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## From Outlaw to Citizen: Police Power, Property, and the Territorial Politics of Medical Marijuana in California's Exurbs

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### Abstract

As governments worldwide justify the transformation of marijuana governance from one police power (law enforcement) to others (e.g. public health, zoning), the place of marijuana in lawful society is transforming rapidly. No venue in California is more central to this than land use regulatory bodies, which decide how marijuana rights, practices, and relations become territorial. Land use powers, as a declaration of the state's police power, require a definitional rendering of "community." This article analyzes an episode of outdoor marijuana cultivation policymaking and the struggles over the definition of community in a conservative exurban California county. From debates on fences, property line setbacks, rental terms, and nuisance complaints to racial and economic anxieties and the roaming stigma of crime, marijuana advocates confronted a powerful logic of private property and the moral-aesthetic propriety it implies. Despite the subordination of advocates' claims to the terms of private property, outlaw communities sustained their own forms of territorial governance, informal regulatory and enforcement powers, and understandings of community. This episode, which illuminates territorial production across illegal/legal lines, has implications for understandings of liberal rule of law, political possibility, and the practice of citizenship.

### Keywords

Land use; marijuana; exurbs; property; community; illegality

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"I opened the door of the county building and said, 'Oh fuck, it's over now. [The cops] are going to be at my home waiting for me,'" Sammy said, rubbing more cannabis tincture onto his disability-worthy knee. "We were growing weed in the front yard!" he marvels. Sammy was sitting in his electric recliner, his voice rising above the fan and the TV on this hot California day. He is recounting the day in 2009 he asked permission from the county to grow medical marijuana. "I can't lie...I just don't want to lie no more. Gets me in trouble." A two-time felon in a three-strike state, with approximately 70 arrests, lying could mean 25 to life. He had to get it right. "I told them, I told the truth," Sammy explains. "I walk out [thinking...] I just shot myself in the stomach. I'm leaving a blood trail all the way home. I got home. I'm all weirded out in the brain. A blood trail from the cop shop to my front door." As one of the first people to request permission from the county to grow, Sammy's

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anxiety over his future was understandable. Jake, a grey-bearded biker helping with the garden for the season, was unimpressed. He shakes his head, repeating one of the basic rules of “being an old school outlaw.” Don’t give the government your address.

The last time Sammy went to the county administration building, in the 1990s, he entered for a probation check and left in cuffs, remanded into custody for 3 years on assault charges. It was a long road back: he was released “in a paper suit with only \$200” and found himself living in a “tweaker” friend’s chicken coop. He eventually quit dealing and using meth, helped his girlfriend quit, got a job, bought a property, and helped his stepson get to college, a family first. Then he was injured at work, suffered a botched surgery and found himself disabled, with a doctor’s prescription for 240mg of morphine a day, a dose that would’ve turned this recovering addict into “a sitting bugger.” Given his addiction history, the doctor recommended marijuana, landing Sammy back in a “drug” economy he thought he’d left.

His more recent trip to the county building (to request permission to grow marijuana) not only jeopardized his new life but it also signaled a new relationship to government. “It took three days to get right before I’d let anyone come around. Shit’s gonna go down. I thought I should rip up those plants.” The liminal 3-day period of isolation and anxiety was a transformative time for Sammy. Was he an outlaw or a property-owning citizen? Get rid of “the evidence” or wait for code enforcement to inspect for “compliance”?

In 2011, still a free man, the Planning Department summoned Sammy to participate in a workshop to gather input for an outdoor marijuana cultivation policy. This led to Sammy’s third trip to the county building here in the foothills of California’s Sierra mountains. First trip, a criminal; second trip, a property-owning patient-cultivator; third trip, a community leader. With each trip, from a small town on the county’s geographic and socioeconomic edge to the county seat, Sammy traversed a rapidly shifting political geography of criminality, citizenship, governance, and medicine—a geography at the core of this article.

Drawing from 19 months of fieldwork conducted between 2010 and 2013 in northern California, this article follows Amador County’s formulation of a medical marijuana outdoor cultivation policy, in which Sammy participated. Caught between marijuana’s blanket federal prohibition and California’s medical decriminalization and authorization, Amador’s land use regulations were a *de facto* resolution, a territorial fix, to the law’s vagaries. Territorial policies also became a vehicle for expressing local and regional anxieties over race, property, economic development, crime, and exurbanization. The resulting land use policy registered these social-legal tensions in a set of new territorial practices and logics that were significantly determined by the politics and proprieties of established property owners and their political patrons, who lay at the center of the county’s political economy. Despite this subjection, medical marijuana patients established a political voice within a civic territorialization even as marijuana producers recomposed illegalized territorialities beyond the law’s scope.

In this article I explore land use regulations as a form of “police power” that govern social relations through territory. I attend to the linkage of police power with private property and with different definitions of *salus populi*, or community wellbeing, by the state and by

outlaws living beyond territorial-civic regulation. The bulk of the article explores the contentious establishment of the state’s police power through public debate and policymaking processes after which I turn to the recursive effects of this reformed police power on informal territorial practices and notions of *salus populi* among illegalized marijuana producers. I conclude by considering the implications of marijuana’s incorporation into civic territoriality for understanding contradictions within liberal rule of law and the potential for new citizenship practices. The liberalization of marijuana augurs both an expansion of freedoms and a governance through freedom as well as a rectification of some inequalities and a recuperation of other inequalities. By prying open space between the outlaw and the citizen, as my informants did, this article illuminates the stakes of marijuana’s governmental transformation.

### Territorializing Law: Police Power, Property, and Implied Community

Prior to California’s decriminalization of medical marijuana in 1996, marijuana was consigned to a criminal sphere and therefore unavailable to civil regulation and surveillance. In its move from criminal to civil status it became subject to regulation through the state’s “police power,” which includes a range of capacities from economic policy to public health to land use policy. Police power, which differs from the colloquial equation of police to law enforcement,<sup>1</sup> can be conceptualized as liberal governmental strategies to “intervene” in permissive “milieus” (Foucault 2007: 27) and can be thought of as “the mix of administrative and coercive measures to order space and regulate conduct” (VALVERDE 2009: 139).

Because the State of California did not offer clarifying legislative guidance to voter-approved medical marijuana laws, responsibility for marijuana’s civil incorporation devolved to local governments and their primary governing capacity: land use policy. Through mediating technologies such as planning documents, zoning designations, compliance stipulations, complaint protocols, special use conditions, nuisance criteria, and so on, a new form of territorial police power materialized. Territory became a calculative form of governance, one among many “things” through which populations were governed (ELDEN 2007). Stated differently, territorial police powers were not just a means of ordering land—they were a means of governing social relations *through* land.

It is no surprise, in a region where the social order was structured through private property claims (BRANDS 2003), that propertied interests are a consistent political force in shaping territorial governance in California’s Sierras. Land use regulations are, after all, a system through which property rights materialize (FREYFOGLE 2010). Private property, though, is not just one among many interests. If liberal legal theory is predicated on the notion that property precedes the state (MACPHERSON 1964; ABRAHAM 1996), property ownership is a protected premise of liberal rule of law (HABERMAS 1988; LOSURDO 2011) against which other social orders and rights claims are cast as criminal (HILL 1996; FEDERICI 2004; THOMPSON 1975). The explicit equation of US political society with property

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<sup>1</sup>Law enforcement is also authorized by the same civil authority as regulatory powers and is a “police power” to the degree it regulates the commerce of everyday life. Unlike civil police powers, law enforcement enforces criminal law. Its actions are to arrest not regulate, to bar from the civil sphere not to regulate action within the civil sphere.

ownership, however, became untenable with the Jacksonian extension of the franchise to non-propertied white men, the broadening of the franchise and property rights to African-Americans during Reconstruction, and the expansion of civil society to include industrial, “freed” labor (ABRAHAM 1996; SALKIN 2011). Private property, rather than constituting civil-political society, soon became a governing rationale that sublimated the logic of private property into the techniques of civil administration in an expanded and stratified society (VALVERDE 2011), becoming its naturalized and technicized operating presumption. The state assumed the role of what I call the “collective property owner” and land use powers became the “coercive arm of property rights” (ANDERSON 1992 in GHERTNER 2012: 1178).

Marijuana’s entry into civil-territorial regulation is not just a matter of acquiring legalistic property rights. Rights claims themselves are ordered in a moral-aesthetic propriety found in land use regulations (BLOMLEY 2005), as studies of sex work zoning regulations show (CROFTS, HUBBARD, PRIOR 2013; KELLY 2008). Resulting interventions can be highly normative, discretionary, and more invasive than law enforcement, which is held to higher legal standards than civil enforcement (WALBY & LIPPERT 2012). The moral ordering of rights claims must legally avoid the appearance of being “arbitrary” and “capricious” (SALKIN 2011), which in the US centers around the authorization to promote and protect “public health, safety and welfare” (e.g. AMADOR COUNTY CODE 2014). VALVERDE (2009) argues that in protecting this *salus populi*, or wellbeing of the community, the state defines a particularistic, exclusionary notion of “community” by predicating a subject whose wellbeing must be secured. (For example, the definition and measurement of “offensiveness” of smell in nuisance codes is a particularly subjective affair [CURREN 2012].) This particularistic communal subjectivity, concealed in the “fuzzy” and “capacious” (VALVERDE 2011: 292) administration of police powers, potentially undermines the liberal state’s claims to the universality of law. Land use regulations recuperate universality through property-centric moral-aesthetic rationales, such as that of “improvement” or “nuisance” (GHERTNER 2012; GIDWANI 2008: 68–137), and through a power to make exceptions to its own rules (VALVERDE 2009), such as with designations of “non-conforming use” and “special” and “conditional” permits. These rationales and exceptionalisms achieve a social ordering by suppressing, excluding, or banishing some (BECKETT & HERBERT 2010) or granting impunity to others (LIPPERT & WILLIAMS 2012). In the uneven application of land use regulations, broader social tensions around inequality find their technical-territorial “fix” (CHIODELLI 2012). Territory, in short, manages the tensions between liberal-legal concepts of “equality” and the inequality inherent in private property systems (SMITH 1990).

For generations, illegalized marijuana and the social realm around it, has stood outside the state’s civil power. As property, it was eminently alienable as was any property associated with marijuana’s proceeds (since the 1980s). Outside the civil reach of police power, non-state sanctioned forms of social organization developed around marijuana. While these were embedded in and influenced by dominant legal territorialities, illegalized realms nonetheless carried their own territorial practices and optics, definitions of community and propriety, and powers to police. In assessing this illegalized realm along with civic-state realms, this paper illustrates how territory is produced in the confluence of illegal and legal territorialities

(AGNEW 2005; Heyman & Campbell 2009) and their conjunctural political-economic expressions (HALL & MASSEY 2010).

In its transformation to an object of civil governance and a feature of California's legal territoriality, marijuana's place within public life is subject to a newly public debate. For a substance that has been defined in opposition to the wellbeing of the community, how will its incorporation redefine the propertied order and moral-aesthetic proprieties that define "the community"? Conversely, how will civil rationales of property and propriety alter the informal social systems and territorialities of (formerly-)illegalized social life? In Amador County's struggle over land use policies, we can outline responses to these questions as one community struggled over its identity and social order.

### **A Murder and a Nuisance: Exurban Anxieties**

The neighbors reported shots to Amador's Sheriff's Department in the middle of the night. Upon arrival officers found He Ting Fu murdered, grasping an empty shotgun, his 779 marijuana plants unadulterated. Suspecting a botched robbery, deputies took two days to apprehend five young men found with semiautomatic pistols, a flak jacket marked 'SWAT,' plastic handcuffs, a flashing police light—and pruning shears and bags for marijuana. Presumably, they were to disguise themselves as raiding police and confiscate the marijuana, when the heist turned sour. The five were ultimately shown in court to be Vietnamese "gang members" from Sacramento. "These gang members," the Sheriff advised, "would not have been in our county had it not been for the lucrative financial opportunity" (HECHT 2011).

Marijuana, here, connoted a wrong type of economic development—one that generates crime (criminogenic)<sup>ii</sup> and attracts crime (crimino-magnetic). Even the victim, Fu, was encompassed by these criminal connotations: the number of plants, which exceeded his doctor recommended amounts, suggested commercial-criminal (not medical) sales. The problem, according to a California Police Chiefs Association representative, was not simply marijuana's illegality but its location among law-abiding, residential communities "on farms, in backyards, or indoors" (HECHT 2011). The conclusion was clear: marijuana's overt presence on properties endangered residents and caused social and economic disorder.

This anxiety ran deep. Typical of other Sierra Foothill counties (WALKER & FORTMANN 2003; BEEBE & WHEELER 2012; HINER 2012), Amador was undergoing a decades-long "exurbanization" process, underwritten by a population boom that restructured sociopolitical discourses, imaginaries of land and its use, and the regional political economy. Between 1970 and 1990 the county population skyrocketed by over 150%, ranking as one of the fastest growing counties in a state noted for its property boom (COMPARATIVE ECONOMIC INDICATORS 2014). By 2006 the population had grown another 20%. A 2007 study, on the cusp of the national mortgage crisis, showed a rural industrial-extractive economy transformed into a service-based, amenity exurb: retail edged out manufacturing in 1990 as the largest employer; healthcare and social assistance ranked second; real incomes

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<sup>ii</sup>The "criminogenic" effect of marijuana has become an object of contention in scientific and organizational studies (Kepple & Friesthler [2012]; California Police Chiefs Association [2009]).

declined in the low-wage service economy; and poverty concentrated among working age people, not among wealthier, service-consuming elderly in-migrants. Controversy was typically exurban: land use battles among flagging extraction-oriented industries, residential developers, conservationists and “amenity” or “lifestyle” émigrés (GOSNELL & ABRAMS 2011).

These tensions heightened after the mortgage crisis. Amadorans owned homes at one the state’s highest rates (76% versus 56% statewide) and home values climbed steeply through 2006 (AMADOR COUNTY 2007). Between 2006 and 2011, housing values declined by over 60% and residential construction permits by 85%. Dependent industries—construction and retail—went into a tailspin, resulting in a crisis for local government, the largest county employer, which was triply-impacted by declining property taxes, taxable sales, and income taxes as unemployment almost tripled (CALIFORNIA DOT 2013). An insurgent libertarian-fueled Tea Party polarized the county’s assessment, planning, and land use capacities as distressed property owners turned against a government it held responsible for economic decline.

Amidst these anxieties over property, development, and government, Fu was murdered, stoking fears of the wrong type of neighbors, bad types of land use and economic activity, and criminal—and ineluctably racialized—migration from urban areas. In this 91% white, heavily Right-wing county, the expulsion of “the urban” was precisely what motivated moves to the ex-urbs. This was neatly expressed in a territorialized fear of becoming “Sacramento in the hills”—where racial criminality was seen to spill out from its urban container. Fittingly, Fu’s fatal drama unfolded near Ione, the county’s largest exurbanizing city on its western edge, impacted most by close proximity to Sacramento.

Meanwhile, in Amador’s burgeoning wine country, a locus of Amador’s new service-based “lifestyle” economy, fragile and stratified as it was, a Fiddletown resident filed a nuisance complaint against his neighbor. The neighbor had allowed his brother to grow 96 marijuana plants on his property for 19 medical marijuana patients, forming a “collective” grow (approximately five plants a person). The property owner died during the season but his brother remained, harvested, and vacated shortly after. The deserted house soon became a meth “funhouse” and fell into disrepair. The local paper ran a photograph of the funhouse, not the marijuana grow, but the “blight” was attributed to growers. The photo ostensibly represented the disorder marijuana posed. (The truth, according to several informants and public testimony, was otherwise: the growers, while not perfect, had done “the county a service” by cleaning it up before “the tweaks” destroyed it.)

Subsequent coverage and public hearings connected Fiddletown blight to Ione violence—each threatened property values and the enjoyment and safety of neighbors, and burdened taxpayers who had to fund criminal trials. Despite the different nature of the cases—one was a modest, collective grow fully accounted for by medical recommendations while the other violated legal-medical practice—both came to represent the danger of “large,” “commercial,” and criminogenic-criminomagnetic grows, thereby linking the specter of the racialized urban criminal to the county’s sizeable population of impoverished whites, despite the fact that marijuana growing was a cross-class phenomenon. This inter-signifying



“communicable cartography” (BRIGGS 2005) charted a narrative that drew upon anxieties over property, established (poor people’s) collective medical marijuana as the problem requiring resolution, and produced the intervention to resolve the issue—regulate and control legal collective cultivation through land use regulation.

By 2011, the land use regulatory powers of California’s counties had become the major lever of engagement with medical marijuana. After 1996’s Proposition 215 decriminalized medical marijuana, the state neglected to pass clarifying legislation, thereby ceding authority to localities. In patchwork formation, localities took varying tacks (HEDDLESTON 2012), drawing upon their “police power” to authorize everything from unreformed prohibition enforcement (LEE 2012; MCCARTNEY unpublished) to detailed zoning laws (SALKIN & KANSLER 2011). In the Sierra foothills—and throughout the federally-designated Eastern District of California—the initial answer was arrest first and let the prosecution sort it out, a tactic that was one prong of a larger federal-state law enforcement strategy to quash medical marijuana (LEE 2012). While law enforcement has significant discretion, they are subject to legal metrics and public judgment—across California juries ruled in favor medical marijuana patients. When statewide legislation passed in 2003 to affirm the protection of medical marijuana patients from arrest and prosecution and allow for “collective, cooperative cultivation projects,” the struggle over medical marijuana rights shifted from law enforcement to land use regulations—a police power that has caused years of litigation over its application and extent. Though the state’s Attorney General issued regulatory guidelines, they were non-binding and eventually jettisoned in 2011 when the incoming Attorney General decided they were rendered ineffective by resurgent federal intervention.

The shift in the mode of the state’s police power (law enforcement to territorial governance) altered the relations comprising marijuana’s governance. No longer prohibited from the public and legal order, it was made visible, compliant, and regulated. A legitimizing marijuana was now to align with regulatory aims to promote “public health, safety, and welfare.” These subjective aims gave counties the power to decide how laws and rights would be territorially implemented—it gave substance to formal law and rights. In 58 counties across California, medical marijuana was equilibrated to 58 different politically-determined definitions of what constituted the wellbeing of their residents.

Spatial regulations thus became the “territorial fix” required by localities to address the crumbling legitimacy of marijuana prohibition and the vagaries of medical marijuana at state and federal levels—a de facto solution to a fraught relation among conflicting jurisdictional laws. This pliable administrative “fix” also became a moment for the re-articulation of the terms of community belonging and political order.

## Uncovering the Community, Producing Policy

In late 2011, Amador County passed an “urgency ordinance” banning outdoor marijuana cultivation until Supervisors could decide on a permanent ordinance. Over five months, this permanent ordinance developed in meetings of the Board of Supervisors (BOS), the BOS-appointed Planning Commission, and workshops by the BOS’s Land Use Committee. I attended several of these meetings, interviewed involved patient-cultivators, conducted

ethnography with the patient’s rights organization that organized efforts (Collective Patient Resources), and obtained and analyzed recordings and documents of meetings I could not attend. In analysis, I explored the establishment, techniques, and discourses of authority, expertise and credibility by officials, property owners, and patient-cultivators. Through this I was able to assess how definitions of community, private property, and propriety were imported into law through territorial police power.

## Switching Police Modes: From Delimiting the Legal to Governing the Territorial

Emergency moratoria on medical marijuana were not uncommon in late 2011. “Urgency ordinances”—essentially a legislative version of an injunction—were sweeping California’s counties in the Fall and Winter of 2011 for two reasons. First, an appellate court ruled (*Pack v Long Beach*) that localities could not regulate marijuana without violating the federal Controlled Substances Act (the decision was overturned in 2012). Second, the federal government was waging an offensive to shutter much of California’s burgeoning, activist-led medical marijuana industry. One aspect of this multi-pronged offensive was the threat made by US Attorneys suggesting that government officials and bureaucrats who regulate marijuana “are not immune” from federal prosecution. Though this threat likely violated federal law, as the ACLU argued, it froze policy processes as counties implemented moratoria out of fear of prosecution.

Amador had avoided cultivation policies altogether for 16 years and banned dispensaries but, paradoxically, allowed possession, use, and “depositories” where marijuana bought from other places could be stored. As a lawyer said one county over, they legalized the milk but not the cow, effectively establishing a don’t ask-don’t tell policy in regards to cultivation and acquisition. This selective regulation implicitly acknowledged that these federally-illegal activities occurred but the county would not be implicated in them.

The cultivation moratorium provided the county with time to study policy options as federal and state judicial processes developed. The first step was assessing what levers of control the county currently had to police cultivation. Supervisors summoned the Undersheriff to advise on the status of remediation capacities available to deal with multi-patient, collective grows like the one that caused the Fiddletown complaint. After being asked if he could shut it down unilaterally, the Undersheriff testified he could not, in his opinion, without violating state law. Law enforcement has “discretion” to determine what amount of marijuana is “reasonable” for a patient to have, putting them in the unenviable position of discerning medical need but it was unlikely prosecution would succeed. Given the legal protections in place, collectives and cultivation were not a matter best dealt with through law enforcement but through other regulatory powers. Indeed, the Sheriff’s powers to search and seize had been curtailed in a 2006 case (*People v. Russell*) ruling that simply growing medical marijuana was not sufficient cause for a general search and seizure warrant.

He then expressed his belief that some collectives were providing cover for “cartels” to produce commercial-illegalized marijuana. This framing cast a criminalizing shade on collective gardens, marking them as inherently suspicious. The Supervisors theorized: if



regulations—and restrictive ones—weren't passed, criminal collectives from around the state would flood Amador. "What I don't want," one Supervisor said, "is people to get the message that Amador County is an easy mark. 'Let's set our co-op out there and I'll grow whatever the hell I want.' I want to send a message to those folks that it's not going to happen here." Regulatory action, then, would carry a message, beyond the scope of law, to illegalized undesirables, that their presence (and peculiar brand of economic development) would not be tolerated. In the shuffle, Supervisors noted regrettably, the "legitimate needs of patients...to get their medicine" would have to be subordinated.

The response from advocates was pointed. "You're trying to address criminal activity," one advocate said, by "looking at further regulating a legal activity to suppress a criminal activity. It's my contention that the kind of people you're dealing with [criminals] don't give a crap about your resolutions and your county code. The people that are going to worry about what you do and who's most affected are the people that are trying to follow the law." In short, illegal activity can't be regulated—it is already illegal. Restrictive regulations, another advocate argued, would "make a whole class of outlaws" out of people exercising their rights. The Undersheriff agreed, cautioning against criminalizing the population for the actions of a "haphazard" few. "There are a lot who are doing this right, who are in compliance," he said.

The Supervisors decided on land use regulation. Unlike law enforcement—which served as a kind of negative limit, a regulatory agent of last resort—land use regulations could positively regulate conduct *within* the limits policed by law enforcement (e.g. plant counts, garden locations). As the Planning Director stated, regulations don't determine legality but do regulate "the manner, the method, with which [outdoor cultivation] would be conducted."

Some medical marijuana advocates worried about the invasive power of code enforcement inspection and the nebulosity of their discretionary power (e.g. no jury review, inability to face accusers, expansive powers of inspectors that exceeded that of law enforcement). For this reason, one advocate suggested that law enforcement retain discretionary control over cultivation—at least they had to abide by legally-entrenched protocols, unlike county code enforcement that had latitude to assess "nuisance," "offensiveness" or other subjective criteria often without a warrant (which the Sheriff couldn't acquire easily after the 2006 *Russell* ruling). Actually-existing medical marijuana cultivation rights were broader under limited law enforcement than under inevitably more interventionist land use regulations.

Unmoved, Supervisors nonetheless had to justify regulatory action in terms of the promotion and protection of the "public health, safety, and welfare" of the community. To this effect, the Planning Department director, in language that would be directly included in the urgency ordinance cited "complaints" at "several locations," pointed to a series of problems including drifting odors, poor sanitary conditions, unauthorized camping, increased traffic, and concerns for safety—all posing a threat to public health, welfare, and safety. Next, the threats were shown to be "current and immediate" through the testimony of the Fiddletown complainant and a second resident concerned about the adverse effects of private marijuana growing on a local park. Having established governmental interest and public impact, regulatory action was presumably the public remediation required. This series—interest-

impact-remediation—is the frame of the private lawsuit, where the state becomes the aggrieved, the judge, and the enforcer. While the state could act arbitrarily against marijuana under prohibition, however, its civil status enabled political contestation over the state’s powers.

### **Defining Community: Whose public health, safety, and welfare?**

The county next had to decide on the content of outdoor cultivation policy. Following the example of neighboring El Dorado County, Supervisors decided on a model of a general ban with an exception carved-out for limited cultivation. The Supervisors authorized input-gathering workshops by the Land Use Committee with three primary constituencies: the Fiddletown complainant who came to represent property owners, government officials, and medical marijuana advocates. The latter formed a patient-cultivator rights network under the name Collective Patient Resources (CPR)–Amador. (CPR originated in neighboring Calaveras County.) In the weeks leading up to and during the county deliberations, the new CPR chapter grew as patients accepted the county’s call for “input” into its policy machine.

During the meetings patient-cultivators’ lay expertise suggested a flexible regulatory policy to meet the needs of patients. Supervisors instead instructed staff to draft a restrictive policy that would effectively ban collective gardens and require county residence or permission from property owners to grow. Rebuffed, patient-cultivators discovered that the Board had reauthorized the urgency moratorium without notifying the public (as legally required). Many were irate when they discovered the Fiddletown complainant *had* been notified, giving him the opportunity for an extensive deliberation with Supervisors about what regulations should be implemented—many of which Supervisors seconded. When patient-cultivators filed a complaint with the county’s Grand Jury, Supervisors retreated as they beheld a strengthening patient’s rights force.

This newfound voice came to its zenith at a Planning Commission meeting, where the contours of an alternative definition of “community” emerged as patients lined up to testify for the public record. Patient-cultivators derailed the restrictive outdoor cultivation policy recommended by Supervisors—a policy seen as a *fait accompli* prior to the meeting. In haltering words and bedraggled clothes, many took to the microphone for their first time to record their names as marijuana users and growers, to speak of their illnesses and pains, and to educate on the exigencies of poverty, self-provisioned medicine and collective growing.

This politicized, alternative community—a far cry from the public of offended property owners—mustered their expertise on marijuana in a pedagogical episode for Commissioners and themselves on political power. Their aim was two-fold: to increase the plant allowance (12) and patients per parcel (2) proposed by Supervisors. As they argued for higher plant numbers and for collective growing, they defined public health, safety and welfare in ways that spoke of poverty, illness, and criminality as perspectives that also had a claim to political voice. Testifiers rejected class-based understandings of two-person households, arguing instead that extended family and group households were required by those in poverty (thus making 2 patients per parcel untenable). They pointed out the importance of collectives to the sick, unskilled, and poor who weren’t able to self-provision physically or

because of housing insecurity. They refused the association of blight with collective economic organization, arguing instead collectives could improve land. They argued for the right to self-provision instead of the requirement to enter a costly and remote retail economy, which required a car, gas, and time many didn't have. They pointed to the importance of an alternative modality of medicine and self-provisioned healthcare that diverged from a professional-driven, commercial, and prescription-based system that, for the many testifiers dealing with chronic pain conditions, only provided life-numbing painkillers. Testifiers situated themselves as legitimate medical citizens who may be criminalized but were not criminals or a community blight.

The Planning Commission moved to create a draft policy that increased the amount of plants excepted from the ban from 12 plants to 72, from two patients per parcel to six, and from six plants per patient to twelve. After the meeting, as patients gathered in the hall, disbelief and ebullience was the mood.

The battle, however, was not over. The Supervisors had yet to review and approve the recommendations. The meeting, a month later, began civilly, with patient-cultivators thanking Supervisors for hearing them and urging them to pass the draft policy. Then the "public hearing" section closed. In what would become a humiliating parade of revisions, the Planning Commission's recommendations were dismantled, revised, and a new document formulated. First, one Supervisor cited the original Fiddletown complainant as foundational—this "non-growers concern about how growing affected them" had been lost and they'd now "crafted an ordinance...that is addressing the concerns of the growing public and not the concerns of the non-growing public." The complainant's claims were thus placed over the dozens who had participated in the meeting series. Another Supervisor, channeling his subjective power as a representative, agreed that the "people we don't see here are who we should be concerned about," thereby referencing what one advocate would call an "invisible constituency."

Having privileged the claims of non-growers above growers, the original crime-blight narrative resurfaced as Supervisors indexed an impacted and endangered community interest that superseded patient-cultivator's claims (and their claims to comprising a community interest). The capstone came when a Supervisor muttered a comment about medical marijuana cultivation being another form of cash-cropping. To suggest patient-cultivators were motivated by profit defined them as duplicitously criminal (California medical marijuana legislation does not permit profit) and to delegitimize claims to medical value and right. To patient-cultivators this represented a blatant repudiation of their participation over several months: the pall of criminality was being cast over them in order to abrogate their medical marijuana rights as defined in Proposition 215 according to Supervisor's particularistic perceptions.

Deflecting charges of arbitrariness, Supervisors and staff deployed precedential policy citations in order to triangulate their actions and patient-cultivator claims with a third, presumably objective coordinate. Precedential citations had been key at various points (El Dorado's moratorium and exception model; Kern County's 12-plant/2-patient limit per parcel). Now, staff pivoted again by citing Mendocino County's failed farmer permitting

program, which had just been terminated by federal authorities. The Mendocino citation was significant. First, it indexed Supervisors fear of federal intervention. Second, Mendocino was located in the conservative Central Valley or Sierra foothills (like El Dorado or Kern) but, rather, in the heart of the marijuana-producing “Emerald Triangle.” This political geography suggested that, even if Amador wanted to be more permissive, and accept demands by patient-cultivators, their hands were tied. Thus, county staff and Supervisors, following Mendocino, affirmed their original proposal: a low limit on plant numbers under which strict and extensive regulations would be activated. Supervisors directed staff to cut-and-paste Mendocino provisions into its final policy. In this cross-jurisdiction citational traffic, medical marijuana rights were consistently framed as needing restrictive regulation.

Following this meeting, an angry patient-cultivator voiced his outrage in the local paper, claimed his right to participate, and scolded Supervisors for misunderstanding their role as servants of the public, not the other way around. A second editorial denounced the “dog and pony show” of gathering public input and subsequently ignoring it. For advocates, the rift with officials toppled the fragile political unity patients had provisionally built, eventually leading CPR-Amador to become an organizational shell as people either accepted compliance or dropped from public view. If efforts by medical marijuana advocates to define and become the authorizing community of the state’s police power were unsuccessful, then what understanding of community stood in its place? The answer lies in the final county policy—a two-dimensional document that belied a contoured, particular definition of community.

### **Documenting Community: Property, Policy, and Plants**

The policy was filed within Section 19 of county code concerning zoning, designating it as a matter of territory (as opposed to “health and safety” or “public peace, morals and welfare,” e.g.). It establishes zoning power through Assembly Bill 2650, which reads that medical marijuana facilities could not be within 600 feet of a school. AB2650, however, only authorizes restrictions on retail outlets (not collective or personal gardens), something that Amador banned years prior. Regardless of this spurious state code citation, Amador policy then cited its general authority in the Health and Safety code to “protect the public health, safety and welfare of Amador County residents.” The protection of these interests was justified in now familiar terms: “risk of criminal activity” and threats “to the safety and property of nearby land owners.” With an incorrect citation and nebulous justification, the county claimed power to abrogate what it termed the “limited right” of patient-cultivators, who may “create or maintain a public nuisance.” This rendering of marijuana posited an unspoken subject against whom a nuisance is committed.

The document then bans outdoor cultivation and provides an exception for 24-plant limit per parcel (not the Supervisor’s original 12 or the Planning Commission’s 72), an action that still is unsettled in case law. The policy limits patients-per-parcel to two thereby eliminating collective grows and their putative criminomagnetic, disorderly and blight-producing effects and substantively dismissing the testimony of patient-cultivators on the need for collective grows.

Next, the policy details garden location: not within 600-feet of a “youth-oriented facility, a school, a park, or any church or residential treatment facility” and not in the line of sight of public roads. This action had two implications. First, the distance of marijuana to these sensitive sites implies a moral protection. In Supervisor’s deliberations (and the policy’s language), marijuana threatens the public’s moral comportment (they might be offended) and it tempts the public into moral corruption (they might steal, relapse, or experiment). Distance requirements position the county as moral arbiter and marijuana as corrupting. Second, by regulating marijuana’s visibility, the county also becomes the ultimate arbiter of landscape, ruling that marijuana is not—and cannot be *seen* as—part of the community’s aesthetic sensibility. These arbitrations establish county space as a particular aesthetic-moral space protected by distances. The county finds its authority for these actions, presumably, in its citation of AB 2650, which concerns distances of retail outlets to schools (and not to other sites such as churches and rehab facilities as Amador’s policy read). Surprisingly, the code did not cite AB 1300, which would have at least authorized zoning regulations of collective cultivation. Even this citation, however, would not have applied to self-provisioning patients or patients’ caregivers, thus disqualifying many of the spatial regulations Supervisors applied to patients.

Three of the remaining code stipulations concern the relation of medical marijuana to neighbors: distance from neighboring residential structures, screens to impede visibility, control of lights and smells. Each stipulation is based in the concern for protecting (some) neighbor’s enjoyment of their property and can be traced to quantified and recorded impacts the Fiddletown garden had on one neighbor (excluding the light regulation, which likely came from another complainant with a history of harassing his marijuana-growing single-female neighbor).

While these stipulations are common for nuisance laws generally, the point is that they require the judgment of what is offensive and acceptable, thereby positing a particular, non-growing property owner as the source of this judgment. The state must tautologically protect that community it defines as requiring protection. This circularity is hidden not only legislatively but administratively: if a complaint is made under nuisance laws, the county assumes the role of complainant in addition to its role as legislator, judge, and inspector-enforcer, roles that are dispersed through several agencies in the juridical process.

More than any other item, a final element clearly orders the rights of landowners over and above the rights of medical patients and those without property. It requires renters or lessees to acquire “written permission from the landowner...prior to planting” and provide it “to the county upon request.” This element requires patients to disclose medical status to landlords (cuing potential discrimination suits) and privileges the rights of landlords over tenants. Notably, the call for landlord protections emerged during the un-publicized Supervisor meeting attended only by the Fiddletown complainant, who worried about federal threats to seize a landlord’s property for a tenant’s medical marijuana-related activity. Although this threat was being applied almost exclusively to retail outlets and landlords were generally able to retain control of properties regardless of their tenants’ activities (POLSON 2013), the ominous and evolving federal offensive justified a concern for landlords at the expense of patient-cultivators in general, and the poorest in particular.

In this way, medical marijuana came to be governed through territory according to particularistic definitions of community that portrayed itself as general. Via the depoliticizing administrative rubric of territorial regulation, the government gave shape to formal rights according to a disciplinary logic of private property and community propriety. Territory was not merely a flat space through which universal rights spread; rather territory defined how, where, and to whom rights would spread. In actually-existing liberalism rights are an achievement and a process, not an inherent or abstract possession (LOSURDO 2011). Similarly, territorial policies are themselves only realized in territorial practice, which leads us back to Sammy, his permitted garden, and the outlaw community in which he resided.

## Ordering Marijuana: Code Enforcement, Informal Policing, and Illegal Territories

Sammy's house hadn't been vacant in the five years since he began growing marijuana. When there weren't plants in danger of being stolen, there were stashes of bud ready to be made into salve or stacks of cash buried in his yard. Yet, he wasn't simply attached to the house out of fear or because of the pain walking caused. Sammy's house, which he owned, was a crowning accomplishment of his life. He had occupied other domiciles—jail cells, a chicken coop, meth “fun houses”—but this house represented the newfound stability of his post-meth, post-criminal life. Sammy was determined to not end up in jail or addicted, again.

Over decades of meth production and poverty, Sammy's town (per capita income was \$14k in 2010) had developed an “outlaw” sense of community, with its own understandings of territory, police powers, propriety and social order. The town developed as a resort area in the 1920s but hadn't seen a new house built since the 1960s. In the 1970s, Sammy and his uncle had grown low-grade Colombian cannabis indica, switching to sativa in 1976 as it swept California's market. Despite some successful runs, meth was more lucrative. By the late 1970s the town's core industry and pastime became meth, gaining it a reputation as a rough place that, in terms of meth production, “made Oakland look small.” By the early 2000s, Sammy explained, all “the tweaks” had died, except for Sammy, his wife and a few others.

“Now it's pot growers here,” Sammy says, listing only two of his neighbors as non-growers —“probably.” Property values remained low but the neighborhood had “gotten better” with more property owners and almost two-thirds of residents having moved into their house in the past decade (with nearly the entire remainder having moved in during the 1970s, leaving the 1980s and 1990s as stagnant decades). Despite this, the outlaw traditions of community self-policing had carried over from meth days. Sammy explains, “Twenty miles to the cops this way, 20 miles to the cops that way....They've physically moved people from this community because they call the police. You don't call the police here, never in the history of this town. Just like in the old West. When I was younger they'd call me rather than the Sheriff. I'm just right around the corner, I'd call another friend and we'd handle business.” Calling the police instigated a domino effect: “If the cops come, they'll pick up Glen



because he's got a broken taillight. He'll go to jail 'cause he's got a warrant. It's a cascade effect. Don't bring the police out."

This informal community policing governed conflicts and protected community interests (insularity and protection) through territorial policing. Sammy recalls a deployment sent to evict a marijuana grow on nearby public lands. "It was a Mexican grow up there. We went up there, said you all gotta stop, pack your shit up, and go...get the fuck out of [the] county because it ruins it for us. They get caught, we get the press. Six hillbillies with shotguns, they want to be badass but what are they going to do? They had hoses pumping from the creek, thought they were out in God's Country. But the cops are going to find it—we found it on a deer hunt. We told them to get out and that the next visit wouldn't be so friendly. They said, 'who the fuck are you?' 'We're the hillbillies and you better get the fuck out of here'....We all had guns. They had guns. We were all on our toes and we told them, 'not tonight, not tomorrow, now.'"

As marijuana became medical and regulated, the local community became less subject to law enforcement. "Used to be I knew every cop by name. Now I don't know a one except the Undersheriff. I've stopped and helped him; he'd do the same for me," Sammy explains. A year prior, when a domestic dispute resulted in the police being called (a move unimaginable during the meth era), the officer poked his head over Sammy's fence. "'You're growing weed!'" the cop said but, to Sammy's amazement, subsequently left.

Code enforcement, however, did show up and a new cascade effect began. After the officer gave him compliance notices on his junk-strewn front-yard garden and ordered him to build a screened fence, she took a walk "over the hill and there was a kid growing 100-plus. A knucklehead. They got after him, pulled some of his plants."

The outdoor cultivation policy was presumably a passive, complaint-driven ordinance but after its passage, code enforcement sent out letters to Sammy and many of the growers in his town who had attended the public meetings and entered their name in public record. The letters instructed them to come into compliance or stop growing. Sammy (and his neighbors) began to get proactive visits from the code enforcer, who passed his house every day on her way to and from work. "Compliance" for many of his neighbors was impossible as their properties were too close to sensitive sites (a park, a school bus stop). Since they were barred by county regulations from growing collectively on other properties some left the county or turned to illegalized production. Sammy hosted the code enforcer episodically as she compounded demands: abate the junk car; clean up the yard; install locks; build an opaque fence in the front; build another fence around back. During a last visit in Summer 2013, Sammy was waiting for her to take pictures of his property from a neighbor's property and judge whether his garden was adequately shielded. Accustomed to the justice system, Sammy once replied to her sundry orders that he wanted a trial—to confront his accuser. She replied that when a complaint is made, the county becomes the complainant—the collective property owner and neighbor—and that's all he needed to know. In Sammy's impoverished town, the effort to regulate medical marijuana began to appear more like a roving effort to clean up improper forms of property occupation. This was not surprising given the town's location at the edge of a burgeoning wine country ruled over by five, politically powerful

“mucky-muck” families who had “been fucking with [Sammy’s] family since the ‘30s.” Despite episodic property purchases by investors, the town had not “flipped,” to the chagrin of many in the county. Sammy explains, “They want us out of here for sure. We used to be the asshole [of the county] and now we’re just the armpit.”

Sammy’s town adjusted to these new pressures through new territorial practices and informal policing practices. When Sammy started his county-approved garden he went to the house of the known local thieves and, he explains, “I told them: ‘Look, I’m going to grow this year. If I get ripped off I’m going to come kill you, beat you down, regardless of whether you did it or not. I’m going to beat you up.’ Never had a problem.” After growers met to discuss and agree on intra-community rules, one grower cultivated over the agreed limit and built two salient 16-foot fences. The community shut down the grow lest they “ruin it for everyone else” when “the whole neighborhood gets in shit... We told him, ‘you’re creating heat right here in your home town,’ so now he’s in [another county] doing his thing.” Many of the town’s youth had either left to grow elsewhere or stayed but established grows on lands far from the regularizing medical marijuana garden system of the town. Of the remaining larger grows in town, the old codes stood: don’t let government go their way. In this way, the town’s informal zoning, abatement and adjudication process shifted along with extra-local pressures.

While one might imagine a growing divide between “medical” and “commercial” growers, this was not the case. It was common practice among the town’s “compliant” medical growers to sell excess marijuana on the commercial market. Similarly, one of Sammy’s neighbors would broker marijuana to out-of-state buyers for the small town “up the hill.” “They’re doing big things,” Sammy’s neighbor explains. “They’ve got crops. It’s invisible, not on the radar yet. They’re all pot growers, even the old people, they’re all hip.” For years now, Sammy’s neighbors had served as sentinels for the town, calling them when police turned on the 17-mile road to their town. “They’ll fall six trees, right across the highway, gives people time to move. If they find out the Tinker’s are going to get busted [on the police radio] they move it to Ms. Smith’s house. They show up at Tinker’s and he’s doing nothing, sitting on the porch.” Now the police are “smart enough to bring chainsaws” when they travel to the town.

The porous connections between medical-regulated and commercial-outlaw growers suggests an underlying and alternative agreement on community interests that is informed by a common history of impoverishment and outlawry. “Public health,” for instance, was both physical and economic. One neighbor lived on \$700 of disability with his wife earning an equal amount in her service job. Medical marijuana reduced their intake of pharmaceutical, addictive painkillers, a major concern for the ex-addicts. Self-provisioning marijuana saved them hundreds of dollars a month since they didn’t shop at dispensaries. Further, the husband sells some of his marijuana to out-of-state buyers in order “to get along.” They consider this extra money a lifeline, as they don’t have to choose among basic necessities and, more importantly, they’re able to stabilize their lives and not slide into old addictions. Marijuana is not just “medical” in a strict sense of its bodily effects but its illegal sales are critical to well-being for this couple living in the economic situation they do. This sets Sammy’s community apart from even other medical marijuana advocates, he explains, who

dislike that people in his community commercially sell their “medical.” But, as Sammy’s friend explains, “Money will get you through times with no weed better than weed will get you through times with no money.”

The consonance between “commercial” and “medical” growers illuminates a definition of community that conceives of poverty and law-breaking as matters of community health, welfare and safety. The informal policing and territorial practices that emerge manage the precariousness implicit in poverty and illegality. While becoming state compliant affords some level of security *within* governmental strictures, informal policing maintains a security *from* government and dispossession or dislocation through seizure, arrest, code enforcement harassment, or the formal market’s push toward gentrification. The “public health, safety and welfare” of this quasi-legal community, then, is rooted in a particular class position, notion of well-being, and form of belonging that establishes its own police power and territoriality. This alternative jurisdiction exists through and beyond the “legal” and “compliant” jurisdictions of dominant political and class power. Perhaps more clearly in outlaw communities than in reified state governance, the link between community and police power are evident.

## Conclusion

Liberal rule of law projects itself as a formalistic system guided by universal ideals, which contrasts with particularistic and arbitrary wielding of law (SCHMITT 2004 [1932]). As I’ve argued, however, communitarian and particularistic sensibilities are smuggled through liberalism’s policing capacities. In the state’s police power a fuzzy and subjective community, in all its political particularity, bleeds into formal systems of universalizing law (cf. CHAKRABARTY 2000). The police power is a recalibrating mechanism that aligns law with community norms, abstract rights with lived territory, objectivist universalism with aesthetic-moral particularism. This recalibration process is dispersed through localities’ powers, among others, to regulate land use. Land use codes ostensibly regulate territory but mask the underlying political work—defining political community, order, and exclusion. As marijuana re-enters the public realm, struggles in land use debates over the definition of community wellbeing illustrate the new premise of marijuana’s social governance.

This article has shown the dynamics of this process in one county so as to highlight the linkages between the state’s territorializing technologies, local political economies, and the foundational contradictions of liberal governance. Amador’s outdoor cultivation policy disciplined marijuana into private property, its ordered propriety, and the broader social anxieties haunting discussions of the community’s wellbeing. In land use negotiations such as Amador’s, marijuana finds its new territorial and social contours in local and state jurisdictions across the United States.

While it might appear that marijuana is in a liminal relationship to the legal system, it is, rather, the legal order that finds itself in ongoing limbo as it seeks to recuperate the tattered ideals of justice, equality, liberty, freedom and property left in the drug war’s wake. This liminal period for marijuana and the law is a political period wherein the discontents of that which has been prohibited—the criminally excluded and the alternative definitions of

property, medicine, economy, community—are aired. In this liminal space, the otherwise insoluble elements of poverty, criminalization, and wellness momentarily mix with administrative efforts to foreclose, order, and imbue propriety in a yet-unsettled political future. The unseemly appearance of marijuana’s “criminals” in public life opens a rift along liberalism’s seamy underside. Just as the non-propriety, slaves, women, and others have forced US society into political redefinitions, so marijuana advocates are pushing liberal community to politically redefine, rectify and recuperate itself (FONER 1999; LOSURDO 2011). Prior to this recuperation—prior to the purification, cleansing, and absolution of marijuana’s criminalized moorings—this liminal moment is rife with political possibility.

The recuperation of liberal rule of law is enabled through the configuration of marijuana prohibition as “failed” policies and institutions, rooted in an anachronistic moralism, beyond which law needs to “progress.” Yet, one might ask, how does a liberal government based on freedom and equality produce just the opposite for 78 years of marijuana prohibition? A “progress” narrative not only absolves liberal rule of law of its prior production of inequality and suppression, but it also trumpets new civic regulations as an unqualified emergence of freedom, thus leaving unremarked the implicit moralities, aesthetics, proprieties and politics within civil law that craft and maintain historical inequalities. The rush to recuperation is forestalled—and the possibility for new political solutions enhanced—through the outlaws and activists described above as they make claims as rights-bearing citizens.

Like police power, citizenship is an ambivalent concept within liberal legal philosophy as it straddles communitarian belonging and universal law (cf. ROUSSEAU 1947 [1762]). The contours of citizenship are not (simply) realized in abstract law, however, but in the struggle over the elaboration of law and rights in citizenship practices. Once consigned to the criminal exterior of political community, marijuana patients and producers exercise a kind of “interstitial citizenship” (LEE 2010) that is ambivalently within and outside political community. Citizenship, for Lee, is a script read differently from this interstitial position, in a way that can challenge political exclusions and orderings through an “insurgent citizenship” (HOLSTON 2009). Re-read from the interstices, liberalism’s contradictions—like the shrouding of propertied privilege in civil-territorial administration—can be laid bare so long as insurgent citizens grapple with the disciplinary, often-covert pressure toward dominant forms of belonging. Interstitial citizenship carries the danger of becoming a “probationary citizenship,” (ZEDNER 2010), in which the citizenship of those at the law’s margins are cast in doubt and required to “requalify to enjoy full citizenship” (379). With marijuana, the requirement to “requalify” is placed not upon the legal system that criminalized entire populations for a substance it now legalizes but is, ironically, thrust back upon these same populations as they re-enter civic life. Given the justifiably anti-state libertarianism within marijuana advocacy, the momentum toward a property-based citizenship entailing the “right to be left alone” (MITCHELL 2005: 97; also ABRAHAM 1996) is powerful. This libertarian model renders citizenship asocial, much like private property renders itself an asocial possession outside social and governmental relations that protect and maintain it (BLOMLEY 2005). But, among the patients, producers and advocates in their medical collectives, political organizations, and criminalized communities,

there is a practice that defies a privatized asociality and speaks to a new form of social citizenship.

While ballot measures and legislative landmarks make headlines, it is in dissimulative territorial powers that the contoured definitions of marijuana and political community are being defined, the contradictions of ongoing prohibition are “fixed,” and systems of criminalization, exclusion, and order are reformulated. The journey from outlaw to citizen, much like Sammy’s sojourns at this article’s opening, illuminate possibilities, politics, and pressures that otherwise lie hidden in the shadowy geographies of the state and its beyond.

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