney 2019), the allocation of risk and reward (Polson 2013), and the forms of care, trust, and power that suffuse labor relations and commodity chains under prohibition (Hafley and Tewksbury 1995; Laudati 2016; Potter 2006).

In sum, prohibition can be considered a kind of marketizing government-at-a-distance. It incites self-governance, incentivizes and sanctions actions, and administers social life through calculative techniques and enforcement institutions. The question in assessing prohibition is not simply what it proscribes but also what it produces. Any analysis of legalization—why it might fail, succeed, or take on particular dynamics—must first grasp what prohibition generated. Legalization is not simply a corrective to what prohibition failed to do; it is, conspicuously or not, an encounter with all that prohibition succeeded in achieving.

Legalization

Legalization may be defined as a moment of policy regime shift, coming in several forms (e.g. decriminalization, medicalization, commercialization). It may also be defined as a process through which an object (e.g. an act, a commodity, a group of people) acquires legal meaning. This occurs not just in authoritative policy actions but in everyday contexts and institutional settings, where legal meanings are encountered and (re)produced (Comaroff and Comaroff 2008; von Benda-Beckmann, von Benda-Beckmann, and Griffiths 2012). Who generates and mobilizes these meanings, with what effects, and bound to what kinds of political-economic projects?

In Humboldt County on California’s North Coast, legalization became an object of anticipation. People formulated and projected developmental visions of what legalization could entail and, wielding these imagined futures, sought to guide legalization in certain directions (Polson 2017). Marijuana’s shift from criminal to legal circuitry coincided with the final collapse of the timber industry in the late 2000s. Freed from the timber-developmental regime that dominated county life since its colonization in the mid-1800s, two visions emerged from two political blocs. One was premised on an idea of sustainability and localist “smart growth,” which embraced cannabis as a new, job-producing anchor industry. The other, based among actors variously invested in prohibition for political and economic purposes (property owners, developers, law enforcement, timber operators, even some cannabis growers), begrudgingly made marginal space for legal cannabis within a broader vision of a *rentier* economy dominated by property development and speculative appreciation. This anticipatory political visioning still ramifies in debates over jobs, sustainability, and property values, even as both visions mobilized local energies to become the first to enact a full framework to regulate cannabis after statewide legalization. Here, “legalization” was more than a policy moment—it was a social and political process and struggle through which cannabis acquired legal meanings, which continue to shape everyday life and relations.

In Amador County in the Sierra Foothills, cannabis was translated to legal forums through the register of “land use.” With a shift in jurisdiction from law enforcement to the planning commission, a set of political claims were made newly audible. Activists, articulating demands and medical needs in this new institutional forum, could be recognized as citizen-residents rather than criminals. Issues of poverty, addiction, injury, and medical necessity were presented publicly, lending legitimacy and legibility to claimants and necessitating new responses and rationales from administrative institutions and surprised politicians. Yet, other sets of claims were also activated by marijuana’s jurisdictional shift, namely those of the county’s well-represented property owners, who demanded cannabis be considered a nuisance and abide by civilly aesthetic norms of propriety (Polson 2015; cf. Blomley 2005). Cultivators, most of them low-income whites, were met with new techniques of control—blight-spotting, complaints, inspections, abatements, etc. Following statewide legalization, these civil techniques have been leveraged in other counties to enact de facto and official bans on cannabis commerce generally (Polson and Petersen–Rockney 2019), lending new shape to legalized cannabis.

Legalization generates unique social forms. It rearranges the logics, agencies, and techniques that govern cannabis and makes possible new kinds of political capacities and legibilities, community and territorial dynamics, and modes of self-understanding. Yet, legalization necessarily builds from the patterns routinized under prohibition. After all, if “legalization” can be considered a process through which an object acquires legal meanings and relations, “prohibition” is just another way marijuana is made into a legal object, albeit in criminalizing terms.

Prohibition and Legalization

As jurisdictional mandates, prohibition and legality coexist across space, and, as modes of regulating economic action, they both serve similar social-regulatory functions. Moreover, each shapes the other. In the US, legalization haltingly emerges in various places, yet prohibition recursively constricts the terms in which it can be realized, as it did when localities halted regulatory efforts under threat of federal intervention (Polson 2017) or when agricultural agencies cite federal funding worries to deny cannabis cultivators assistance (Polson and Petersen-Rockney 2019). Conversely, prohibitionist strategies are reworked as legalization advances, as happened when the federal government retrenched its jurisdictional authority over public parks when support for widespread cannabis prohibition flagged in California (Polson 2019).

The environmental politics around cannabis provide a clear example of the coincidence of prohibition and legalization—and the possibilities for a post-prohibition environmental politics of cannabis. In Northern California, law enforcement has historically framed cannabis as an environmental threat requiring prohibitionist responses, namely eradication. Pollution, danger, violence, and cartels were commonly invoked in discourses of environmental defense, often in ways that racialized cannabis production in order to rally environmental publics to the cause of prohibition—despite an admitted lack of proven links to actual cartels in the region (Mozingo 2012). As cannabis was brought under medical and, later, commercial regulation, these material discourses persisted as environmental status demarcated the line between good/responsible and bad/irresponsible cultivators—a distinction made not only by policy makers but by cultivators themselves, who had to perform their suitability for legal recognition. This eco-ethical sorting, which I trace in Mendocino County (Polson 2019), reproduced existing inequalities along racial, class, and cultural lines, even as it allowed some well-resourced actors to consolidate claims on the emerging economy. Humboldt County, however, made attempts to draw upon the expertise of cannabis market actors in formulating land use regulations. This facilitated a broader debate about the terms of sustainability and also generated forces that eventually shaped statewide environmental protections around cannabis (Polson 2019). Though these robust environmental regulations are exceptions to agricultural regulation generally, the question remains whether they will erect high barriers to market entry, exclude broad swaths of historical cannabis market actors, and facilitate industrial consolidation with its own sets of environmental issues (see Bodwitch et al. In press for recent findings). Regardless, prohibition-tinged environmental logics are now being invoked to justify federal, state, and local efforts to ban or eradicate cannabis, recriminalize some farmers, and discipline the plant into private land markets.

This is evidently the case in Siskiyou County on the Oregon border, where the sheriff is leveraging environmental agencies and civil enforcement capacities to substantively recriminalize cannabis. The effort got its start when the county moved to regulate cannabis for the first time in 2015 (nearly 20 years after medical cannabis passed at the state level). The move to regulate emerged amidst public controversy over the presence of Hmong-American farmers, who began moving in relatively large numbers to grow cannabis in this sparsely populated county. The resulting civil codes seemed to be applied most readily to Hmong Americans, who not only lived on highly visible subdivided lots that

were easily susceptible to complaints of blight and nuisance (by neighbors and government officials), but whose cultural and linguistic difference made them more salient to complainants. The sheriff, whose pleas to protect children were mentioned in the introduction, urged and won passage of a county moratorium on cannabis commerce, prohibitive requirements on self-provisioning, and a unique emergency declaration over an influx of cannabis cultivators. He assumed enforcement powers from the county's underfunded civil enforcement agencies and has rallied various land use agencies to his side, ranging from fire prevention, fish and wildlife, and county planning offices to toxic substances control and water regulators, which collectively wield civil and criminal sanctioning powers. The effect of this neo-prohibitionist resurgence in a post-legalization setting has been to shut down and criminally stigmatize Hmong-American, countercultural, ill, and poor white and Native growers in unincorporated lands. Meanwhile, several municipalities in the county are licensing cannabis operations to those able to navigate regulatory requirements and leverage resources to (re)locate there (Polson and Petersen-Rockney 2019), leading to a filtered stratification among cannabis market actors.

Though some predicted legalization efforts would produce economic benefits that would convince even the most morally conservative and revanchist jurisdictions to reverse course, this market logic has not conquered all—and, even if it did, “free” markets do not in themselves deliver social or environmental justice. Whether in terms of property aesthetics, environmental protection, or fear of cartels or invasive outsiders, there are many new articulations of post-legalization prohibitionisms, and they intricately connect to broader political-economic and racial projects to protect land values, privilege various sectors and groups, and control subdominant populations. While perhaps this is merely a “transitional” process of cultural-social adjustment, it is very possible that cannabis, like any psychotropic substance, will continue to generate political contestation over social order and its potential negation in liminal realms (cf. Turner 1967).

New research can illuminate the manifold and often implicit connections between prohibition and legalization. For instance, how do legalizing policies draw on prohibitionist meanings? Whether as a vice, a public health threat, a prescribed medicine, a recreational substance, an agricultural crop, or a substance that enriches wellness, like herbal supplements, marijuana's framing matters tremendously for how it is governed, perceived, produced, and consumed. Also, new research can bring attention to populations once governed by prohibition that cannot find a place in legalized markets. What new illegal or informal markets take shape, either with cannabis or in lieu of it? What new systems of social control emerge to govern those who built the cannabis economy but are now excluded in its operation? One might look to studies of other collapsed and rearticulated systems of governance, like post-welfare poverty management (Goode and Maskovsky 2001) and the management of deindustrialized populations (Cowie, Heathcott, and Bluestone 2003). Given the global scope of cannabis prohibition and commodity flows, these matters are as relevant in California as they are in Mexico, Paraguay, Morocco, South Africa, Afghanistan, and other traditional producer nations, especially as countries from Spain to South Korea, Australia to Thailand, Uruguay to Canada and the US, the main purveyor of global prohibition, “legalize” cannabis in various ways.

Conclusion

In this chapter, I argued that prohibition and legalization produce distinct modalities of governance yet they also overlap, coexist, and give form to one another in practice. Legalization does not emerge as a clean slate—it comes into existence through the social relations crafted and routinized under prohibition. I showed how prohibition and legalization can be understood: first, through their effects; second, through their articulation in political-economic projects; and third, through ethnographic methods.

If society has determined that cannabis is in fact a legal substance—and that the precepts underlying its prohibition are misplaced—then the persistent (and insidious) logics underlying prohibition must be identified and uprooted. Legalization may bring unique freedoms and social dynamics, yet it also produces and justifies inequalities and practices of environmental exploitation that may or may not derive from prohibition. What happens to political action in this transition? As some of my interlocutors have argued, does it become unnecessary as the irresistible, ineluctable logic of the market takes over? To the contrary, politics abound, whether sublimated in new civil terms, expressed in languages of competition and market survival, or rearticulated in claims to medical access, racial and social equity, environmental stewardship, drug reform, heritage or appellation status, economic development, or agricultural transformation. Legalization will not, in itself, break with racial-capitalist systems of domination, yet it can become a social reality in more or less destructive or restorative ways. If legalization can be unhitched from prohibitionist logics and assumptions about the ways legal markets necessarily work, it offers a chance to do things differently.

Note

- 1 A geo-cultural and agricultural area that spans Humboldt, Trinity, and Mendocino Counties. See Leeper (1990) and Meisel (2017).

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