

In 2021, recreational marijuana officially became legal in New York. Among its various provisions, this legislation directs the newly created Cannabis Control Board to ensure that at least 50 percent of the cannabis business licenses it approves go to social equity applicants. This group includes people from marginalized communities negatively impacted by marijuana arrests (the Black and Latino communities, primarily), women and minority business owners, struggling farmers, and disabled veterans.

Social equity provisions like these are increasingly being adopted by states and local communities across the nation. Legislation that prioritizes the involvement of Black and Brown people in the cannabis industry can help serve the cause of redistributive justice. Attempts at finding some sort of economic redress for those who had been enslaved began in January of 1865, with Union General William T. Sherman's Special Field Order 15, which promised plots of land, much of it confiscated from Southern plantations, to freed slaves. The edict soon became known as "40 acres and a mule." Not surprisingly, it was reversed later that year by the Southern-sympathizing Andrew Johnson, who had been elevated to the presidency when Lincoln was assassinated. A century on, the so-called "war on drugs" brought more devastation to Black and Brown communities. But perhaps now, cannabis, long unfairly portrayed as leading to "reefer madness," might bring some economic healing after generations of harm.

Oakland Leads the Way

One individual who helped create a robust social equity initiative, in Oakland, California, is Ramon Garcia. He is a founding member of the San Francisco Cannabis Equity Working Group (SFCEWG), which provides guidance and resources to those starting to navigate emerging cannabis equity programs. Garcia learned about social engagement from his parents, who were activists in the Bronx during the civil rights movement.

Garcia has stressed how necessary social equity measures are to developing the cannabis industry in economically oppressed communities. "How are you going to create something equitable from a system that is inequitable?" he asks rhetorically during our Zoom conversation. "We're trying to recreate policies that are not endemic with those systemic racist undertones that have been in this the whole time. The only way to do that is to include the community, include the people who are impacted by those policies."



Standing up for social equity: members of the San Francisco Cannabis Equity Working Group (Nina Parks is sixth from left, in front with blue jacket; Ramon Garcia is seventh from right, in black T-shirt and glasses). Photo courtesy of Nina Parks

Garcia sees the social equity initiative adopted by the Oakland city council in 2017 (the first such program in the nation) as a step in the right direction, not an endpoint. “The equity conversation was about providing that structure and system within all of our structures,” he says. “But cannabis was the place to start because we actually had data back from these equity reports and had admissions from the federal and local governments that [the drug war] targeted our communities ... okay, then there needs to be some kind of reinvestment back into these damaged communities.”

Oakland, especially, has suffered over the decades. “Oakland historically was a center for the war on drugs,” Garcia explains. “The people were ready for social equity because the impacts were so great, like West Oakland was traditionally 70 percent, 80 percent Black-owned, East Oakland I think was 60-something-percent Black-owned. Through those 30, 40, 50 years of the war on drugs, all of that was lost.”

The stated goal of Oakland’s Cannabis Equity Program is to “address disparities in the cannabis industry by prioritizing victims of the war on drugs, and by minimizing barriers of entry into the industry.” The city is issuing permits for cannabis cultivators, dispensary owners, manufacturers,

distributors, and transport professionals. Fully half of all of these permits are reserved for equity applicants (determined by income level, residential location, and previous cannabis-related encounters with the legal system). Assistance is offered to equity applicants in various forms, including no-interest loans funded by cannabis tax revenue, business coaching modeled after programs organized by micro-lenders and equity investors, technical instruction through workshops and online training programs, and free legal assistance regarding anything related to starting a plant-touching business.

Nina Parks is also a founding member of SFCEWG, and an activist (she joined us on Zoom). She has formed a new organization, the Original Equity Group (OEG), whose goal is to make sure that social equity applicants to San Francisco's program have all the support they need to achieve their entrepreneurial goals. Garcia, Parks, and their associates have consulted with citizens and interested officials in San Jose, Sacramento, and Los Angeles, spreading the message about the value of social equity initiatives.

"I think it's very important for people to remember that the strategy around the war on drugs was to break up people's ability to community organize," says Parks. "That's why community organizing is always going to be important ... the big thing about the equity programs is that we're trying to empower individuals to take ownership of their agency."

The Weaponization of Marijuana

Terry Gilbert has spent the past five decades of his life working in Cleveland as a civil rights attorney. He uses the law as a vehicle for social change, as he describes in his newly published autobiography, *Trying Times: A Lawyer's 50-Year Struggle Fighting for Rights in a World of Wrongs*. Gilbert shared his thoughts with me over Zoom.

"The war on drugs has been a complete disaster on many levels, impacting people of color disproportionately," he says, summarizing five decades of history. "The collateral consequences range from mass incarceration, aggressive and military policing in marginalized communities, an epidemic of pretextual traffic stops, SWAT raids, brutal excessive force, and police shooting deaths. These policies, endorsed by courts, have devastated communities and done little to keep them safe."

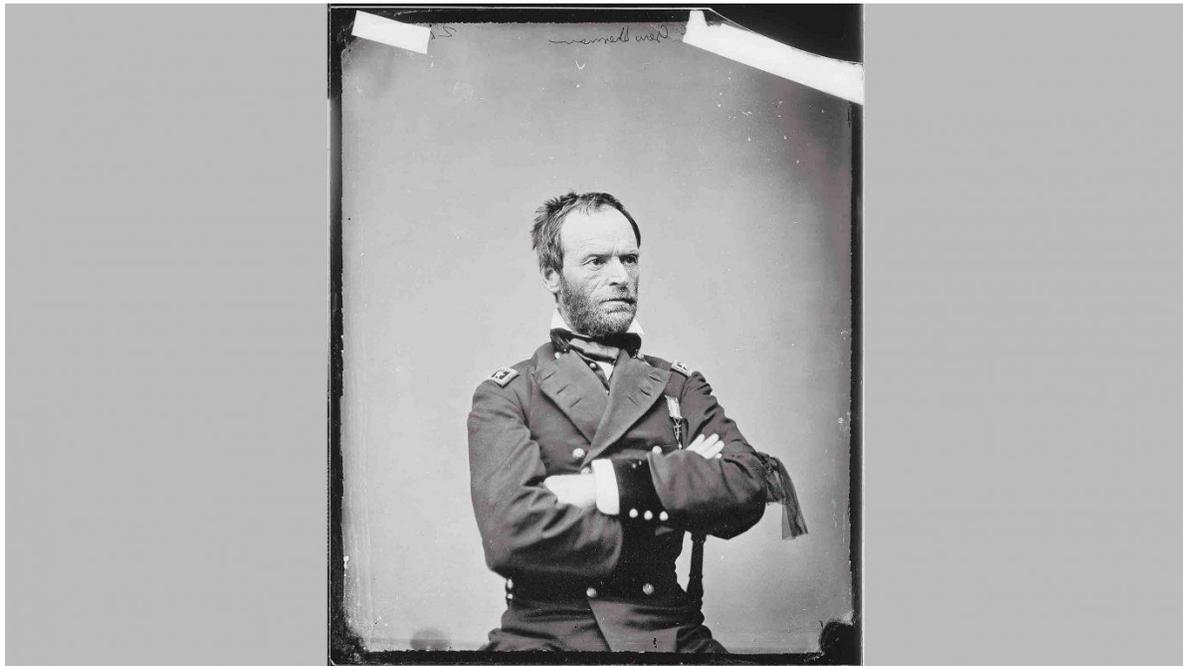
Gilbert singles out the government's quest to stigmatize and criminalize marijuana by conflating it with much harder drugs as equally damaging. "It was an oppressive tool ... it was a tool of the war on drugs to destroy our communities, to give access to basically breaking down generational wealth and controlling what our communities were involved in."

This is not opinion. The truth about the war on drugs was disclosed by former Nixon administration domestic policy chief John Ehrlichman. In a 1994 interview published in *Harper's* magazine in 2016, Ehrlichman explained Tricky Dick's decision to start a drug war: "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those

communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”

Nixon’s politically cynical campaign was only the opening salvo in the drug war. The next significant move was made by the Reagan administration, which sought to establish its conservative “law and order” credentials through the 1986 Anti-Drug Abuse Act. This racially charged law mandated draconian prison sentences for crack cocaine possession while largely exempting the pricier powdered cocaine favored by wealthier populations from these edicts. It also included longer mandatory minimum sentences for selling or possessing marijuana, which increased incarceration rates in impoverished communities even further.

Not to be outdone by Republicans, in 1994 President Bill Clinton and his Democratic allies in Congress passed the 1994 Crime Bill, hyperbolically referred to as the Violent Crime Control and Law Enforcement Act. Cowritten by Senator Joe Biden, this bill was the most sweeping and punitive anti-drug legislation ever passed. It included such goodies as truth-in-sentencing, the federal three-strikes rule, 100,000 more cops on American streets, and funding support for states willing to build more prisons to mass incarcerate marijuana users and other threats to public safety. Between 1995 and 2005, with the Crime Bill taking effect, the U.S. prison population increased by 40 percent. People of color arrested for marijuana possession were responsible for a sizeable portion of that increase. Biden, unlike many politicians, has admitted some of his mistakes, noting particularly in a 2019 speech that one of the problems with the Crime Bill was the disparate treatment of people who used crack as opposed to powdered cocaine: “We were told by the experts that ‘crack, you never go back,’ that the two were somehow fundamentally different. It’s not. But it’s trapped an entire generation.”



Union General William Tecumseh Sherman. Economic justice is still a long time coming. Matthew Brady / National Archives

Criminal prosecutions for marijuana possession are hardly a thing of the past. Between 2010 and 2018, more than six million Americans were arrested for marijuana-related crimes, with simple possession accounting for 90 percent of the total. Black Americans are still 3.64 times more likely to be arrested for marijuana possession than whites, despite no disparities in usage levels between the two groups.

This selective enforcement reveals the self-perpetuating reality of systemic racism. It also helps create the rationale for social equity programs in 2021.

Possible Pitfalls for the Social Equity Movement

Social equity initiatives can work if they're comprehensive in scope and implemented with commitment. But if they're not, they may fail to reverse historical trends.

This is what happened in Massachusetts, which sought to be a pioneer in social equity when it launched its program, in 2018. A 2019 *Boston Globe* article detailed some of the reasons Massachusetts has struggled to meet its social equity goals: most Massachusetts cities haven't fully promoted or publicized social equity; capital has been hard to come by, as banks remain reluctant to loan to marijuana businesspeople; and venture capital investments rarely go to Black-owned start-ups in the cannabis or any industry. The final approval process has been slow and costly, even when applicants seem to meet all program qualifications. The state government hasn't allocated adequate funding for social equity, and attempts to increase financial support have failed to gain legislative traction.

These factors mirror issues that Black and Brown entrepreneurs interested in cannabis have faced nationwide, with the lack of access to capital being especially acute. While Massachusetts has picked up the pace of social equity approvals recently, overall it has failed to thoroughly address the systemic issues that have kept Black entrepreneurs out of the industry since the beginning.

Another potential pitfall is corporate domination. With profit levels in cannabis projected to surpass \$43 billion by 2025, big players are moving fast to gain control of the action wherever they can.

Orville Vernon Burton is a Clemson University historian and co-author of the new book *Justice Deferred: Race and the Supreme Court*, which, among other subjects, charts how discriminatory drug laws have hurt the Black community. While he recognizes the possibilities offered by social equity initiatives, calling them "a wonderful retribution," Burton is concerned that a corporate takeover of cannabis may be difficult to prevent. "The problem is now you have these big corporations, they are even taking over farms," he says. "Money is one of the problems with America. Small people with some investment can do it, but eventually these huge farms and huge investments take control."

Civil rights attorney Gilbert also worries about sharp business practices from corporate operators. "We have seen in the minority construction contract bidding process that investors and white established companies use minorities to get contracts, but the minorities have no control over the operation," he says. "This could be what happens with marijuana." He also cautions

activists to be sure they press for carefully designed social equity programs to avoid corporate domination. “The devil is in the details,” he proclaims. “The social equity provisions need to be spelled out in detail so the benefits truly go to local community ownership, with tax revenues coming back into the communities, not into a shared fund.”

Transforming Community Health Through Cannabis

To make the industry work for entrepreneurs and members of marginalized communities alike, Parks and Garcia recommend a more inclusive, health-oriented marketing strategy.

Parks decries the overall de-emphasis on the therapeutic benefits of cannabis, which she sees as fundamental to its appeal. “All use is medicinal use, no matter if they call it adult-use or whatever, and it does everyone a disservice by calling it recreational,” she says. “All use of any drug is medicinal because there’s something that is ailing within the human spirit, within the psyche, or within the body that’s been calling for some kind of supplement.”

Garcia adds, “What you need to do is start marketing and providing education to the folks that are going to want to put a little tincture in their food, or want a gummy or a topical or a bath salt, or all these different things that allow them to relieve that pain.”

It is indeed ironic that an economic renaissance in the Black community may be sparked by the growth, manufacture, and sale of a substance that was weaponized to severely limit Black mobility and achievement. It is a further irony that a healing substance demonized as dangerous and addictive may prove its medicinal value in the very marginalized communities that its demonization damaged the most.



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