

RESEARCH ARTICLE

Prohibited commoning: Cannabis and emancipatory legalization

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Oddly, criminal prohibition can lead to “commoning,” when individuals, left unprotected by state and formal property rights, innovate collective systems to access, use, and benefit from illegalized resources. “Legalization” entails the conversion of these prohibited commons to legal property systems, bringing new freedoms and liberties as well as the dispossession of collectively generated assets (material, relational, and otherwise). This paradox of legalization is currently playing out among U.S. states moving to legalize cannabis. Motivated by the failures of cannabis prohibition and its grievous harms, the question looms: How will states and markets grapple with the collectively generated assets and relational systems generated under prohibition? Building from ethnographic research and survey data, this article argues for recognition of the commoning practices that produced the resources upon which the legal market is based. These practices illuminate ways that legalization may deliver not only markets and regulation but also emancipatory justice in the wake of the War on Drugs. First, we document the commoning practices of cannabis cultivators, the collective benefits they generated under prohibition, and how legalization is affecting these practices and dynamics. Second, we explore strategies, like allotment and pricing systems, that build from prohibited commoning practices to achieve greater collective benefits and the emancipatory potential of legalization.

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Introduction

“I miss it,” Sabrina, a white woman in her early 40s, tells us. “I really quite enjoyed being an outlaw. I enjoyed being off the grid, off the books.” A second-generation cannabis grower in Northern California, some of her earliest memories were of cannabis farming—the burdens and thrills of illegal childhood secrets. Secrecy, however, did not imply isolation. In this cannabis-dense, rural region, one had to rely on neighbors, if only for keeping secrets. For her part, Sabrina has “always been a . . . contributing person in society.” Instead of paying taxes, an impossibility with illegal produce, she donated to community road maintenance funds, school fundraisers, the fire department. For over a decade, she grew cannabis for friends and neighbors in the San Francisco Bay Area. In 2015, she organized a “medical collective” on California’s North Coast. The not-for-profit association allowed her to provide at-cost medicine for designated patients, often with plant strains tailored (through trial, error, and folk knowledge) to specific ailments and medical needs. Left unregulated by cautious

state officials for years, medical collectives were, for Sabrina, a “really, really sweet grey area”—a “beautiful moment in time”—allowing her to make a livelihood by provisioning decriminalized medicine to sick people she knew and cared about.

Cannabis alleviated social as well as bodily conditions. Sabrina could employ people from her old neighborhood, many of them were poor people of color, nearly all of them felons, who were virtually barred from formal market participation. Medical or “criminal” cannabis was also a lifeline to her rural, mostly white neighbors, many of whom have “no other options. They have no skill sets, [nothing] to fall back on” in their deindustrialized region. For Sabrina, too, cannabis saved her from being forced into “a menial job, [working] for some jackass,” which would “kill a little bit of [her] soul.”

Recognizing the grievous impacts of prohibition, this paper cautiously assesses the benefits, meanings, and freedoms that were generated under cannabis prohibition and quasilegal medicalization. We recognize that doing so risks retrospective glossing of the prohibition era, while downplaying the immense, intense, and frequently traumatic pressures of criminalization, stigma, risk, and exclusion that characterized the U.S.’s low-level, century-long “war” against its own residents. Having failed at its overt aims of stanching cannabis flows and consumption, U.S. cannabis prohibition (if not the drug war generally) is rightfully, and

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increasingly, relegated to history. Yet at the same time, eclipsing prohibition may also eclipse those who lived under it and the benefits, sociality, and stabilities they produced. In so doing, legalization may compound the injustices of prohibition through new processes of erasure and exclusion. While recognizing the failures and cruelty of cannabis prohibition, can we also recognize the communal labor of those who survived and sometimes thrived under it? Doing so, we argue, is a key starting point in fulfilling the emancipatory potential of legalization.

This article argues that prohibition, for all its injustices and inequities, generated a practice of “prohibited commoning,” or collective resource provisioning that exists alongside and because of state prohibitions. The “prohibited commons” (and its quasilegal variation, the “medical commons”) were bounded by coercive, criminalizing force. Yet within this structuring condition, commoners cultivated unique dynamics of resource access, benefit, management, and sociality as they realized livelihoods, meanings, communities, and selves. In this paper, we illuminate these practices of prohibited commoning, rather than dismissing them as criminal deviations in need of formal market ordering. Through this, we reenvision legalization’s potential not just to regulate and marketize but as a project to expunge prohibitionism and make legalization collectively beneficial. After all, legalization was not merely a call for markets or regulation (Polanyi, 1944); rather, in Fraser’s terms (2013), it was a move to emancipate society from the oppressive effects of the War on Drugs. Emancipatory legalization would benefit those grievously targeted by the drug war through retroactive, redistributive action. It would also *reproduce* emancipation (Federici, 2010) by structuring markets in ways that continuously, stably produce benefits for all involved. Emancipation addresses the injuries of the drug war, even as it reworks markets and policies to achieve emancipatory aims.

After theoretically considering prohibited commoning and “legalization-as-enclosure,” we explore how cultivators, patients, and workers built the commons extralegally and often in caring terms of medicine and community. Then, we show some of the ways legalization has foreclosed, privatized, and regulated aspects of these commons. By way of conclusion, we present potential strategies for reproducing the commons, dwelling particularly on the idea of allotment and pricing systems as a way of instituting democratic, stable, and just markets that benefit farmers, workers, the environment, and society. This paper draws from data obtained during: (1) ethnographic fieldwork done by Polson (2010–2014; 2018–2019) before and after legalization, and (2) a survey and interview series conducted by Bodwitch and Polson in 2019–2020. Polson’s fieldwork involved over 80 semi-structured interviews and nearly 2 years of participant observation with actors including cannabis cultivators, policymakers, environmentalists, and others in order to understand how people conceived of, acted in, changed, and were changed by shifting social networks. Bodwitch and Polson’s survey and interview series, which included quantitative data and coded qualitative responses, was

oriented toward licensed and unlicensed cannabis growers to grasp motivations and barriers to regulatory compliance.

Defining the prohibited commons, imagining emancipatory legalization

The commons are traditionally conceived as a product of socioecological provisioning in which a collective of non-state actors manage a resource for mutual benefit (Ciriacy-Wantrup and Bishop, 1975). Collective management, which entails customary rules of access and use, effectively produces the resource as a kind of common property (Ryan, 2013). Critically, then, the commons, is less “a noun” than “an activity” or “a verb” (Linebaugh, 2008, p. 279). “Commoning” practices are “centered on achieving and maintaining access to a resource” (Durant, 2021, p. 6) and occurs across multiple kinds of property regimes—state, communal, open access, or private. This article draws attention to commoning practices that have arisen in relationship to a unique kind of (anti-)property regime—state-imposed prohibition that disqualifies cannabis as (legal) property. Left unprotected by the state and formal property rights, cannabis farmers innovated commoning practices to produce and manage the resources necessary to support their livelihoods as well as social, emotional, and physical needs.

While monetary benefit often accrued individually through (illegal) markets, commoning practices produced “commoned resources.” One might be able to grow and consume the plant privately but to derive broader livelihood benefits from it, one must have access to a suite of people, markets, and knowledges. This includes accessing community-metered information (on genetics, horticultural techniques, police actions, etc.) and crucial relationships (with brokers, breeders, workers). It also means managing resource provisioning through, say, codes of secrecy, informal conflict management processes, norm-based security practices, support for community institutions, and maintenance of common resources necessary for cultivation (water sources, roads, etc.). Cannabis farmers, whose communicative practices were impeded by prohibition, may not have formed a neat, reified, known “community,” yet they did manage access to and use of these resources in rhizomatic, informal, covert, and contingent ways. Out of these collective practices, commoned resources took shape—seed stocks, technological innovations, informal political power, market relations, medical knowledges, communication networks. The summation of these commoning practices is a prohibited commons around cannabis.¹

1. Although prohibited commons are organized beyond the state’s legal order, they diverge from “organized crime” to the degree criminal organization unevenly allocates resources and benefits across power-inflected hierarchies. Prohibited commons might be considered “disorganized crime” patterned through economizing impulses (Reuter, 1984) and social networks (Nordstrom, 2007; Wyatt et al., 2020) in which access and benefit is open to all participants.

"The commons," broadly, are not held privately and thus have a vexatious relation to liberal rule of law (Peluso, 1992), based as it is in state-protected private property. If not overtly outlawed (Linebaugh, 1976), commons are regarded as unproductive waste (Goldstein, 2013) subject to the so-called tragedy of the commons (for critique, see Ostrom, 1990). The remedy to unproductive, tragic commons comes in all forms of "legalization," or the subjection of the commons to law's ordering capacities. Legalizing the commons does not simply designate what is legally allowed but also what is legally prohibited. For instance, the classic process of enclosure was itself a legalizing process entailing both the legal buttressing of property alongside the *il*-legalization of other uses, thus framing customary or common usage as, say, "pilfering," "infringement," or "trespassing" (Thompson, 1975). Together, regulation and prohibition comprise two sides of "legalization."

Liberal state prohibition disqualifies its objects (i.e., people, things, activities) from civil protections, namely the rights of legal property, rendering them perpetually alienable by and exposable to state force. That is, prohibition manages resources by legally impeding access and use. "To prohibit" situates state power as a negative regulatory limit—a determination of what cannot be done. Under prohibition, however, the determination of what *can* be done (i.e., positive regulation) is thus ceded to those involved in the thing's provisioning. Extralegal actors collectively develop patterns of access, benefit, management, and sociality around prohibited things (Ribot and Peluso, 2003, pp. 156–157). Prohibited commoning occurs in specific socionatural, affective-relational and power-laden dynamics (Nightingale, 2019), where "other-than-capitalist" subjectivities form in contingent entanglements of human labor, social histories, and natural processes (Singh, 2017).

In short, prohibition can generate unique forms of the commons and commoning. One might see these dynamics in illegalized domains as diverse as forest subsistence (Peluso, 1992; Agrawal, 2005), raw milk production (Linn, 2019), water access (Bond, 2012; Dwinell and Olivera, 2014), housing (Dadusc, 2019; Blomley, 2020) or political provisioning of resources, material and otherwise (Peluso and Vandergeest, 2011; Harney and Moten, 2013; Hanhardt, 2018). Amid and in response to state predations and prohibitions, these commoning practices are political claims to the right not to be excluded from the means of a full life (Blomley, 2016).

Risk pervades these commons. Confiscation, arrest, and violence are persistent possibilities. All actors are bound by this shared, if differentially distributed, condition of risk—a condition that demands trust, cooperation, and norms. The linkage of punitive risk with resource benefit makes the prohibited commons "cruel." In Lauren Berlant's (2011) terms, cruelty is not just sadism; rather, it is found when aspirations to wealth and of work are made elusive, if not treacherous, trapping people in suspended states of hope and harm, survival and failure. In the prohibited commons, people may thrive, make meaning, tend relations, collectively manage resources, and derive

livelihoods, freedoms and benefits, but they only do so in coercive, marginalizing systems of state rule that can arbitrarily disqualify livelihoods, abridge freedom, and confiscate resource benefits.

The cruel, prohibited commons are a key component of expanded capitalist reproduction. They lubricate legal processes of accumulation by excavating illegal backchannels for economic flows, coercively manage surplus populations, arrest political ferment through criminalization, and countercyclically facilitate liquidity and commodity flows (Schneider and Schneider, 1975; Roitman, 2005). The extralegal commons can appear to capital as not-yet-private property. As frontiers of accumulation by dispossession, they typify capital's pursuit of surplus value (Harvey, 2011) through "the free appropriation of immense quantities of labor and resources that must appear as" external to capital (Federici, 2010). Whether these external quantities are indigenous knowledges, informal settlements, enslaved peoples, illegalized immigrant labor, peasant commons, or criminalized, commoned assets, the prohibited commons feed capital's voracious search for new value forms. The commons may harbor resistance to formal capitalist accumulation (Federici and Linebaugh, 2018), though their subjection to legal punishment and expropriation blunts the transformative potential of this resistance, consigning it to what Anna Tsing (2015) might term the "latent commons."

Under liberal capitalism, to convert a commons from illegal to legal form is to order it via state-protected private property systems and to authorize formal modes of accumulation and resource management. Without countervailing efforts, the commonly held properties developed under prohibition are rendered legally incontrovertible, making them available for private expropriation (Duvall, 2016). Converting commons may exclude those who had previous access to common benefits (cf. Bodwitch et al., 2021). The commons is then doubly expropriated—first under coercive prohibition; second in its transition to formality. Left unaddressed, legalization augurs the privatizing enclosures of the prohibited commons. Formalization divorces the resource from its social relations and remakes it as commodity through market and governmental practices—claims, contracts, authorized trade, measurement, regulation, and so on (Polson, 2015). The once-common resource is rationalized, bureaucratically and economically. The cruelty of the prohibited commons converts into the cruel optimism of legal markets (Berlant, 2011), where the hope for legal prosperity dashes against the systemic barriers of formal capitalism.

The commons literature repeatedly shows that the prohibited commons—its customs, uses, and properties—stubbornly endures despite formalization (Fortmann, 1990; Neumann, 1998; Jacoby, 2014). Might these commons and the practices that produce them have a future *within* formal market systems, too? First, it is necessary to know what commoning practices existed under prohibition, something we unearth below. Then, it is necessary to inquire how logics other than state protection of private property claims might guide legalization. For this, we turn to the causes motivating legalization demands—not just

demands for market freedom or state protection but for emancipation. For cannabis, we argue, emancipation means ending prohibition's predations and recognizing the commoning practices of prohibited commoners.

Might emancipation serve as a coordinating logic, or "design principle" (Ostrom, 1990), for legalized cannabis markets? Can it provide "some new synthesis of marketization and social protection" (Fraser, 2013) or, in Federici's (2010) thinking, a logic not just of protecting but of reproducing the commons? State action is likely necessary to routinize and expand emancipation in the workings of a market economy (Ryan, 2013). This means more than correcting market maldistribution through redistribution or creating often-nebulous "opportunities" for disadvantaged market entrants, important as these measures may be. Rather, it entails ensuring that markets *produce* justice—or systemic repair in light of past injuries and current dynamics of exclusion and harm—in an ongoing way as a designed outcome. Thus, emancipation is not only retrospective but prospective; it repairs prior harms even as it establishes benefits for those who *would have been* exposed to risk, insecurity, and harm. To miss the emancipatory cause and possibility of legalization would be to render cannabis as another commons-for-capital (De Angelis and Harvie, 2013), another commodity yet-to-be-metabolized in the predictable double movement (Polanyi, 1944) of liberal capitalism. As Fraser (2013) might say, no legalization without emancipation.

The practice of prohibited commoning

Unauthorized "guerrilla" (public land) or "trespass" (unauthorized private land) or "grows" (or gardens) have become a trope in cannabis legalization debates. Much like Hardin's tragedy of the commons, the idea goes that self-interested cultivators, with no rules around resource access or management, will exploit those resources with little regard for ecological, economic, or social sustainability. There is truth to this narrative. Prohibition rewards farm siting in remote, ecologically sensitive areas, where detection is difficult. It also incentivizes guerrilla and trespass grows—better to grow on someone else's land, where responsibility for the grow is opaque. Since unauthorized grows carry high risks of discovery and eradication, cultivation methods may be intensified to increase turnover and quantity—more pesticides, denser planting, no cleanup, chemical dumping, significant water diversions, wildlife poisoning or killing, and deforestation (Wartenberg et al., 2021). These environmental impacts are not just confined to trespass and guerrilla grows; they are also documented on authorized (but unlicensed) private-land grows, since prohibition disincentivizes environmental monitoring and reporting and prevents state regulation (Carah et al., 2015). "Commoners" can destroy environments, too. Note, however, these impacts may be framed as a disregard for common resources—Hardin's tragedy—or as sensible responses to prohibition's incentives. Unfortunately, because prohibition impedes research, little is definitively known about illegalized or quasilegal cannabis cultivation (Giannotti et al., 2017). What little is known should be read cautiously; prohibitionist discourses run

deep and shape knowledge production (Polson, 2019). Like Hardin's tragic commons, prohibited grows are often referenced as a typical occurrence, becoming real in the absence of systematic data, and through provocative, often-recycled photos, taken by law enforcement, of egregiously polluted cultivation sites. This specter of defilement leads to moral claims—and policy measures—postulating the proper use and disposal of nature. Cannabis growing belongs on private land and under the control of owners, claimants contend. Those without access to private property, particularly poor people, tribal members, and undocumented workers (Polson, 2015, 2019), are definitionally excluded from these disciplinary-moral claims.

Trent, a mixed-race cultivator in his early 20s, might be regarded as typical of this guerrilla grower. The summer before Polson met him, he lived on a mountain top, deep in a national forest, a "real remote place [with] no running water, no electricity," growing cannabis, hoping to stockpile cash to fund business school. He worked with one partner, whom he described as "a selfish dick," a point driven home when his partner ordered Trent to fight a raging forest fire as it barreled toward the plants and, unskilled in firefighting, place his life on the line. Trent, though, defends these actions with social Darwinian repose: "Capitalism is the survival of the fittest. That's the way it's always been. If you innovate, you should be the one who gets the benefits." His labor was "only a choice," for which he is responsible. A self-taught scholar of economic theory, Trent regards money, labor, nature, and property in strictly rationalist terms. They are commodities subject to utility maximization. Trent's outlook—that human labor and nature were simply resources available to innovators, with no rules of access and management other than individual self-interest—led to a "tragic" abuse of land and social relations, much as Hardin theorized.² If an entire economy is prohibited, utility maximization theories suggest remote public land growing could indeed be a rational decision. Risk and criminal liability are arguably reduced, profits more secure, and externalities can simply be dumped in streams or left for stewards to clean.

A friend of Trent's observed that Trent might not be fighting fires and risking his life for "a dick" manager in the forest depths had he regarded his relationship to (more-than-)human others in enduring terms, rather than simply immediate cost-benefit calculations. "I've always been an advocate of longevity in a relationship [rather] than a quick fix," his friend offered. Other guerrilla growers had this relational orientation. One grower, for instance, ran a guerrilla grow on public park land (which was subsequently torched in a forest fire). Having worked

2. Tragic commons tracked with people's dispositions toward land/nature across varied types of unauthorized grows, whether on private, public, or trust lands. One "guerrilla grower" [**lead author**] spent time with was also a business major, realtor, and cannabis dealer, who grew a "trespass" grow on private timber land to avoid legal culpability for cultivation on land he had legal title to. Another grew on his own private land but in a remote section, creating plausible deniability and a basis to claim it was a "trespass" grow.

for the U.S. Forest Service for several years, he was conscientious to utilize low-impact, nontoxic growing methods to produce cannabis. “It’s not your land, so you shouldn’t blow it up,” or push it beyond its productive and ecological capacity, he remarked. He intended his cannabis for medical consumers and self-certified it as “meth free.” Hand-carved wood chips placed in each 1-pound bag of cannabis he sold proclaimed that his cannabis was not a cash-driven means to fuel addiction but was grown with care for the plant and community. In multiple respects, this grower recognized ethical obligations that mediated his access to land and relations with consumers, even if he grew on public land. That is, even unauthorized guerrilla growers recognized informal codes of resource access and management.

As this brief exploration of unauthorized grows illustrates, unauthorized growing may lead to tragic consequences (and it may not), but it is debatable whether this is due to some intrinsic selfishness, as Hardin proposes, or because prohibition structures people’s decisions in tragic ways. Regardless, guerrilla and trespass grows did not comprise the bulk of Northern California’s prelegalization cannabis farms—most of them were and are on private lands (Butsic et al., 2017).

The presence of geographically fixed legal titles (or leases) made gardens more vulnerable to detection and enforcement, thus necessitating deeper rooting of farms in relational systems of common management and protection. People in these prohibited commons: (1) tended to and depended on trusting, socioaffective (Nightingale, 2019) relationships with community members; (2) regarded money and nature as relational; (3) navigated leveling, or horizontalizing, tendencies between owners and workers; and (4) resisted alienation from produced commodities. This prohibited commons had its own dynamics of access, management, and benefit, and its own internal incitement to productivity that included but exceeded profit maximization. These commons were not intrinsically more equal or just. They were, however, bound to local dynamics in palpably relational ways. While prohibition generated spaces apart from the formal-legal economy, these spaces were also interdependent with formal economies, whether via acts of laundering, property transactions, cash movement, labor provision, or, as with Trent, ideological engagement with theories of utility-maximizing market actors. Prohibited commons were place-based formations, which are idiosyncratic yet systemically related to their socionatural and legal-economic dynamics. Across this uneven landscape, a loose, multiscalar commons hung together as it was continuously reproduced and practiced by farmers, as with the following case, before legalization occurred.

Seth, Trent’s cousin and a mixed-race cultivator in his early 30s, was made distressingly aware early in his career that cannabis cultivation required relationship cultivation. In an attempt to build goodwill among his cannabis-producing neighbors, he rallied several people to participate in assembling a bulk cannabis order for an acquaintance and their buyer. Seth advanced everyone’s product with no payment, assuring his neighbors that his

acquaintance could be trusted. Unfortunately, the acquaintance made a series of self-interested missteps, leading to his arrest, and was later suspected of being a police informant when he was released without charge. Seth’s efforts to build community relations thus resulted in enmity, even a death threat against him, spoiling several years of painstaking relationship building. Without legal means of resolving property, market, and interpersonal disputes, these relations had to be resolved through direct appeals. Seth went about the slow work of repairing those relations because his livelihood depended on it in numerous ways—accessing buyers, technical knowledge, credit, genetics, help with laundering, awareness of impending police raids, and so on. Though operation outside of these relations was possible, it was onerous. Dependence on community was much more than a romantic notion of belonging; rather, community was integral to successfully producing cannabis.

Reflecting on this experience, Seth said “For me, it’s about honor, integrity, and truth. These are more important than money. Everyone’s got to feel good, and if they don’t, mistrust grows. That’s when things fall apart.” For Seth, money was not an abstracted object that transactionally divorced him from social relations. Moneyed transactions required “balance” between economic and social considerations. Strictly transactional approaches always held the danger of “empire,” the desire to “get ahead of everybody,” leading to unwise abandonment of social obligations. “I’ve watched people bring up their best friends in the world. They come up for one season and their relationship is tarnished by the money—by what they feel they deserve,” he explains. He acknowledges relations of debt and obligation when he speaks of his white father, whose “white man’s greed” led him to a disastrous land purchase that threatened to ruin his retirement and his children’s inheritance. Instead, Seth assumed responsibility for the property, partly growing cannabis to dig his father out of debt. Money was a means to calm troubled social relations.

Seth also expressed debt and obligation in his care for the land, a practice that, as part Native Pacific Islander in a settler-colonial society, he saw as incumbent upon himself. Reflecting on one of his neighbors, who belonged to a 70-year-old commune with religiously inflected back-to-the-land sentiments, he admired their “accumulated wisdom and experience. That’s something I want—to grow with this land.” This task materialized in his conversion of his property from a deserted, eroding, trashed lot into one with carefully tilled soil, protected water, a buttressed hillside, flattened grade, a renovated house perpetually under improvement by local artisans, and a verdant garden of vegetables, herbs, and cannabis.

Throughout the seasons, Polson visited his farm (2011–2014), Seth had a relatively large cannabis operation requiring full-time and periodic employees. Illegality imposed a condition of labor intensity, or, in Marx’s (1992) terms, a low organic composition of capital. To invest too heavily in technology and fixed capital was to open oneself to greater losses if police raids and seizures occurred. Trust was paramount in relations between Seth and his

workers. To Seth, each employee was an assumption of risk; a loose comment over a beer could bring authorities or burglars. Conversely, as Rafi, a Samoan employee in his late 20s commented, “I’m selling my freedom every time I come out and work. People still get put in jail for this type of thing.” He and the other workers placed their trust in Seth to ensure a modicum of safety; trust was a 2-way street, which simultaneously functioned to support relatively good wages for Seth’s workers, a wage conditioned by mutual risk.

That shared risk produced a different kind of employment relation and arrested, or at least moderated, class differentiation. Seth hoped his farm could serve “the greater good” for his crew. “I hope they feel [and] I’ve tried to make it [so that] this is theirs as well,” Seth haltingly expressed. He provided health care options, offered to put them “on the books” so they could record income and earn social security, offered to put money aside for his employees to invest in their own properties. He viewed their work “as more than just the wage,” stating the “ideal situation” would be if “everyone had a piece of the pie.” Out of shared risk, comes mutual ownership over the operation, he believed, beyond simply the legal title to property. Though Seth’s farm is structured in a kind of paternalistic care, where distinctions exist between owner and employee, those lines blur with prohibition. After Rafi had been cheated out of wages on another farm, he recognized that a mutual sense of ownership was critical, not least because of the systemic ways that “being brown” kept him from ownership. “People [like Seth] will show you what’s up. Show you how to grow—the little tricks that can save you a million years . . . [People here] just want to see the next people come up.” Just as important, elevated investment in his work allowed him to refine his cultivation skills, giving him knowledge of “the recipe” that would enable him to operate his own grow one day.

Trust and investment suggest a less alienated relation of workers to their labor, the land, and the final commodity. Happy to not be like “all these other fools sitting at a desk, fucking miserable and hating their lives,” Rafi was happy with the freedom afforded by his work, a relatively lucrative, flexible job that allowed him to pursue his passion as a visual artist. As he invested more deeply in cannabis cultivation, he “came to a new understanding” of the commodity. When smoking, he respectfully admired “how many hands touched that herb before I smoked it; what kind of attention had been paid to it; what kind of distance it had to cover . . . [and the] relationships that existed to make that happen,” thus echoing a sentiment Polson heard from numerous older growers, who had traded in product from South Africa, Colombia, Thailand, Jamaica, and Afghanistan. The commodity chain was not (as) mystified; it was other people in equally illegal positions, taking risks to produce and move product. Noel, a 20-something Latino coworker of Rafi, states, “This is our work. What we do. You have to respect it . . . and it all shows in the weed,” as when “old cats,” attracted by “the smell of the smoke,” will tell him “they ain’t smelled shit like that in forever.” Pride in work and connection to the product translates into care for the land for growers like

Noel. Nurturing plants over cycles that range from 2 to 8 months, depending on the cultivation technique, inspired affection for the plants. “It’s like a baby, you gotta bring them up strong . . . so they can be strong children and adults.” This caring orientation for plant health translated into self-care for Rafi, who started an organic juicing diet that allowed him to shed 80 pounds. “I’m respecting my body like the living thing it is. That’s been my spiritual trip with this whole thing.”

The paternalistic relations of care between Seth, his employees, and the land incited its own logic of productivity. Referring to his employees, Seth remarked, “They make me wanna do shit for them. Create more. It’s beyond us. The farm produces more than . . . we can consume.” Seth struggled to keep up with this growth. “It’s a lot of work . . . to keep these people working. Every day! I always have to be in front, thinking ahead to what needs to happen, what could happen, and how to employ them in the best way.” While market competition certainly motored productivity (reflected in Seth’s sped-up growing cycles and marketing of previously wasted cannabis “trim” for oils), the competitive compulsion was less urgent, as cannabis was cushioned by prohibition subsidies (i.e., prices inflated by prohibition-caused risks; see McCoy, 2004; Polson, 2013) well above the costs of production. Instead, other productive motivations entered, like care for workers, or a farmer’s interest in regenerating deforested landscapes, making art, earning community respect, indulging hobbies, or traveling. Since farmers were generally barred from formal investments (unless one had effective means of laundering money) and restrained by prohibition’s disincentives to expand capital stock, they often regarded money not only as a means to make more money but also as a means of self-realization, of community relation, of care for land. In Polanyian terms, Seth’s farm was a place of embedded relations to labor, land, and money, where each took on a more social, less alienated character, despite its enmeshment with formal-legal realms.

In farm-dense areas, this social character of illegal farming became more open and licit. As one grower pithily noted, “it would take [the police] months to just take over one hill” in cannabis country. With that collectively produced safety, the prohibited commons took on a kind of sheltered openness, where lines of communication (Ostrom et al., 1999) could develop and deepen the patterned grooves that characterized the prohibited commons. Whether related to work conditions, reputation, or ecological impacts, these communicative pathways could sanction or reward farms that adhered to or diverged from emergent norms of the prohibited commons.

Prohibition’s condition of risk generated relations of community, trust, mutuality, and disalienation—relations often realized in their breach. During Polson’s fieldwork, he encountered female-centered farms focused on healing through cannabis, farms operated to support Alcoholics Anonymous members, radical queer farms that facilitated connection with nature, regenerative permaculture farms, and run-of-the-mill farms that offered employment to locals in fair, friendly circumstances. He also heard of farms

that abused, cheated, and even murdered workers, tolerated sexual harassment, polluted waterways, deforested surrounding areas, trafficked humans, and other negative outcomes, all of which are possible in illegalized realms. Tellingly, he did not encounter these farms but only heard of them. Perhaps this indicated their social isolation or perhaps it indicated how common these characterizations were in discursively vilifying illegal cannabis farming. Either way, the periodic, splashy, scandalous stories of negligent farms belied the vast number of farms that covertly, often licitly, maintained Northern California as one of the top cannabis-producing regions in the world (Brady, 2013) and generated the extraordinary material and immaterial wealth that is the basis of a booming, legal cannabis industry (Fine, 2012).

The argument here is not to conclusively advance any one farm as emblematic of the prohibited commons nor to argue for a return to prohibition. Rather, it is to note each farm's embeddedness in the general social dynamics of prohibition, which subtly altered the development of class antagonisms or enabled novel forms of care, investment, productivity, subjectivity, and sociality. When cannabis was medicalized, however, the prohibited commons would take on a more organized form, particularly as farmers and consumers understood themselves as caregivers and patients, respectively.

The medical commons

In 1996, California voters passed a ballot allowing medical cannabis. After much contention over medical rights, defenses, and enforcement, the state legislature in 2004 passed legislation to clarify and make uniform a statewide apparatus for medical cannabis. This apparatus created a system for provisioning cannabis under the legally undefined designation of "collectives" (or an infrequently used status as a state-regulated "cooperative"). As explored by Chapkis and Webb (2008), collectives went well beyond simply provisioning medicine—they transformed that resource into a commons through practices of care, community, solidarity (Hecht, 2014, Chapter 14). Collectives of patients and "caregivers" had several defining features. They were horizontal, informal agreements among members to facilitate the provision of cannabis, often by designating some members as consumers or producers, depending on their capacities. Collectives could not produce profits nor "sell" cannabis. Rather, members could remunerate one another for material and labor costs of producing the medicine. Quasilegal store-front "dispensaries" often organized as collectives, and acquired other paraphernalia of incorporation, like business, tax, and zoning permits. In sum, collectives were unregulated, medically inflected, nonmarket forms of horizontal association that enabled cannabis provisioning and consumption to take place in new, quasilegal ways. Up until 2 court decisions in 2014 (*People v. Baniani*) and 2015 (*People v. Orlosky*), collectives were consigned to a notoriously vague legal status, leaving individuals and their informal associations in legally treacherous dispositions. This quasilegal status subjected collectives to forms of enforcement

reminiscent of prohibition, even as it gave them a modicum of legal defense and agency in collective determination.

These quasilegal collectives constituted what can be considered a medical commons. Medical cannabis became a kind of resource accessed beyond formal markets and was embedded in immediate relations, often characterized by an ethics of (medical) care and decommmodification. In what follows, we explore how the medical commons developed across an urban-suburban-rural gradient, fostering spaces in which a diversity of people organized themselves to provision a common resource and, along the way, produced new formations of community, politics, affect, ethics, subjectivity, and healing. As a variant of the prohibited commons, the medical commons were negatively bound by enforcement and legal uncertainty, even as it generated alternative, nonmarket ways of resource provisioning.

"Well, we're starting our own collective," Luisa explained. "Marisa and me. We've been studying together and I have the space to grow. She has a lot of the skills I need. So, we're teaming up and growing for ourselves and for my daughter." Luisa's teenage daughter had a brain tumor and, before her cannabis use, would experience frequent epileptic fits, which challenged Luisa's ability to care for her and maintain her IT job. Cannabis brought her daughter sound sleep, reduced the fits, and allowed both of them to access what Luisa called a "normal life." Luisa, born in Central America in an environment that discouraged cannabis use except by men and only away from family and village, was not eager to allow her daughter to use cannabis, much less grow it for her, but after a doctor at a prestigious Bay Area medical center sat her down and told her she needed to alter her attitude for her child's well-being, she relented. Upon research, she found the plant would help her own arthritis, leading her to a cannabis trade school where she met Marisa, who was her daughter's age and cultivating for her epileptic boyfriend. The two women then formed their own medical cannabis collective with their loved ones to provision medicine beyond market mechanisms in the law's grey reaches.

Mario, an Iraq war veteran living in a suburb south of San Francisco, organized a collective of veterans to treat post-traumatic stress disorder and chronic pain conditions often related to their service. After a brush with death that left him in a coma with fractured vertebrae, a brain hemorrhage, and, later, memory loss and chronic pain, he was put on partial disability, fed a diet of morphine, and eventually attempted suicide. But, "the gun didn't fire" and, around that time, his neighbor offered him cannabis as a last resort. Despite skepticism from his doctor and family, he took up cannabis to wean himself off his life-draining pharmaceutical regimen. He educated himself on evolving cannabis uses and laws, started growing his own medicine, and eventually formed a collective of around 60 people who grew cannabis for patients as well as sold low-cost plant clones (\$2–\$7) to those preferring to grow their own. After being hounded by police, zoning officials, and landlords, to close his operations in several

jurisdictions, he finally restricted his operation exclusively to veterans on disability. His home became a kind of community medical center, where members would come to make decisions and tend the garden for a share of medicine and a cut of the “remuneration” (in state legal terms) obtained by vending extra cannabis to dispensaries. Much of the proceeds would be sunk back into production and the provision of common goods, like health care and dental insurance for members or a car to transport members to and from medical appointments. He explicitly rejected the framing of this collective as a business. “I don’t want a business, because then I have to be a business! I want to be a collective garden. As a collective, nobody’s being paid to do anything. We’re doing it collectively because we’re collectively working together for the benefit of each other. Those who are putting in, will benefit from it.”

Though he ran into problems with people skimping on work, stealing medicine and money, and resulting declines in capacity to reinvest in new growing, each collective member received medicine at cost, thus becoming a deduction from their living costs (much like firewood collection described by Fortmann, 1990). This deduction was important in supporting their often-meager formal market wages or disability checks. Retaining veteran members was challenging. Many were on a fixed disability income and depended on the Veteran’s Administration as a source of medication to either treat their ailments or be sold illegally for supplemental income. Using cannabis (at that time) would disqualify them from those medications, with medical and financial implications, and possibly disqualify them from disability payments altogether because of cannabis’ federally prohibited status. Nonetheless, Mario became known as an advocate and educator around cannabis and veteran issues, working to ensure space for collectives in his home county and elsewhere.

In the Sierra Foothills of Eastern California, Tom began growing medical cannabis when his wife, who worked in hospice care, asked him to provide cannabis for a patient with terminal brain cancer. After researching the legal landscape, he cautiously seeded a secret garden deep in his wooded parcel. “I hid it way back there because I was paranoid as fuck,” he explains. “I’d sneak back there, looking for helicopters, convinced [the Sheriff] was gonna show up at that moment. [I was] feeding the plants and looking over my shoulder.” As he witnessed the palliative power of cannabis, he realized that securely providing medicine would require local political transformation. He organized a patients’ rights group, won several key victories earning patients more latitude, and then felt comfortable enough to organize a patient collective. Each patient would give him a copy of their medical recommendation and in return Tom would reserve a certain amount of cannabis for them. The resulting prices were between 50% and 75% cheaper than retail and it “reimbursed” Tom’s direct costs, including labor, thus supplementing his low-wage job working at a drug recovery center. Many of the collective members were either too old or sick to cultivate their own medicine, others had criminal records and did not want to take the risk, and still others lived in

rental units or apartments that made cultivation difficult, if not impossible. For these reasons, Tom was designated as the sole cultivator of the collective.

This medical collective became a kind of community-based network for medical provisioning in a rural area where health care was scarce. Since most members were dealing with chronic pain issues, cannabis offered a treatment modality that was not only an alternative to addictive painkillers commonly prescribed by medical professionals but it did so in embedded community relations. Tom’s house (like Mario’s above) was a community center of sorts, where patients were continually stopping by to get their medicine as well as updates and calls to action around cannabis-related local politics. Though money traded hands, it did so not in terms of sales but as reimbursements for collectively agreed-upon labor and inputs to provide medicine. Though Tom was paid for his labor, his aim was not “this profit thing that you can just focus on and get caught up in.” Rather, reimbursement for him was about “providing medicine for sick people” in a community-based collective, which had its own therapeutic value. He underscored this point by expanding his collective to include several other cultivators, all of whom had medical recommendations, and asking them to contribute free medicine to those who were either too poor or too sick to afford cannabis, even at the reduced collective amount. This “Patient Provider Program” not only provided free medicine but itself served as a kind of political and pedagogical instrument in displaying the value of cannabis as medicine, the goodwill of local cultivators, and the rejection of profit motive as the sole motivation for provisioning.

Medical collectives, authorized by 2004 state legislation, helped to spread cannabis cultivation statewide. Though many collectives had qualities like those described above, it was also true that the medical recommendation and collective system soon became a ubiquitous cover for many (if not most) prohibited cannabis farms in California. Medical recommendations could justify an “appropriate” or “necessary” amount of plants and provide a legal defense that was difficult for prosecutors to pierce (see *People v Kelly*). Many cultivators used this medical guise to divert cannabis into prohibited markets, often shipping out of state. This led to popular characterizations of collectives as illegitimate shams. Yet, the blending of medical and prohibited circuits could only occur because state officials neglected to regulate medical cultivation, often out of concern that regulation itself might render them civilly or criminally liable by the federal government for aiding a criminal enterprise. Collective medical provisioning blossomed, then, not (simply) out of some deviant opportunism, but in the space created by jumbled policy responses.

In essence, medical collectives provided a means of commoning, of transforming market and medical-institutional transactions into socially embedded relations of care and provisioning. They provided well-being not only to ill people but to people impacted by criminalization. “Outlaws” were called forward as medical subjects, “patients” or “caregivers.” Medicalization impelled growers

to cultivate “safe” medicine, which was necessary for sustaining producer–patient relations. This meant organic, sanitary cultivation practices, the configuration of a vulnerable patient as the intended consumer, and thus an altered style of resource production. The collective organizational form this mode of production took generated forceful political energy clustered around consumers’ capacities to “access” medical cannabis.

Like commoning practices under prohibition, medical commoning served as many roles and purposes as there were collectives. Despite this variability, an underlying medicalizing impetus shaped subjectivities, exchange practices, horizontal health care provisioning, cultivation techniques, and political claims, all in a self-consciously nonmarket manner (Chapkis and Webb, 2008; Hecht, 2014). In the process, money, exchange relations, the supply chain, the cannabis commodity itself, and the land and mediums from which cannabis grew were all transformed from their prohibited forms into new forms of extra-market, quasilegal commoning.

From legalization to emancipation

In the 2016 elections, California voters legalized cannabis. On January 1, 2018, the ballot was implemented through state regulations that established a stringent, formal licensure process for recreational and medical cannabis. By 2019, California retired the preexisting system of medical collectives. A web of state and local regulatory agencies enacted provisions to steer cannabis commerce into the regulated system and away from illegal markets. Regulated producers now had to track and trace product from seed to sale, weigh, and record all discarded product, and monitor all employees entering and exiting facilities via video cameras and sign in rosters. Licensed farmers were required to pay third parties to transport product and could only sell cannabis through licensed dispensaries. Licensing criteria also included cultivation requirements aimed at monitoring environmental impacts of cannabis agriculture: report water use, refrain from planting on steep slopes or using nonorganic amendments, and submit a percentage of each harvest to third party testing labs to ensure compliance (Bodwitch et al., 2019), in addition to numerous locally enacted measures. In short, this new regulatory regime reworked cannabis cultivation in terms legible to state and legal market actors. The prohibited and medical commons were now subject to new formative forces.

One way of assessing these shifts is to return to Sabrina, mentioned in the introduction, who expressed ambivalence over the shift from prohibition and medical cultivation. A few years prior, Sabrina would not have sat for an interview. Now, after legalization, she elected not only to sit for an interview over an audio connection but, with a click of her mouse, visually transported us into her bright, airy, high-beamed mountain home. Though regulatory compliance has been a struggle, Sabrina’s involvement in the legal market changed her life. She can talk to neighbors about her livelihood and, more importantly, she can tell Child Protective Services “to take a hike.” No longer will she live in fear of losing her children for growing

an illegal crop. She will not have to lie to her children nor will she have to ask her children to lie about her livelihood, saddling them with the knowledge that a stray comment could devastate their family. “That’s a heavy load at 5 [years old],” she tells me. Having been brought up by a cannabis-growing parent, she would know.

Yet, the transition to legal growing has meant uprooting, or disembedding, the relationships she forged over decades—and re-embedding herself in new governmental and formal market relations. She no longer works with people she’s known for a “very, very long time,” people she “emphatically trusted” as patients, consumers, employees, or brokers. Now, her interactions are just “business transactions.” Buyers try to “lowball” her product, debasing the care she takes for her craft, workers, and land. In her first year of operation, she was “ripped off” to the tune of \$20,000 when a deal fell through. Rather than trying to navigate tenuous contract law surrounding cannabis, a federally illegal substance, she cut losses. Legally mediated contracts are categorically different from her prior, embedded relations of trust, where no one cheated her because she “knew where their mother lived.” Now, she is asked to build new, trusting relations with government and enforcement officials, after a lifetime of being treated as a criminal. Legalization requires not only compliance, to go “by the book,” but also going “over the book and through the book,” a process making her dependent on government permissions, reducing her more than once to tears and tantrums with officials.

Sabrina hoped legalization would benefit small farms, seeing as state legislation explicitly sought to create an industry of small and medium-sized operators (Bodwitch et al., 2021). She became a prolegalization activist with that idea in mind. Yet, now she sees legalization as a liability for smaller farmers like herself. GIS and license data confirm Sabrina’s impression, showing that individuals operating smaller farms are less likely to have applied for state licenses (Butsic et al., 2018; Dillis et al., 2021). Although she supports regulation for the purpose of environmental conservation (as most respondents to our statewide survey did), she sees stringent, expensive regulations as furthering small farmer exclusion and uprooting historically accumulated knowledges and relationships between cannabis farmers and the land they tend. “It’s destroying people’s way of life and it doesn’t have to be this way,” she tells us. Legal status, for Sabrina and others, is bittersweet, trading some insecurities for others.

Our 2019 statewide survey of licensed and unlicensed cultivators reflected Sabrina’s experience and perspective. The survey ($n = 362$ full responses; 700+ partial completion) found that most farmers, many of whom produced illegally or medically prior to regulation, viewed legalization as a hindrance to their ability to make on-farm decisions and a better income. People applied for permits not for economic security and control over farms but for other reasons such as a hope for future income and a desire to be freed from potential criminal consequences (Bodwitch et al., 2021).

Overall, the strongest impediment to becoming licensed were the substantial costs required for compliance,

especially those costs required to ameliorate environmental effects. Within the survey sample, 86% of nonapplicant farmers ($n = 80$) and 84% of applicants ($n = 300$) reported costs as a significant or primary barrier to obtaining a license. The cost burden fell hardest on small farmers, who were more likely to remain unlicensed—only 34% of nonapplicants grew over 100 lbs of cannabis, while 60% of applicants ($n = 307$) produced over 100 lbs. Smaller farmers were also more likely to use cannabis income as a supplement to other sources; 74% of nonapplicants ($n = 77$) reported that cannabis income comprised less than 50% of their income in 2018, compared to just 39% ($n = 285$) of applicants (Bodwitch et al., 2021).

Farmers believed regulations were skewed toward larger, capitalized growers, as evidenced in licensing outcomes. Qualitative survey responses revealed that farmers interpret regulatory stringency and high costs as proof of anticannabis bias and governmental discrimination against marginalized actors, thus dissuading farmers from involvement in policy decisions or regulatory participation. Many farmers regarded state allowances for “stacking” of multiple permits into one firm (Dillis et al., 2021), as a predictable effort to consolidate cannabis agriculture into the hands of a few.

Regulations, then, were not just a new system of resource management; they also entailed a new system of benefit distribution. Prohibited and medical commons had disseminated collective benefits, albeit insecurely, through informal commoning practices, either at the farm level or more generally. These commons formulated a consistent, if precarious, field in which agency could be exercised. Farmers could influence factors that immediately affected them (e.g., on-farm practices, market connections) and practice community-based forms of recognition through relatively defetishized, embedded supply chain relations. Of course, these commons always existed within the limiting constraint of prohibition-induced risk.

Regulation altered the constrained agency of cultivators. Decision-making jumped scale upward to regulatory agencies, supply chains, and impersonal market dynamics fueled by increasingly transparent competition. Most farmers were rendered illegible to policymakers—they were less stakeholders than they were prior criminals with little legitimate claim (Polson, 2015, 2019). It was up to farmers to remake relations with government, to reembed prohibitionist, war-making relations as ones of trust and compliance. Benefits were constricted to those who could comply. The terms of compliance were aligned with generalized, abstract ideas of “public good” (e.g., consumer, environmental and public safety), which supplanted the particular ethical values that had guided cultivation and benefit derivation previously.

This shift in resource management and benefit has met with significant opposition from growers, who often reject or delay regulatory compliance. Rather than a simple matter of ideological resistance to state regulation, which found little support in our survey, this resistance could be seen as protests against the upheaval of an accepted system of customary rights and regulation (Fortmann,

1990). The “mismatch” (Duraiappah et al., 2014) between new and old regulatory systems drives noncompliance by many producers, as they lose control over resources, management systems, and benefit distribution. The products of their historical commoning efforts—genetic stocks, horticultural information, cultural symbols and heritage markers, market networks—become available for private appropriation in intensified ways. Meanwhile, as shared risks that sutured together various actors into collectivities subside, class schisms become more evident, as the risks and interests of owners and workers become increasingly differentiated. Without explicit efforts to understand informal management systems and transition them into a new (legal) management, preexisting systems will be rendered invalid, if not illegitimate—and legalization will have created its own terms of resistance, failure, and inequality. Can cannabis be transitioned to a legal resource regime in a way that retains aspects of agency, control, and benefit? What would a just transition to legality look like?

To address this question, one can delineate the primary “causes,” or justificatory rationales, that propelled legalization. From there, it becomes possible to assess whether and how those causes have been realized since legalization. First, legalization has been promoted as a kind of market-making machine that would create jobs, stimulate business growth, and generate tax revenue (Himmelstein, 2020), thus offering societal benefits. Implicit to this approach is the framing of prohibited cannabis as waste—a potential source of economic growth that was irrationally and inefficiently managed by illegalized actors and state officials. Legalization would subject cannabis to rationalizing economic forces, resulting in efficient and beneficial treatment of the resource. Second, and relatedly, legalization has been regarded as a means to protect public goods—the environment, public safety, consumer health, state revenue (Bennett, 2018). The prohibited and medical commons are regarded as a “tragedy” that threatens those public goods. Protective state interventions are the solution. Together, these approaches constitute the “double movement” of liberal capitalism postulated by Polanyi (1944), whereby markets and states give formal order to previously nonmarket activities, spheres, and resources. The commons are rendered inefficient, tragic, and needing improvement.

Fraser (2013), however, identifies a third kind of causation of social transformation under liberal capitalism—“emancipation”—that cannot be easily reduced to state and market processes. For cannabis, emancipation from the tyrannies of the drug war was as causative a force as market-making and public protection, evidenced by decades of overt and covert activism against the drug war and cannabis prohibition (Lee, 2012). Emancipation would first redress the predations of the drug war. This means stopping arrests, seizures, and policing of targeted communities and society at large. It also means repairing the historic harms that have been done to individuals and communities, through efforts including expungement, reparations, and equity programs. Finally, a thorough realization of emancipation would require not just the

retrospective address of prior harms but the production of just futures. It would *reproduce* (Federici, 2010) emancipatory justice through a “new synthesis” of market and state action (Fraser, 2013), what Fraser refers to as a “triple movement” of social change. It would create a regulated economy for and by populations that *might have otherwise suffered* under prohibition.

These 3 causes—market improvement, public protection, and social emancipation—converge in the moment of cannabis legalization. Yet, that convergence is momentary (Himmelstesen, 2020). Soon these causes follow internal logics to different effects, materializing in varied visions and plans, organizations and networks, and cumulative “interests” around cannabis’ social and economic development (Polson, 2017). Legalization splinters in directions that might be roughly sorted into its 3 causal motives. To date, the emancipatory cause has been reduced largely to state and market languages of equity, which ambivalently translate social justice into neoliberal market spheres (Laurie and Bonnett, 2002), often in terms of front-end “opportunity” or back-end redistribution while leaving core market operations relatively untouched. That is, equity is often rendered as a marginal adjustment rather than a fundamental reworking of markets and policies.

Environmental justice scholars consider how regulatory and market initiatives produce or hinder community-scale forms of justice. They highlight: the distribution of environmental, economic, and social burdens and benefits; the procedural involvement of affected communities and actors; and the recognition and representation of affected groups, such that ongoing participation and benefit is sustainable (Whyte, 2010). In addition, prohibited and medical commons provide a metric of how benefits, burdens, agency, and control have existed in the past and might be imagined in the future. They also can be contrasted to current legalization dynamics in assessing the extent to which legalization alters, redresses, or reproduces historic and new inequalities. If legalization can be characterized currently as state-guided privatization of an informal commons, an emancipatory approach would actively seek to transition the commons and commoning practices—and the benefits, properties, and extra-economic logics commoners produce—into formality. How might that look?

Commoning cannabis, again

Elsewhere (and with open access), we have explored multiple ways legalization initiatives might be designed to achieve more equitable outcomes (Bodwitch et al., 2021). Those measures include appellation systems, much like those used in the wine industry, to recognize, valorize, and protect unique ecological, horticultural, and/or social–historical dynamics; farmer-owned cooperatives, which collectivize information, risk and resources, and foster norms, agency, and political power; and provisioning of public goods, like government agricultural extension support and research and/or public seed banks, which would reduce information costs and barriers to regulation, increase access to farming requisites, and

protect a knowledge commons. Advocates have proposed and developed these solutions and others since legalization came into effect (California Growers Association, 2018) and some initiatives, like small cooperatives (Schaneman, 2019) and appellations have gained traction statewide. While the foregoing initiatives are being discussed and sporadically adopted in various jurisdictions, one initiative has yet to enter policy debates, namely, a market allotment and price setting system that would synthesize market and state actions to achieve emancipatory aims.

Allotments are a right to produce or harvest a product and have been deployed widely in fisheries and, less so, agriculture. Allotment systems generally limit overall commodity production (often to protect scarce resources or support livelihoods) and apportion that production to individuals or collectives to achieve explicit aims, like protecting historic sectors, ensuring compliance, uplifting disadvantaged communities, or democratizing economies. They are, in short, market-making programs to achieve social, ecological, and/or economic aims.

The United States’s allotment program for tobacco production serves as a useful analogue in considering cannabis. In effect from 1937 to 2004, the tobacco program was established to assure smaller, independent tobacco farmers would not be consolidated out of existence nor subordinated as contract farmers by powerful processors. It supported 350,000 farmers at its height and for decades won overwhelming approval from farmers, who not only funded various aspects of the program but repeatedly and overwhelmingly voted to reinstitute it. Production allotments were a percentage of the projected yearly demand, which was calculated annually based on demand data and unsold product from the previous year. The government set prices for crops that covered average costs of production (i.e., labor, inputs, technology) to ensure that farmers would, at base, break even. Those prices were the opening bid at farmer-funded, state-facilitated auctions, which would sell tobacco according to quality grades. Unsold product was purchased by a farmer-financed cooperative, which would sell it the following year. In effect, this was one big cooperative for all farmers to face the market. Unlike quota systems with price supports (e.g., Brunner and Hutyon, 2009), the allotment system relied neither on a fixed amount of product nor fixed prices, but rather, varied by year, market conditions, and production conditions, thus preventing numerous problems associated with quotas and price supports (e.g., overproduction, underproduction).

The program suffered because allotments were non-transferable, which led to a class of rentier owners who leased allotments, on the one hand, and the retirement of allotments as farmers stopped producing, on the other. Soon, leasing power consolidated to a fewer allotment owners and resentment brewed among lessees. In 2004, the program ended, partly from these internal pressures and partly from external pressures stemming from the Master Settlement Agreement (MSA) that restructured downstream tobacco processing and distribution. Under the new free market system that replaced the allotment program, the amount of farmers went from 124,000 to

just 4,000 today, many of them under grueling contracts with multinational tobacco processing conglomerates that dictate yearly prices to farmers. Farmers had to “get big or get out” (Stull, 2009; also Griffith, 2009; Benson, 2011).

An improved allotment system would need to address the problem of transfer by linking allotment ownership with active production, similar to what is found in certain fisheries regulated by quota systems, where access to fishing quotas (a form of allotments) is restricted only to those who actively fish (i.e., Warpinski et al., 2016). This would prevent rent-seeking behavior and dwindling allotments. Further, restricting allotment size and concentration would prevent consolidation and stratification within the sector. The “base price” farmers receive should not only include basic inputs but also the costs of environmental stewardship, compliance, and decent wages and working conditions for farmworkers. Cost formulas could be modified to incorporate information on quality, strain, medical quality, mode of production (e.g., indoor, mixed light, outdoor), or other markers. If base prices reflect these actual costs of production, they will prevent farmers from selling below cost, which inevitably leads to debt, buyouts, industrial consolidation, and pressures to hyperexploit farmworkers and degrade the environment.

Allotments would, of course, limit the total amount of producers. Yet, if left to free markets, periodic overproduction and market crises will create (and is creating) a similar winnowing of farms in much less democratic ways. Fewer farms, particularly ones run by poorer and marginalized farmers in more remote areas, are unlikely to survive a free market system than an allotment system, if the tobacco experience is any guide. Alternatively, an allotment program might set aside allotments specifically for disadvantaged new entrants.

The price structure of cannabis makes an allotment and pricing program uniquely possible. Cannabis prohibition inflated prices well beyond costs of production. As legal market competition increases, those costs will be reduced toward that cost of production (along with whatever universal regulatory costs are required). Downward price pressure will gravitate toward consolidation, technological incorporation, and the externalization of labor and environmental costs (Dillis et al., 2021). An allotment-pricing program, however, could arrest this slide in prices, keep smaller farms viable, bolster equity, prevent indebtedness, protect producer communities, and protect workers and ecologies. It would also further public health aims by keeping costs somewhat elevated and law enforcement aims by tailoring supply to demand. To the degree it keeps costs elevated, closed-loop collective systems could be supported to enable the indigent and ill to provision their own cannabis outside market mechanisms.

Allotment programs realize and sustain some of the benefits and commoning practices of the prohibited and medical commons in formal market terms. It would enable a multitude of farmers to draw livelihoods from and have collective agency in markets, while also protecting workers and ecologies. From allotments and the collectivity it produces, it is possible to imagine other commoning practices proliferating—seed banks, peer-to-

peer compliance programs, norm-building efforts, and so on. Cannabis would not simply be integrated into legal market and state structures—it would transform those structures in a new synthesis of marketization, protection, and emancipation.

Conclusion

One could postulate numerous causes of cannabis legalization. It was perhaps libertarian or neoliberal designs to eliminate market-distorting government interventionism, a cultural process of public opinion transformation, a rational determination on the failure of prohibition, a desire for legal jobs and government revenue, and so on. There is likely truth to each of these postulations and more. Behind these claims, however, is a generations-old layer of activists who have demanded an end to the U.S. government's war on its own people. Whether in terms of hemp, medicine, or open markets, or whether it was narrowly framed around cannabis or a broad demand to end the War on Drugs, it is activist demands that made cannabis legalization a reality. A unified demand from these activists is and has been a demand for “emancipation”—freedom from the drug war and justice in its wake. What legalization looks like after this demand is where politics proper begins.

Many perceive that this demand for emancipation can be found in the market. This is unsurprising, given the dynamics of prohibition and legalization: government repressed the market; the market must be liberated; the market will deliver liberation from state repression. That formal market participation can lead to a sense of freedom and liberation should not be discounted (Ramamurthy, 2011). Yet, one only needs a cursory understanding of agricultural capitalist markets to know that markets do not always (or even often) deliver justice—social, environmental, and otherwise. Markets by themselves can only deliver a peculiar justice to those able to continuously access capital and navigate competitive pressures to do so. “Justice,” in a Hayekian sense, is for those who survive the market (Hayek, 1978).

State regulation only unevenly delivers justice, too. Our survey found that farmers are suspicious of existing state regulations—before, they excluded and oppressed farmers through criminal prohibition, now they achieve the same function through high barriers to entry. The end result is the same. That said, we also found widespread optimism among farmers that state regulations could, for instance, improve the environment. It was not government regulation, *per se*, but inequitable regulatory outcomes and design that were the problem.

The question, then, is not whether the state should be involved in legal markets but how it might be involved in ways that achieve emancipatory ends. Unlike the market, the state can create democratic architectures for emancipatory justice—benefit distribution, processual involvement, and the fostering of recognition and agency. As Ryan (2013) argues, governments might go further than simply protecting “public goods”—if won over politically, they can buttress, expand, and foster the growth of the commons in legal society (in more uniform and less

exclusionary ways than even the commons itself might do). This means more than simply redress and protection for parochial interests but the generalization of benefit for society—a task for which states are suited. In the engagement of states with the commons, the problem of exclusionary particularism, implicit to the commons (Harvey, 2011), and the problem of difference-obliterating universalism, present in liberal state operations, might be addressed (Susser, 2017; Blomley, 2020).

Emancipatory legalization is not the absence of prohibition but the presence of justice. Fraser urges us to consider emancipation via “some new synthesis of marketization and social protection” in ways that exceed what the market or state might achieve singularly. In this, we might see the market not just as a mechanism that moves commodities, appropriates land and labor, and turns profits but as a method of distributing emancipatory justice. The state might do more than protect society from the market, in the Polanyian paradigm; it might foster emancipatory projects in, through, and well beyond markets. Emancipatory legalization would subvert the double dispossession of legalization, where the common properties of once-criminalized peoples are denied recognition and made private. It would convert the risk-based benefits of prohibition into the just benefits of legality. This goes for those directly harmed by prohibition and for building justice forward to future actors. Faced with the devastating consequences of climate and biodiversity crises, the cyclical crises of agricultural markets, and the life-depleting consequences of racial and economic inequality, it is imperative to reimagine how we supply basic goods to society. Cannabis, with its prohibition-inflated price cushion, may be a perfect place to start.

Data accessibility statement

Due to the continuing prohibited status of cannabis in the United States, anonymity of informants was a necessary aspect of research design and IRB approval. For this reason, we do not make data publicly available. However, for deeper insight into previous research findings and reporting of data, please refer to Bodwitch et al. (2021), Polson (2021), and Bodwitch et al. (2019).

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Competing interests

We have no competing interests to declare.

Author contributions

Conceptualization, data curation, formal analysis, funding acquisition, investigation, methodology, project administration, software, supervision, roles/writing—original draft, writing—review and editing, submission approval: MP.

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