

CANNABIS

AN AMERICAN INDUSTRY

GROWS FROM BLACK MARKET

TO BULL MARKET

James Marion

It could be said that Americans are in constant pursuit of the “next big thing.” Our identity is inextricably linked to that search for another frontier, to crossing the next horizon and seizing new opportunity. Where there is no opportunity, we tend to create it. As a people, we have a particular knack for pushing the envelope, and Californians are no exception to that rule. In fact, they often take pride in themselves as the paradigm. In 1848, the discovery of Sierra gold put San Francisco and California on the map, and the worldwide frenzy it spurred fundamentally reshaped the American West. In 2016, another, and perhaps more infamous commodity, marijuana (cannabis to the initiated), is poised once again to mark the state as epicenter of the next big American industry. The California “Green Rush” is on! And with the recent passage of new statewide regulations, along with the prospect of ballot initiatives legalizing adult use this November, it appears that the floodgate is only just beginning to open.

A BRIEF HISTORY OF PROHIBITION

At this point some readers may be asking, “Marijuana? Next big American industry? Aren’t drugs illegal?” Fear not. If this is your understanding of marijuana’s place in American society you are still, at least partly, correct. But the landscape is changing at an exponential rate. To better understand the current state of affairs, let us first take a look at the role this intriguing plant has played in the American story.

Cannabis is a genus of a flowering plant native to Central America and the Indian subcontinent, which is now grown extensively across the globe. It comprises three species: the popular *Cannabis sativa* and *C. indica*, along with

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the lesser known, but increasingly relevant, *C. ruderalis*. The fiber and oil extracted from the plant’s stalks, better known as hemp, have long been used for a variety of practical purposes (think rope, clothing, and that bottle of Dr. Bronner’s liquid soap in your shower), but cannabis’s modern notoriety stems from chemical compounds known as cannabinoids, which derive from its flowers. Of these cannabinoids, tetrahydrocannabinol (THC) is a highly psychoactive compound and the prime culprit behind the plant’s notorious (or celebrated) reputation. A second cannabinoid, cannabidiol (CBD), is also a major constituent of the plant.

When Europeans first reached the Americas, cannabis was waiting for them alongside corn, tomatoes, and tobacco. When the Jamestown settlers reached Virginia in 1607, they quickly began to harvest the plant for hemp, and this practice continued throughout the colonial period. Many of the founders were adamant proponents of hemp cultivation, and both George Washington and Thomas Jefferson grew cannabis on their plantations, although there

is little evidence to suggest they ever grew the plant to consume it.

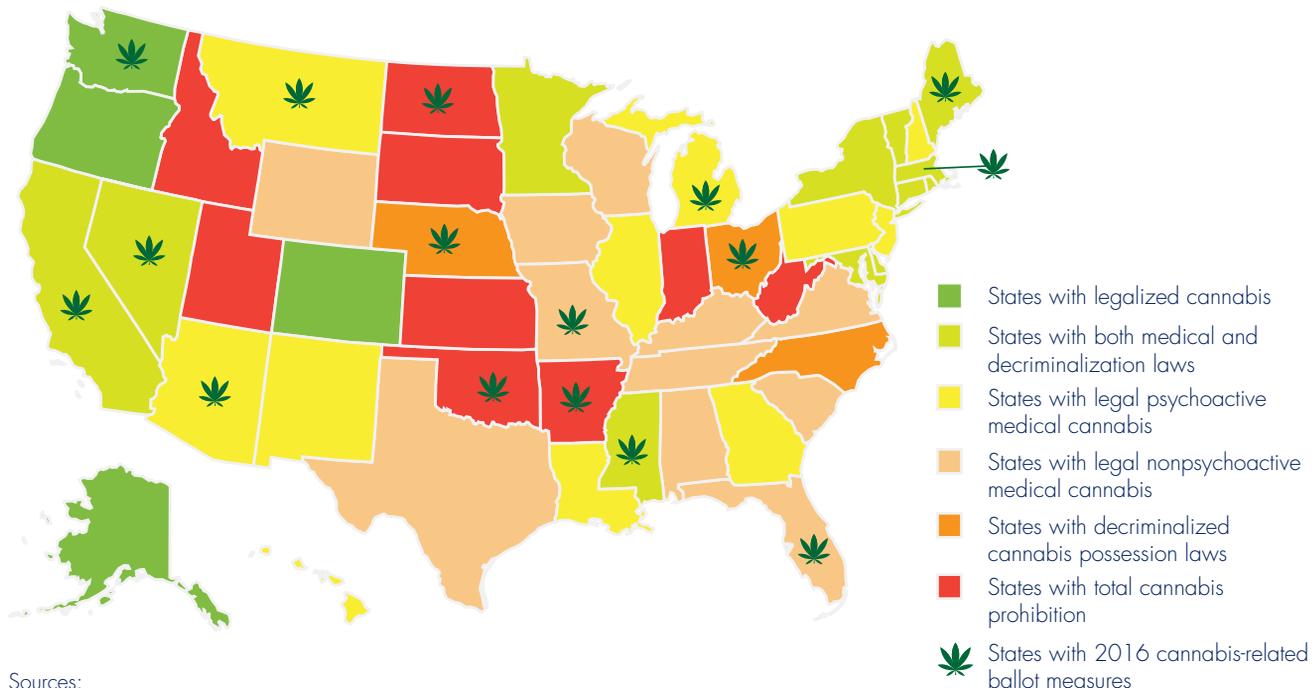
Nonetheless, Americans were keen to recognize the medicinal value of the crop. Cannabis cultivation existed as a viable industry until after the Civil War, and during that time it was widely dispensed by physicians and pharmacists to combat a variety of illnesses. The plant was even entered in standard pharmaceutical reference works, such as the *United States Pharmacopeia*. But despite enjoying roughly three hundred years of comfortable acceptance within the folds of American society, cannabis became increasingly denigrated near the beginning of the last century.

While a set of circumstances contributed to the nationwide push for cannabis prohibition, the confluence of two major factors stands out. The first, still sadly familiar, was

a racist and xenophobic reaction to the growing influx of immigrants finding their way across the U.S. border with Mexico. It is no coincidence that “marihuana” (marijuana) emerged as the colloquialism for the plant as used in its recreational capacity. Nor is it coincidence that Utah, a Southwestern state, passed the first universal ban on marijuana use in 1915, followed soon thereafter by New Mexico and Texas. At the time, it was generally assumed that use of marijuana west of the Mississippi was limited primarily to the Mexican segment of the population.

The coinciding presence of similar legislation in the East highlights the second reason for the precipitous decline of the plant’s image. A 1914 amendment to New York City sanitary laws restricting marijuana use had migrated to the state’s general ban on narcotics by 1927. In fact, by the end of that year, fifteen states had enacted laws against

CANNABIS LAWS IN THE UNITED STATES



Sources:
Map of the United States showing U.S. cannabis laws, Wikipedia
Marijuana on the ballot, Ballotpedia

any sale or possession of marijuana, and by 1931, another fourteen states passed similar bans on nonmedical sale and use.

The perception of cannabis as a potent drug was certainly behind this trend. Reporting on the 1914 citywide amendment, the *New York Times* stated, “this narcotic has practically the same effect as morphine and cocaine, but it was not used in this country to any extent while it was easy to get the more refined narcotics.” But as with most cultural shifts, timing is everything, and cannabis happened to find itself in the cultural crosshairs at the peak of the American temperance movement. For more than a hundred years, a battle to eradicate the sin of alcohol had been raging within the American public, as “wets” and “drys” clashed over its prohibition. When this fight culminated in the passage of the Eighteenth Amendment to the Constitution in 1919, the federal ban on alcoholic beverages claimed cannabis as collateral damage, with temperance-minded legislatures targeting the “addictive” plant as a likely substitute for the now-illegal booze.

By 1937, alcohol prohibition was already dead and buried, but cannabis prohibition had taken on a life of its own, with every state in the country having already enacted laws criminalizing the possession and sale of the plant. In that year, the federal government followed suit and passed the Marihuana Tax Act, levying stiff fines on physicians prescribing cannabis to patients. At the same time, the head of the Federal Bureau of Narcotics, Harry J. Anslinger, was busy waging a propaganda war to paint marijuana as a national scourge, seething from the criminal underclass. By 1942, cannabis had been removed from standard pharmaceutical reference texts, including the *United States Pharmacopeia*. It had taken only a quarter century to transform Americans’ idea of cannabis from medicine to *Reefer Madness*.

When recreational use of cannabis finally began to propagate among the white middle and upper class during the 1960s, the reaction to that countercultural appetite was unequivocally severe. Passed by Congress in 1970, Title II of the Comprehensive Drug Abuse Prevention and Control Act, better known as the Controlled Substances Act (CSA), employed a broad definition of “marihuana” and

placed it under a Schedule I characterization, implying that it had no accepted medical use, and making it illegal for doctors to medically prescribe it (while practically prohibitive, prescription had still been federally legal to this point). In doing so, the act created a dubious distinction, placing cannabis in a notably more verboten category than drugs like cocaine, PCP, and methamphetamine (all medically *useful* Schedule II drugs).

At the date of this writing, the CSA’s scheduling of cannabis still stands. The plant that then President Richard Nixon derided as a component “Public Enemy Number One,” has been a frontline presence in America’s War on Drugs for forty-five years.

STATES AS THE GREENHOUSES OF DEMOCRACY

But the tide of prohibition is rolling back. And, not surprisingly, California has taken the lead in this movement from the beginning. In the decades following the passage of CSA, a small host of dedicated growers migrated north from the Bay Area to the woods of Mendocino and Humboldt counties, where they doggedly maintained one of the last bastions of domestic cannabis cultivation (the majority of the U.S. supply now comes from cartels in Central and South America, although recent state legalization efforts have helped to cut into that imbalance). They refined growing techniques that have since proliferated to the global market. At the height of the AIDS crisis in the 1980s and 1990s, this “Emerald Triangle” crop provided relief to patients in San Francisco, as smoking cannabis was found to have a significant positive effect on patients suffering from nausea related to the wasting effects of the disease, as well as on patients undergoing chemotherapy treatment for cancer.

This renewed interest in the medicinal benefits of the plant resulted directly in the passage of Proposition 215, or the Compassionate Use Act (CUA) of 1996, making California the first state in the country to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2004, the Medical Marijuana Program (MMP) Act mandated, among other things, that the California Department of Public Health establish and main-



Hemp plant, from Franz Köhler's Medizinal-Pflanzen (Medicinal Plants), published 1887

tain a program for the voluntary registration of patients and caregivers through a statewide identification card system. As such, patients in California can obtain a doctor's prescription for medical cannabis, be issued a medical marijuana identification card, and purchase legally grown cannabis from a dispensary. These "primary caregivers" currently operate as part of nonprofit collectives or cooperatives that include the member patients.

This is soon to change, however, with the pending implementation of the California Medical Marijuana Regulation and Safety Act (MMRSA), signed into law by Governor Jerry Brown late last year. The legislation will create a for-profit model, and aims to beef up state regulations, which have widely been seen as flimsy. The system created by CUA and MMP is generally considered a cannabis "gray market." The new law also presumes to allay concerns voiced by an expanding cannabis business community, desperate for some modicum of certainty in the face of the persisting federal ban. A regime less reminiscent of the Wild West is more attractive to investors hoping that

the Department of Justice and Drug Enforcement Agency will maintain the relatively hands-off approach adopted during Obama's administration. Less left to question, less need for intervention.

These days, California has the added advantage of looking to other parts of the country for perspective on shaping cannabis law. Since CUA's passage in 1996, twenty-four states and the District of Columbia have joined California in passing medical cannabis bills or ballot initiatives. California is also one of nine states to eliminate jail time for possession of small amounts of the plant, a primary catalyst for pro-legalization activists who still see cannabis as a tool used in the disproportionate incarceration of minorities by the prison industrial complex.

Four states (Colorado, Washington, Oregon, and Alaska) have taken the next step forward by legalizing adult use. Now California—along with Arizona, Nevada, and Massachusetts—looks to jump on the adult use bandwagon this November with the Adult Use of Marijuana Act (AUMA), a ballot initiative bankrolled in large part by Napster and Facebook entrepreneur Sean Parker, along with other industry heavyweights and political action groups.

With the landscape still unclear, it remains to be seen to what extent the legal cannabis business will ever resemble Silicon Valley. There are many within the industry that would prefer it never does. Still, with sales projected to hit \$6.7 billion in 2016, one thing does seem clear; the American cannabis industry is back, and it won't be leaving anytime soon.

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