

Medicinal cannabis law in the USA: history, movements, trends, and countertrends

Legislação sobre cannabis medicinal nos Estados Unidos: histórico, movimentos, tendências e contra-tendências

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ABSTRACT

BACKGROUND AND OBJECTIVES: In recent decades, the United States (USA), after banning the use, possession, and commerce of the *CS* plant for medicinal and social purposes for nearly a century, has embarked on law reform processes and movements at the state level to legalize the plant, forging regulated markets to support these changes. The present study's objective was to describe the history of prohibition and eventual legalization, observing the social, political, and economic components that contributed to this paradigm shift.

CONTENTS: Qualitative research, using observation, literature review, and analysis of practical experience in advocacy processes, law reform, and building regulated markets to replace prohibition. The historical, social, and economic processes that made up the end of the prohibition of *CS* and its later regulation as a substance for medicinal and social use were described.

CONCLUSION: *CS* during the last century has been labeled as a drug with no medicinal potential for purely political and non-scientific reasons. A number of civil society movements in the US led to the legalization of *CS* due to its therapeutic properties. These movements have succeeded in redefining the plant as a medicine rather than a drug, while also taking into account the high social and economic costs of criminalizing it.

Keywords: Cannabis, Law Enforcement, Public Policy.

RESUMO

JUSTIFICATIVA E OBJETIVOS: Nas últimas décadas, os Estados Unidos (EUA), depois de proibir o uso, a posse e a comercialização da planta *CS* para fins medicinais e sociais por quase um século, embarcou em processos e movimentos de reforma de lei em nível estadual para legalizar a planta, forjando mercados regulamentados para amparar essas mudanças. O objetivo foi descrever o histórico da proibição e da eventual legalização, observando os componentes sociais, políticos e econômicos que contribuíram para essa mudança de paradigma.

CONTEÚDO: Utilizou-se de revisão de literatura, amparada por análise de experiência prática em processos de “advocacy” e construção de mercados regulamentados em substituição a proibição. Foram descritos os processos históricos, sociais e econômicos que compuseram o fim da proibição da *CS* e sua eventual regulamentação como substância para uso medicinal e social nos EUA.

CONCLUSÃO: Durante o último século, a *CS* foi rotulada como droga sem potencial medicinal por motivos puramente políticos e não científicos. Uma série de movimentos da sociedade civil nos EUA levou à legalização da *CS* devido a suas propriedades terapêuticas. Esses movimentos tiveram êxito ao redefinirem a planta como um remédio em vez de uma droga, levando em conta também o alto custo social e econômico de sua criminalização.

Descritores: Aplicação da Lei, Cannabis, Política Pública.

INTRODUCTION

The Cannabis sativa (*CS*) plant permeates the history of American society since its colonial era¹, when the planting of its industrial hemp variety was not only encouraged, but required by some colonies, such as Virginia, for the production of rope, cloth for clothing, and ship sails. Presidents such as George Washington and Thomas Jefferson not only planted hemp on their estates but also promoted the practice widely².

At that time, using industrial hemp or even the traditional variation of the plant with other cannabinoids, such as tetrahydrocannabinol (THC), for medicinal purposes was not yet common in the United States (US), but already by the end of the 11th century, *CS* became a regular ingredient in many medicines offered in US pharmacies³.

However, in the years 1900 and 1925, due to the great depression, the war with Mexico in 1910, and the huge wave of immigration of Mexicans to the US, society's perception to-

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HIGHLIGHTS

- History of *CS* prohibition in the United States.
- History of legalization and regulation in the United States.
- Description of trends and counter-trends in the new US economy.

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wards CS as a therapeutic agent or medicine changed. Due to the common social (formerly called recreational) use by this immigrant population, and the fear of mass unemployment by the USA citizens, the substance ended up being associated with xenophobic and prejudiced feelings, generating a political movement focused on banning the plant as a whole (including industrial hemp).

But the discrimination was not exclusive to Latinos. It was and still is perversely to black people as well. The “War on Drugs”, as it was called, was a racist political tool to target black and brown people. Harry Anslinger, then director of the Federal Bureau of Narcotics coordinated a successful campaign to spread fallacies such as “people who use cannabis commit crimes”, “people who make jazz and use cannabis have an evil character”; so much so that the FBI investigated the famous musician Louis Armstrong for his proclaimed medicinal use.

By 1931, 29 states had already banned CS. The use of cannabis as medicine greatly decreased in this period also due to the increasing popularity of synthetics and opium-derived drugs⁴. In 1937, a tax measure at the federal level, the Marijuana Tax Act of 1937, for the first time, through very high taxation, effectively banned the sale and possession of CS. The Marijuana Tax Act of 1937 was the measure that drove this trend that in the following decades characterized a series of laws and public policies focused on making CS an illicit drug, erasing for nearly 100 years from history its potential and therapeutic properties, and eventually preventing any possibility of scientific research in the area.

Between 1952 and 1956, laws called the Boggs Act and the Narcotics Control Act, respectively, began to impose severe criminal sentences for the possession of a variety of substances, including CS. In 1970, the US Congress passed the Controlled Substances Act, which created categories of different substances or drugs, as they were labeled, according to a totally unscientific and arbitrary assessment of their medicinal properties as well as their potential of abuse by the users of each substance. Category 1 drugs, which include CS, was characterized as agents with no medicinal application, and with a high level of abuse potential⁵.

However, while governments and these eminent laws sought by all means to annihilate the medicinal properties in American memory and public opinion, other forces were at work in society. In 1972, the Shafer commission, a scientific study body created by President Nixon, recommended that the possession and use of CS no longer be considered a crime, and that it be removed from category 1 of the Controlled Substances Act, a recommendation that was rejected by the authorities, who kept (and still keep) the plant in this definition of an illegal drug with no medicinal properties at the federal level.

CONTENTS

The beginning of the end of prohibition

The Vietnam War was the focus of social debate in the 1970s, and the counter-culture movement that grew out of protests by young people against that war was symbolized by an entire

generation that consumed CS and, through observation and experience, did not see that same harmful and dangerous effect dictated by the authorities. Starting with an incident in Ann Arbor, Michigan, in 1971, where student leader John Sinclair was sentenced to 10 years in prison for possession of two cigarettes of CS, society began to question these laws, first at the municipal level, then at the state level. Through advocacy, protests, public education, and plebiscites, many localities began to decriminalize the plant and its use and possession. In the 1970s, several states, such as Oregon, Alaska, and Maine followed this trend.

At this time, the first advocacy group focused on reforming the unjust laws governing CS, called the National Organization for the Reform of Marijuana Laws (NORML), emerged. NORML emerged as a force for change at the municipal and state levels, creating opportunities for activism, education, and transformation of these outdated laws. Other groups came later, such as Marijuana Policy Project, based in California and Americans for Safe Access and Drug Policy Alliance, both in Washington, DC. Drawing on the US constitutionalist legal concept of the autonomy of the states of the Union to change their local laws without the permission of the federal government, these groups joined with civil society used education to generate a change in public opinion about the plant, while using legal artifacts like plebiscites within the concept of state autonomy to change municipal laws as a way to leverage these processes. Decriminalizing was the first step, followed later by state-by-state regulations.

In the 1990s, in the midst of the AIDS crisis, following this trend, California passed the 1996 proposition 215, which provided access to CS for HIV-AIDS and cancer patients, creating the first state-level medicinal market in the US. Other states followed starting in 1998: Oregon, Washington, Nevada, and Alaska. In 1999 it was the turn of the state of Maine. And in 2000 Colorado and Hawaii. In the years that followed, a true domino effect caused several other states to follow the same trend, and medicinal use of the plant is now permitted in 38 states⁶.

In the 2000s, in addition to this wave of medicinal regulation that took the US by storm, activists specifically focused on re-introducing the cultivation and use of industrial hemp in the US were able to advance that cause through the Hemp Farm Bill of 2005, through a series of litigation actions that culminated in the regulation of industrial hemp by the Farm Bill of 2018.

Hemp extract imported from Europe had been used as a source of raw material to obtain cannabidiol (CBD), which has been used to manufacture medicines on American soil for years. But the Americans wanted to grow hemp. This strategic decision to distinguish, for political purposes, industrial hemp from traditional CS, which by convention offers more than the 0.3% THC limit contained in hemp, although unscientific, was very successful because it allowed advances in industrial hemp law before society could even advance the laws on traditional CS, or rather the whole plant, like all its other cannabinoids. In any case, to science, hemp is a simple variation of the same plant, CS.

After each each year going by, officials saw more economic activity being generated by this new economy. In 2021, the legal cannabis industry totaled \$25 billion in sales. The expectation by the end of 2022 is \$33 billion, an annual increase of 32%, a growth percentage that has remained constant annually since legalization. The industry today has already created 520,000 jobs, and this number is expected to reach 800,000 by 2026¹¹. Above all, regulated markets generate wealth for the public repository in the form of taxation. According to a study by New Frontier Data, federal legislation would result in \$128.8 billion in taxes, and 1.6 million new jobs¹².

Representing the burgeoning cannabis industry, while bringing this economic data, activists were able to regulate full adult use in twenty states, a number that is likely to expand further, especially in states where a medicinal market already exists and where activists and society are organizing to change the laws.

Trends and countertrends

This complex legal scenario in the US is likely to remain the same for some years to come. Although the MORE Act, a bill proposing to legalize the plant at the federal level has passed the House of Representatives, and has the support of the industry at large, it is unlikely to pass the current Senate. Meanwhile, the global trend is for other countries to continue to evolve and reform their laws regarding CS, as the law reform in the US has caused other societies to question their laws due to the huge lack of access to medical cannabis for patients with a wide variety of illnesses.

The trend of existing medical markets in the US continues to expand their reach and implement adult-use models amidst federal illegality. Just as it was with the regulation of alcohol at the time of the great depression, it is important to highlight that not all states will regulate the use, be it medicinal or adult. States will follow the same concept of state autonomy in determining whether or not they want to expand or implement new regulatory systems to govern its use.

Regarding the industry, which was the main catalyst in changing the law at the state level, it is known that the large cannabis companies today do not want federal regulation because it would mean that traditional industries such as food and pharmaceuticals would swallow them up overnight.

Currently, these larger cannabis companies pay lobbyists to advance their own corporate interests, not those of the legalization cause. This characterizes the movement's biggest counter-trend: the industry's own actions to sabotage federal legalization.

The greatest economic benefit of federal legalization for both large and small and medium-sized businesses would be access to banking services and investment capital, both of which are still very limited. In addition, fairer taxation on their activities would allow for greater investments in their companies and employees. However, the economic trend is that a 30-40% annual growth in cannabis sales will continue without the industry having access to banking services, i.e. that it will continue to operate on a cash basis.

As far as what concerns the patients, access to research would be the greatest benefit of federal regulation, allowing one to

embark on a new era of cannabis medicine, that of personalized medicine, in which, each individual, with his or her physician, could assess the unique needs of his or her endocannabinoid system, and determine which strains of plant and dose would be best suited for his or her specific condition. Tests that determine these specific deficiencies and needs for certain cannabinoids are already being tested in the marketplace.

One cannot forget the socioeconomic impact caused by the incarceration of people arrested daily for possession, purchase, or sale under federal illegality, the vast majority of whom are black and Latino individuals. Even though regulated states are not focused on arresting users and patients, 660,000 people are still arrested each year for possession of CS in the US. The trend of historical reparations will continue to dominate the law reform debates because, as it was observed and proven, prohibition and the war on drugs itself is a war based on racist precepts. Ironically, the legalization movement began with counties decriminalizing use and possession, yet to this day, even with multi-billion dollar markets in place, CS has yet to be decriminalized at a federal level.

CONCLUSION

CS, for the past century, has been labeled as a drug with no medical potential for purely political rather than scientific reasons. A series of civil society movements in the US led to its legalization due to its therapeutic properties. These movements succeeded in redefining the plant as a medicine rather than a drug, also considering the high social and economic cost of its criminalization.

AUTHOR CONTRIBUTION

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Writing - Preparation of the Original

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