

UNIVERSIDADE DE SÃO PAULO  
INSTITUTO DE RELAÇÕES INTERNACIONAIS

**NATÁLIA DA SILVA NUNES**

**Desecuritization of cannabis in the United States:  
drug policy reform from the ground-up**

São Paulo  
2023

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drug policy reform from the ground-up**

Dessecuritização da cannabis nos Estados Unidos:  
Reforma da política de drogas de baixo para cima

**Corrected Version  
Versão Corrigida**

Ph.D. Dissertation presented to the International Relations Program in the Institute of International Relations at the University of São Paulo in partial fulfillment of the requirements for the degree of Doctor of Science.

Supervisor: Prof. Dr. Rafael Antonio Duarte Villa

São Paulo  
2023

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Catálogo na publicação  
Seção Técnica de Biblioteca  
Instituto de Relações Internacionais da Universidade de São Paulo

Nunes, Natália da Silva

Desecuritization of cannabis in the United States: drug policy reform from the ground-up / Natália da Silva Nunes ; orientador: Rafael Antonio Duarte Villa. -- São Paulo, 2023.

203 p.

Tese (Doutorado) – Instituto de Relações Internacionais. Universidade de São Paulo, São Paulo, 2023.

1. Política de drogas 2. Estados Unidos 3. Cannabis 4. Proibicionismo 5. Teoria da Dessecuritização I. Villa, Rafael Antonio Duarte, orient. II. Título.

CDD – 363.4

Responsável: Maria Marta Nascimento - CRB-8/6200

Para o meu irmão Estêvão, *in memoriam*, que tanto se orgulhou de mim por estar nesse programa de doutorado. O que quer que eu me torne, sempre serei sua irmã.

## ACKNOWLEDGMENTS

A PhD is challenging, going through one during a global pandemic is extremely challenging. Losing my brother due to COVID-19 made everything feel impossible. He was so proud of me for entering a doctoral program at the University of São Paulo and I wish he was here to see me finishing it. Notwithstanding the hardship, when people around you believe wholeheartedly in you and in your potential, you feel supported enough to put your strength in motion. I would like to thank these people:

First and foremost, I would like to thank my mother, Maria Nilse Nunes. I would have never had a chance to pursue my academic training away from home without your support and hard work to raise me and my brother by yourself. This achievement is as much as mine as it is yours. Thank you.

Immense gratitude to my advisor, professor Rafael Antonio Duarte Villa. I deeply appreciate your acceptance of my ideas and taking me on as your advisee. Since day one you gifted me with care and wisdom. You also made sure I was well and safe in a big city, far away from my family and at a demanding work place while at the University of São Paulo. Thank you so much for your support during the easy but specially during the difficult times.

Thank you, professor Alex Wendt, for being a supportive mentor, for believing in me and in my project when I didn't, and for convincing me that I was, in fact, smart enough to do this. You have helped me beyond the call of duty and it has been a great honor to be under your guidance.

The University of São Paulo always sounded like a distant dream. Once there, the dream became an amazing reality. I had access to the best academic resources and I valued every minute I spent there. I would like to extend my appreciation to the “Núcleo de Pesquisa em Relações Internacionais” (NUPRI) and its brilliant researchers that I had the honor to call colleagues. Special thanks to professor Janina Onuki for being so supportive, kind and an inspiration as a woman in the International Relations field. I also appreciate all my professors and all graduate office staff for their assistance, especially Cris (with her coffee and snacks full of love).

A big and sincere acknowledgement goes out to THE Ohio State University, Moritz College of Law, the Political Science Department and the Drug Enforcement and Policy Center in Columbus, Ohio. I appreciate the warm welcome to an environment that stimulates both learning and companionship. I received exceptional training from Professors Alex Kreit, Alex Wendt, Douglas Berman and Vincene Verdun. My six months in the USA as a Visiting Scholar were way better than I could ever wish both personally and professionally, my experience there was life-changing and I'll be forever grateful. Go Bucks!

Thank you to my beloved friend Clarissa, for being a source of inspiration and helping me throughout every challenge life imposes. I am also so grateful to the friends that were present during the all these years and helped me with this PhD program at some point or another, from emotional support to sharing their spaces so I could get some work done, to name a few: Orion (gratitude for the editing and improvements), Arthur, Daniel, Elze Rodrigues, Karina Monteiro, Maria Olívia, Pedro Frazão and Pereira. Our weekly meetings, aka orkontro, always felt like a home away from home. A very special note of gratitude to Claudinha, Laura, Mariana and Miriam, thank you for going through this rollercoaster with me. I feel so lucky to have shared the countless hours of classes and seminars with you.

Additionally, my heartfelt thanks are also extended to my psychiatrist and therapists Dr. Marcial Moreira, Patricia Gomes and Fabiana Lira, for the medical care and for being constant champions of my success.

Finally, Cat Packer, I would like to thank you for your support and love. Your work ethic, sustained excellence and persistent authenticity have been an inspiration since I've met you.

## ABSTRACT

NUNES, N. S. Desecuritization of cannabis in the United States: drug policy reform from the ground-up. Dissertation – International Relations Institute, University of São Paulo, São Paulo, 2023.

This PhD dissertation examines drug policies in the United States and explores its dichotomy between domestic and federal policies. Although marijuana is legal under some states' laws, it remains illegal under federal law — creating all sorts of hurdles, from taxing to banking to interstate commerce. The US has been the driving force behind the establishment of the international drug control regime and has historically been its main enforcer. However, as the failures of the punitive and prohibitive drug control paradigm, both nationally and internationally, became increasingly acute, the consensus around the model began to break. Popular support for reforms led to changes in the scenario, legislation painted the US map in green for recreational use of marijuana in now more than twenty states. To understand this process, we use the international security studies theory of Securitization and Desecuritization. This approach shows how discourse and the concept of threats shape security responses, in this case, how the states have dealt with drug issues. I ask: how the prohibition regime leader is now rearticulating the drug issue from securitization to Desecuritization? How is this process taking place? Who are the actors involved? What is the impact of the domestic policies on the federal ones? I explore in detail two case-studies: the state of California and the state of Texas, comparing how the drug issue is perceived and their laws were made. My findings show that the securitization process of drugs in the US was led by the government, top-down; while the Desecuritization process was mostly performed by civil society, from the ground-up. Moreover, I found that beyond American federalism and bipartisan system, marijuana reforms are possible due to public support, access to ballot initiatives and local leadership.

**Keywords:** Drug Policy; United States; Cannabis Reform; Prohibitionism; Desecuritization Theory.

## RESUMO

NUNES, N. S. Dessecuritização da cannabis nos Estados Unidos: Reforma da política de Drogas de baixo para cima. Tese de doutorado – Instituto de Relações Internacionais, Universidade de São Paulo, São Paulo, 2023.

Esta dissertação de doutorado examina as políticas de drogas nos Estados Unidos e explora a dicotomia entre políticas domésticas e federais. Embora a maconha seja legal de acordo com as leis de alguns estados, ela permanece ilegal sob a lei federal – criando todos os tipos de obstáculos, de impostos a bancos e comércio interestadual. Os EUA têm sido a força motriz por trás do estabelecimento do regime internacional de controle de drogas e, historicamente, seu principal executor. No entanto, à medida que as falhas do paradigma punitivo e proibitivo de controle de drogas, tanto nacional quanto internacionalmente, se tornaram cada vez mais agudas, o consenso em torno do modelo começou a se romper. O apoio popular às reformas levou às mudanças no cenário, a legislação pintou de verde o mapa dos EUA para o uso recreativo da maconha em mais de vinte estados. Para entender esse processo, utilizo as teorias dos estudos internacionais de segurança sobre securitização e dessecuritização. Esta abordagem mostra como o discurso e o conceito de ameaças moldam as respostas de segurança, neste caso, como os estados têm lidado com questões de drogas. Eu pergunto: como o líder do regime de proibição está agora rearticulando a questão das drogas da securitização para a dessecuritização? Como está ocorrendo esse processo? Quem são os atores envolvidos? Qual o impacto das políticas domésticas sobre as federais? Exploro em detalhes dois estudos de caso: o estado da Califórnia e o estado do Texas, comparando como a questão das drogas é percebida e suas leis foram feitas. Minhas descobertas mostram que o processo de securitização de drogas nos EUA foi liderado pelo governo, de cima para baixo; enquanto o processo de dessecuritização foi realizado principalmente pela sociedade civil, de baixo para cima. Além disso, descobri que além do federalismo americano e do sistema bipartidário, as reformas sobre a maconha são possíveis devido ao apoio público, acesso a iniciativas eleitorais e liderança local.

**Palavras-chave:** Política de Drogas; Estados Unidos; Cannabis; Proibicionismo; Teoria da Dessecuritização



This study was financed in part by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior - Brasil (CAPES) - Finance Code 001; the doctoral exchange period in the United States was also financed by CAPES under the PrInt USP/CAPES Edital 01/2019 program.

O presente trabalho foi realizado com apoio parcial da Coordenação de Aperfeiçoamento de Pessoal de Nível Superior - Brasil (CAPES) - Código de Financiamento 001; o período de “Doutorado Sanduíche” nos Estados Unidos também foi financiado pela CAPES sob o Programa PrInt USP/CAPES Edital 01/2019.

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## **CHATER 1 – Introduction**

In recent years, marijuana reform has emerged as a highly contentious and rapidly evolving issue in the United States. The shifting landscape of cannabis policy has sparked heated debates, fueled by varying perspectives on public health, social justice, and individual freedoms. As a result, the topic of marijuana reform has garnered significant attention from researchers, policymakers, and the public at large. This dissertation aims to delve deep into the complex realm of marijuana reform in the United States, examining the multifaceted dimensions of the ongoing policy changes, their implications, and the socio-political dynamics that shape them. By focusing on the interplay between federal laws, state initiatives, public opinion, and societal perceptions, this study sheds light on the evolving cannabis landscape and its impact on individuals, communities, and the broader field of drug policy.

The focus of this dissertation is on changes that are relevant to recreational cannabis (adult or non-medical cannabis) with an emphasis on the implementation of legal access and markets in the United States. I target this point because the US has been the leader of drug Prohibition at federal and international levels, while internally has 21 states and Washington, D.C. with legalized recreational use of cannabis for adults 21 years and older, while 37 states have legal medical marijuana programs.

The term “drugs” encompasses a wide range of substances that can have both medical and recreational applications. Throughout human history, the consumption of psychotropic substances has been a part of various cultures and societies for diverse purposes. From ancient civilizations to modern times, humans have utilized natural substances for medicinal, spiritual, and recreational purposes. Plants and substances such as opium, cannabis, coca leaves, mushrooms, and various herbs have been used for their psychoactive properties, often playing significant roles in religious rituals, healing practices, and social customs. They were also used for the celebration of religious, cultural, social rituals, strategic and military actions, among others. However, the use of drugs has not been without controversy and challenges. Societal attitudes, norms, and legal frameworks surrounding drug use have varied across time and cultures. Some substances have been stigmatized, demonized, or prohibited due to concerns about addiction, societal harm, or moral and religious beliefs. The regulation and control of drugs have been shaped by political, economic, and social factors, often resulting in complex and evolving policies.

In the case of marijuana, Duvall (2015) believes that the 20th century's human turbulence provided ideal conditions for its diffusion in North America and other continents. The author exemplifies the fighters in the Mexican Revolution (1910–20) taunted the other side with allegations of marijuana use. British and French troops in North Africa appreciated hashish during the First World War; colonial South Asian troops brought hashish to Europe, as did Greek refugees fleeing Turkey. Eventually, cannabis became widespread throughout the years. However, when looking at society rules and norms, I ask: how come such a common plant turned into a threat?

The year of 2021 marked the 50th anniversary of US President Nixon's declaration of the War on Drugs, which is still being fought. This set of policies have led to the criminalization and punishment of millions. It has also disproportionately harmed communities of color, fueled mass incarceration and impacted nearly every aspect of everyone's lives. Ten years ago, it was already considered a failed war, with devastating consequences for individuals and societies around the world<sup>1</sup>. This dissertation aims at demonstrate how a very personal choice of using cannabis turned into a security problem by governments and is now making its way back to being personal choice through local leadership. What was once an innocuous plant used for various purposes has been securitized and labeled as a threat to public safety and societal order. However, in recent years, a significant shift has been witnessed, as local leadership has emerged as a driving force in reclaiming cannabis as a personal choice rather than a security problem.

There are a few interconnected elements brought to discussion: history, the particularities of the US political system and the consequences of the War on Drugs. Most times, the substance user has been connected to a specific group: cocaine with African American, the opium-smoking with Chinese, the Mexican or youthful with marijuana. But all times the punishment has been considered the most effective way to curb drug abuse. I explore how, regardless of these different stereotypes and approaches, drug use and drug users have always been seen as essentially deviant and threatening to mainstream American norms and values. As a world leader, the United States have spread this "drug war logic" to other nations creating a prohibition regime. Now, the change from the US being a prohibitionist on the international stage to being a global outlier on cannabis reforms on the national stage has undoubtedly shuffled the international cannabis reform

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<sup>1</sup> Report of the Global Commission on Drug Policy, June 2011 [https://www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/Global\\_Commission\\_Report\\_English.pdf](https://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf)

landscape. In this section I will present an overview of the theoretical and methodological choices that will be further detailed in the following chapters.

To build on the basics, the World Health Organization (WHO) defines drug – psychoactive as “substances that, when taken in or administered into one’s system, affect mental processes, e.g., perception, consciousness, cognition or mood and emotions. Psychoactive drugs belong to a broader category of psychoactive substances that include also alcohol and nicotine”<sup>2</sup>.

For this dissertation’s intention, from now on I’ll use the word “drug” in the common sense of illicit substances. More specifically, I will discuss cannabis, or marijuana, as shown at Figure 1. The cannabis plant contains a variety of compounds known as cannabinoids. While there are over 100 known cannabinoids, the most well-known cannabinoids are tetrahydrocannabinol (THC) and cannabidiol (CBD). Experts regard THC as the primary psychotropic component of cannabis, responsible for much of the intoxicating “high” reported by cannabis users. In contrast, CBD generally is understood not to be intoxicating. Depending on factors such as the specific strain of the cannabis plant, as well as growing and harvesting conditions, some cannabis plants have much higher levels of THC and/or CBD than others. Very low-THC cannabis is often regarded as a distinct crop known as “hemp.”<sup>3</sup> Hereafter, I will use the term “cannabis” to refer to the non-hemp, generally higher-THC version of the plant, and to the products made from it.

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<sup>2</sup> World Health Organization. Drugs (psychoactive), 2021 [https://www.who.int/health-topics/drugs-psychoactive#tab=tab\\_1](https://www.who.int/health-topics/drugs-psychoactive#tab=tab_1)

<sup>3</sup> Petek, G. How High? Adjusting California’s Cannabis Taxes. The Legislative Analyst’s Office (LAO), 2019.

**Figure 1: Understand cannabis terminology**

NAMES	METHODS OF CONSUMPTION
<p><b><i>Cannabis sativa</i>, cannabis:</b> a species of flowering plant containing more than 480 chemical compounds that has been cultivated for over 6,000 years for use as a medicine, a food, a fiber, and a recreational drug. It is often abbreviated as "cannabis", which is technically the genus name.</p>	<p><b>Edible:</b> Food infused with marijuana oil, which produces a high approximately 30 to 90 minutes after consumption.</p>
<p><b>Marijuana:</b> Cannabis grown to produce a recreational high or for medicinal purposes. It usually contains a THC content of 5% or more.</p>	<p><b>Joint:</b> A marijuana cigarette. After being smoked, it produces a high in minutes.</p>
<p><b>Hemp:</b> Cannabis with THC content below 0.3%, usually grown for industrial use, such as for making cloth, or for food cultivation.</p>	<p><b>Hash, hashish:</b> Cannabis resin. Usually smoked this paste-like preparation is common in Europe.</p>
<p><b>Cannabinoid:</b> A chemical compound that reacts with the body's cannabinoid receptors.</p>	<p><b>Vaporizing, vaping:</b> A method for imbibing marijuana by heating cannabis or cannabis oil to around 200C° and inhaling.</p>

Source: Webb, A. Marijuana Medicine, 2019.

For most of the nineteenth-century, substance use was basically a question of personal choice and was not regarded with social disapproval. People didn't know the effects on their bodies and minds, so abuse and addiction were common. Only at the beginning of the twentieth century the consumption of drugs became the object of international political debate and action. This activity took place in many diplomatic conventions that built an International Prohibition Regime on the consumption, sale and production of Psychotropic Substances. The first convention was in 1909 (Opium Commission), but the three main regulatory instruments are the United Nations Single Convention of 1961, the 1971 Convention on Psychotropic Substances and the Convention against Illicit Traffic in Narcotic Drugs 1988, within the framework of the United Nations (UN).

As Mattli and Woods (2009) present, few topics are as central and of consequence to the lives and well-being of individuals as regulation, broadly defined as "the organization and control of economic, political, and social activities by means of making, implementing, monitoring, and

enforcement of rules”. Regulation is increasingly global as elements of the regulatory process have migrated to international or transnational actors in areas as diverse as trade, finance, the environment, and human rights. Here, I pay attention to how the United States was the key player in most multilateral negotiations, lobbying continually and forcefully around the world for new conferences, rules and liability for drug consumption. They even declared a “war on drugs” in 1971, considering the issue a security matter. I will argue that in that specific moment drugs were securitized, grounding my argument on the Securitization theory formulated by Buzan, Waever and de Wilde.

According to Buzan et al., (1998), political issues are constituted as extreme security issues to be dealt with urgently when they have been labeled as ‘dangerous’, ‘menacing’, ‘threatening’, ‘alarming’ and so on by a ‘securitizing actor’ who has the social and institutional power to move the issue ‘beyond politics.’ Using a very common terminology in International Relations (IR), ‘the hegemon’ in drug policy is argued to be the United States. Regulators in other countries can choose to follow the US regulation or not. If divergence is costly to the United States, in other words, it is a source of negative externality for the United States, then the hegemon will mobilize political pressure to coerce foreign regulators to fall in line with U.S. rules<sup>4</sup>.

They did that through, for example, a certification procedure that employed a series of trade and aid sanctions and rewards intended to gain cooperation if the country came aboard with the recommendations. The prohibition regime dominated the *status quo* for over a century, incorporated into the domestic laws of over 150 countries. It mandates criminal sanctions for the production, supply and possession/use of a range of psychoactive substances, although the penalties have great variation between countries<sup>5</sup>.

The US in particular has spent huge diplomatic, military and economic capital to ensure that prohibition is a deeply entrenched policy<sup>6</sup>. One can imagine the United States playing the role of a captain of the drug-free boat, berthing in every country’s shore, pledging that drugs constitute a serious evil for the individual and are fraught with social and economic dangers to mankind.

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<sup>4</sup> Simmons draws this argument in the financial field. Beth Simmons, “International Politics of Harmonization: The Case of Capital Market Regulation,” *International Organization* 55 (Summer 2001), 589–620.

<sup>5</sup> My Master’s thesis presents a detailed analysis of the normative leadership of the United States, it can be found at <http://tede.bc.uepb.edu.br/jspui/handle/tede/2681> available in Portuguese.

<sup>6</sup> Ending the war on drugs, how to win the global policy debate. Transform Drug Policy Foundation/México Unido contra la Delincuencia <https://transformdrugs.org/product/ending-the-war-on-drugs-how-to-win-the-global-drug-policy-debate/>



They could have advocated for drugs to remain restricted to medical use with no security implications, but instead they went all the way to turn them into a security issue, something out of the ordinary and that must end. The institutional mechanisms that evolved over the following decades using the United Nations as a forum became focused on supply minimization and police enforcement as the means to achieve a drug-free world. As a consequence, military intervention, aerial spraying, border enforcement and criminalization of consumption were pursued as the goal to end drugs. Bureaucrats were hired to focus on supply; delegates attended international meetings to discuss supply; home governments then implemented supply-focused treaties and recommendations. An international machinery emerged, initially under the banner of the League of Nations and then transferred to the United Nations, to implement this treaty framework<sup>7</sup>.

Countries like Colombia and Bolivia, for example, that have historical and cultural connection to cocoa leaves, were strongly reprimanded and treated as supply-countries. In the meantime, countries with previously low rates of illicit drug consumption began witnessing a rapid expansion in drug use. As they cast around for a method to deal with this, the US-led prohibitionist bloc appeared to offer the only coherent model ready for adoption. Following the American lead, and supported by the UN treaty framework and agencies, states uniformly moved towards the criminalization of use and doubled down on supply enforcement measures<sup>8</sup>.

## **1.1 Analytical puzzle and theoretical positioning**

After years of that much engagement in the global prohibition, here lies the puzzle: the states in the United States are regulating and legalizing cannabis since 2012, after decades of instituting global prohibition, the US is locally permitting. Colorado and Washington State voted to legally regulate recreational cannabis production, supply and use, making them the first places in the country to do so. Advocates suggest that legalization reduces crime, raises tax revenue, lowers criminal justice expenditures, improves public health, increases traffic safety, and stimulates the economy. Critics argue that legalization spurs marijuana and other drugs, alcohol use, increases crime, diminishes traffic safety, harms public health, and lowers teen educational

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<sup>7</sup> William B. McAllister, 'Reflections on a Century of International Drug Control,' in *Governing the Global Drug Wars*, ed. John Collins (London: LSE IDEAS Special Report, 2012), 13

<sup>8</sup> Ending the drug wars. Report of the LSE Expert Group on the Economics of Drug Policy, May 2014

achievement (Dills et al., 2021). To demonstrate how cannabis legislation is evolving rapidly, by the end of 2020 election night, New Jersey, South Dakota, Montana and Arizona joined 11 other states that had already legalized recreational marijuana. Mississippi and South Dakota made medical marijuana legal, bringing the total to 35 states. The citizens of Washington, D.C., voted to decriminalize psilocybin, the organic compound active in psychedelic mushrooms. Oregon voters approved two drug-related initiatives<sup>9</sup>: one decriminalized possession of small amounts of illegal drugs including heroin, cocaine and methamphetamines, the other measure authorized the creation of a state program to license providers of psilocybin. Therefore, not only cannabis legislation is evolving, but so are other substances.

However, this is not that surprising if one considers the consequences of the prohibitionist approach. Drug consumption, crime and violence related to it did not end. In fact, an unregulated drug market allows sellers to do just about whatever they please: lie about certain substances, sell these mystery drugs to unsuspecting minors, take their money, and face no consequence if the drugs they lied about cause serious harm to others. The prohibition also generated mass incarceration, a creative illegal market, more overdose deaths, among other problems<sup>10</sup>. Meanwhile, the available evidence<sup>11</sup> so far suggests that marijuana legalization has generated substantial tax revenue and savings in the criminal justice system, all without resulting in significant increases in the use of the drug.

Considering this shift, one might ask: how come the global leader against drugs is now moving in the opposite direction? How is it that the US is regulating drugs domestically but prohibiting federally? How does this process take place? What does this mean for the global regime on drugs? These interrogations are the driving forces for this dissertation, and its research question is as follows: How is the prohibition regime leader now rearticulating the drug issue from Securitization to Desecuritization? What is the process by which this is happening? The aim is to understand how a very powerful discourse that has been in place for so long is gradually becoming challenged. Also, the objective is to see how are drugs discursively constructed and what are the

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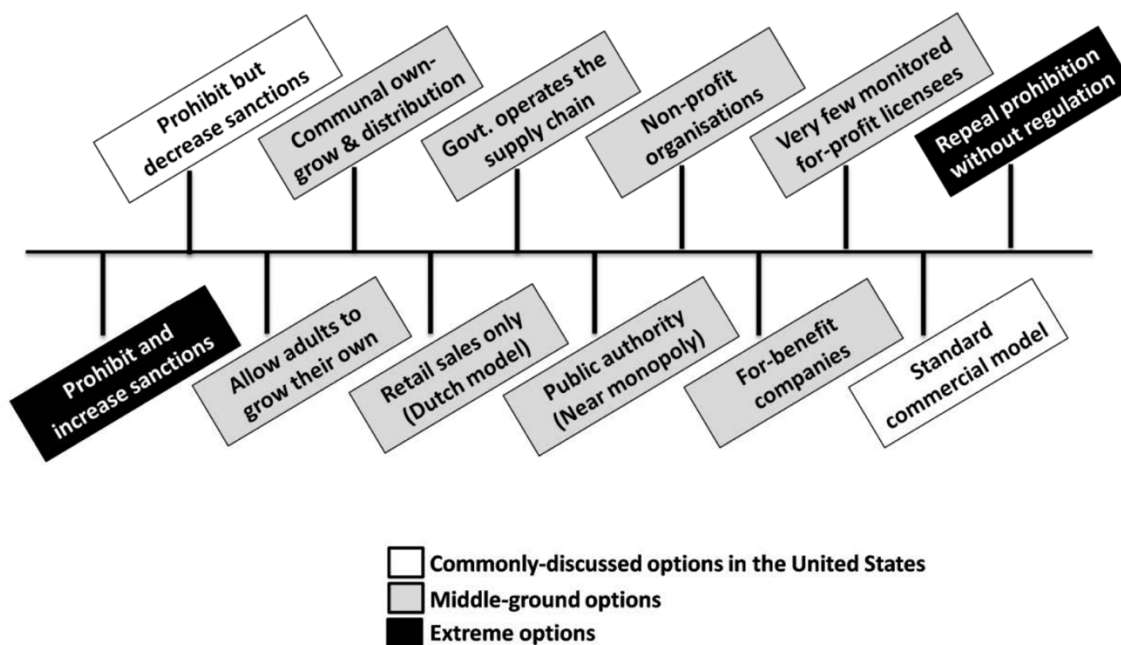
<sup>9</sup> Ballotpedia. 2020 Marijuana legalization and marijuana-related ballot measures [https://ballotpedia.org/2020\\_marijuana\\_legalization\\_and\\_marijuana-related\\_ballot\\_measures](https://ballotpedia.org/2020_marijuana_legalization_and_marijuana-related_ballot_measures)

<sup>10</sup> For a review of this literature, see the International Center for Science in Drug Control Policy, "Evidence of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review," 2010, <http://www.countthecosts.org/sites/default/ICS DP-1%20-%20FINAL.pdf>

<sup>11</sup> Marijuana Policy Project. Cannabis Tax Revenue in States that Regulate Cannabis for Adult Use <https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use/>

implications of its different constructions. I look at what is happening in the United States as analog to what might happen globally: small units leading big changes. The way the states are experimenting with the legislation is the way countries tend to do, building a new regime. The first hypothesis is that this new regime will be formulated not by States, but by non-state actors like individuals, organizations and organized community. The second hypothesis is that when and how non-state actors are able to influence security policies and what makes them powerful is a key to understanding marijuana policy. I propose these questions because there are a few options between extreme Prohibitionism and extreme legalization, as Figure 2 shows, so I investigate what makes the US choose prohibition and sustain that choice for so long.

**Figure 2: Possibilities of Cannabis Regulation**



Source: Caulkins et al., 2015

Besides being a normative leader, I portrait the US domestic federalism as an equivalent to the anarchical international system, in consequence the United States can instruct or shed light on what others countries might do. Uruguay, Portugal and Canada are examples of countries that left Prohibitionism behind, yet they are not normative leaders when it comes to promoting their experiences. Also, they don't have a political system that can be equivalent to an international

system. That is why, for the purpose of this dissertation, we look at this microcosm of US internal politics and project that globally.

The main objective is exploring how the drug policies were rebuilt at the local level, what actors are involved and how these regulations are impacting the communities. To that end, I consider drug policies from the perspective of securitization framework, which brings an innovative contribution to the field of International Relations, not only due to the very current topic, but also from a methodological point of view, by proposing a pluralist and interdisciplinary view to understand the role of actors involved in drug policy formulation and decision-making in the United States. Non-traditional security actors and issues are challenging objects and subjects of knowledge production, owing to both their non-state status and the peculiarities of the fields of security and security policy. However, this dissertation will argue that Buzan, Waever and de Wilde's Securitization framework<sup>12</sup> provides a useful basis for analyzing how drugs have been constructed as a threat and why this discourse has proved so resilient.

The securitization framework sets out a new agenda for understanding security within a wider context than traditional security studies. Buzan, Waever and de Wilde define securitization as a specific grammatical process that involves a 'speech act' whereby an issue is presented as an 'existential threat' to a designated 'referent object' and finally, 'extraordinary measures' are justified in order to combat this threat (Buzan, et al., 1998). Securitization theory allows to investigate how the discourse of drugs as a threat was carefully crafted as something dangerous that must be contained. Therefore, language here is of high importance.

Instead of treating drugs as a medical issue, the US intentionally treated it as a security issue by using specific discourse, making this theory the natural choice to analyze this topic. Moreover, the Desecuritization theory, defined in the Copenhagen School literature as 'the shifting of issues out of the emergency mode and into the normal bargaining process of the political sphere' (Buzan et al., 1998: 4) is applied to look at what the states in the US have done when it comes to marijuana regulation. My main argument is that the states desecuritized marijuana from a ground-up process because the actors involved are not the decision-making elites, but the NGO's, civil society and local regulators. Securitization and Desecuritization theories will be applied to the cases and show who are the actors and how the drug issue moved inside the spectrum from being the enemy to be every-day political issue. Also, it will display how and in what conditions that

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<sup>12</sup> Buzan, B., Waever, O., & de Wilde, J. (1998). *Security: A new framework for analysis*. Boulder, CO: Lynne Rienner

happened. Again, this theory also makes sense because it is based on the fact that securitization theory is a linguistic - or discursive - analysis that seeks to trace how speech acts are made and what they enable. It is the best choice to show what are the subjects constituted within the discourse and its actors. The Copenhagen School's main argument is that rather than objective phenomena, security threats should be understood as produced in discourse. I argue that drugs were not a real security threat, like the dangerous and lethal COVID-19 virus, but rather were conceived and perpetuated as a threat by a resilient discourse. In view of that, I will now expose my choices of suitable methods for analyzing my research question.

## **1.2 Methodological approach to examining US Drug Policy**

The way I methodologically approach this study is by conducting case study research using process-tracing as the analytical strategy. Process-tracing is a research technique that traces case-specific causal mechanisms using within-case evidence to infer the most plausible causal explanation(s) for a phenomenon (Beach & Pedersen, 2019). The states of California and Texas were chosen as case studies, mostly because they demonstrate the linkage of all the levels of analysis in providing greater analytical weight. Process-tracing gives space to analyze failed securitizations as well as to understand why some fail and others succeed, making it very useful for the cases here studied.

The policy process regarding drug legislation was mainly monitored based on the data available in the state's legislative houses and then compared with each other by Mill's method of difference. These two states were chosen also because they are similar in some political-cultural aspects, such as a predominantly Latino population and proximity to the Mexican border. These two aspects were connected to the War on Drugs, pose as the greatest crime threat to the United States and have "the greatest drug trafficking influence," according to the annual U.S. Drug Enforcement Administration's (DEA's) National Drug Threat Assessment. However, they differ in conservative (Texas) and liberal (California) drug regulatory positions. By using process-tracing it is possible to look at various interactions and identify how they impact upon the case study and also under what conditions the securitizing moves succeed or fail (Balzaq, 2011). Additionally, by making it easier to establish control over non-party variables, a focus on subnational units helps pinpoint how variation in political institutions shapes the performance and policy choice.

From a theoretical perspective, Desecuritization theory has been underdeveloped so my main contribution and innovative argument is that the Desecuritization of drugs is happening from the ground-up, led by non-elite actors and bringing the issue to the normal politics arena. Whilst there is an abundance of scholarly literature that acknowledges that drugs have been securitized<sup>13</sup>, they do not look at the US marijuana reform as a Desecuritization case, specifically from the ground-up through local actor's initiatives

After making a paired-comparison between California and Texas, I analyze how subnational/state-level drug policy has impacted federal legislation and, hence, foreign policymaking on the topic. The objective is to make not only a theoretical contribution, but also to problematize the policy implications applicable to the US and beyond in both domestic and foreign policies. To the extent of the federal level, we specially look at The Marijuana Opportunity Reinvestment & Expungement (MORE) Act, the most far-reaching marijuana legalization bill to ever be considered in Congress. It was designed to decriminalize marijuana at the federal level and let states set their own policies without federal interference. Also, it intends to begin to repair the harms of prohibition by expunging marijuana convictions and reinvesting in communities disproportionately impacted including Black, Latinx, and low-income people.

### **1.3 Structure of the dissertation**

To map the next chapters, I will use this subsection to display the architecture of this dissertation. First, I elaborate on the methodological considerations: the method of process-tracing used in this dissertation, the practical analytical process and standard methodological considerations relating to reflexivity and research design. Most importantly, why those choices were made for this analysis.

Following methodology, chapter two tells the history of cannabis and its prohibition in order to contextualize this study. This chapter is essential to analyzing how the United States built a culture on prohibiting substance consumption (alcohol, opium and then marijuana) and is an important piece of background information when interpreting the interactions of today's

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<sup>13</sup> Consider: Kyle Grayson, *Chasing Dragons: Security, Identity, and Illicit Drugs in Canada*, (Toronto: University of Toronto Press, 2008); Alba Hesselroth, 'Struggles of Security in US Foreign Drug Policy Towards Andean Countries', *Peace, Conflict and Development* [online], Vol. 5, 2004. David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity*, (Minneapolis: University of Minnesota Press, 1992), pp. 198- 222.

regulation. The History shows how the narrative of controlling the use of substances has been resilient over the time and how morality mixed with American politics since the earliest times.

At this point in the narrative, the core historical and methodological choices are explained and justified, I then turn to an extensive literature review on chapter three. The purpose of this chapter is to explore and validate the choice for Securitization and Desecuritization theories and show how I understand this conceptual framework to be the best tool for my dissertation's arguments. To bridge my argument from Securitization to Desecuritization I talk about the War on Drugs and its consequences, which I consider the main cause for the drug issue going from security threat to day-to-day politics. In this chapter I also take the opportunity to contribute with my argument of a ground-up Desecuritization. A further original contribution that this research makes to understanding marijuana regulation at the US is showing the key elements that make it possible for prohibition at the federal level and legalization at the internal level.

Moving from analysis to discussion, chapters four and five are about the empirical work. In chapter four I present a timeline for California's cannabis laws as to specify the important dates and show how the treatment of cannabis evolved there. In other words, how the discourse moved from prohibition to tolerance and then legalization. I consider the state of California to be a successful case of Desecuritization from the ground-up through rearticulation and the objective of that chapter is to describe what relevant elements made that possible.

Chapter five I analyze the state of Texas, its history of marijuana and how cultural elements turned out to be fundamentally important for the state's political process. I also evaluate the actors and their roles in those processes in search for the causal mechanisms through process-tracing. Marijuana is still illegal in Texas and I aim to investigate why the discourse there has not fully changed. In chapter six I propose an analysis of the results after presenting all the data from the selected cases of California and Texas. I scrutinize why the two states are so similar in various aspects yet so different when it comes to marijuana regulation in light of the Desecuritization theory and my hypothesis of a ground-up process.

I also take chapter six and my final remarks to discuss what, within the United States, makes the case of marijuana so uniquely interesting. I explain how the culture and the federalism system play essential roles and should not be dismissed when analyzing the political process. Finally, I discuss the current cannabis landscape and possibilities for further research.

## 1.4 Research Design

At its core, this section is the explanation of the path I chose in order to theorize the causal structure that leads to drug Desecuritization in the US. Although there has been heated debate between qualitative and quantitative research, I believe that both can produce science, make contributions and are not mutually exclusive. But for the scope of this dissertation, a qualitative small-N analysis is well fit. Because I sought to create a narrative, qualitative methods were well suited to my task. At the beginning of the process, I needed to look at existing sources on my topic to discover where I needed to fill in the blanks. My use of theory and method was hybrid in form, but it is not perfect, issues of reliability and reactivity are potential weaknesses of this research design. As Katz (1982) notes, qualitative research methods do not easily conform to the standards of traditional social scientific methods: validity, reliability and generalizability. All scholars of applied social sciences face the same challenge: not only must they identify a suitable method for analyzing a research question, they must also apply it to a particular case or a number of selected cases. Considering that a case study is a “detailed examination of an aspect of a historical episode to develop or test explanations that may be generalizable to other events” (George and Bennet, 2005, p.5), I chose to make a qualitative case study, as it provides tools to explore complex topics within their contexts. Moreover, I chose to look into two cases, the states of California and Texas, to track the causal mechanism and necessary conditions on the cannabis regulation process, an empirical investigation aiming to comprehend this contemporary puzzle. Goertz and Mahoney (2012) explains that:

In the qualitative culture, scholars are interested in explaining outcomes in individual cases as well as studying the effects of particular causal factors within individual cases. These scholars often start with events that have occurred in the real world and move backwards to ask about their causes. Much like other scholars in the historical sciences, including natural history, geology, and cosmology, they develop causes-of-effects models and use methods to identify the causes of particular occurrences in the past. These models ideally identify combinations of conditions, including all non-trivial



necessary conditions, that are sufficient for outcomes.

The within-case analysis is a core trait of qualitative research, but also the qualitative methods of hypothesis-testing that are built around necessary and sufficient conditions include Mill's methods of agreement and difference<sup>14</sup> and process-tracing tests. With that in mind, California and Texas were chosen because they are similar in some political-cultural aspects, as mentioned in the introduction session. However, they differ in conservative (Texas) and liberal (California) drug regulatory positions. Texas is now one of only 14 states with no effective medical cannabis law, and one of only 19 that still imposes jail time for simple possession of cannabis; while in California possession, consumption and the secure cultivation of up to six plants is lawful for all adults. Thus, when we apply the method of difference to investigate the effect and impact of this political process using the tools of process tracing, we ask: in political terms, what California has that Texas not? Why, even having important similarities, one has legal access to marijuana and the other not? By looking at variations we find the causal mechanism, the set of entities engaged in activities which produce the phenomenon in question – cannabis regulation. It is a fundamental ontological stance that we cannot limit a phenomenon to a single causal mechanism. At the same time, phenomena are not believed to be produced by randomness (Illari & Williamson, 2012, p. 69).

The hypothesized associations between two or more concepts are conceived in logical terms using ideas of necessity and/or sufficiency. Here, the probability of (dependent variable B) occurring increases (or decreases) with the level or occurrence of (independent variable A): I surmise that public engagement in political processes (A) causes drug Desecuritization (B); other variables are prohibition inefficiency (A<sub>1</sub>); medical and scientific evidence of marijuana benefits (A<sub>2</sub>); negative impact of the War on Drugs (A<sub>3</sub>).

Process tracing in social science is commonly defined by its ambition to trace causal mechanisms (Bennett, 2008a, 2008b; Checkel, 2008; George and Bennett, 2005). The process tracing will help answer those questions and locate key observations from within their individual cases. A causal mechanism can be defined as, ‘...a complex system, which produces an outcome

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<sup>14</sup> John Stuart Mill (1856). *A System of Logic, Ratiocinative and Inductive: Being a Connected View of the Principles of Evidence and the Methods of Scientific investigation*. London: John W. Parker, book 6, chapter 7.

by the interaction of a number of parts' (Glennan, 1996:52). By looking at every step I try to find what was so singular about those processes that provided different outcomes. Process tracing involves, '...attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable' (George and Bennett 2005:206-207). I process-trace the documents of the legislative assemblies in the sessions that dealt with the regulation of drug policy in the aforementioned states, so it will be possible to define possible standards and necessary conditions for policy-making. Moreover, I ground these methodological choices on Snyder's (2001) arguments<sup>15</sup>, that subnational units of analysis play an increasingly important role in comparative politics. A focus on subnational units is an important tool for increasing the number of observations and for making controlled comparisons, it helps mitigate some of the characteristic limitations of a small-N research design. Also, a focus on subnational units strengthens the capacity of comparativists to accurately code cases and thus make valid causal inferences. Finally, subnational comparisons better equip researchers to handle the spatially uneven nature of major processes of political and economic transformation. Since I argue that the states are analogous to the International System, the subnational comparative method can help build theories that explain the dynamic interconnections among the levels and regions of the system, shedding light on drug policy issues.

According to Kruck and Schneiker (2017), especially since the end of the Cold War, a broad range of non-state actors have become highly relevant research objects. These actors include rebel groups, terrorists, private military and security companies, business firms and non-governmental organizations (NGOs). Here, I seek the non-state actors involved in the drug policy decision-making process to see their causes, effects, actions and interactions. I argue that the Desecuritization process happens from the ground-up, so I will be looking at organizations like Marijuana Policy Project (MPP) and Drug Policy Alliance (DPA) that play an important role in advocating, educating and campaigning for the end of prohibitionism.

From this investigation it is possible to dialogue with the federal level, under the perspective of the War on Drugs, for being responsible for the country's international relations and transmitting its policies to the International System. I plan to analyze the data collected with the support of the qualitative comparative analysis (QCA) methodology, a data analysis technique to

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<sup>15</sup> Snyder, Richard. *Scaling Down: The Subnational Comparative Method*. *Studies in Comparative International Development*. March 2001, Volume 36, Issue 1, pp 93–110

determine which logical conclusions a data set supports and facilitates a form of counterfactual analysis based on case-oriented research practices. The purpose of the method is useful to identify the necessary and sufficient conditions for subnational drug policy to be able to impact federal approaches in the same topic. The most recent move to fight federal prohibition was the House Judiciary Committee vote to approve the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act). This is the furthest any marijuana legalization legislation has ever advanced in Congress and now it moves to the House floor. If approved, it would de-schedule marijuana and reinvest marijuana tax revenue in those who have been most affected by failed marijuana laws, changing the federal policy. It would also support equitable licensing, prevent deportation and provide for federal resentencing and expungement for marijuana cases.

### **1.5 Empirical material collection**

As the logic of process-tracing suggests, the empirical material of this dissertation consists of the diverse set of available data that were understood to be relevant at some point during the process. The practical sources that provided the empirical basis for this project consists of the following:

- *Observational material* from participant observation at the Drug Enforcement and Policy Center's activities, auditing on the "Sentencing Law & Policy" and "Marijuana Law, Policy & Reform" classes and academic events;
- *Documents* from legislative sessions in California and Texas, which includes historical archives ranging back decades from the beginning of marijuana regulation in those states. Also included legislative participation as submissions by member states, industry, NGOs and ballot initiatives by the public. All the documents that I am showing and quoting in this dissertation have been made public.
- *Interview material* from in-person interviews with 10 cannabis related actors, including activists, scholars and business owners, as showed in Table 1. In order to make sense of my observations and have more in-depth conversations about the proceedings of drug policy in the US these were all semi-structured interviews based on themed interview guides and were adjusted as I was searching for more specific elements in the interviews.

**Table 1: Interviews**

Interviewee	Title / Affiliation	Date
N1	Senior scholar on Drug Policy	20/02/2020
N2	Chief of Staff and Associate Deputy Attorney General at the U.S. Department of Justice	10/10/2019
N3	Social justice activist	21/02/2020
N4	One of the founders of the non-profit Drug Policy Alliance (DPA)	22/02/2020
N5	Cannabis regulator in California	04/11/2019
N6	Member of Republicans Against Marijuana Prohibition (RAMP) in Texas	05/11/2019
N7	Senior researcher at RAND Drug Policy Research Center	20/02/2020
N8	Campaign coordinator – Proposition 64, California	11/12/2019
N9	California NORML attorney	05/03/2020
N10	Adviser at Texans for Responsible Marijuana Policy	10/07/2020

Source: Elaborated by the author

## 1.6 Interview Guide

I chose to put the interview guide upfront, not as annex, so the reader can also be guided and know the main questions that drove this dissertation. It is also important to clarify that the interviews were conducted in-person between September 2019 and March 2020. They took around 90 minutes and were recorded in audio format via the iPhone Voice Memo facility. All of

interviewees choose to talk in anonymity and confidentiality, which can be explained due to the political sensitivity of the topic and their respective posts. The questions were the following:

- 1) The US declared a war on drugs and is still fighting it, what do you think has changed that made it possible for cannabis to be regulated internally?
- 2) How can the states have legalized cannabis but the American federal government has not?
  - How does this process work?
  - What is the role the Federalism system plays?
- 3) What does your organization do in order to handle political issues concerning drug regulation in the US?
- 4) Who do you think are all the relevant actors on state drug regulation?
  - Who is the most influential political actor when it comes to formulating new drug policy regulation?
- 5) Why hasn't Texas advanced on Marijuana regulation?
- 6) What is the political process in Texas to drug regulation?
- 7) What do you think are the biggest challenges for nonprofits and advocates for drug reform in Texas?

When using interview data, I had to consider issues that threaten internal validity. In addition to relying on the veracity of my interviewees, I also face the risks of memory recall. However, to decrease the risk of internal invalidity of my study, I also used to corroborate evidence, including newspapers and official documents.

Now, after contextualizing the overall research and methods, I will present the historical aspects of drug policy analysis. In the next chapter I try to provide the background of repeated attempts by the American society to control how the individual consume substances, at times legal and at times illegal. Moreover, how this narrative was built and still prevails.

## CHAPTER 2 - History of Prohibitionism Before Securitization

*And who is the enemy? “Let me tell you straight out”, Bush said in 1989. “Everyone who uses drugs. Everyone who sells drugs. And everyone who looks the other way.”*

This chapter will present a brief history of controlled substances in the United States, before the declaration of War on Drugs in 1971, that helped define and frame the current marijuana policy of that country. I made this selection on purpose since I believe that until Nixon’s declaration of a war, drugs were outlawed but not securitized; forbidden but not an essential threat. Although it is not on the scope of this dissertation, I believe that an understanding about the political and judicial response to the alcohol and narcotics prohibitions is essential to an assimilation of the eventual tough control of marijuana. The objective here is to demonstrate the escalation of censorship that paved the way to the prohibition regime and how strong and well-articulated the narrative of prohibition has been.

Moreover, it is noteworthy a moral, religious and cultural weight since the prohibition inception. As a matter of fact, it goes back to the US inception as a country<sup>16</sup> and American as an identity. The way this perpetrates the decision-making process regarding drugs is present in the justifications for restriction and how this message was passed through discourse. Besides, this is one way we can see the intersection between drug policy and society, how the states exercise social control over economic or ethnic groups that are believed to be dangerous and seek to use law and moral beliefs to regulate individual behavior.

Also, in this chapter I will explore how the United States had various organized movements to tackle consumption of drugs and control its population. In tracing the historical development of punishment towards the use of drugs, I draw upon Foucault’s concepts of technologies of the self and governmentality. He described his concept of “technologies of power” as determining “the conduct of individuals and submit[ting] them to certain ends or domination, an objectivizing of the subject.”<sup>17</sup> That is, technologies of power are employed by institutions as a form of discipline

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<sup>16</sup> For a more detailed analyses consider Morone, James. **Hellfire Nation: The Politics of Sin in American History**. New Haven: Yale University Press, 2003.

<sup>17</sup> Foucault, M. Technologies of the Self, in **TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHEL FOUCAULT** 16, 18 (Luther H. Martin et al. eds., 1988)

upon bodies as object, in this case, how the United States designed laws to control the use of drugs. In contrast, “technologies of the self,” according to Foucault, permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immorality.<sup>18</sup>

In this chapter I explore how the United States tried multiple times to control the individual, targeting specific communities, and their use of substances. I explore the prohibition of alcohol and narcotics, then move on to the history of marijuana prohibition and the main political mechanisms used before the declaration of war. Also, I analyze the International Drug Regime and its main Conventions, participants and repercussions.

## **2.1 The Temperance Movement**

Before the twentieth century, substances such as marijuana, cocaine and opium were sold openly and were commonly used as painkillers. The first Western physician to take an interest in marijuana was W. B. O’Shaughnessy, who found it useful as an analgesic and anticonvulsant and whose work led other physicians to study the drug’s potential to treat conditions including migraines, insomnia, and anxiety (Grinspoon and Bakalar, 1993). Around the turn of the twentieth century, groups including the medical community, commercial and political elites, Progressive reformers, and racist and nativistic interests lobbied for drug control legislation (Courtwright, 2002). Faced with a rise in drug imports, more wide-spread drug addiction, a shifting population of users, and pressure from international treaty obligations, the United States started its first drug control legislation.

The History of Prohibition begins with the social reform movements of the middle and late nineteenth century. A new conception of alcohol use and abuse was developed through these movements with new ideas about the relationship between the individual and society. According to this new understanding, alcohol was an inherently dangerous substance whose use was a personal vice, and the moral depravity attendant with drinking had serious adverse effects on the

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<sup>18</sup> Supra note, p. 18

social order.<sup>19</sup> This led to the Temperance movement, a campaign devoted to convincing people that alcoholic drink in any form was evil, dangerous and destructive. Temperance reformers were especially concerned with what some have called “saloon culture.” According to temperance reformers, the most morally dangerous kind of drinking took place in saloons and taverns, which were portrayed as dens of iniquity where the rending of the nation’s moral fabric began. They believed a wide variety of vices began at the saloon and spread outward to infect the rest of society.<sup>20</sup>

The prohibition status benefited from decades of lobbying on behalf of the temperance movement, which saw all alcohol as evil and sought to eradicate it from the U.S. The temperance movement’s first successes were on the local and state level. For instance, Maine became the first state to ban alcohol in 1851, starting a national prohibition trend followed by the states of Oregon, Minnesota, Rhode Island, Massachusetts and Vermont the next year<sup>21</sup>.

Elias (2014) believes that during the first phase of the temperance movement, the predominant strategy for changing society’s use of alcohol involved two principal aspects. First, through legislation, it sought to impose indirect regulation on drinking by the lower classes, which reformers believed was the greatest single source of abusive drinking. Second, it sought to encourage individual moral uplift through promoting the pledge of total abstinence, especially among the middle and upper classes. Either way, the movement grew stronger.

In fact, it grew so strong that the Prohibition Party, founded in 1869, played an important role in the temperance movement’s push for a constitutional amendment banning the “manufacture, sale, or transportation of intoxicating liquors”, the Eighteenth Amendment. The movement had achieved something unparalleled by any movement before or since: they had introduced a new moral decree into the Constitution<sup>22</sup>. In doing so, they believed that they had enshrined Protestant virtue in American life and saved the country from decay. The moralist discourse had gone from local to the supreme law of the United States of America. I highlight that

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<sup>19</sup> Elias, Roni. Lessons of Prohibition for Contemporary Drug Policy. *Center for Alcohol Policy*, 2014 [https://www.centerforalcoholpolicy.org/wp-content/uploads/2015/03/Roni\\_Elias\\_Essay.pdf](https://www.centerforalcoholpolicy.org/wp-content/uploads/2015/03/Roni_Elias_Essay.pdf)

<sup>20</sup> Bernard Bailyn, Et Al. *The Great Republic: A History of the American People*. 330-37, (3rd ed.) (1985).

<sup>21</sup> The building blocks of prohibition. The Mob Museum [http://prohibition.themobmuseum.org/?\\_ga=2.49481318.1141713926.1607111237-749273332.1607111237](http://prohibition.themobmuseum.org/?_ga=2.49481318.1141713926.1607111237-749273332.1607111237)

<sup>22</sup> Neklason, Annika. (2020) “The Battle for the Constitution”, National Constitution Center. <https://www.theatlantic.com/ideas/archive/2020/01/prohibition-was-failed-experiment-moral-governance/604972/>



having this layer infused in the Constitution shows, in a socially constructed way, the building of American virtue.

To enforce those decisions, on October 28, 1919, Congress passed the Volstead Prohibition Enforcement Act, which delegates responsibility for policing the 18th Amendment to the Commissioner of Internal Revenue, Department of the Treasury. Legislation became effective on January 16, 1920 and the Prohibition Unit is created to enforce the National Prohibition Act from 1920 to 1926<sup>23</sup>. These political efforts meant that the government was taking every possible action to pursue alcohol use and punish those involved. However, the enforcement had a disproportionate impact on poor and working-class communities, as Okrent (2010) explains:

For the next three-quarters of a century, immigrant hostility to the temperance movement and prohibitory laws was unabating and unbounded by nationality. The patterns of European immigration were represented in the ranks of those most vehemently opposed to legal strictures on alcohol: first the Irish, then the Germans, and, closer to the end of the century, the Italians, the Greeks, the southern European Slavs, and the eastern European Jews.

In accordance with that, McGirr (2015) sees Prohibition as the beginning of centralized police power — “the rise of the American State” — and argues that this power was mainly directed against minorities. It became a war on the poor and, in particular, against poor urban minorities. I argue, and will explore in the next chapter that this is the same targeting discourse about the War on Drugs<sup>24</sup> nowadays.

## 2.2 Alcohol and Narcotics Prohibition

Excessive consumption of alcohol increased with the commercialization of production, distribution and the expansion of saloons. Because of that, after 1898, the Anti-Saloon League

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<sup>23</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives <https://www.atf.gov/our-history/timeline/18th-amendment-1919-national-prohibition-act>

<sup>24</sup> Granderson, LZ. “The 'war on drugs' was always about race”. LA Times, 21 de jul. de 2021 <https://www.latimes.com/opinion/story/2021-07-21/the-war-on-drugs-was-always-about-race>

(ASL) took over as the primary prohibition lobby in America<sup>25</sup>. Okrent (2010) believes that the ASL may not have been the first broad-based American pressure group, but it certainly was the first to develop the tactics and the muscle necessary to rewrite the Constitution. Public resentment against the corrupting influence of the large liquor dealers in local politics, especially in the larger cities, tended to focus public attention on removing “a cancer from the body politic”. Finally, the institution that most strongly agitated public sentiment against liquor traffic was the licensed saloon, itself the symbol of intemperance and corruption (Bonnie & Whitebread, 1970).

Along with that, World War I was still raging, and anti-German sentiment was running high in the U.S.; much of the brewery business was still German-owned, and xenophobia ended up winning the battle over alcohol. On January 17, 1920, after Congress overrode President Woodrow Wilson’s veto and Prohibition officially took effect.

**Figure 3: Anti-Saloon League Rally**



Source: PBS LearningMedia, 2015

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<sup>25</sup> Campbell, A. (2017). The temperance movement. Social Welfare History Project. Retrieved from <http://socialwelfare.library.vcu.edu/religious/the-temperance-movement/temperance-movement/>

Illegal activities stepped in to profit from the business and to fill the void left by the legal market, while law enforcement lagged behind the rise in criminal behavior. Inflated underground prices often provoked criminal activity and this activity in turn evoked a moral response from the public, cementing the link between perversion and substance addiction and making prohibition unsustainable. The consequences of this policy had engendered and corrupted state and federal institutions and helped create the US Mafia. Its ultimate demise had been brought about by the loss of popular support for Prohibition and, in the context of the Great Economic Depression, the US Government's dire need to raise alcohol revenue<sup>26</sup>.

Finally, in 1933 the Twenty-First Amendment repealed the Eighteenth, and manufacture, sale and consumption of alcohol became legal in the United States again. But that was just alcohol, a long history of prohibition in pursuit of other substances had just started.

Public perception is an important feature here, while alleged evils of alcohol abuse were matters of public knowledge, public and even professional oblivion were common when it came to narcotics. Civil War hospitals used opium and morphine freely and many veterans returned home addicted to those substances (Terry & Pellens, 1928). Overmedication continued long after peace had been restored, due to the ready availability of these drugs with and sometimes without prescription. Since physicians were free to dispense these drugs as pain-killers, individuals given morphine first for legitimate therapeutic purposes often found themselves addicted. Even though is not on the scope of this dissertation, it is hard not to point out that, similar to that period, in 2012, at the height of the prescription opioid trend in the United States, roughly 1 in 3 U.S. veterans was prescribed opioids<sup>27</sup>, causing an opioid epidemic that led to deaths from drug-involved overdose.

Although many states regulated narcotics indirectly through their general "poison laws" before 1870, the first anti-narcotics legislation did not appear until the last quarter of the nineteenth century<sup>28</sup>. Most of the early legislation focused primarily on crime prevention and public education regarding the so-called dangers of drug use. The spread of opium-smoking, especially in the western states, gave rise to legislation in eighteen states between 1877 and 1911 designed to

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<sup>26</sup> Transform Drug Policy Foundation. International security and the global war on drugs, the tragic irony of drug securitization (2011).

<sup>27</sup> Mosher HJ, Krebs EE, Carrel M, Kaboli PJ, Weg MW, Lund BC. Trends in prevalent and incident opioid receipt: an observational study in Veterans Health Administration 2004-2012. *J Gen Intern Med.* 2015 May;30(5):597-604. doi: 10.1007/s11606-014-3143-z. Epub 2014 Dec 18. PMID: 25519224; PMCID: PMC4395612.

<sup>28</sup> U.S. Treasury Department, State Laws Relating to the Control of Narcotics Drugs and the Treatment of Drug Addiction 1 (1931)

eradicate the practice either by preventing the operation of opium dens or by punishing the smoking of opium altogether. Those states were highly populated by an Asian community creating a stigma to that immigrant population. The Asians were connected with the opium and the laws criminalized the substance use and, indirectly, the population also. This connection between substances and peripheral communities would repeat along the way.

Ferraiolo (2007) says that the story of American narcotics policy in the twentieth century can perhaps best be described as a history of repeated attempts to control deviance. The first national legislation designed to regulate narcotics distribution, the 1909 “Act to Prohibit Importation and Use of Opium”, banned the importation of opium at other than specified ports and for other than medicinal use. By this time, the world began to pay attention to the drug market and had its first international conference about drugs, the Opium Commission, at Shanghai in 1909.

According to the UN, the initiative for organizing the Commission came from US President Theodore Roosevelt’s government, which in 1908 had canvassed Far Eastern and interested European powers<sup>29</sup>. Which can be considered as a leadership role in bringing the issue to the international sphere. After the Commission, back in the United States, the Harrison Act was passed in 1914, a taxing measure, required registration and payment of an occupational tax by all persons who imported, produced, dealt in, sold or gave away opium, cocaine or their derivatives.

The Harrison Act added a new layer of control to an already extensive system of state and local anti-drug laws. Spillane (2004) argues that it represented both “a culmination of years of drug control efforts, [and] also a new beginning.” In the nineteenth century many states used their authority to control the licensing of pharmacists who sold cocaine and to rein in the spread of opium dens or confine them to certain areas of the community. According to Ferraiolo (2007), these laws, however, were full of loopholes, only sporadically enforced, and used in highly selective ways.

So far, the History and laws presented here demonstrate both the American aim for controlling the individuals and their ways of life while carrying a moral aspect. Additionally, the intersection between the national politics and the normative leadership at the international level begin to show. Now I move on to regulation that treats specifically marijuana use at the federal level.

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<sup>29</sup> United Nations Office on Drugs and Crime. **The Shanghai Opium Commission**. Available at: [https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin\\_1959-01-01\\_1\\_page006.html](https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1959-01-01_1_page006.html)

## 2.3 Federal Marijuana Prohibition

Until the inclusion of marijuana in the Uniform Narcotic Drug Act in 1932 and the passage of the Marihuana Tax Act in 1937, there was no national public policy regarding cannabis specifically. However, the first state marijuana prohibition law was passed in California in 1913. The law received no public notice in the press. It was passed as an obscure technical amendment by the State Board of Pharmacy, which was then leading one of the nation's earliest and most aggressive anti-narcotics campaigns<sup>30</sup>. In 1914 the New York City Sanitary Laws included cannabis in a prohibited drug list; in 1915 the state of Utah passed the first state statute prohibiting sale or possession of the drug and by 1931 twenty-two states had enacted such legislation.

At each stage of its development, marijuana policy has been heavily influenced by other social issues because the drug has generally been linked with broader cultural patterns. Particularly at its inception, nationwide anti-marijuana legislation and its fate in the courts were inseparably linked with the earlier anti-narcotics and prohibition experiences (Bonnie & Whitebread, 1970). Those state-level prohibitions stemmed largely from anti-immigrant sentiment and, in particular, from racial prejudice against Mexican migrant workers, who were often associated with the use of the drug. Prohibition advocates attributed shocking crimes to marijuana and the Mexicans who smoked it, creating a stigma around marijuana and its alleged “vices”. These moral and cultural variables play an important role in explaining why these substances were not simply treated as medical ones, but rather a security issue, a threat.

Bonnie and Whitebread<sup>31</sup> discuss the possible influences on the state legislation, arguing that there were three major influences: 1) “the most prominent was racial prejudice”. Again, an immigrant population is stigmatized and connected to substance abuse, as pointed previously; 2) “the assumption that marijuana, which was presumed to be an addictive drug, would be utilized as a substitute for narcotics and alcohol then prohibited by national policy”; 3) “there is some evidence that propaganda by the Geneva Conventions in 1925 was publicized and may have had some influence”. Those conventions were intended to impose global controls over a wider range of drugs, including, for the first time, cannabis – described as “Indian hemp” in Article 11 of the

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<sup>30</sup> Gieringer Dale H. The Forgotten Origins of Cannabis Prohibition in California. *Contemporary Drug Problems*, Vol 26 #2, Summer 1999

<sup>31</sup> Bonnie R. & Whitebread C. The Forbidden Fruit and the Tree of Knowledge. *Virginia Law Review*, Volume 56 October 1970 Number 6.

Convention. Articles 21-23 required Parties to provide annual statistics on: drug stocks and consumption; the production of raw opium and coca; and the manufacture and distribution of heroin, morphine and cocaine<sup>32</sup>.

On the national level, the first pronouncement of federal authority over marijuana use was the Marihuana Tax Act, passed in 1937. The obvious question, from a historical point of view, is why such legislation was thought to be necessary, especially after the passage of related legislation in every state in the previous few years. Berman and Kreit (2020) believe that the main reason was that “whatever publicity the ‘marijuana problem’ received during this period was attributable to Commissioner Anslinger and his office (Federal Bureau of Narcotics - FBN), who conducted an active educational campaign for federal prohibition”. They also point out that Anslinger “prepared press stories on the dangers of the drug and traveled around the country disseminating propaganda.” On the international level he was considered a new actor on the U.S. delegation: Harry J. Anslinger, first Commissioner of the newly created Federal Bureau of Narcotics, position he would hold for 33 years<sup>33</sup>. Utterly devoted to prohibition and the control of drug supplies at the source, Anslinger is widely recognized as having had one of the more powerful impacts on the development of U.S. drug policy, and, by extension, international drug control into the early 1970s.

Anslinger became an active actor for prohibition and along with others they submitted testimony to Congress regarding the evils of marijuana use, claiming that it incited violent and insane behavior. Commissioner Anslinger had informed Congress that “the major criminal in the United States is the drug addict; that of all the offenses committed against the laws of this country, the narcotic addict is the most frequent offender”<sup>34</sup>. In this discourse, one can note the criminalization of the individual, not treated as a sick person, but as a lawbreaker.

The advancing implementation of the Marihuana Tax Act of 1937, combined with public information campaign, hardened antidrug attitudes and brought about near-total prohibition. Throughout much of the twentieth century, negative stereotypes about drugs and users helped

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<sup>32</sup> Sinha, J. **The History and Development of the leading International Drug Control Conventions**. Law and Government Division, Library of Parliament, Senate of Canada, 21 February 2001.

<sup>33</sup> For more on Anslinger see Rathge, Adam R. “Cannabis Cures”, Boston College, 2017. <http://hdl.handle.net/2345/bc-ir:107531> ; McGettigan, Timothy, The Politics of Marijuana: Truth Regimes and Institutional Ignorance (January 28, 2020). Available at <http://dx.doi.org/10.2139/ssrn.3527126>

<sup>34</sup> See statements by H. J. Anslinger, Commissioner of Narcotics, Bureau of Narcotics, Department of the Treasury and Dr. James C. Munch, before the U.S. Congress, House Committee on Ways and Means, Taxation of Marihuana, 75th Cong., 1st sess., April 27-30, May 4, 1937, HRG-1837-WAM-0002.

justify the federal emphasis on law enforcement, interdiction, and punishment as the primary weapons in the war against drugs (Ferraiolo, 2007).

Over the next decades, Congress continued to pass drug control legislation and further criminalized drug abuse. For example, the Boggs Act (Public Law 82-255), passed in 1951, provided uniform penalties for violations of the Narcotic Drug Import and Export Act and the Marihuana Tax Act<sup>35</sup>. One can consider these penalties as heavy-handed. For instance, a first offense was punishable by two to five years in prison. A second offense was punishable by five to ten years imprisonment and a \$2,000 fine. A third offense would result in ten to twenty years in prison and a \$2,000 fine. Moreover, for second and subsequent offenses, there was no parole, probation, or suspended sentences. The 1956 Narcotic Control Act (P.L. 84-728)<sup>36</sup> further increased penalties for drug offenses and established the death penalty as punishment for selling heroin to youth:

Section 2 of the Narcotic Drugs Import and Export Act, as amended, is further amended by adding at the end thereof the following: (i) Notwithstanding any other provision of law, whoever, having attained the age of eighteen years, knowingly sells, gives away, furnishes, or dispenses, facilitates the sale, giving, furnishing, or dispensing, or conspires to sell, give away, furnish, or dispense, any heroin unlawfully imported or otherwise brought into the United States, to any person who has not attained the age of eighteen years, may be fined not more than \$20,000, and shall be imprisoned for life, or for not less than ten years, except that the offender shall suffer death if the jury in its discretion shall so direct.

As harsh as the penalties were getting, it would be pertinent to note here, as I walk through the intersections between drugs and society, the emergence of the Counterculture Movement in the 1960's. The youth rejected overall establishment of societal norms, specifically regarding

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<sup>35</sup> Public Law 255 CHAPTER 666, AN ACT To amend the penalty provisions applicable to persons convicted of violating certain narcotic laws, and for other purposes. November 2, 1951 [H. K. 3490] <https://www.govinfo.gov/content/pkg/STATUTE-65/pdf/STATUTE-65-Pg767.pdf>

<sup>36</sup> TITLE I—AMENDMENTS TO THE 1954 CODE, THE NARCOTIC DRUGS IMPORT AND EXPORT ACT, ETC. SEC. 107. SALE OF HEROIN TO JUVENILES—PENALTIES. <https://www.govinfo.gov/content/pkg/STATUTE-70/pdf/STATUTE-70-Pg567.pdf#page=9>

racial segregation and initial widespread support for the Vietnam War (Larkin, 2015). Marijuana took on a politically charged meaning as it became associated with anti-war, anti-authority sentiments. Music and movies of the 1960s often depicted or even glorified marijuana use, and celebrities, journalists, politicians, and others admitted to using the drug and sometimes were arrested for possession<sup>37</sup>.

The tumultuous social upheaval of the 1960s included a sharp rise in the drug using population as middle-class “baby boomers” came of age during the psychedelic revolution and growing numbers embraced marijuana and LSD as the chief sacraments of the counterculture (Lee and Shlain, 1991). With the youth coming of age, taking on rebelling perspectives and defying the common order wasn’t unheard of. However, the number of young people spread across the nation allowed the counterculture movement to expand exponentially.

Despite a drug scare and the subsequent criminalization of LSD, (which had been legal until 1966) the growth of a middle-class population of drug users contributed to a loosening of drug laws when compared to the 1950s (Himmelstein, 1983). Demographic and political changes would begin to provide activists and policy makers with new opportunities to change drug policies.

In summary, prior to the declaration War on Drugs in 1971, the country was involved in the Cold War and its sub-wars. In an effort to silence the Counterculture Movement, government authorities banned the psychedelic drug LSD, restricted political gatherings, and tried to enforce bans on what they considered obscenity in books, music, theater, and other media. The landscape painted before the declaration of war on drugs is one of repression and discontent that only became stronger in American society.

## **2.4 The Controlled Substances Act (CSA)**

In order to organize and create a legal foundation for drug regulation, the federal Controlled Substances Act of 1970 (CSA) governs the classification of drugs and regulates their manufacture, distribution, and use in medical studies. It is administered by the Drug Enforcement Administration (DEA) and it establishes the drug federal policy. Under the CSA, controlled substances are divided into five “schedules” based on their potential for abuse, medicinal value, and addictiveness. As the

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<sup>37</sup> Jonnes, *Hep-Cats, Narcs, and Pipe Dreams*; Larry Sloman, *Reefer Madness: A History of Marijuana in America* (Indianapolis, 1979).



drug schedule changes - Schedule I, II, Schedule III, etc., so does the abuse potential - Schedule V drugs represent the least potential for abuse<sup>38</sup>.

The Controlled Substances Act (CSA) is still the current controlling federal legislation, which classifies marijuana as Schedule I. As I show in Table 2, this category is for substances that, according to the Drug Enforcement Administration (DEA), have “no currently accepted medical use and a high potential for abuse”, as well as a risk of “potentially severe psychological or physical dependence”<sup>39</sup>.

**Table 2: Control Substance Act Classification**

	Abuse Potential	Medical Use	Safety and dependence
Schedule I	High	Not accepted	Not safe for use
Schedule II	High	Accepted	Abuse may lead to severe dependence. These drugs are also considered dangerous.
Schedule III	Less potential for abuse than Schedules I and II	Accepted	Moderate to low potential for physical and psychological dependence.
Schedule IV	Less potential for abuse than Schedule III	Accepted	Low risk of dependence
Schedule V	Less potential for abuse than Schedule IV	Accepted	

Source: Elaborated by the author based on the Controlled Substances Act

The CSA emerged from a widespread, bipartisan view that comprehensive legislation was needed to clarify federal drug laws, and its centerpiece was this comprehensive scheduling system for assessing and regulating drugs in five schedules. The CSA established the statutory framework through which the federal government regulates the lawful production, possession, and distribution

<sup>38</sup> United States Drug Enforcement Administration, Drug Scheduling <https://www.dea.gov/drug-scheduling>

<sup>39</sup> The CSA regulates drugs in five major classes: narcotics (including marijuana), depressants, stimulants, hallucinogens, and anabolic steroids. For more information on these classes, see the U.S. Drug Enforcement Administration, Drug Classes, [http://www.justice.gov/dea/concern/drug\\_classes.html](http://www.justice.gov/dea/concern/drug_classes.html).

of controlled substances<sup>40</sup>. This broad drug law classified controlled substances under five schedules according to (1) how dangerous they are considered to be, (2) their potential for abuse and addiction, and (3) whether they have legitimate medical use. It became, and remains today, the legal framework through which the Drug Enforcement Administration (DEA) derives its authority. Extensive research has contested those affirmations and many legislators have fought to change marijuana from this schedule, but after half a century, the CSA is still valid.

In design, the CSA was intended to prioritize a scientific approach to drug prohibition and regulation by embracing a mixed law-enforcement and public-health approach to drug policy. However, in practice, the US Justice Department came to have an outsized role in drug control policy, especially as subsequent “tough-on-crime” sentencing laws made the CSA the backbone of a federal drug war in which punitive approaches to evolving drug problems consistently eclipsed public health responses<sup>41</sup>. Also, Berman and Kreit (2020, p. 606) criticize the CSA for being silent as to the meaning of potential for abuse, accepted medical use, and physical dependence. The lack of congressional guidance, in combination with the administrative process, gives the DEA a great deal of control over the scheduling criteria.

Many patients, advocates, health professionals and elected officials have sought to reschedule marijuana to reflect its accepted medical value, low abuse potential, and relative safety<sup>42</sup>. They argue that marijuana can be harmful and is abused, but the same is true of dozens of drugs or substances which are listed in Schedule II so that they can be employed in treatment by physicians in proper cases, despite their potential for abuse. Rescheduling can occur either by Congressional action (legislation) or through the DEA’s administrative rulemaking process (petition). In 1972, the National Organization for the Reform of Marijuana Laws (NORML) launched the first petition to reschedule marijuana from Schedule I to II. The petition was not given a federal hearing until 1986. In 1988, DEA Administrative Law Judge Francis L. Young concluded that marijuana is “one of the safest therapeutically active substances...In strict medical terms, marijuana is far safer than many foods we commonly consume.”<sup>43</sup> Despite the court’s finding, the

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<sup>40</sup> Legal Scholarship Blog. “The Controlled Substances Act at 50 Years”, January 13, 2020

<sup>41</sup> Sacco, Lisa. Drug Enforcement in the United States: History, Policy, and Trends. Congressional Research Service, 2014. <https://fas.org/sgp/crs/misc/R43749.pdf>

<sup>42</sup> Abrams, D.I., Couey, P., Shade, S.B., Kelly, M.E. and Benowitz, N.L. (2011), Cannabinoid–Opioid Interaction in Chronic Pain. *Clinical Pharmacology & Therapeutics*, 90: 844-851. <https://doi.org/10.1038/clpt.2011.188>

<sup>43</sup> U.S. Drug Enforcement Administration, “In the Matter of Marijuana Rescheduling Petition,” Docket No. 86-22, 6, 57– 58, 68 (1988).

petition was ultimately denied after more than two decades of court challenges. None of the subsequent attempts to reschedule marijuana have succeeded so far.

## 2.5 International Drug Control Regime

Although it is not the objective of this research to articulate in detail the international treaties on drugs, it is essential to acknowledge the UN-based international drug control system previously cited in the introduction of this dissertation as the main international level of guidance for prohibition. I have written about the regime in detail in my master's thesis<sup>44</sup>, but I will briefly present the regime and the three main documents that compose the UN-based regime here.

I consider it the “International drug control regime” based on Young's constructivist definition of regimes: “agreements among some specified groups of actors” that spelled out rules of power and authority, rights and liabilities, and behavioral obligations, later noting the important role that “convergent expectations” play in social institutions (Young 1977).

Also, I chose Young's concept because he acknowledges that regimes undergo change of varying proportions during their lifetimes and experience “continuous transformations in response to their own inner dynamics as well as to changes in their political, economic and social environments” (Young, 1983, pp. 106–107).

By the start of the 20th century, influential American leaders, including U.S. Opium Commissioner Hamilton Wright, appointed in 1908, had begun describing drugs as a “curse” and moral threat that must be removed entirely from society. Sinha (2001) shows that since the start of international drug control efforts at the turn of the 20th century, the U.S. has been the key player in most multilateral negotiations. The prohibition basis derives largely from U.S. policy – the various forms, past and present, of the U.S. “war on drugs” – and the particular individuals who have represented the U.S. in international negotiations. As cited previously, following U.S. leadership, in 1909, world powers convened in Shanghai for the Opium Commission, which aimed to find a collective way to eliminate “drug abuse” once and for all.<sup>45</sup>

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<sup>44</sup> For more on the concepts of Regimes in IR and the drug control regime formation, see my master's thesis, it can be found at <http://tede.bc.uepb.edu.br/jspui/handle/tede/2681> available in Portuguese.

<sup>45</sup> John Collins, “The Economics of a New Global Strategy,” in *Ending the War on Drugs*, ed. John Collins, (London: LSE Expert Group on the Economics of Drug Policy, May 2014

The present global drug control system is now over 100 years old. It was inspired by the realization that no country could regulate drug use in isolation, since these commodities were so readily bought and sold across borders and jurisdictions. Effective control would require states to work together as an international community<sup>46</sup>. The following conventions are the instruments of international drug law: The 1961 UN Single Convention on Narcotic Drugs which draws together previous drug control legislation and forms the unified legal bedrock of the current system; The 1971 UN Convention on Psychotropic Drugs; and the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Piaggio and Vidwans (2019) alert that though the treaties establish a global mission (ending global drug consumption and abuse) with a general policy guideline (prohibition), they did not establish processes to coordinate efforts across nations. The guidelines established by U.N. treaties give countries a degree of freedom in fighting drug use and trade within their borders, and as a result, the strategies and harshness of legislation vary considerably between different jurisdictions. Here, I couldn't help but notice that this is similar to what is happening inside the United States. The states and local jurisdictions are changing their marijuana laws while the federal government continue to prohibit but does not enforce it, as the international drug regime is mirrored in the American drug regime.

### **2.5.1 Single Convention on Narcotic Drugs, 1961**

Seventy-three States were represented by officials at the Conference intended to codify most of the numerous international drug conventions dating back to 1909, and place under international control primarily plant-based substances such as coca, marijuana and opium, as well as their derivatives. The document explains that is “a plenipotentiary conference for the adoption of a single convention on narcotic drugs to replace by a single instrument the existing multilateral treaties in the field”, it is also “to reduce the number of international treaty organs exclusively concerned with control of narcotic drugs, and to make provision for the control of the production of raw materials of narcotic drugs”<sup>47</sup>.

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<sup>46</sup> International Drug Policy Consortium. **Global Drug Control System** <https://idpc.net/policy-advocacy/global-advocacy/global-drug-control-system>

<sup>47</sup> UN, Single Convention on Narcotic Drugs. United Nations Headquarters from 24 January to 25 March 1961 <https://www.unodc.org/unodc/en/treaties/single-convention.html?ref=menuaside>

Among other provisions in the Convention, article 2, 5 (b) of the Single Convention stipulates that any signatory

shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only.

The United States argued that the Single Convention “should be amended to make it more effective before it came into force” and therefore not only refused to sign the treaty but was also the only country who voted against a resolution in 1962 that invited governments to ratify or accede to the Single Convention (Lande, 1962, pp. 776–797). Mindful of the fact that the US had initiated the process for a unifying treaty (E/CONF.34/24, p. 6), this put the US once again in a somewhat paradoxical position just as they are nowadays with marijuana regulation. In 1967 the US eventually acceded to the treaty and only a few years after Senate ratification initiated a period of unusually intense diplomatic activity designed to bolster the UN drug control framework (Woodiwiss & Bewley-Taylor, 2005, pp. 11–12; Kušević, 1977, p. 47; Fisher, 1984, p. 361; McAllister, 2000, pp. 236–237).

Finally, the 1961 Convention established the Commission on Narcotic Drugs (CND) to be the organ responsible for guiding global policy and deciding on future amendments to the treaties. Additionally, the Convention established the International Narcotics Control Board (INCB) to monitor the implementation of the treaty.

### **2.5.2 The 1971 UN Convention on Psychotropic Substances**

As the title of the Convention says, this treaty was designed to control the new psychoactive drugs such as amphetamine-type stimulants, barbiturates, benzodiazepines, and psychedelics as they became increasingly prevalent.

The result of the meeting materialized in the Protocol Amending the Single Convention on Narcotic Drugs, signed on 25 March 1972 and came into force in August 1975. Rather than making dramatic changes to the Single Convention, the Amending Protocol actually fine-tuned existing

provisions relating to the estimates system, data collection and output, while strengthening law enforcement measures and extradition (Boister, p. 47).

An interesting point is the amended article 36: it introduced the option of alternatives to penal sanctions for trade and possession offenses when committed by drug users. It says that “parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers of drugs shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration.<sup>48</sup>” However, as the other articles, its application is entirely up to the discretion of national governments.

The hurry to gather for a new Convention and creation of new international protocols because of the surge of new substances led to confusion. Bewley-Taylor and Jelsma (2012) identified that “the whole concept of ‘psychotropic’ substances itself was a distortion of the logic behind the control framework, as the term lacks scientific credentials and was in fact invented as an excuse to safeguard the wide range of psychoactive pharmaceuticals included in the 1971 Convention from the stricter controls of the Single Convention”. In summary, the 1971 Convention controls ‘psychotropic’ drugs, and the 1961 Convention controls ‘narcotic’ drugs, yet neither term had a coherent scientific meaning.

Only in 2000 the UNDCP acknowledged that “the international classification into narcotic drugs and psychotropic substances according to whether the substance is governed by the 1961 Convention or by the 1971 Convention has no conceptual basis”. It also recognized that “the legal definition of many psychotropic substances is entirely applicable to narcotic drugs, and in many cases, the reverse is true. Even more important, the international classification is not dependent on the risk that the substance poses for health and welfare” (UNDCP, 2000, p. 8).

### **2.5.3 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988**

Because drug use continued to rise and the global illegal drug market expanded into a multibillion-dollar industry, the states felt the need to gather again with the aim of discussing

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<sup>48</sup> E/CONF.58/7/Add.I. (1973). United Nations Conference for the adoption of a Protocol on Psychotropic Substances, Vienna, 11 January–19 February 1971. Official records, Volume II: Summary records of plenary meetings, Minutes of the meetings of the general committee and the committee on control measures. New York, United Nations

organized crime. The 1988 UN Drug Convention is expansive in scope and coverage, it establishes internationally-recognized offenses relating to drug trafficking and money laundering that are to be criminalized under the domestic laws of the Convention's parties. It also creates a framework for international cooperation to bring to justice those persons who profit from drug trafficking (Gurule, 1998). Examples of international cooperation in this case can be, for example, extradition of drug traffickers, controlled deliveries and transfer of proceedings.

By then, the United States had declared the War on Drugs, which Crick (2018) points out that not only did it change the way US drug law enforcement was prosecuted overseas by introducing militarized counter-narcotics programs that were copied in other countries, but its focus on drugs as a threat to the state was replicated in the 1988 UN Convention which had the effect of integrating this perspective into global norms. We can identify that this new convention has a more precise language on security. For instance, the Convention states that signatory states recognize "the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States"<sup>49</sup>. The UN is not inviting states to discuss drugs or the substance's potential to harm or not, they are now using language for the states to take action towards threats, crimes and criminals. As I explained in the introduction, language is important and it changes the narrative.

Woodiwiss and Bewley-Taylor (2005) claim that the convention, which is essentially an instrument of international criminal law, has at its core Article 3: "Offences and Sanctions." As the UN Commentary to the Convention notes, the treaty deviates from the earlier drug conventions by requiring Parties to "legislate as necessary to establish a modern criminal code of criminal offences relating to various aspects of illicit trafficking and ensure that such activities are dealt with as serious offences by each State's judiciary and prosecutorial authorities."<sup>50</sup> One can notice this discursive construction of the illicit drug trade as threatening to national security, along with various US law enforcement practices, was incorporated into the United Nations system.

Stewart (1990) argues that "The US participated actively in the negotiation of the Convention, and many of its provisions reflect legal approaches and devices already found in US law." In agreement, Woodiwiss and Bewley-Taylor (2005) point out that the convention also

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<sup>49</sup> United Nations, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna: United Nations, 1998) p. 1.

<sup>50</sup> United Nations Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Done at Vienna on 20 December, 1988, New York, United Nations, 1998, 48.

recommended using US-style law enforcement methods such as asset seizures as well as reinforcing drug prohibition as the predominant paradigm through which international drug control should be enacted. Although the convention did allow for the treatment or rehabilitation of addicts as an alternative to a penal sentence, the widespread acceptance the Convention can be seen as a significant stage in the internationalization of American drug prohibition policies.

These three conventions integrate the international drug control regime and were highly influenced by the United States' diplomacy, which I will further discuss next chapter. Moreover, I now move to an extensive literature review and presentation of my main argument of a Desecuritization from the ground-up.



## CHAPTER 3 - The Fabrication of a Threat

In the previous chapter I presented the history, historical laws and agreements that layered the foundation to security discourse and war rhetoric. In this chapter I ask: How did drugs become a threat? How can International Relations (IR) theory help us understand drug prohibition? To shed light on these questions, this chapter will proceed as follows: the first section presents the theoretical framework used to analyze the drug issue through IR lenses, followed by a segment with theory application. I explore Securitization and Desecuritization theories in detail and how I use it to analyze the War on Drugs. Also, I will present the consequences of this war in various sectors of society. Throughout this chapter I highlight the importance and construction of the language. Lastly, I take a look at the results of drug prohibition and what is considered success and what is considered failure.

### 3.1 Theoretical Outline

Within the discipline of International Relations, security is regarded as being an ‘essentially contested concept’. The dispute of ‘security’ arises naturally as the meaning of security is not ontologically given, but changes throughout time. Cohen (2018) talks about how the idea of security has brought individuals together, promoted commodious living and industrial pursuits, fostered intellectual, technological and cultural advancements, and contributed to the expansion of political and social communities. At the same time, it has legitimated wars both foreign and domestic, inculcated and perpetuated authoritarian, totalitarian and dictatorial regimes, elevated certain collective goals and virtues above others, and created out-groups whose insecurity has been seen as necessary for the security of the in-group. Since security has no constant meaning, the concept means something different for every school of thought within security studies (Floyd, 2007). Security, understood as a specific *problematique*, is fundamentally a discursive process. That is to say, ‘security’ is not something that exists because of some real, physical phenomenon with tactile boundaries – it is not an object that can be given or taken away. Rather, it exists through its designation as such (Cohen, 2018). For the purpose of this dissertation, security takes a constructivist and discursive shape and this chapter aims to present the original idea of Securitization in order to explain how drugs became an existential threat for the American and international community.

Security concerns can be projections of existentially-threatening fear onto a reified ‘Other’. In this sense, insecurity results from the presence of these ‘Others’ and is mitigated when the fear assigned to them no longer becomes premise-altering or existential. In this research, the ‘Others’ are controlled substances that have been long consumed but were turned into threats. I adopt the constructivist understanding of security that does not necessitate that any ‘Other’ be an object, material threat; it is only with the addition of an existential threat that an ‘Other’ becomes securitized.

Securitization theory is remarkably well documented<sup>51</sup> and its purpose is understanding how issues become securitized, focusing on the role of speech in the framing of threats. It is an explicitly social constructivist approach to understanding the process by which topics become a matter of security, for example the environment or society. Drugs are seen as a matter of security, even of war and survival, but not always was it like that. Cannabis itself has been around in some form and used by humans for many years. In order to connect drugs and Securitization I now unpack what is this theory, its concepts and features.

### **3.2 Securitization Theory: from theory to policy**

The Copenhagen School (CS) of security studies was created in the end of the 1980’s in response to the traditionalist and predominantly realist paradigms of International Relations theory. This was done by deepening and widening the concept of security, and by directing attention to the social and political mechanisms that are at play when issues are placed on, or removed from, a state’s security agenda (Åtland, 2008). They sought to include a range of concerns such as environmental change, poverty and human rights on the agendas that before were just filled with military and sovereignty concerns. The deepening and widening (or wide versus narrow) debate is largely attributed to Buzan, who also included the introduction of analytical levels other than that of the state, and sectors other than the military. Wæver’s main contribution was the twin concepts of ‘securitization’ and ‘desecuritization’, which in this study is applied to the analysis of drug policy in the United States.

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<sup>51</sup> See, for instance, Buzan, Barry, Ole Waever, and Jaap de Wilde (1998); Huysmans, Jef (2000); Aradau, Claudia (2004); Roe, Paul (2004); Jutila, Matti (2006); Balzacq, Thierry (2010) and many more.

According to Elbe (2006), not only is the “securitization” theory presented in this framework widely considered to be among the most important, original, and controversial contributions to the field of security studies in recent years (Huysmans 1999), it also remains one of the most significant systematic scholarly study of the ethical implications of widening the security agenda to include an array of non-military issues, making it a natural starting point for a more sustained normative debate about the securitization of drugs. The author also states that, although securitization theory is not exclusively concerned with normative questions, and also has important analytical interests in tracing the detailed social processes through which security threats become constructed by political actors, it is predominantly this normative dimension of the framework that remains indispensable for opening up a wider ethical debate about framing drugs as an international security issue.

Securitization theory, developed within the Copenhagen School of Security Studies, on several occasions was compared to the political theory set out by Carl Schmitt. His conceptualization of the political as a domain of exception is similar to the understanding of security in Securitization theory as a domain that breaks established rules of the game through obtaining legitimacy for extraordinary measures. While for the Copenhagen School (CS) security is conceptualized as a speech act that takes an emergency issue beyond normal politics into an area of security thus justifying exceptional measures that wouldn’t otherwise be acceptable.

Ejdus (2009) believes that both theories’ constitutive concepts are devoid of any ontology: they are regarded as performative acts. In the work of Schmitt, it is an act of decision on amity/enmity, while in Wæver’s theory it is a speech act that identifies threats, proclaims emergency action and demands exceptional measures. As the authors put it: “In this approach, the meaning of the concept lies in its usage and is not something we can define according to what would be analytically or philosophically the best.” (Buzan, Wæver and de Wilde, 1998, p. 24). Similar is Schmitt’s definition: “The political [...] does not describe its own substance but only the intensity of an association or dissociation of human beings.” (Schmitt, 1996, p. 38).

In spite of the conceptual similarity and narrative overlapping between the two theories, for Schmitt the ‘sovereign is he who decides upon the exception’ (Schmitt, 1985, p. 5). In contrast, Wæver identifies a series of conditions for that. In order to succeed, a speech act has to follow the grammar of security, be spelled out by someone who holds the position of authority and has to refer to an existential threat that is generally held by the audience to be threatening (Buzan, Wæver

and de Wilde, 1998, p. 23). These authors view security as a particular form of performative speech act; security is a social quality political actor, such as intelligence agencies, government officials, and international organizations, inject into issues by publicly portraying them as existential threats (Buzan, Wæver, and de Wilde 1998, p. 204).

Williams (2003) argued that different kinds of speeches might constitute an act, and made an important theoretical connection to Schmittian politics of sovereign exceptionality. Williams wrote that the CS process of securitization — notably that securitization implies depoliticization — can be found in other theories of sovereign authority, and that securitizing moves are an attempt by the sovereign to decide the exception and thus remove the sector from democratic debate.

The CS's main contribution is the concept of Securitization, which is the move that takes politics beyond the established rules of the political game and frames the issues either as a special kind of politics or as above politics (Buzan et al., 1998, p. 23). The securitization approach is an alternative route to a wider concept of security that broadens the security agenda to include threats other than military ones. While the traditional studies' central concern is 'how we become more secure', securitization theory asks instead 'how does an issue become a security issue'. The core claim of Securitization Theory — that security must be understood as a 'speech-act' — is not only a sociological and explanatory tenet. As a speech-act, securitization is located within the realm of political argument and discursive legitimation, and security practices are thus susceptible to criticism and transformation. In this way, securitization theory is linked directly to recent exploration of the role of argument, action, and ethics in constructivist theories in International Relations (Risse, 2000). The social construction of security issues (who or what is being secured, and from what) is analyzed by examining the "securitizing speech-acts" through which threats become represented and recognized.

Having disaggregated 'state security' into several sectors (military, political, societal, economic, and ecological), the authors marked a major shift in security studies. In contrast to state security which focuses on sovereignty as the core value, the other security sectors focused instead on identity, exchange, authority and environment. Floyd (2007) explains that for a 'non-traditional' approach the military understanding of security still matters but is not privileged over other sectors of security. Furthermore, the referent object of security includes, besides the state, the individual, the global, the local and/or specific groups. Buzan will argue that 'the question of when a threat becomes a national security issue depends not just on what type of threat it is, and how much the

recipient state perceives it, but also on the intensity with which the threat operates' (1991, pp. 133–4). At its most extreme, security threats might stem from anywhere, endangering almost anything.

When widening takes place, it is possible to retain the specific quality characterizing security problems: urgency; state power claiming the legitimate use of extraordinary means; a threat seen as potentially undercutting sovereignty, thereby preventing the political “we” from dealing with any other questions. With this approach, it is possible that any sector, at any particular time, might be the most important focus for concerns about threats, vulnerabilities, and defense (Wæver, 1995). Securitization can thus be seen as a more extreme version of politicization. This way, I find it useful to visualize public issues placed on a pendulum that can move from one position to another in accordance with discourses. For a matter of visual effects, when actors publicly portrait issues (e.g., drugs) as a threat or not, we can see them moving in the pendulum as we discuss them.

**Figure 4: Securitization Theory’s pendulum**

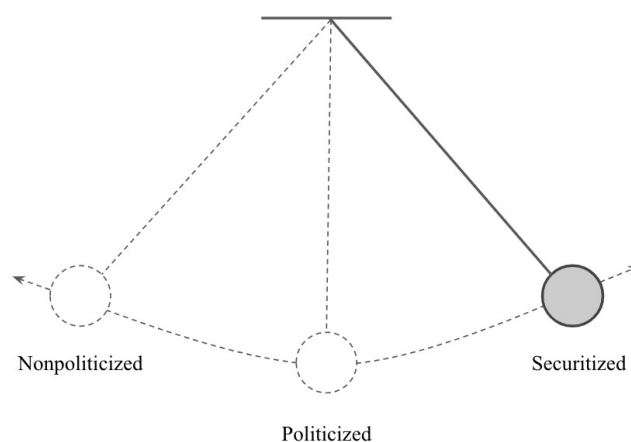


Image by the author

According to Buzan (1998), when a topic is non-politicized the state does not deal with it and it is not in any other way made an issue of public debate and decision. Moving to the center of the pendulum, a politicized topic is part of a public policy, requiring government decision and resource allocations. If an issue reaches the other end of the spectrum, it becomes securitized and is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedures.

One of the features of the securitization process is the speech act. Wæver (1995) has defined security as a speech act in which “security is not of interest as a sign that refers to something more real; the utterance itself is the act. By saying it, something is done (as in betting, giving a promise, naming a ship). By uttering ‘security’, a state-representative moves a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it.” If securitization is successful, then the issue is shifted from ‘normal’ politics to ‘emergency’ politics (Julita, 2006). Any actor can speak on behalf of an issue in a securitizing move; however, securitizations are commonly carried out by the traditional elites in a heavily top-down approach. It is important to note that not every fear becomes a security concern. Indeed, as Buzan *et. al* write in ‘Security: A New Framework for Analysis’, “there are intellectual and political dangers in simply tacking the word security onto an ever-wider range of issues.” Instead, security concerns should be understood as corresponding to those fears that “alter the premises for all other questions.”<sup>52</sup> Security concerns thus correspond to threats which promise to change the fundamental mode of existence for a community; if the threat is carried through, there will be no more recourse to ‘normal’.

Securitization is not an instantaneous or irrevocable act. Rather, securitization reflects the complex constitution of social and political communities and may be successful or unsuccessful to different degrees in different settings within the same issue area and across issues (Salter, 2008). Nor is securitization an act that removes an issue from deliberative politics forever, but needs to account for the movement of issues into and out of the security sector over time. The model provided by the Copenhagen School gives us no way to measure the success or failure of a securitizing move. In this dissertation, one of the ways I gauge the success or failure of a securitizing move by looking at the public opinion and the data on the consequences of the drug war. Applying the Securitization Theory, I argue that drugs became securitized by the speech (act) President Nixon gave in 1971<sup>53</sup>, declaring The War on Drugs, with the goal of eradicating what he viewed as the growing problem of drug addiction. I identify and pinpoint Nixon’s discourse as a specific speech act for the securitizing move that created the drug warfare. That is not to say that this is the only speech act responsible for the securitization of drugs but it is the chosen one for the following analysis.

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<sup>52</sup> Jahn *et. al* in Huysmans, “Revisiting Copenhagen,” p. 491; see also Wæver, “Securitization and Desecuritization”.

<sup>53</sup> You can watch it at <https://www.youtube.com/watch?v=y8TGLLQID9M>

The president states that “America’s public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive”. In this sense, Buzan et al. advocate that a successful speech-act is a combination of language and society, of both intrinsic features of speech and the public that authorizes and recognizes that speech. Among the internal conditions of a speech act, the most important is to follow the security form, the grammar of security, and construct a list that includes existential threat, point of no return, and a possible way out. In his pronunciation, Nixon used the words “enemy”, “fight”, “defeat” and “offensive” articulating the internal conditions of a speech act. This kind of language was greatly influential in establishing the war on drugs as a global fight focused on eliminating substance abuse. In fact, global policy surrounding drugs has predominantly been shaped by the United States’ advocacy for an “absolutist prohibition approach,”<sup>54</sup> and while prohibition is a matter of international law, the global drug war is widely considered a U.S.-led campaign.

Having disaggregated ‘state security’ into several sectors (military, political, societal, economic, and ecological), Buzan argues that ‘the question of when a threat becomes a national security issue depends not just on what type of threat it is, and how much the recipient state perceives it, but also on the intensity with which the threat operates’ (1991). The war metaphor also signifies the intensity with which we should pursue the goal of reducing all drug use and the sorts of sacrifices or extraordinary measures we should accept. Labeling the drug policy as war has signaled that it is something more than just prohibition for the sake of public health. War is a life and death fight against the enemy, where the enemy is drugs, a drug crime is an offense of the highest order and the goal of reducing all illegal drug use should be pursued at any cost.

The U.S. strategy of drug prohibition has created a “regime of truth” that drug prohibition is necessary for the protection of the citizenry. As constructed through discourse, drug policy is an example of the nexus between knowledge and power par excellence (Heddleston, 2012). According to Foucault (1990), “...it is in discourse that power and knowledge are joined together.” Through the discourse of “punitive prohibition” (Reinarman and Levine, 1997) and the representations it deploys, drug policies are legitimized and sustained.

The external aspect of a speech act includes the social capital of the enunciator, the securitizing actor, who must be in a position of authority and the features of the alleged threats that

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<sup>54</sup> John Collins, “The Economics of a New Global Strategy,” in *Ending the War on Drugs*, ed. John Collins, (London: LSE Expert Group on the Economics of Drug Policy, May 2014)

either facilitate or impede securitization<sup>55</sup>. It is important to note that Securitizing Actors are those who securitize issues by declaring something - a referent object - existentially threatened, in this case, president Nixon himself is the actor in authority. The referent objects are defined as things that are seen to be existentially threatened and that have a legitimate claim to survival. In this sense, the president announced in his speech that “Fundamentally, it is essential for the American people to be alerted to this danger, to recognize that it is a danger that will not pass with the passing of the war in Vietnam”, making the society the referent object.

Buzan *et al.* also present a third feature in the speech act approach, the Functional Actors, which are those who affect the dynamics of a sector. Without being the referent object or the actor calling for security on behalf of the referent object, this is an actor who significantly influences the decisions in the field of Security. We can also find that in Nixon’s declaration of the War on Drugs when he expresses that “with regard to this offensive, it is necessary first to have a new organization, and the new organization will be within the White House”. That organization turned out to be the Drug Enforcement Administration (DEA), as a superagency to provide the momentum needed to coordinate all federal efforts related to drug enforcement. In the last 50 years, ten percent of its Special Agent and Intelligence Analysts are permanently stationed overseas conducting drug interdiction, including undercover operations, surveillance, money laundering, paying informants, and facilitating arrests. Internationally, the DEA-led drug war has contributed to increased violence in many countries, as well as political and economic instability<sup>56</sup>.

The authors also claim that ‘a discourse that takes the form of presenting something as an existential threat to a referent object does not securitize it by itself – this is a securitizing move, but the issue is securitized only if and when the audience accepts it as such’ (Buzan et al. 1998). To evaluate the audience acceptance of the War on Drugs we can look at the polls regarding illegal drugs during those years, in which the American society agreed that marijuana should be illegal, as the Gallup poll data shows:

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<sup>55</sup> Buzan et al., *Security: a new framework for analysis*, 1998, p. 33.

<sup>56</sup> Drug Policy Alliance. It’s time to dismantle the DEA. <https://www.drugpolicy.org/DEA>



**Table 3: Poll - Do you think the use of marijuana should be made legal, or not?**

	<b>1972</b>	<b>1973</b>	<b>1977</b>	<b>1979</b>
No, illegal	81%	78%	66%	70%
Yes, legal	15%	16%	28%	25%
No opinion	4%	6%	6%	5%

Adapted from GALLUP: Illegal Drugs, constantly updated at <https://news.gallup.com/poll/1657/illegal-drugs.aspx>

Moreover, Julita (2006) believes that presenting an issue as an existential threat – if done successfully – means that ‘normal’ day-to-day politics is intensified into emergency politics. Pushed to the extreme, intensification creates an absolute division between friends and enemies. The enemy’s positions on certain issues are presented as posing an existential threat to us, and therefore any means necessary can be used in order to prevent the enemy’s project from succeeding, including the destruction of that enemy. This applies to Nixon’ speech and actions, particularly when he points that “in order to defeat this enemy which is causing such great concern, and correctly so, to so many American families, money will be provided to the extent that it is necessary and to the extent that it will be useful”. For example, in terms of investments, since the official declaration of the drug war in 1971, the United States alone has spent upwards of \$640 billion on the war on drugs. Other estimates of the costs of the war are even higher — American Progress reports<sup>57</sup> that it has cost the United States more than \$1 trillion. These numbers only include federal spending. Furthermore, according to Transform Drug Policy’s report<sup>58</sup>, “Count the Costs,” global annual spending exceeds \$100 billion, not to mention the money and operations in other countries.

Securitized issues are also marked by urgency: if we do not deal with this issue – that is, the existential threat – now, we will not survive and therefore will be unable to deal with other issues in the future (Wæver, 1995). This kind of emergency politics made Nixon build policies aimed at reducing the supply of drugs, believing that this would inevitably lead to a reduction in consumption. This meant that the burden of enforcing prohibition fell on countries where drug

<sup>57</sup> Betsy Pearl, “Ending the War on Drugs: By the Numbers,” Center for American Progress, June 27, 2018

<sup>58</sup> Count the Costs, The War on Drugs: Creating Crime, Enriching Criminals (London: Transform Drug Policy, 2019)

crops are cultivated (known as “production countries”) or countries that are along trade routes (known as “transit countries”)<sup>59</sup>.

A number of scholars have criticized the CS’s emphasis on the discursive element in securitization theory. What most of these critiques have in common is that they view the emphasis on speech as problematic in cases where the ability to speak is constricted, or where securitization occurs without a speech act (Fako, 2015). Among the main voices in this regard is Thierry Balzacq (2005), who adds a social aspect of securitization that includes ‘the context, the psycho-cultural disposition of the audience, and the power that both the speaker and the listener bring to the interaction’. This approach increases the explanatory power of the securitization theory by including a social context that is “independent from the use of language” (Balzacq, 2005). His examples demonstrate that these choices are constrained by history, memory, and discursive personifications. Likewise, Ralf Emmers (2007) shares these environmental aspects and notes that the articulation in security terms conditions the audience and provides securitizing actors with the right to mobilize state power and move beyond traditional rules. Additionally, the successful performance of securitizing acts is constrained and enabled by social and contextual conditions.

Moreover, as the Securitization theory and its critics evolved, there are now a number of critiques concerning the concept of securitization, dealing, for example, with the issue of political responsibility (Eriksson, 1999), with the absence of gender (Hansen, 2000), and with the consideration of other, non-discursive, institutionalized forms (Bigo, 2002). Along with other analysts, I believe that securitization and desecuritization can exist on a local as well as an international level. For instance, Lemanski (2012) suggests that security problems exist on a variety of scales—and security and securitization can be constructed from the bottom up as well as from the top down. Also, McInnes and Rushton (2012) have described securitization as a multidimensional process that can be carried out on a variety of levels (local, state and international) as well as along a continuum, with some issues being more securitized than others. In addition, they suggest that issues can become both securitized and desecuritized over time

Furthermore, the theory is a constant subject of constructive theoretical discussions and critique (Floyd, 2007, 2010; Hayes, 2009; McDonald, 2008; Mitzen, 2006; Stritzel, 2007; Taureck, 2006; Williams, 1998, 2003). Additionally, Floyd (2011) believes that securitization is complete

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<sup>59</sup> Collins (2012) “The Economics of a New Global Strategy,” 9.

only if the warning/promise made in the speech act is followed up by a change in relevant behavior by a relevant agent, a security practice.

In this sense, I now focus on some of the actions the government took after declaring the War on Drugs. The guiding tenets of the drug war strategy have been the vision of a drug-free society and the belief of vigorous enforcement of uncompromising criminal justice measures is the most effective method for realizing it. This philosophy has manifested itself in a focus on supply-side initiatives, on the assumption that these efforts will suppress the market for drugs. Besides, the laws that serve as the foundation for federal drug policy were signed by Nixon.

The actions to complete the securitization process are not just about bureaucratic transformation, but also about enforcing it. By the late 1960s, opiates and cocaine were controlled by one law (the 1914 Harrison Act), marijuana by another (the 1937 Marijuana Tax Act), and hallucinogens, stimulants and depressants by yet a third (the Food, Drug and Cosmetic Act, under amendments passed in 1965). The 1970 Controlled Substances Act (CSA) cleared away nearly all then-existing federal drug laws in favor of a single comprehensive statutory scheme to criminalize the possession, distribution, and manufacturing of all drugs for recreational use. The CSA established, for the first time, a standing federal policy of prohibition of the recreational market for all mind-altering substances (with the exception of alcohol and tobacco, which Congress specifically exempted from the CSA).

Following up on Floyd's argument, I would go further and add that the securitization process of drugs is not only about bureaucratic transformation but also about the consequences of law and enforcement. Those consequences materialized with the war on drugs, which I now expand the lenses to see how the declaration of War on Drugs escalated prohibition to become an internationally established legal norm and its consequences.

### **3.3 War on Drugs**

Since its inception, International Relations studies have dedicated much of its literature to warfare in an attempt to understand it, prevent it and alleviate its consequences. Whether categorized by the types of weapons used to conduct it, the scale of participation or scope, wars are largely evoked by extreme violence, aggression and destruction. Although one cannot see the war on drugs tactics daily on the news, as one can see about the conflict between Russia and

Ukraine in 2022, the war on drugs has also been harmful. It is the longest war in the American history and has made drug possession the most arrested offense in the country with one arrest every 31 seconds<sup>60</sup>.

It is true that the drug problem has been globally addressed<sup>61</sup> before the declaration of the War on Drugs by President Richard Nixon and there has been much scholarship and public debate around this fight. However, an announcement of war coming from one of the world's most powerfully militarized countries takes things to another level, making the perception of threat and danger more acute, essential for our security analysis. Moreover, I look at the War on Drugs considering that securitization is a sociological and political process—manifest in language, but a complex effect of power, interest, inter-subjectivity, bureaucratic position, and process (Salter, 2011). After five decades, enough disclaimed and declassified data is available to consider what has worked and what hasn't with these policies based on what the promoters of the War on Drugs claimed were the objectives. Therefore, I now take a better look at the national and international actions pursued by the US in this war as a step to understand the states' interest in regulating drugs even though it is still prohibited at the federal level. My intention is to show the War on Drugs as the ultimate example of securitization of controlled substances and also the results of the War so far in order to understand the need for change. Here, I measure success or failure based on the costs, especially human cost.

The War on Drugs' goal was to eliminate drug abuse and declaring war against drugs changed from metaphor and political slogan in the early 1970s to reality in the 1980s through the increased use of military tools, strategies, and personnel to combat the illicit drug trade (Andreas, 2019). Nationally, Nixon announced<sup>62</sup> the creation of the Office for Drug Abuse Law Enforcement, a precursor to the Drug Enforcement Administration (DEA). The office's goal, as Nixon explained, was to put greater emphasis on fighting drugs through the criminal justice system. "Today our balanced, comprehensive attack on drug abuse moves forward in yet another critical area as we institute a major new program to drive drug traffickers and drug pushers off the streets of America," Nixon said in 1972. When it comes to the criminal justice system this approach

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<sup>60</sup> FBI's Uniform Crime Reporting (UCR) Program using their Crime Data Explorer, 2019 <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topicpages/persons-arrested>

<sup>61</sup> Specially at the Opium International Convention (1912, revised in 1925) and UN Conventions of 1936, 1948 and 1961.

<sup>62</sup> Richard Nixon, Statement on Establishing the Office for Drug Abuse Law Enforcement. Online by Gerhard Peters and John T. Woolley, The American Presidency Project <https://www.presidency.ucsb.edu/node/254830>

of harsher sentences for drug offenses played a role in turning the country into the world's leader in incarceration. More specifically, people of color have been disproportionately hurt by mass incarceration for drug offenses, devastating families and communities.

Tonry (1994) argues that the “War on Drugs” has “foreseeably and unnecessarily blighted the lives of hundreds of thousands of young disadvantaged black Americans and undermined decades of effort to improve the life chances of the urban black underclass”. Punitive drug laws remain a key driver of incarceration all over the world, courtesy of the war on drugs. In that sense, the widespread criminalization and punishment of people who use drugs also mean that the war on drugs is, to a significant degree, a war on drug users – a war on people<sup>63</sup>. Not surprisingly, according to an October 2021 Pew Research Center survey<sup>64</sup>, wide majorities of Black adults support legalizing marijuana at least for medical use (85%) and favor reforms to the criminal justice system such as releasing people from prison who are being held only for marijuana-related charges and expunging marijuana-related offenses from the criminal records of individuals convicted of such offenses (74% each).

Another component of the War on Drugs is how Nixon shaped it as an outside problem. As Smith (2021) puts it, Nixon's (and his successors') rhetoric pushed the focus from U.S. drug demand to international drug supply. In doing so, politicians now framed the war as foreign conflict which pitched Americans against “murderous gangs of overseas criminals”. It is a narrative that continues to this day and was central to, for instance, President Donald Trump's argument for a US-Mexico border wall. Nixon said<sup>65</sup> to Congress that he was “proposing additional steps to strike at the ‘supply’ side of the drug equation - to halt the drug traffic by striking at the illegal producers of drugs, the growing of those plants from which drugs are derived, and trafficking in these drugs beyond our borders.” He continues arguing that is an exterior issue by stating that “America has the largest number of heroin addicts of any nation in the world. And yet, America does not grow opium - of which heroin is a derivative - nor does it manufacture heroin,

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<sup>63</sup> Steve Rolles, Lisa Sánchez, Martin Powell, Danny Kushlick and George Murkin. Ending the war on drugs: How to win the global drug policy debate. Transform Drug Policy Foundation (TDPF) and Mexico Unido Contra la Delincuencia (MUCD), 2015

<sup>64</sup> Edwards, K. Clear majorities of Black Americans favor marijuana legalization, easing of criminal penalties. Pew Research Center, 2022. <https://pewrsr.ch/3mr2VCu>

<sup>65</sup> Richard Nixon, Special Message to the Congress on Drug Abuse Prevention and Control. Online by Gerhard Peters and John T. Woolley, The American Presidency Project <https://www.presidency.ucsb.edu/node/240245>

which is a laboratory process carried out abroad. This deadly poison in the American life stream is, in other words, a foreign import.”

To conquer this “foreign enemy”, a Congressional Research Service Report for Congress<sup>66</sup> lay out several key U.S. strategies and initiatives that outline the foundation of U.S. counternarcotics efforts, including the U.S. National Drug Control Strategy and International Narcotics Control Strategy Report (INCSR), both of which are updated annually and congressionally mandated. Other major country and regional initiatives include the (1) Mérida Initiative and Strategy in Mexico; (2) Central American Citizen Security Partnership; (3) Caribbean Basin Security Initiative (CBSI); (4) U.S.-Colombia Strategic Development Initiative (CSDI); (5) U.S. Counternarcotics Strategy for Afghanistan; and (6) West Africa Cooperative Security Initiative (WACSI). Billions of dollars are still allocated in all those programs.

For some scholars<sup>67</sup>, one of the motives behind these programs has been the desire to use the drug war as a tool for delivering wider foreign policy goals, with it becoming an excuse and rationale for direct or indirect military intervention in many other countries. Looking at that from a “Necropolitical Expansion” perspective, Esquivel-Suárez (2018) argues that those initiatives are a U.S.-orchestrated effort to paramilitarize a foreign nation while disregarding the use of addictive substances in the United States for the achievement of political goals. It is one example of how the War on Drugs has been used as a justification of expensive budgets for the militarization and paramilitarization of narcotics-producing nations to guarantee access to natural resources and unjust labor practices. The author also argues that those actions are perpetuating the logic of racial oppression in those countries, the violent enforcement of drug war policy disproportionately focuses on people of color producing their transnational overrepresentation in casualty and incarceration rates. The highly securitized discourse that criminalized drugs has also criminalized the user, inside and outside the United States.

The U.S. has been the most vocal and active exponent of global drug prohibition not just by creating those programs and agencies but also by influencing the United Nations and other international fora. The U.S. has played a dominant role in the administration of international drug

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<sup>66</sup> Rosen, L W. International Drug Control Policy: Background and U.S. Responses. Congressional Research Service Report for Congress, 2015.

<sup>67</sup> Steve Rolles, Lisa Sánchez, Martin Powell, Danny Kushlick and George Murkin. Ending the war on drugs: How to win the global drug policy debate. Transform Drug Policy Foundation (TDPF) and Mexico Unido Contra la Delincuencia (MUCD), 2015

control policies and in preventing other nations from deviating from the regime of global prohibition. The impact of the US in the United Nations is also noted when a national approach is adopted, as the case of the proposed National Security Decision Directive 221 (NSDD-221)<sup>68</sup>.

The domestic policy directive announces that “The international drug trade threatens the national security of the United States by potentially destabilizing democratic allies. It is therefore the policy of the United States, in cooperation with other nations, to halt the production and flow of illicit narcotics, reduce the ability of insurgent and terrorist groups to use drug trafficking to support their activities, and strengthen the ability of individual governments to confront and defeat this threat.” To implement this policy, the NSDD-221 establishes that “The Vice President and the Secretaries of State, Treasury, Defense and the Attorney General should strengthen international support for counter-narcotics initiatives by raising this issue in high level discussions with counterparts in producer and trafficker nations as appropriate.” Furthermore, “they should also raise narcotics as an international security issue with U.S. allies, urging these nations to increase their assistance and cooperation and encouraging them to also raise the issue as a high priority in their own relations with producer and trafficking states.” This document changed the way US drug law enforcement was prosecuted overseas by introducing militarized counter-narcotics programs that were copied in other countries and it was replicated in the 1988 UN Convention which had the effect of integrating this perspective into global norms (Crick, 2018).

The nexus between International Relations, war and securitization of drugs can also be seen in some instances when the U.S. has exercised military force to extradite former ally Manuel Noriega on drug trafficking. In other instances, as with the militarization of Mexico’s drug war and the later stages of Plan Colombia, the U.S. has participated by funding and providing military hardware. With other nations, the U.S. relies on “soft power” by flattering foreign leaders who voice support for prohibition, as demonstrated by W. Bush and Obama with leaders from Latin America, and ignoring those who denied to do so, as with Clinton’s Drug Czar Barry McCaffrey and drug policy in the Netherlands (MacCoun and Reuter 2002; Bullington 2004). Using hard or soft power, “the invocation of security has been key to legitimizing the use of force, or to take special powers, to handle existential threats” (Buzan et al., p. 21) and the US put explicit political and military pressure on other countries. However, insisting on the claim of a “foreign enemy”,

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<sup>68</sup> National Security Decision Directive 221; NSDD 221, April 8, 1986 United States. White House Office Digital National Security Archive: <https://www.hsdn.org/?view&did=463177>

the American perspective is that the U.S. involvement in international drug control rests on the central premise that helping foreign governments to combat illicit drugs abroad will ultimately curb availability and use in the United States (Rosen, 2015).

Besides the diplomatic work during the UN meetings, another mechanism of leading the War on Drugs internationally is the “presidential certificate”. According to this authentication process, the US president may suspend U.S. foreign assistance appropriations to countries that are considered “major illegal drug producers” or “major transit countries for illegal drugs”. A “major illicit drug producing country” is statutorily defined in Section 481 of the Foreign Assistance Act of 1961 (FAA), as amended (22 U.S.C. 2291(e)(2)), as a country in which: 1,000 hectares of more of illicit opium poppy is cultivated or harvested during a year; 1,000 hectares or more of illicit coca is cultivated or harvested during a year; or 5,000 hectares or more of illicit cannabis is cultivated or harvested during a year, unless the President determines that such illicit cannabis production does not significantly affect the United States.

A “major drug transit country” is statutorily defined in Section 481 of the FAA, as amended (22 U.S.C. 2291(e)(5)), as a country in which there is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States; or through which such drugs or substances are transported. Failure to receive a presidential certification of substantial counternarcotics efforts may result in certain foreign assistance prohibitions against those drug majors. Decertified countries may continue to receive U.S. foreign assistance, however, if the President determines that assistance is “vital” to U.S. national interests. Alternatively, foreign assistance to some countries may nevertheless be withheld by Congress, despite a presidential certification, if Congress enacts a joint resolution disapproving of the President’s certification (Rosen, 2015).

Although the practice dates back to the 1980s, it is still active and demonstrates how the federal government keeps its punitive approach. For example, in September 2020, President Donald J. Trump identified 22 countries on the “Majors List” of Illicit Drug-Producing and Drug-Transit Countries. President Trump also determined that two of these countries, Bolivia and Venezuela, “failed demonstrably” to uphold their counternarcotics commitments. Invoking his authority to grant aid restrictions waivers for U.S. national interest reasons, President Trump



authorized the continuation of assistance for “programs that support the legitimate interim government in Venezuela and the Bolivian government.”<sup>69</sup>

That is not to say that this focus on other countries stopped the War on Drugs to impact the lives of Americans on many levels, including education, employment, housing, child welfare, immigration, and public benefits. This “drug war logic” means, for instance, low-income people are denied food stamps and public assistance for past drug convictions, people who are even suspected of using drugs are evicted from public housing, qualified people have to pass a drug test unrelated to their employment before they are offered a job (Drug Policy Alliance, 2020).

From a human rights perspective, global prohibition is not just ineffective but it’s also harmful. A report<sup>70</sup> from The Human Rights Foundation shows how prohibitive policies have directly caused severe human rights violations in affected countries, especially by undermining civil and political rights to such a degree that these policies constitute a threat to democracy. Supply-centric policies have had grave consequences for individuals, communities, and the health of democratic institutions, including high rates of violence, disappearances, kidnappings, and incarceration; impacts on local communities and minority populations; state instability, lack of trust in government, and corruption; and a deterioration of rule of law and electoral competition (Human Rights Foundation). Human rights are only mentioned once in the three UN drug conventions that form the international drug regime, Article 14(2) of the 1988 Convention, reflecting how they have historically been marginalized in drug-law politics and enforcement. The article reads:

Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

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<sup>69</sup> The White House. Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2021. Federal Register / Vol. 85, No. 187 / Friday, September 25, 2020 / Presidential Documents

<sup>70</sup> Piaggio, A.; Vidwans, P. The cost and consequences of the war on drugs. The Human Rights Foundation (HRF), New York, August 7, 2019

Additionally, the article mentions the environment, which has also been put under threat by the war on drugs. Because the US has focused on fighting the “supply countries”, they encourage authorities in South America to use crop eradication to prevent the illegal cultivation of coca and tackle the illegal cocaine supply. The process involves aerially fumigating drug crops using a chemical mixture that includes herbicide glyphosate (which kills any plant exposed to a certain amount). Drug crop eradication drives deforestation by progressively displacing drug farmers into new, more remote environments<sup>71</sup>. Describing this phenomenon as “narco-deforestation”, Devine et. al. (2021) argues that illegal deforestation in protected areas is blamed on poor farmers, when the true drivers of this deforestation are drug traffickers. The studies estimate “narco-deforestation” contributes to more than 80% of deforestation in protected areas. In this sense, the most recent report from the UN Intergovernmental Panel on Climate Change<sup>72</sup> calls for “accelerated climate action” to implement climate resilient development. Ironically, the UN Office for Drugs and Crime most recent annual World Drug Report<sup>73</sup> fortifies and strengthens prohibition, which means more harmful practices of drug eradication.

Another feature that makes the war on drugs a failure is how Nixon didn’t account for the fabrication of new drugs. There are many ways to dabble with molecules creating new drugs and staying one step ahead of the drug policies. This also complicates how one judges and sentence someone for drug offenses in the criminal justice system. The criminal justice specialist interviewed for this dissertation stated that: “The goal should be to find a way to regulate these synthetic drugs as a class. So, when some new drug appears, we can consider it into that category and the government can stop playing catch up with the creative criminals.” They believe that this would alleviate the “cat-mouse” game between the government and the criminals.

After Nixon, Ronald Reagan expanded the reach and power of this offensive by framing the fight against addiction as a new ‘war for our freedom’ and ordered U.S. citizens to swing into action as ‘when we were attacked in World War II’ (Esquivel-Suárez, 2018). Continuing that discourse, Ronald Reagan escalated the war with “tough on crime” mandatory minimum

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<sup>71</sup> A Rincón-Ruiz and G Kallis, “Caught in the Middle, Colombia’s War on Drugs and its Effects on Forests and People,” *Geoforum* 46:60–78, 2013.

<sup>72</sup> UN Intergovernmental Panel on Climate Change. *Climate Change 2022: Impacts, Adaptation and Vulnerability* <https://www.ipcc.ch/report/ar6/wg2/>

<sup>73</sup> World Drug Report, 2022 UNODC <https://www.unodc.org/unodc/en/data-and-analysis/world-drug-report-2022.html>

sentences; then George H.W. Bush gave his first televised national address<sup>74</sup> on drugs, telling the country that drugs are “the greatest domestic threat facing our nation today” while holding up a bag of seized cocaine; and Bill Clinton signed laws that pushed for tougher prison sentences and stripped prison inmates of much of their legal defense rights (Lopez, 2017). Half a century later, based on evidence we can affirm that this prohibitive approach fails to curb drug use and has given rise to an illegal market that fuels violence.

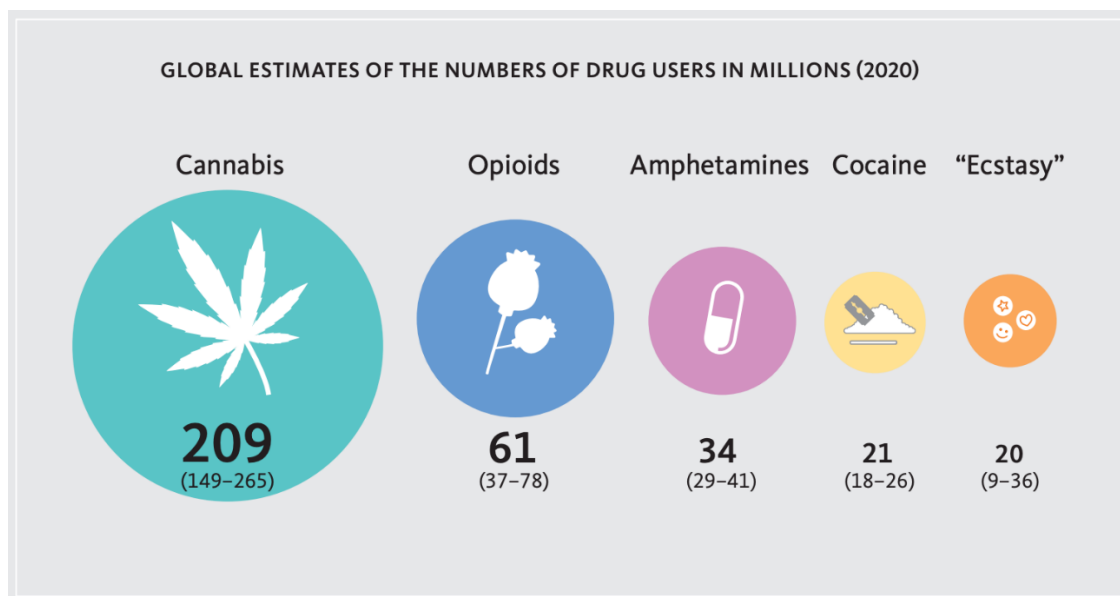
The goal of ending “manufacture, distribution, and consumption of banned substances commonly known as illegal drugs” was not achieved. In fact, in 2020, 1 in every 18 people aged 15–64 worldwide – an estimated 284 million people (5.6 percent of the population) – had used drugs in the past 12 months (UNODC, 2022). Additionally, according to a National Center for Health Statistics report released the last week of 2021 using official annual mortality data, 91,799 Americans died from drug overdoses in 2020. That means that in terms of public health the war on drugs has not only failed in its key aim of reducing or eliminating drug use, but has increased risks and created new health harms.

The UNODC report shows that in 2020 cocaine manufacture reached a record high; cannabis cultivation remains a global phenomenon (see the figure below), and much is produced in the country where it is consumed. This overturns the argument of “production country” that justified many US actions towards nations like Mexico and Colombia. These failures alone should justify at least a revision of global drug policy standards.

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<sup>74</sup> Presidential Address on National Drug Policy, September 5, 1989 <https://www.c-span.org/video/?8921-1/president-bush-address-national-drug-policy>

**Figure 5: Number of drug users in millions (2020)**



Source: UNODC, World Drug Report 2022

From an economic perspective, the war on drugs and Prohibitionism generate costs of enforcement and the lost potential taxes from regulating illicit drugs. Salter (2011) points out that “in order for a threat or a danger to remain present in political discourse, resources must be spent to counter this entropy” and the US sure did. According to the Drug Policy Alliance<sup>75</sup>, the estimated amount that the U.S. government spends per year enforcing drug prohibition is \$47 billion. On a state level, for example, enforcement of California’s drug policy is estimated to cost taxpayers \$4 to \$5 billion a year<sup>76</sup>. Beyond that, prohibition created an illegal market where the prices of illegal drugs increase as they move down the supply chain. For economists and businesspeople this is a predictable result. Squeezing the supply (through enforcement) of products for which there is high and growing demand dramatically increases their price, creating an opportunity and profit motive for criminal entrepreneurs to enter the trade<sup>77</sup>.

One startling economic fact is the budget for the Drug Enforcement Administration (DEA) that has actually grown over the years, even though the country has advanced on drug regulation.

<sup>75</sup> Drug War Statistics, Drug Police Alliance. <https://drugpolicy.org/issues/drug-war-statistics>

<sup>76</sup> C. Daniel Vencill; Zagros Sadjadi. Allocation of the California Drug War Costs: Direct Expenses, Externalities, Opportunity Costs, and Fiscal Losses. *Justice Policy Journal: Analyzing Criminal and Juvenile Justice Issues and Policies* Volume: 1 Issue: 1. August 2001 Pages: 1-40

<sup>77</sup> Transform Drug Policy Foundation. The War on Drugs: Count the Costs, 2015 <https://transformdrugs.org/assets/files/PDFs/count-the-costs-economic-costs.pdf>

As I discussed, the agency was created to represent the War on Drugs enforcement and although cannabis and other drugs are a reality within many states in the US, Table 4 shows that the agency's budget has only grown in the past ten years.

**Table 4: The budget for The Drug Enforcement Administration (DEA)**

<b>Fiscal Year</b>	<b>Total Employees (Positions)</b>	<b>Special Agents</b>	<b>Support Staff</b>	<b>Budget (\$ in Billions)</b>
2021	9,848	4,649	5,199	\$3.28
2020	9,818	4,672	5,146	\$3.20
2019	10,169	4,924	5,245	\$3.17
2018	9,961	4,777	5,184	\$3.08
2017	9,784	4,708	5,076	\$2.93
2016	11,088	5,249	5,839	\$2.92
2015	11,017	5,221	5,796	\$2.92
2014	11,055	5,249	5,806	\$2.88
2013	11,053	5,250	5,803	\$2.76
2012	11,116	5,314	5,802	\$2.89
2011	11,082	5,356	5,726	\$2.815

Source: The Drug Enforcement Administration (DEA), Staffing and Budget.

Lost tax revenue is another cost of the war on drugs. According to the Marijuana Policy Project (MPP), as of March 2022, states reported a combined total of \$11.2 billion in tax revenue from legal, adult-use cannabis sales. In 2021 alone, legalization states generated more than \$3.7 billion in cannabis tax revenue from adult-use sales. In addition to revenue generated for statewide budgets, cities and towns have also generated hundreds of thousands of dollars in new revenue from local adult-use cannabis taxes<sup>78</sup>. That means that a scenario where instead of spending

<sup>78</sup> MPP. Cannabis Tax Revenue in States that Regulate Cannabis for Adult Use, 2022 <https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use/>

billions of dollars and not reaching those goals, the government can profit from it, is not only possible but a reality in many places.

Overall, the goals and strategies to control and end drug use have varied to a minor extent. However, the support for regulation grew as the negative impacts of the drug war became indisputable. Not only did the War not achieve its goals but it generated unintended negative consequences. In terms of success, one can say that it was a successful securitization move, they labeled drugs as an existential threat, removed the drug policy from the scope of deliberative politics, invoked the urgency of emergency (war) and the audience accepted.

The failure and consequences of the War on Drugs made people begin to challenge that narrative. The majority of Americans now favor decriminalization of marijuana and treatment instead of incarceration for many drug offenses. To this end, I ask: shouldn't the people be heard? Why hasn't the American government changed the approach?

One way of doing it is by taking the issue out of the special realm and bringing it back to normal politics. In other words, by desecuritizing the issue. The Copenhagen School, and Wæver in particular, see 'security' as a negative outcome that undermines openness and democratic politics, and they argue that the aim should always be for desecuritization. Here, I argue that the federal government and the elites haven't taken drugs from the security realm, so local leaders and institutions like NGOs took on the job to Desecuritized controlled substances and advocacy groups are the ones helping to push for decriminalization and legalization. Therefore, I now move to the possibility of changing the narrative of prohibition using Desecuritization theory.

### **3.4 Desecuritization Theory**

While Securitization theory might be considered over-explored, Desecuritization theory would be under-explored. That gives us ground for innovation and contribution but at the same time brings hesitancy. The first discussions about desecuritization were about how it could be achieved (Huysmans 1995, Wæver 2000) and sometimes inevitably required a background synopsis of traditional securitizations. Next, the literature on desecuritization has focused on three sets of questions: what counts as desecuritization (identification of the phenomenon), why should there be desecuritization (ethics and normativity), and how can desecuritization be achieved (transformative practice) (Balzacq et al. 2015). Efforts to advance the normative discussions and

applications of the concept must be acknowledged, especially by Aras and Polat (2008), Hansen (2011) and Aradau (2003). Furthermore, Åtland (2008) states that Desecuritization studies have so far focused mainly on the political and societal sectors, and issues such as migration (Huysmans, 1998), national identities (Morozov, 2004) and minority rights (Roe, 2004, 2006; Julita, 2006).

Few studies have attempted to explore the dynamics of desecuritization within, or related to, the military sector. Additionally, I'd say that even fewer have attempted to explore the dynamics of Desecuritization within and related to drugs, mainly cannabis, pursued by non-elite actors in the states of the US, making this dissertation so relevant for individuals seeking a comprehensive understanding of the complex interplay between drug policy, societal perceptions, and the role of grassroots movements in reshaping the discourse surrounding drug decriminalization. Because the states are units spread geographically and politically, I take into consideration the evolutionary dynamics and will further analyze in detail the states of California and Texas. As these cases will reveal, desecuritization discourses that become separate across distinct states can have the effect of both reinforcing and undermining one another's process of going back into "normal" politics.

As I have explained before in this dissertation, the theoretical framework I use believes that an issue can be non-politicized (it is not subject to public debate or policymaking), politicized (it is publicly debated and subject to policymaking) or securitized (it is presented as an existential threat, authorizing measures outside normal politics to address it), and 'any issue can end up on any part of the spectrum' (Buzan et al., 1998, p. 24); in our visual analysis, the image below shows that an issue can end up on any part of the pendulum. In this section, I look at how the drug issue has been reframed and made those movements. In other words, I look at the shift from war to day-to-day politics.

**Figure 6: Desecuritization Theory's pendulum**

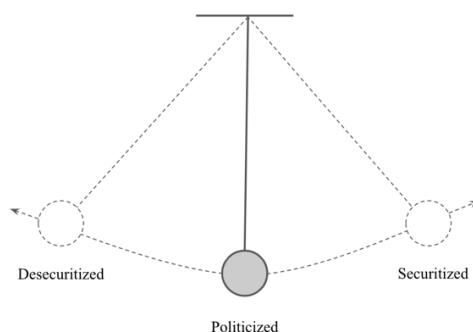


Image by the author

The concept of Desecuritization, introduced by Ole Wæver and the Copenhagen School focuses on moving issues “out of security” realm, it is the “shifting of issues out of emergency mode and into the normal bargaining process of the political sphere” (Buzan et al.). That being said, the objective here is to present how the drug war rhetoric was challenged internationally and also by some US states, implementing approaches other than prohibition and changing their drug policies. These approaches are mostly aimed at health and human rights. They might vary between harm reduction, needle and syringe exchange programs, opiate substitution therapies and decriminalization of drug possession for personal use and they represent substitute alternatives to the War on Drugs.

In terms of concept, Hansen (2012) argues that “Desecuritisation is derivative of securitization semantically (modified through ‘de’), and in terms of the political modality, the concept identifies: Desecuritisation happens ‘away from’ or ‘out off’ securitization”. Moreover, “there is a theoretical inferiority attached to Desecuritisation in that it lacks securitization’s grounding in popular language.” Regardless of the grammar, there is no superiority or inferiority between the two concepts, what matters here is their theoretical capability and application. Åtland (2008) points out that whereas securitization can be characterized as a form of depoliticization, desecuritization usually implies some form of re-politicization. Instead of framing an issue in terms of security, the purpose of a ‘desecuritizing move’ is to take the ‘securityness’ out of the issue and reintroduce it to the sphere of everyday politics. That means, visually, moving the pendulum away from one extreme to the middle, not yet achieving desecuritization but provoking discussions on the matter.

As the drug issue is a continuing dialogue, some states in the US are bringing it to discussions (politicizing) through local direct democracy, such as initiated ordinances, initiated charter amendments, or town meetings; while others, the state of Oregon for instance, have already desecuritized the issue entirely, as decriminalizing the possession of small quantities of all illicit drugs, following the passing of Oregon Ballot “Measure 110” in November 2020<sup>79</sup>.

Salter (2011) believes that different actors are able to make competing claims, according to different narratives and social structures of authority, to identify the nature of threat, the appropriateness of the policy solutions, and the requirement for emergency action. He says that in

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<sup>79</sup> Oregon Health Authority. Drug Addiction Treatment and Recovery Act (Measure 110) <https://www.oregon.gov/oha/hsd/amh/pages/measure110.aspx>



terms of securitization but I bring that reality for desecuritization arguing that local actors are the ones responsible for bringing the drug issue back to normal politics in many US states. Also speaking about securitization, Doty (2007) asks “What if the state is not the only site of the sovereign decision on the exception, the enemy, and the political? What if securitization is a widely dispersed and at times amorphous phenomenon not controlled or even initiated by elites?” (2007: 116). Again, I bring those questions to the other extreme and apply them to desecuritization.

Some argue that as opposed to securitization, desecuritization does not necessarily happen as the result of a “speech act”. Rather, there are many other ways that an issue or issue-area can be moved out of the sphere of security politics and into the sphere of regular politics. Others have come to view desecuritizing moves as the product of a wider management process, rather than a sheer speech act or debate. Behnke (2006) sees desecuritization as a ‘withering away’: explicit debate on whether something no longer is a security issue retains the logic and possibility of securitization. The author argues that desecuritization can only happen through lack of speech. Vuori (2011), for instance, believes that explicit speech acts can at times be desecuritization moves: whether or not something is successfully desecuritized may perhaps depend on a withering away, but this withering may begin with active moves. This conceptual fragmentation in the literature on desecuritization has barred the development of a basic consensus on the nature of desecuritization as a model, concept, or process<sup>80</sup>. I try to take advantage from the lack of consensus but at the same time move forward and contribute to discussions on the making of the theoretical framework of desecuritization.

The Copenhagen School outlines three possible options with regards to how to desecuritize: not to talk about issues in terms of security in the first place; or once an issue has been securitized, ‘to keep the responses in forms that do not generate security dilemmas and other vicious spirals’; or to move security issues back into ‘normal politics’ (Wæver, 2000). This “normal” is what Roe (2006) calls the three Ds – discussion, debate and deliberation – by contrast, emergency politics is constituted by the three Ss – silence, secrecy and suppression.

About the option of not talking about issues in terms of security, Polat and Aras (2008) ask: “What kind of evidence do we need in order to suggest that an issue has been desecuritized?”

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<sup>80</sup> Sahar A. and Kaunert C. Desecuritisation, deradicalisation, and national identity in Afghanistan: Higher education and desecuritisation processes. *European Journal of International Security* (2022), 7, 189–206 doi:10.1017/eis.2021.31

The answer is nothing. We need to see (or hear) nothing to suggest that an issue has been desecuritized.” I argue that this has not been the case with drugs, in fact, there is an open and ongoing discussion where the Civil society and the general public have been able to express their opinions. Additionally, policy makers and numerous social, political, and economic power determinants have weight on this debate.

The second option offered on how to desecuritize, to keep the responses in forms that do not generate security dilemmas and other vicious spirals, also doesn’t match the reality of the drug issue. As a central concept of international affairs and foreign policy, the “security dilemma” was first formulated by John Herz in 1950 and then developed by Robert Jervis, Charles Glaser, and others. The security dilemma describes how “the actions that one state takes to make itself more secure—building armaments, putting military forces on alert, forming new alliances—tend to make other states less secure and lead them to respond in kind. The result is a tightening spiral of hostility that leaves neither side better off than before” (Walt, 2022). Based on the actions perpetuated by the US in the War on Drugs, it became clear that it has caused many spiral effects, such as the violence and incarceration inside and outside the country.

The strategy of moving security issues back into “normal politics” seems more suitable when it comes to drug policy in the 38 states inside the US that have legalized the use of cannabis to some degree, where drugs are no longer considered an existential threat. When analyzing the 1989 revolutions in Eastern Europe, Wæver pointed out that “inside-to-outside collapse can be seen as a speech act failure: the performance of the security act and reinstallation of truth suddenly failed to work” (Wæver, 2000). In this sense, it can be tempting to simply say that the unintended consequences of the War on Drugs caused an inside-to-outside collapse and that is the case of Desecuritization of drugs. However, Nixon’ speech act was very successful and the end of the war hasn’t been declared so far. Bourbeau *et al.* (2015) admit that security policies aim at desecuritization (the solution to the threatening situation), but desecuritization can also happen independently from the actions of securitizing or desecuritizing actors: the original security problem may be solved, institutions may adapt through new reproductive structures, discourses may change (e.g., with the loss of interest or audiences), and the original referent object may be lost (de Wilde 2008). Once more, I argue that this is not the case of the drug issue, which continues to be federally prohibited and certainly hasn’t been lost.

In a more comprehensive and refined way, Hansen (2012) presents four political forms of desecuritization and advance the debate. She advises that “the four forms are ideal types, which means that individual security theorists might articulate understandings of (security) politics at level one which does not fit completely into one of the four forms”. Also, they may combine two or more of the four forms. “Change through stabilization” is an option of desecuritization that “implies a rather slow move out of an explicit security discourse, which in turn facilitates a less militaristic, less violent and hence more genuinely political form of engagement. It also requires that parties to a conflict recognize each other as legitimate” (Hansen, 2012). Its original design and application were during the Cold War when a stable bipolar system ruled the international relations. Although the discourse on drugs and the War on Drugs can be argued to have stabilized throughout the years, one cannot argue that it has changed to a point of desecuritization, especially at the federal level and international levels.

The author gives another option for desecuritization called “Replacement”. It happens when “the combination of one issue moving out of security while another is simultaneously securitized” (Hansen, 2012). While researching the drug problem in the US, I couldn’t ignore the magnitude of the opioid crisis. At first glance, it seemed like it had replaced the war on marijuana and cocaine for a war on opiates and this would be a case of desecuritization through replacement.

However, a closer look reveals that this is not the case. The War on Drugs kept targeting users of all controlled substances while opioid use was not only legal but overly prescribed. According to the US Department of Health and Human Services (HHS), in the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to opioid pain relievers and healthcare providers began to prescribe them at greater rates. Increased prescription of opioid medications led to widespread misuse of both prescription and non-prescription opioids before it became clear that these medications could indeed be highly addictive<sup>81</sup>. Only in 2017 the HHS declared a public health emergency. When asked about this issue, a cannabis regulator interviewed for this dissertation pointed out that:

It has more to do with who was perceived as the user of these drugs: when the users of drugs were stereotyped as black/brown low-income people (“the marijuana smokers”) it was an issue

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<sup>81</sup> U.S. Department of Health and Human Services. “What is the U.S. Opioid Epidemic?” <https://www.hhs.gov/opioids/about-the-epidemic/index.html>

needed to be dealt with under a criminal system. Other drugs, as opioids, were perceived as affecting white middle class people and now people call it a public health crisis instead of seeing it as a crime.

Once again, the nexus between morality, drugs and prejudice played a role and showed that social context constructs American moral identity. In view of that, this is not a case of desecuritization through replacement. If anything, it is a new layer of a multifaceted problem. Hansen (2012) argues that another “form of desecuritization that one encounters in the literature applying securitization theory is that of silencing, that is when an issue disappears or fails to register in security discourse”. The option to silence an issue sounds unintentional and, as the discourse shows, the presidents kept the prohibition rhetoric over the years not only through discourses but with actions. The drug issue is far from silent, it is iterative, dynamic and multi-layered.

Finally, Hansen (2012) elaborates on the option of desecuritization through “Rearticulation”. It “refers to desecuritization that removes an issue from the securitization by actively offering a political solution to the threats, dangers, and grievances in question”. She continues to explain that “at level one, rearticulation refers to fundamental transformations of the public sphere including a move out of the friend-enemy distinction” (Hansen, 2012). I argue that this is the strategy taken for desecuritization of drugs, particularly cannabis in many states in the US. I stress the failures of the War on Drugs and the public support for legalization are the driving forces behind the rearticulation of the drug issue.

A constructivist interpretation of security defines the danger of drugs as a socially manufactured problem which receives its security qualities from the application of specific techniques, such as policy and defense. Consequently, the constitutive dimensions of a security policy enter the picture. Security agencies, like the DEA, do not develop purely reactive policies triggered by drug trafficking, for example. The knowledge they produce and the technologies they deploy also fabricate the perceived threat drugs represent (such as a statistical representation connecting drug use to Mexican immigrants). In this sense, this dissertation argues for Desecuritization on instrumental grounds because a security approach is considered to be an

ineffective way of dealing with the drug problem, desecuritizing drugs would be the unmake of its representation and institutionalization as an existential threat.

Of course, coming from a constructivist approach, I take into consideration the desecuritization of drugs is affected by social and contextual conditions. Talking about securitization, Salter (2011) defends that it is a dialogical or relational process, but one that takes place within already existing bureaucratic, social, economic, and political structures. By accepting that there is not a single decision, nor a single speaker, nor a single audience – it is needed a much more complex, sociological method of analyzing the processes of securitization. I believe that the same applies to desecuritization.

Examining governmental attempts to reframe urban property squatting as a crime and a threat to domestic security, Manjikian (2013) believes that desecuritization can be seen as a type of emancipating process, by which a social problem can be reinterpreted and reconceptualized, so that new policy solutions to an old problem might emerge. By developing a new optic or a new lens for viewing a problem, it is entirely possible that the problem itself can now be shaped in a new way. The author believes that desecuritization may occur in four different ways: that there are two possible paths towards managed desecuritization—top-down and bottom-up—as well as two paths to evolutionary desecuritization—top-down and bottom-up (Manjikian, 2013), as the Table 5 shows:

**Table 5: Manjikian’s Paths for Desecuritization**

	<b>Managed desecuritization</b>	<b>Evolutionary desecuritization</b>
<b>Top down</b>	Change in language of security; change in security procedures	Change in international system
<b>Bottom up</b>	Empowerment of objects of securitization: visibility, articulation	Changed views of object of securitization

Source: Manjikian, M. *Securitization of property squatting in Europe*. Routledge, 2013

As stated before, I argue that cannabis is being desecuritized from the bottom-up and drawing upon Manjikian’s insights for bottom-up pathways, I argue that the drug issue has been more visible and articulated by individuals and institutions that promote regulation and legalization. Also, the views towards drugs, cannabis in particular, have changed since more research is being made available about the science behind the plant. In this sense, Hruby (2020)

points out that the 2020 election continued to build upon changing perceptions, attitudes, and policies on the legalization of marijuana. While CBD has become more widespread in its use for chronic pain management, a continuation and relaxation of legalized cannabis use continues to gain favor across the United States.

However, my argument goes beyond Manjikian's possible pathways. The event of cannabis desecuritization by the states in the US show individuals and civil society as the main actors of change, not those normally in power. It is characterized by active involvement in local politics and debates, not a result of waiting for changes in the national or international system.

In her analysis, Manjikian (2013) also explores desecuritization that occurs due to a change in the majority's view of the object of securitization. She cites "the ways in which Americans have changed their views regarding traditional 'threats' such as homosexuals or people of minority races". Then, she adds that "in recent years, we have seen how homosexuality has become more accepted in the American mainstream due to legislative initiatives in the areas of gay marriage, homosexual adoption and gays serving in the military". The author believes that "gradually, in the United States, views have changed, so that homosexuals are no longer regarded by a majority of citizens as mentally ill deviants, or as people who are too compromised and untrustworthy to serve in the military or as bad neighbors to be avoided". Although it is true that there has been legislative initiatives, that argument can be challenged, for example, due to the rise of groups that vilify the LGBTQ community that represented the fastest-growing sector among hate groups in 2019<sup>82</sup>.

This option of desecuritization by evolution of tolerance is also true in the case of the drugs, the Pew Research Center poll (Figure 7) shows that there has been a dramatic increase in public support for marijuana legalization in the last two decades<sup>83</sup>. Furthermore, supporters and opponents of marijuana legalization cite different reasons for their views. Americans who favor legalization are most likely to point to the drug's perceived medical benefits or to say it would free up law enforcement to focus on other types of crime, according to a Gallup survey conducted in 2019<sup>84</sup>. It can't be considered the only reason for desecuritization processes, but the evolution of tolerance certainly weighs on the drug issue.

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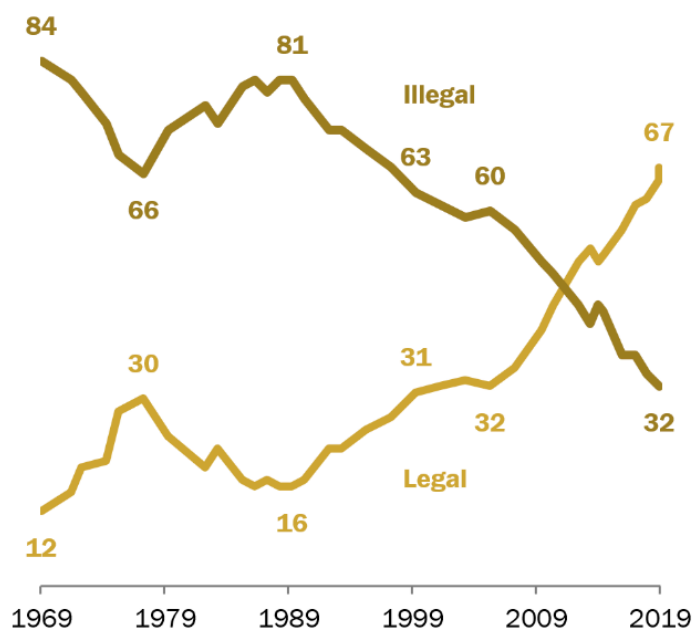
<sup>82</sup> The Southern Poverty Law Center. "Year in Hate and Extremism", 2020 <https://www.splcenter.org/year-hate-and-extremism-2019>

<sup>83</sup> Schaeffer, K. 6 facts about Americans and marijuana. Pew Research Center. APRIL 26, 2021 <https://www.pewresearch.org/fact-tank/2021/04/26/facts-about-marijuana/>

<sup>84</sup> Jones, J. In U.S., Medical Aid Top Reason Why Legal Marijuana Favored. Gallup. JUNE 12, 2019 <https://news.gallup.com/poll/258149/medical-aid-top-reason-why-legal-marijuana-favored.aspx>

**Figure 7: U.S. public opinion on legalizing marijuana 1969 – 2019**

*Do you think the use of marijuana should be made legal, or not? (%)*



Source: Pew Research Center

Desecuritization is a critical strategy which should make it possible to relocate the question to a context of ethical-political judgment in which one does not seek to find the political basis of an existential threat (Huysmans, 1998). I argue that the opportunity to turn drugs, cannabis mainly, into a non-security issue was brought up from popular demand, defying the securitization narrative of leader-led policies. That would also represent a change in American society, at least in parts of that society that too often view drug users as moral failures rather than as people with a treatable medical condition.

Along with securitization, desecuritization can be shown through discourse. It is important to highlight that Passage (2000), former Director of Andean Affairs at the US State Department, stated the failure of the prohibition and that “one would be hard-pressed to think of another subject where we, as a nation, have engaged in more self-deception than about the effectiveness, or even efficacy, of our war on drugs and the likely impact of even tougher and more expensive, but likely equally futile, counternarcotics programs”. He continues to observe that “so long as there is an

insistent market in a country like the United States for illegal narcotics and a sufficient profit to be made, they will probably be produced. And so long as they are illegal, their production and distribution will be through organized crime” (Passage, 2000).

Considering the desecuritization process as a move back to discussions and normal politics, state initiatives that don’t consider drugs as a threat or the enemy are forms of desecuritization once they enter the political arena and yield legislative changes. Here, I take into account multiple actors, social forces, and audiences. Also, I present a general view of how the US states transformed their attitude towards drug policy with individual and local players’ activism, resulting in reforms predominately established via citizen-initiated referenda.

The case of cannabis policy in the US shows that the first desecuritization calls and regulations came for medical use and then expanded for adult non-medical use (recreational). In 1976, Robert Randall, who suffered from glaucoma, brought a lawsuit to the US federal government, arguing his possession charges should be nullified due to his medical use of cannabis and became the first legal medical marijuana patient since the Marijuana Tax Act. The judge ruled Randall needed cannabis for medical purposes and required the Food and Drug Administration set up a program to grow cannabis on a farm at the University of Mississippi and to distribute 300 cannabis cigarettes a month to Randall<sup>85</sup>. This corroborates with my argument of a ground-up desecuritization process, a single individual challenged the prohibitionist rhetoric and brought the issue to political discussion that eventually led to political change. One can look at this event as the beginning of a particular way of desecuritization that does not come from elite discourse or specific speech acts.

Moving forward, during the AIDS (Acquired Immunodeficiency Syndrome) epidemic in the 80’s, patients affected by wasting syndrome, advocated for medical marijuana access in California (further analyzed on the next chapter), but were forced to seek relief in the illicit market<sup>86</sup>. However, the fight for medical marijuana access didn’t stop. Again, from the bottom-up, on November 2, 2004, Montana voters made two critical but seemingly contradictory electoral choices. First, along with their counterparts in thirty other states, they voted to reelect George W. Bush as president (prohibitionist). Second, they approved a medical marijuana ballot initiative by

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<sup>85</sup> The History of Medicinal Cannabis - Montana State Legislature <https://leg.mt.gov/>

<sup>86</sup> Alternative Compassion Services. A brief history of medical cannabis in the United States. Jun, 2020 <https://acscompassion.com/a-brief-history-of-medical-cannabis-in-the-united-states/>



a margin of 62 to 38 percent. In fact, in this paradigmatic “red state,” Montana voters supported medical marijuana in greater numbers and by a greater percentage than they supported the reelection of the president (Ferraiolo, 2007).

From 1995 to 2005, no state has rejected an initiative that solely addressed medical marijuana. After California passed Proposition 215 in 1996, Alaska, Oregon, Washington State and the District of Columbia passed similar initiatives two years later to allow patients to access cannabis for qualifying conditions, which included several hard to diagnose ailments. Voters in Maine were the first state east of the Mississippi River to approve of medical cannabis, doing so in 1999. In 2000, voters in Colorado, Hawaii and Nevada approved medical cannabis. Of these, Nevada and Colorado amended these changes into their state constitutions, rather than laws. Enacting such a legal change into state constitutions requires a higher threshold of support and is thus harder to amend (or possibly strike down under a federal challenge)<sup>87</sup>.

As of February 2022, 37 states, four territories, and the District of Columbia have made marijuana legal for medical use. In short, in 11 states and D.C., the ballot initiative process was used to legalize marijuana; in one state the legislature referred a measure to the ballot for voter approval and in seven states bills to legalize marijuana were enacted into law. The medical marijuana movement represents an effort to reform one important aspect of marijuana laws, it also indicates that it doesn’t need to be seen as a threat or an enemy, but as a health approach is also useful due to its scientific proven medicinal characteristics. Additionally, these examples of desecuritization happening from the ground-up show the movement of the drug issue coming from a prohibitionist discourse to a politicized arena and finally getting out of the security realm.

After that period, the “modern era” of cannabis regulation shows that states have taken additional steps to permit adults to use the drug for non-medical (i.e., recreational) purposes. This era was inaugurated by Colorado and Washington State in 2012 with legislations that favor private, for-profit commercialization. Pardo (2020) notes that most states that have repealed prohibition have adopted a commercial model, allowing licensed for-profit firms to produce, process and distribute cannabis for adult consumers in the state. The goals of these reforms are to reduce the costs and problems associated with the illicit market and traditional responses to it (e.g., excessive

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<sup>87</sup> Pardo B. “The uneven repeal of cannabis prohibition in the United States” In Tom Decorte, Simon Lenton, Chris Wilkins (Eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios* (pp. 11 – 38), 2020.

policing of minority communities that infringes on civil liberties) as well as generate tax revenues through the sale of cannabis (Hall and Lynskey, 2016).

Pardo (2020) also points out that in Colorado, Amendment 64 to the Colorado State Constitution was approved by voters in November 2012 was championed by advocates, civil society groups and the state's medical cannabis industry, which strengthens my argument of a ground-up desecuritization. The residents of Washington D.C. also made their voices heard in November 2014 by overwhelmingly voting in favor (70%) of Initiative 71<sup>88</sup>. The initiative removed criminal penalties for adults over 21 from the penal code for growing, possessing and gifting cannabis under certain limits. Once more a ground-up push, I-71 was submitted by “a community group fighting for equal rights for DC cannabis users, growers, and their families” after collecting nearly 57,000 signatures<sup>89</sup>. Along with them, The Massachusetts Marijuana Legalization Initiative, also known as “Question 4” was on the November 8, 2016, ballot in Massachusetts as an indirect initiated state statute and it was approved. The Initiative and Referendum Institute considers an indirect initiated is citizen-initiated through the collection of signatures. Once the signatures are collected, the proposed law is sent to that state's legislature<sup>90</sup>. “Question 4” passed by 54 percent, allowing adult non-medical access. The measure was broadly similar to those of other states, allowing adults over 21 to grow six plants in their home, possess up to an ounce and craft a regulatory scheme to allow for the supply and distribution of cannabis in stores (Pardo, 2020). Table 6 shows examples of states and the District of Columbia that regulated cannabis through a bottom-up approach led by citizen initiative.

This assessment is not a tentative of defining what other states should expect from legalization or related policies, but look at states undoing earlier prohibitions and departing from federal policy as a way of desecuritizing the drug issue.

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<sup>88</sup> Ballotpedia. Washington D.C. Marijuana Legalization, Initiative 71 (November 2014) [https://ballotpedia.org/Washington\\_D.C.\\_Marijuana\\_Legalization\\_Initiative\\_71\\_\(November\\_2014\)](https://ballotpedia.org/Washington_D.C._Marijuana_Legalization_Initiative_71_(November_2014))

<sup>89</sup> D.C. Cannabis Campaign (DCMJ) About. <https://dcmj.org/about/>

<sup>90</sup> Initiative & Referendum Institute. What are ballot propositions, initiatives, and referendums? USC Gould School of Law <http://www.iandrinstitute.org/quick-facts.cfm>

**Table 6: Cannabis regulation in comparison**

	<b>ALASKA</b>	<b>COLORADO</b>	<b>MAINE</b>	<b>DISTRICT OF COLUMBIA</b>
<b>REGULATORY PROCESS</b>	Voter initiative, state statute	Voter initiative, amendment to state constitution	Voter initiative, state statute	Voter initiative
<b>TITLE OF MEASURE</b>	Ballot Measure 2	Amendment 64	Question 1	Initiative 71
<b>YEAR</b>	2014	2012	2016	2014
<b>MEDICAL CANNABIS</b>	Yes	Yes	Yes	Yes

Source: Elaborated by the author

After desecuritizing and legalizing cannabis, the states still have many more challenges to overcome, such as deciding on licensing, production, processing and retail market structure. A report by Leafly and Whitney Economics (2022) shows that over the past decade, 19 states have legalized cannabis for adult use. Retail cannabis stores now operate in 14 of those 19 states, which represents a big market with its own industry challenges. As of July 1, 2022, 45% of Americans live in a legal adult-use state. Legal, state-licensed cannabis products are subject to strict regulations that safeguard public health. Those rules include mandatory lab testing for product purity and potency. They also limit the amount of THC per product as well as the amount of cannabis an adult may purchase during a 24-hour period<sup>91</sup>.

Lastly, although the recent opioid crisis is not on the scope of this dissertation, it is important to note the bottom-up approach of harm reduction that is taking place in the US. Similar to the case of cannabis and the actors involved in the process of desecuritization, Macy (2022) shows that is the work of the volunteers and outreach workers who are dedicated to aiding addicted people is the one saving people from the opioid crisis. As overdose deaths escalated in the United States — more than 1 million since 1996, according to the Centers for Disease Control and

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<sup>91</sup> Barcott B and Whitney B. Opt-In Report. Leafly and Whitney Economics, 2022. <https://leafly-cms-production.imgix.net/wp-content/uploads/2022/09/21143531/OptOutReport2022.pdf>

Prevention — these groups stepped in to attempt “what officials have failed for decades to do: keep people alive,” Macy writes<sup>92</sup>.

With more and more policy issues — such as taxes and spending, gaming, same-sex marriage and abortion access — being settled by states rather than representative institutions at the federal level, desecuritization from local and individual actors is likely to continue to shape American politics.

### **3.5 International Efforts to Desecuritize Drugs**

Crucial and substantial experiences on drug policy reform are happening globally. Several examples around the world portrait success but, despite these efforts, their impact on the international system has been limited. Beyond the United States, there have been calls for the desecuritization of drugs in the international community both through discourse and action. However, I chose not to analyze them in detail for this dissertation because most of the cases are examples of top-down desecuritization. Nonetheless, this session demonstrates some examples. Over the past 50 years, several jurisdictions in Europe, Australia and the Americas have reduced the penalties associated with using or possessing small amounts of cannabis, which means they at least decriminalized, or used any other approach other than prohibition.

On July 1, 2001, a nationwide law in Portugal took effect that decriminalized consumption, acquisition and possession of drugs for personal consumption. By moving the matter of personal possession entirely out of the realm of law enforcement and into that of public health, Portugal has given the world an example of how a national drug policy can work towards the well-being of the user<sup>93</sup>. In other words, they desecuritized the drug issue from the top-down. Most analyses about the Portuguese case tend to focus on the encouraging results regarding drug use prevalence, which stayed reasonably low when compared to other European countries, including those that criminalize drug use; the drop of infectious diseases rates, as well the decline of the equally high incarceration rates for drug-related offenses<sup>94</sup>. It has been over 20 years of Portuguese drug policy

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<sup>92</sup> Campbell, N. “The ‘good criminals’ who help treat opioid addicts”. The Washington Post, August 26, 2022 <https://www.washingtonpost.com/outlook/2022/08/26/good-criminals-who-help-treat-opioid-addicts/>

<sup>93</sup> Domoslawski, A. Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use, Lessons for Drug Policy Series. New York: Open Society Foundations, 2011

<sup>94</sup> European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Portugal - Country drug report 2019. Lisbon: EMCDDA; 2019. [https://www.emcdda.europa.eu/system/files/publications/11331/portugal-cdr-2019\\_0.pdf](https://www.emcdda.europa.eu/system/files/publications/11331/portugal-cdr-2019_0.pdf)

reform and it is puzzling that other countries didn't follow, especially with positive results. Perhaps, if Portugal's foreign policy would take the leadership role the US took on prohibiting drug use, more countries changing their approach towards drug use and users would make a change in the system.

Uruguay became the first country in recent years to legalize cannabis, in December 2013, when President José Alberto "El Pepe" Mujica signed a law to regulate recreational cannabis. It is controlled and regulated by the government, with a top-down approach. The emphasis was on curbing drug trafficking. Crick (2018) points out that Uruguay's president attempted to create a form of counter-securitization whereby he argued that the role of organized crime in the cannabis trade represented a threat to public security and therefore this trade needed to be controlled and regulated by the government. Moreover, Uruguay's law aimed to decriminalize cannabis use by eliminating the legal inconsistency that had allowed marijuana possession and use but criminalized users for accessing cannabis. Also, it aimed to increase public security and reduce drug trafficking-related violence by taking cannabis supply out of the illegal market and to improve public health through education and prevention campaigns that would minimize the risks and reduce the harms of cannabis consumption<sup>95</sup>.

In terms of discourse, Kushlick (2011) defends that "the time has come to review the outcomes of these securitizations and to compare them with the outcomes from alternative regimes, including legal regulation." The author suggests that "conducting a comprehensive global impact assessment, along the lines of the three pillars of the UN: development, security and human rights, would assist in bringing drug policy back within the sphere of normal policy evaluation". He also notes that in 2009, the Ecuadorian representative to the Commission of Narcotic Drugs (CND) called for a "desecuritization of drug policy which allows us to address the problem from the perspective of health and human rights" (Kushlick, 2011).

Among other international examples, Canada approved the "Cannabis Act" and legalized adult use of cannabis in 2018. According to the Canadian government, their main purpose is to protect public health and public safety<sup>96</sup>. Also, to prevent youth access to cannabis, and reduce criminal activity and the burden on the criminal justice system (Canadian Centre on Substance Use

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<sup>95</sup> Queirolo R. "Uruguay: the first country to legalize". In In Tom Decorte, Simon Lenton, Chris Wilkins (Eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios* (pp. 116 – 130), 2020.

<sup>96</sup> Government of Canada. Cannabis Act (S.C. 2018, c. 16). Constitutional Documents. Available at <https://laws-lois.justice.gc.ca/eng/acts/C-24.5/page-1.html>

and Addiction). The decision makers took the war rhetoric away from the issue and treated it as a health and social issue, again, from a top-down perspective, but left many areas of regulation to the provinces and territories.

Moreover, the Dutch government is implementing its 2017 commitment to experiment with a closed supply chain to coffee shops, while Malta's government has taken steps to launch a national debate on whether or not there could be recreational cannabis use, and how this should be implemented. In 2018, the parties forming the government of Luxembourg reached an agreement that may allow for the future sale of cannabis to residents, while the highest courts in South Africa and Georgia have initiated reforms based on human rights that permit the consumption of cannabis in private settings, but not its sale (EMCDDA, 2020).

Down in South America, Evo Morales, former coca grower and president of Bolivia, argued that the country should withdraw from the Single Convention and then re-accede with a reservation that coca growing was legitimate as long as it was for licit purposes. The “community coca control” program adopted during the Morales years (2006-2019) focused on working with coca leaf growers to shrink crops destined for illegal markets, while increasing human rights, alternatives to coca and permitting traditional uses of the plant. This successfully reduced illegal production, and was hailed by the UN Development Program as an innovative approach superior to decades of forced eradication<sup>97</sup>. The Andean Information Network wrote a report<sup>98</sup> to the UN Human Rights Office advocating for the program, concluding that

It has proven more effective and cost-efficient than forced eradication in controlling coca production, and represents a local proposal appropriate to its context. It is a non-violent alternative that empowers citizens and promotes close coordination between government and strong local organizations. States and the international community should seek to empower grassroots organizations and create the conditions for their inclusion and collaboration with coca policy.

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<sup>97</sup> Kathryn Ledebur, Linda Farthing, Thomas Grisaffi. “Bolivia reverses years of progress with new draconian cocaine policy, supported by the EU”. The Conversation UK <https://theconversation.com/bolivia-reverses-years-of-progress-with-new-draconian-cocaine-policy-supported-by-the-eu-144386>

<sup>98</sup> Andean Information Network. **The Bolivian Experience with Community Coca Control and Regulation**. April, 2022  
<https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/DrugProblem/HRC39/AndeanInformationNetwork.pdf>

Finally, the international community must shift its focus and demands away from meaningless eradication statistics to human development indicators to measure progress in coca-growing regions.

Again, what makes this dissertation's argument more interesting is the ground-up approach used by the states inside the US and how they have legalized the use and supply of cannabis for recreational purposes, despite the fact that cannabis remains illegal under federal law. As evidence to my argument of a bottom-up approach to desecuritize controlled substances, the report highlights how local actors are playing an essential role in changing the prohibitionist narrative.

The most recent and significant international call for desecuritization came from the president of Colombia, Gustavo Petro, during a speech to the 2022 United Nations General Assembly<sup>99</sup>. He pointed out that “the war on drugs has failed” and urged “from my wounded Latin America, I demand you end the irrational war on drugs”. Both examples of Bolivia and Colombia (countries considered as producers) making those statements at UN gatherings brings attention to the lack of action from the United Nations. Since the UN holds the agreements that architected global prohibitions, after the claims for ending the war on drugs those agreements should be revisited. Specially since the United Nations Office on Drugs and Crime has repeatedly confirmed in its World Drug Reports that efforts to eradicate and control the production of illegal drugs have largely been futile, as I showed on the War on Drugs session.

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<sup>99</sup> Full speech available at: [https://www.youtube.com/watch?v=F\\_HJHZd1w2o&ab\\_channel=PresidenciadelaRep%C3%BAblica-Colombia](https://www.youtube.com/watch?v=F_HJHZd1w2o&ab_channel=PresidenciadelaRep%C3%BAblica-Colombia)

## CHAPTER 4 – CALIFORNIA: THE GOLDEN STATE TURNED GREEN

In the previous chapter I presented the theoretical framework of Securitization and Desecuritization and why I believe this Security Studies theory is the best fit to analyze drug policy in the United States. Additionally, I demonstrated how the US built a narrative and institutions to fight drugs at the national level. Also, I showed how they played a leadership role at constructing the international drug regime and the impact of fighting the War on Drugs.

This global scenario provides background to transition to a local level sphere. First, this chapter looks at the empirical material collected from various sources including the Los Angeles Public Library’s archives and California’s legislative houses. I present a history of marijuana in the state of California and its evolution. I don’t mean to make the reader tired by the laws and legislative action, but they are part of the process and facts that promoted the Desecuritization of cannabis. Also, as Younger (1978) puts it: the laws of a society are often a mirror of that society’s problems and its perceptions of and reactions to those problems. The drug laws displayed here reflect the society at the time and I look at them specially to highlight the language and argument used to put them into effect. Second, while I look at the legislation, I point out the heterogeneity of non-State actors, not-for-profit and voluntary entities, organized at the local, national or international level, representing a wide range of interests. I believe they are the pushing force behind what I call a successful case of Desecuritization of cannabis. Finally, the objective of this chapter is to look at the state of California as a unit of analysis and understand how they came from prohibition to legalization.

California was a pioneer in prohibiting marijuana, in 1913, and also a leader when it passed Proposition 215, in 1996, becoming the first state to allow possession of small amounts of marijuana for medical use. Also, as of today, the city of Los Angeles is home to the largest legal marijuana market in the world. Cannabis became such a significant part of the state’s economy and life that in response to COVID-19 pandemic in 2020, when California was, again, an early leader in declaring cannabis businesses as “essential” — a critical decision for medical cannabis patients and the many adults who use cannabis for medicinal purposes. To understand this transformation and test the argument of Desecuritization, I now take a close look at California’s evolving marijuana history.

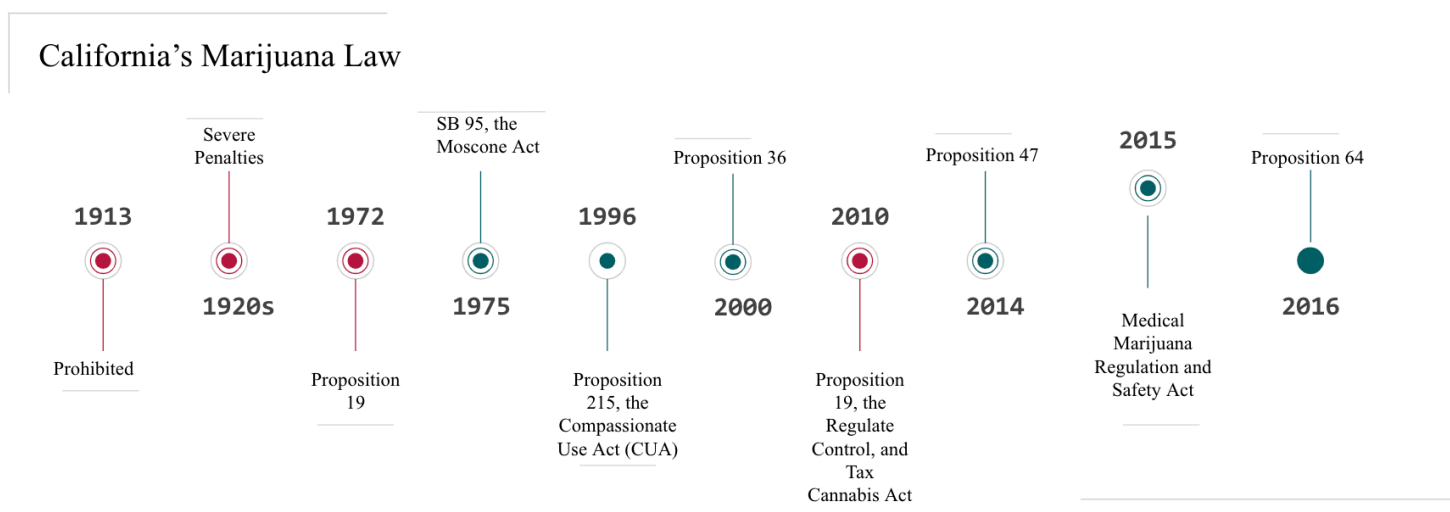


## 4.1 Timeline of Marijuana Laws in California

The following timetable (Figure 8) presents the most important moments of cannabis regulation in California and it will help us highlight the history, context and actors involved. It was designed so to guide the reader since the chapter will explore each of the following key dates. As I unravel the details, one can see that it is not a linear progression. Additionally, California's Marijuana laws are a result of both direct democracy by popular vote and legislative performance.

Ferraiolo (2007) explains that there are fundamental differences in policy formulation and enactment in legislative and initiative settings: legislative bills are often written and modified with input from a variety of political actors and experts but are then decided by a vote of elites; ballot initiatives are typically crafted in private by political amateurs but their results are determined by a public audience.

**Figure 8: California's Timeline**



Source: Elaborated by the author

California's state law allows for both ways of achieving political change, which gives us a variety of actors. However, my goal is to highlight the role of grassroots actors and the ground-up process because I argue that community-based organizations, NGOs and civil society organizations have played an essential role in supporting the debate to treat the cannabis issue

outside the security realm. I go back as far as 1913 to show how the narrative was constructed and how the language and arguments to prohibition have been so resilient throughout the years.

## 4.2 Early History of Cannabis in California

As early as 1795, Cannabis was initially introduced to California lands in the form of hemp by the Spanish people, who cultivated it as a fiber crop. In 1807, California produced about 13,000 pounds (about 6,000kg) of hemp. Three years later that amount grew to 220,000 pounds (100,000kg) of hemp used for fiber, food, feed or oilseed<sup>100</sup>. Although it's not believed that cannabis was used as an intoxicant in the 1800s in the United States, it was used in some forms as a medicine. As I pointed out in chapter two, at that time there were no federal or state laws about the ingredients in medicine, making it possible for many to contain addictive drugs such as morphine and others. Following the national trend to try to control those substances, during the 1880s and 1890s numerous anti-narcotics bills were introduced in California, most of which never reached a vote. Although they were mainly aimed at opium, three included hemp-based drugs as well.

**Figure 9: Cannabis advertising**



Source: Parke Davis, and Co (now Pfizer), and Eli Lilly created their own marijuana strain called Cannabis Americana, a domesticated indica strain. Marketing materials described it as “a reliable fluid extract” and “as active as Indian cannabis”.

<sup>100</sup> Hittell, T. **History of California**, Vol. 4. N.J. Stone & Co., San Francisco, 1897.

According to Gieringer (1999), the first bill, introduced in 1880, entitled “an act to regulate the sale of opium and other narcotic poisons,” would have made it unlawful to keep, sell, furnish, or give away any “preparations or mixtures made or prepared from opium, hemp, or other narcotic drugs” except on a written prescription at a licensed drug store. Hemp was only seen as a medical component. Years later, in 1895, the move from hemp to marijuana, or from medical to recreational, happened. It was introduced by immigrants from southwest Asia, who had the cultural habit of consuming it as hashish, made by compressing and processing trichomes of the cannabis plant. Besides the Asian community, during those same years, a revolution took place in Mexico and thousands of Mexicans fled to the US. Some of them smoked the dried leaves of the cannabis plant, which they called marijuana. Following the Mexican Revolution in 1910, many Mexicans migrated to the U.S., prompting an agitation about the effects of immigration.

Anti-Mexican sentiment surfaced in public fears of “marihuana,” which some believed came across the border with the immigrants and turned users into raging violent lunatics<sup>101</sup>. Between 1963 and 1984, scholars in several fields established what came to be known as the “Mexican hypothesis” of marijuana prohibition in the United States. They argued that, around 1900, waves of Mexican immigrants, many of whom casually smoked marijuana, began to enter the United States. As the Mexicans spread, so did their custom of marijuana smoking<sup>102</sup>. It was the very beginning of a demonization of the drug and the costly connection to Mexican immigrants, perpetuated to this day. However, Campos (2018) believes that marijuana’s history in Mexico is not fully compatible with the story that has long been told about the connection between Mexican immigrants, marijuana in the United States and extreme prejudice. The author believe that this narrative was already well developed against Mexicans, soon attached to these immigrants’ drug of choice. There is no definitive research on the topic, brought by the Mexicans or not, marijuana became illegal soon after.

California became the first state to prohibit marijuana in an addendum to the Poison Act of 1907. The Poison Act made it illegal to sell or use cocaine or opiates such as opium and morphine

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<sup>101</sup> Roy, Jessica. California’s been rejecting legalized marijuana for more than a century. Here’s why this time is different Los Angeles Times, 2016. Available at: <https://www.latimes.com/politics/la-pol-ca-timeline-california-recreational-marijuana-history-20160708-snap-story.html>

<sup>102</sup> Campos, Isaac. Mexicans and the Origins of Marijuana Prohibition in the United States: A Reassessment. *Social History of Alcohol and Drugs*, Volume 32 (2018) <https://doi.org/10.1086/SHAD3201006>

without a prescription. In 1913, the law was amended<sup>103</sup> to include cannabis, referred as “locoweed”. Process-tracing this first state prohibition, I can identify the Board of Pharmacy as the primary actor on drug regulation, mainly because it was considered a medical/medicinal issue, but also because they were leading one of the nation's earliest and most aggressive anti-narcotics campaigns. Prior to the passage of the law, there was no indication that cannabis was a problem in California. The Board of Pharmacy was only formed in 1891 to function as a state health regulatory agency and took control of the legislation, they were professional public policy bureaucrats with the authority and will to regulate drugs in California.

Two decades later, in 1911, the Washington Post published an article<sup>104</sup> called “War on Crazying Drug: California Fears the Dread Loco Weed That Has Menaced Mexico,” stating that “it is reported that the Mexican Marihuano or locoweed is being feared and fought by the California Board of Pharmacy as an enemy no less feared than opium or cocaine.” Further it said that “Much of it is brought into California by the Mexican laborers, who are greatly addicted to it... The loco narcotic destroys body, soul and mind.”

**Figure 10: “War on Crazying Drug”**

**Much of this drug is brought into California by the Mexican laborers, among whom it works havoc. Mescal and pulque are the national drinks of Mexico, and while they are intoxicating and fiery, still they are only alcoholic drinks, no worse, if no better, than whisky, and are under ordinary control. The loco narcotic, however, destroys body, soul, and mind. Its immediate effects are a highly exalted mental state, of much longer continuance than that produced by morphine, followed by a sudden collapse.**

<sup>103</sup> The statutes of California and amendments to the codes passed at the fortieth session of the legislature, 1913. Available at:

<https://web.archive.org/web/20131112060204/http://192.234.213.35/clerkarchive/archive/Statutes/1913/1913.pdf>

<sup>104</sup> San Diego (Cal.), Correspondence New York Sun. The Washington Post (1877-1922); Nov 6, 1911; ProQuest Historical Newspapers: The Washington Post pg. 6

Source: The Washington Post Archive

I want to emphasize the media's language and how it influenced the construction of the law. Thereafter, the board's campaign materialized in the statute saying:

Chapter 342 (1913) Section 8(a). The possession of a pipe or pipes used for smoking opium (commonly known as opium pipes) or the usual attachment or attachments thereto, or extracts, tinctures, or other narcotic preparations of hemp, or loco-weed, their preparations or compounds (except corn remedies containing not more than fifteen grains of the extract or fluid extract of hemp to the ounce, mixed with not less than five times its weight of salicylic acid combined with collodion), is hereby made a misdemeanor...

The language is very technical and detailed, but in a tentative not to leave any loopholes, in 1915 another amendment forbade the sale or possession of “flowering tops and leaves, extracts, tinctures and other narcotic preparations of hemp or locoweed (*Cannabis sativa*), Indian hemp” except with a prescription. Searching for motivation, Morgan (1978) found that Mexicans had nothing to do with the 1910s legislation. Instead, those laws were the predictable result of what they called a Progressive Era “professional reform”. The author also found that anti-Mexican forces rarely linked Mexicans to marijuana even when concern about Mexican immigration intensified in the following decade.

Nationally, the prohibition focus was still about alcohol but California outlawed cannabis as well. Over the next eight years, several amendments to the law made it a misdemeanor to possess, sell, or use any quantity of marijuana. Although it was hard to find any record of public support (or lack thereof) from those years, Bonnie & Whitebread (1970) maintain that “concerns about marijuana were related primarily to the fear that marijuana use would spread, even among whites, as a substitute for the opiates and alcohol made more difficult to obtain by federal legislation”. In agreement, Gieringer (1999) claims that those laws were passed not in response to any public outcry, but as preventative initiatives by drug control authorities to deter future use.

The authors believed that it was clear no state undertook any empirical or scientific study of the effects of the drug. Instead, they relied on lurid and often unfounded accounts of marijuana's dangers as presented in what little coverage the drug received in newspapers. It was simply assumed that cannabis was addictive and would have engendered the same "evil effects" as opium and cocaine.

Following our timeline, the 1920s indicate that the fear and concern about the spread of marijuana consumption turned into reality. The federal alcohol prohibition raised the price of alcohol in the United States, positioning marijuana as an attractive alternative to recreation and led to an increased use of the drug. The Californian response was to harden the laws. Illegal sale, which had initially been a misdemeanor punishable by a \$100-\$400 fine and/or 50-180 days in jail for first offenders, became punishable by 6 months to 6 years in 1925. Possession, which had previously been treated the same as sales, became punishable by up to 6 years in prison (Gieringer, 1999).

Moving on to the 1930s, although not highlighted in figure 8, the decade saw a new actor on marijuana federal prohibition: Harry Anslinger, previously mentioned in chapter 2. He served from 1930 to 1962 as the founding commissioner of the Federal Bureau of Narcotics (FBN), as I previously mentioned in the History chapter. At the time, marijuana had already been banned in 24 U.S. states, but there was still no coordinated federal attempt to outlaw the plant. During its first few years, the FBN issued annual reports that minimized the marijuana problem, which Anslinger believed was best dealt with by state and local officials (Lee, 2013). Anslinger didn't pay much attention to cannabis until 1934, which coincidentally was when the FBN was not getting enough funding due to the Great Depression. To save his bureau, he orchestrated a nationwide campaign against marijuana that required immediate action by a well-funded Federal Bureau of Narcotics. Anslinger and the FBN provided the impetus and the instruments to criminalize marijuana – namely, the propaganda, myth, and misinformation, now generally known as "reefer madness", a large-scale campaign.

Demonstrating little to no scientific or medical knowledge, Anslinger began to "fabricate horror stories connecting drug use to violent crime" (Carroll, 2004, p. 66). He was associated with the creation and/or exploitation of many educational films and articles about marijuana such as

“Assassin of Youth”, “Marihuana, the Weed with Roots in Hell” and “Tell Your Children” (later named Reefer Madness)<sup>105</sup>.

**Figure 11: Reefer Madness Movie poster**



Source: Getty Images

In one article, he called marijuana “as dangerous as a coiled rattlesnake” and told a story of a Florida man who, after smoking marijuana, killed his family with an axe (Anslinger & Cooper, 1937, p. 18). Though Reefer Madness was the most famous anti-weed screed, it was soon followed by many imitators, in which all-night marijuana parties lead to violence or an innocent girl winds up impregnated, addicted to heroin and planning a kidnapping<sup>106</sup>. These efforts and propaganda made the public afraid and fomented an anti-marijuana sentiment. While it is not clear exactly when marijuana was first used recreationally, by 1936 all 48 states had laws regulating the use, sale, and possession of marijuana. Houser and Rosacker (2014) believe that while many speculate

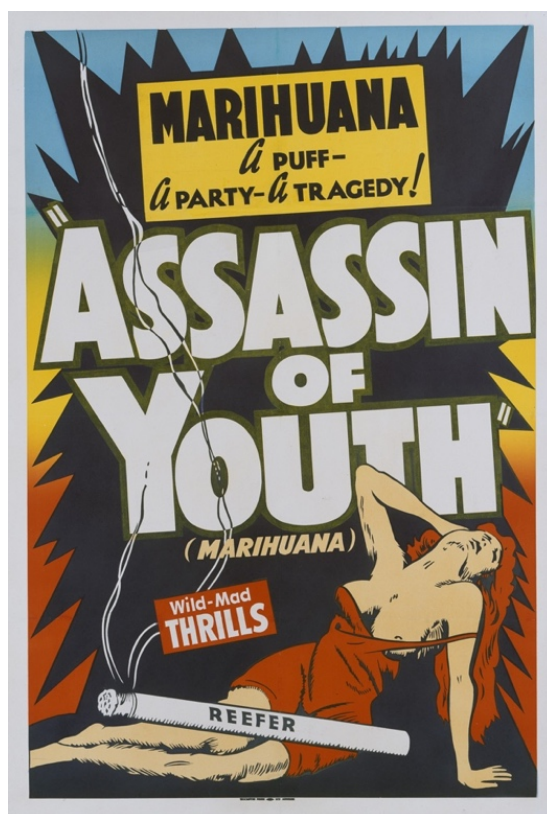
<sup>105</sup> Boyd, S. C. (2009). **Hooked**: Drug war films in Britain, Canada, and the United States. Toronto, Ontario, Canada: University of Toronto Press

<sup>106</sup> Arbuckle, Alex Q. 13 alarmist marijuana posters from the 'Reefer Madness' era. <https://mashable.com/2016/04/18/anti-weed-film-posters/>

why marijuana came to the public's attention at that time, it does strongly correlate with the prohibition of liquor movement.

Yet, Gieringer (1999) defends that by and large, California was unfazed by the famous reefer madness campaign of the later 1930s. The state having already outlawed the drug, being an example of prohibition, so the push for a federal law received little notice, Harry Anslinger singled out California in the Report on Drug Addiction in California (1936) for having exemplary narcotics laws which needed no amendment.

**Figure 12: Assassin of Youth Movie Poster**



Source: Getty Images

Anslinger was emphatic on his job and the efforts and campaign helped fuel federal prohibition in the following years, which set mandatory sentences for drug-related offenses. Nevertheless, with the counterculture movement in the 1960s that I elucidated in chapter 2, changing political and cultural climate, marijuana use was widespread. Dufton (2017) explains that marijuana became very popular during the rise of a national counterculture, when young



people abandoned ‘en masse’ the strictures and constraints of modern American life and sought to create a new, bohemian approach to living that emphasized peace, creativity, and a willingness to experiment with mind-altering drugs. She continues to tell that protests were starting in earnest against the Vietnam War, and marijuana activism was quickly subsumed into the burgeoning national antiwar movement. Given marijuana’s prominence in the counterculture, activists brought the drug to antiwar protests and rallies across the country, merging the act of smoking pot with the cause of protesting the war. At the same time, reports commissioned by Presidents Kennedy and vice-president Johnson found that marijuana use did not induce violence nor lead to use of heavier drugs<sup>107</sup>. Even though the previous administration reported those findings, Nixon took office and declared the War on Drugs, securitizing the issue as I explained earlier.

### 4.3 Weed the people

As a result of the significant momentum generated, a grassroots movement in California made history by proposing the first-ever ballot measure to decriminalize marijuana in the United States. In a sense, it confirms that California pioneered a level of community organization for the cause. The Ann Arbor Sun edition<sup>108</sup> reported that “with 20,000 workers, operating out of fifty offices, and collecting nearly 400,000 signatures, the California registration drive became the only state to put the decision, to smoke or not to smoke, on the November ballot”. A “Yes” vote on this initiative statute was a vote to revise California law relative to marijuana to provide that no person in the State of California 18 years of age or older shall be punished in any way for growing, processing, transporting, or possessing marijuana for personal use or for using it. A “No” vote is a vote to reject this revision<sup>109</sup>.

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<sup>107</sup> Green, M. “Reefer Madness! The Twisted History of America’s Marijuana Laws”. KQED, Jan 5, 2018 <https://www.kqed.org/lowdown/24153/reefer-madness-the-twisted-history-of-americas-weed-laws>

<sup>108</sup> Ann Arbor Sun, October 5, 1972 at [https://aadl.org/files/documents/pdf/aa\\_sun/aa\\_sun\\_19721005.pdf](https://aadl.org/files/documents/pdf/aa_sun/aa_sun_19721005.pdf)

<sup>109</sup> MARIJUANA - Removal of Penalty for Personal Use California Proposition 19 (1972). [https://repository.uchastings.edu/ca\\_ballot\\_props/770](https://repository.uchastings.edu/ca_ballot_props/770)

Figure 13: Section of a sample ballot for Proposition 19 on the November 7, 1972

<b>19</b>	<b>MARIJUANA. Initiative.</b> Removes state penalties for personal use. Proposes a statute which would provide that no person eighteen years or older shall be punished criminally or denied any right or privilege because of his planting, cultivating, harvesting, drying, processing, otherwise preparing, transporting, possessing or using marijuana. Does not repeal existing, or limit future, legislation prohibiting persons under the influence of marijuana from engaging in conduct that endangers others. Financial impact: None.	<b>YES</b>	
		<b>NO</b>	

Source: Voter Information Guide for 1972, General Election (1972)

In favor of proposition 19 were the authors: Joel Fort, M.D., Public Health Specialist and Criminologist; former Consultant on Drug Abuse for the World Health Organization; Mary Jane Fernandez, Educator; Gordon S. Brownell, J.D., Former Member of White House Staff (1969 - 1970). They claimed that marijuana is not addictive, does not lead to use other drugs, does not damage the body, does not produce mental illness, crime or violence, and has no lethal dose. Also, they advocated that while no drug - including aspirin, alcohol and tobacco - is harmless, the vast majority of people who use marijuana do so without harm to themselves or society<sup>110</sup>.

Against it were H. L. Richardson, State Senator, 19th District; Dr. Harden Jones, Ph.D., Professor of Medical Physics and Physiology; Asst. Director of Donner Laboratory, U.C. Berkeley. They defended that there was not enough research on the effects of marijuana use and that “liberalization of laws on marijuana would be the green light for even more drug abuse”, which is also used as an anti-marijuana argument to this day<sup>111</sup>. The official ballot statute also enunciates that “Marijuana is not as harmful as our two most popular drugs - alcohol and tobacco - and there is no justification for making criminals out of people who use any of these. The current laws are expensive, destructive, and unsuccessful: soft on drugs and hard on people”, which also shows a criminal justice debate that is still relevant in today’s societies. Although it was a progressive initiative for that time, voters rejected Proposition 19 by a large majority of 5,433,393 ‘No’ votes (66.5%) and only 2,733,120 ‘Yes’ votes (33.5%)<sup>112</sup>.

<sup>110</sup> Voter Information Guide for 1972, General Election (1972). [http://repository.uchastings.edu/ca\\_ballot\\_props/774](http://repository.uchastings.edu/ca_ballot_props/774)

<sup>111</sup> Ibid

<sup>112</sup> Ballotpedia. California Marijuana Legalization, Proposition 19 (1972) [https://ballotpedia.org/California\\_Marijuana\\_Legalization,\\_Proposition\\_19\\_\(1972\)](https://ballotpedia.org/California_Marijuana_Legalization,_Proposition_19_(1972))

At that time, simple possession of marijuana would be charged as a felony and result in a 10-year term in state prison. Those arrests were producing ever increasing costs on law enforcement. The steep increase in the number of arrests, the change in drug-offender characteristics<sup>113</sup>, and the felony status of marijuana possession offenses led legislators to adopt several different strategies to cope with the burden on the criminal justice system (Aldrich and Mikuriya, 1988).

Motivated by the need to cut those costs, the state legislature passed Senate Bill 95, the Moscone Act, proposed by Senator George Moscone. The bill reduced the penalties for possession and use of small quantities of marijuana. “S.B.95” also revised the penalties for both furnishing without consideration and transporting not more than one ounce of marijuana, treating such offenses as simple possession, rather than as felonies. Giving away or transporting more than one ounce of marijuana, as well as cultivation, sale and possession of any amount with intention to sell remained as felonies under “S.B. 95”. More importantly, prior California law did not distinguish among various forms of marijuana based on form or potency, treating the natural cannabis plant, synthetic THC and hashish as the same substance. S. B. 95 distinguished between “marijuana” and “concentrated cannabis”, the latter referring to the separated resin, whether crude or purified, obtained from marijuana<sup>114</sup>.

This time it wasn’t a community-based movement but an elected official trying to save his state some money. The data shows that the measures were effective. According to Aldrich and Mikuriya (1988), the major ongoing effect of the Moscone Act was to reduce felony marijuana arrests from 92,677 a year (the average for 1974 and 1975) to 20,068 a year (the average for 1976 through 1985), a 78% decrease in felony marijuana arrest expenditures; they used data provided by the Bureau of Criminal Statistics and Special Services, California Department of Justice.

When examining the early history of cannabis in California, it becomes evident that this state has consistently led the way in terms of marijuana policy reform. To build upon this progress, I now look into for the latest advancements in this field.

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<sup>113</sup> In 1960 the typical person arrested for drugs in California was a 26-year-old Hispanic heroin addict from Los Angeles, with a long criminal record. By 1967 the typical drug offender was a 19-year-old white marijuana smoker with no criminal record, often a middle-class youth -from the suburbs (Aldrich, Mikuriya & Brownell, 1986).

<sup>114</sup> Schaffer Library of Drug Policy, A Fiscal Analysis of Marijuana Decriminalization. <https://www.druglibrary.org/schaffer/hemp/moscone/chap3.htm>

#### 4.4 Modern History of cannabis in California

On a national level, the increasingly punitive “War on Drugs” embraced by Ronald Reagan and George H. W. Bush began to shape new areas of concern for drug policy reformers. These included threats to public health, social justice, civil liberties and public policy. Specifically, drug policy reformers addressed the AIDS epidemic and its spread through needle sharing among injection drug users, racially discriminatory policies targeting crack cocaine users, mandatory minimum sentencing guidelines, a rise in violent crime, threats to civil liberties, the incarceration boom and asset forfeiture as damaging consequences of the “War on Drugs.”<sup>115</sup>

Still guided by our timeline, the next point is 1996, when California voters passed Proposition 215, the Compassionate Use Act (CUA) – the first voter-approved state ballot initiative for medical marijuana in the United States. With this major win, CUA allowed qualified patients and approved caregivers to possess and cultivate medical marijuana and ultimately led to the formation of collectives and cooperatives to serve medical patients throughout the state. It represented the inauguration of an even more progressive era for cannabis in California.

The Proposition 215 statewide voter initiative came after many municipalities’ efforts and it was deeply influenced by the AIDS epidemic. When AIDS emerged, researchers had no precedent or guide in dealing with the catastrophic collapse of the patients’ immune systems. During the 1980s, as AIDS became more widespread, patients began to discover medical marijuana as a treatment for “wasting syndrome” and for the nausea that sometimes-accompanied new medications. Berman and Kreit (2020, p. 430) assert that, with no specific drugs to treat AIDS and in face of federal intransigence on marijuana reform, many advocates of medical marijuana turned to the states, where they found a more sympathetic audience for claims that patients should be able to obtain marijuana to use therapeutically in a legal and regulated manner<sup>116</sup>.

Localities within California were the focal point for much early medical marijuana advocacy: San Francisco approved “Proposition P” in 1991, recommending that the California government and the California Medical Association consider marijuana to be an available medicine for physicians to prescribe to patients; Santa Cruz passed “Measure A” in 1992, which

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<sup>115</sup> Heddleston, Thomas Reed. *From the Frontlines to the Bottom Line: Medical Marijuana, the War on Drugs, and the Drug Policy Reform Movement*, 2012

<sup>116</sup> Marijuana has most often been proposed to be useful as a medicine for diseases and conditions including cancer chemotherapy, AIDS wasting syndrome, glaucoma, epilepsy, and multiple sclerosis.

called for law enforcement to use discretion when pursuing those who violate drug laws solely out of medical necessity. These types of reforms prompted California's state legislature to enact medical marijuana bills in 1994 and 1995, but these bills were ultimately vetoed by then-Governor Pete Wilson. There is clear conflict between state and municipality, just like the theory pendulum I presented, the pendulum has always swung back and forth on public policy around making marijuana legal.

In turn, medical marijuana advocates pursued a ballot initiative in 1996. A coalition of marijuana activists collaborated to author the "Compassionate Use Act" in 1995. After getting the language of the initiative approved by the California Secretary of State, California NORML and several grassroots cannabis organizations (including the Cannabis Action Network) worked to gather signatures to put the initiative on the ballot. When this group failed to secure enough signatures, Ethan Nadelmann, at the time director of the Drug Policy Alliance, persuaded three mega-funders to contribute to the campaign (Zeese, 1999). This meeting led to the formation of a political action committee known as "Californians for Medical Rights", which was essential to the campaign.

"Proposition 215", codified as Section 11362.5 to the California Health and Safety Code, created the basic framework and defined the essential parameters for the development of the state medical marijuana laws and regulations in U.S. jurisdictions over the next two decades. The primary opponents of medical marijuana were state law-enforcement organizations such as the "California Narcotic Officers' Association" and the "California Sheriffs' Association". These organizations and their representatives, accustomed to lobbying for their interests through the legislative process, argued that medical decisions should not be made by popular vote (Ferraiolo, 2007). A Field Poll ending Oct. 9 of that year showed that 56 percent of those surveyed would vote for the measure, a private poll in the same period by the campaign for "Proposition 215" found 57 percent supporting it, and a Los Angeles Times poll found 58 percent in favor. The opposition never topped 36 percent in the three polls<sup>117</sup>. The popular vote won with 55.58% of the "Yes" votes.

The purposes of the Compassionate Use Act<sup>118</sup> were:

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<sup>117</sup> Goldberg, C. Medical Marijuana Use Winning Backing. The New York Times, Oct. 30, 1996. Available at: <https://www.nytimes.com/1996/10/30/us/medical-marijuana-use-winning-backing.html>

<sup>118</sup> The law text can be found at: [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=11362.5.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.5.&lawCode=HSC)

- A. To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.
- B. To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
- C. To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

But not without a fight. The federal government under President George W. Bush occasionally raided medical-marijuana dispensaries or growers supplying the dispensaries because, although Proposition 215 legalized medical cannabis in California, at the federal level it remained a Schedule I prohibited drug. The DEA claimed that these medical marijuana businesses were fronts for the illegal market. In March 2009, the Barack Obama administration announced that it would stop raids on dispensaries that followed state law, although it would continue to enforce laws against marijuana production generally<sup>119</sup>. I would highlight that the system was undergoing significant transformation, as it was greatly impacted by the decisions made by various stakeholders at the local, state, and federal levels.

Heddleston (2012) points out that by opening up a novel system for the production and consumption of cannabis to state and public scrutiny with the passage of "Proposition 215", the medical cannabis movement has profoundly altered the cultural representation of cannabis, transforming the plant from dangerous to therapeutic. I would add that public opinion is of utmost importance here, since it was the public's views on the issue that defined the win on the ballot.

Ferraiolo (2007) argues that the shift in venue was spearheaded by a group of drug policy reformers who exploited their prolific skills and resources to achieve success through the ballot

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<sup>119</sup> Kilmer, Beau, Jonathan P. Caulkins, Rosalie Liccardo Pacula, Robert J. MacCoun, and Peter Reuter, *Altered State? Assessing How Marijuana Legalization in California Could Influence Marijuana Consumption and Public Budgets*. Santa Monica, CA: RAND Corporation, 2010. [https://www.rand.org/pubs/occasional\\_papers/OP315.html](https://www.rand.org/pubs/occasional_papers/OP315.html)

initiative process, in part by transforming the way in which drug policy debates were framed. The author also claims that medical marijuana proponents faced ways to create and promote a different image of marijuana and marijuana users. In contrast to the early twentieth-century medical paradigm that defined drug addicts as sick people in need of treatment, medical marijuana supporters sought to define marijuana use itself as having therapeutic purposes, and marijuana users as patients in need of relief from suffering. Ferraiolo (2007) sees it as campaign management, as the proponents' campaign communications revolved around themes of patient rights, treatment options, compassion, and common sense and, to opponents' dismay, avoided or deflected the more controversial issue of recreational use.

However, what Ferraiolo calls a shift in venue, I call it Desecuritization. More specifically, I argue that these changes on how to treat the drug issue is the movement back into 'normal politics.' As I explained in chapter 3, normal politics is marked by what Roe (2006) might call the three Ds – discussion, debate and deliberation – by contrast, emergency politics is constituted by the three Ss – silence, secrecy and suppression. Furthermore, I believe that the Desecuritization process happened not only by changing how the public perceived the cannabis consumer, but also by actual political process. The strategic framing of policy can be significant not solely in shaping preferences or changing minds, but in activating public support and making it electorally relevant. The Securitization and Desecuritization theories are about language and what we see happening in California is the transformation, through language, of how the drug issue is treated. The discourse shifts from marijuana being an existential threat to being a medicine that can help people in need.

Four years after the passage of “Proposition 215”, in November 2000, California voters passed “Proposition 36”, which was enacted into law as the Substance Abuse and Crime Prevention Act (SACPA). It represents a major shift in criminal justice policy, inasmuch as adults convicted of nonviolent drug-related offenses in California and otherwise eligible for SACPA can now be sentenced to probation with drug treatment instead of either probation without treatment or incarceration<sup>120</sup>. Supported by the Drug Policy Alliance and health-related organizations, but opposed by the California Republican Party, the California District Attorneys Association, and

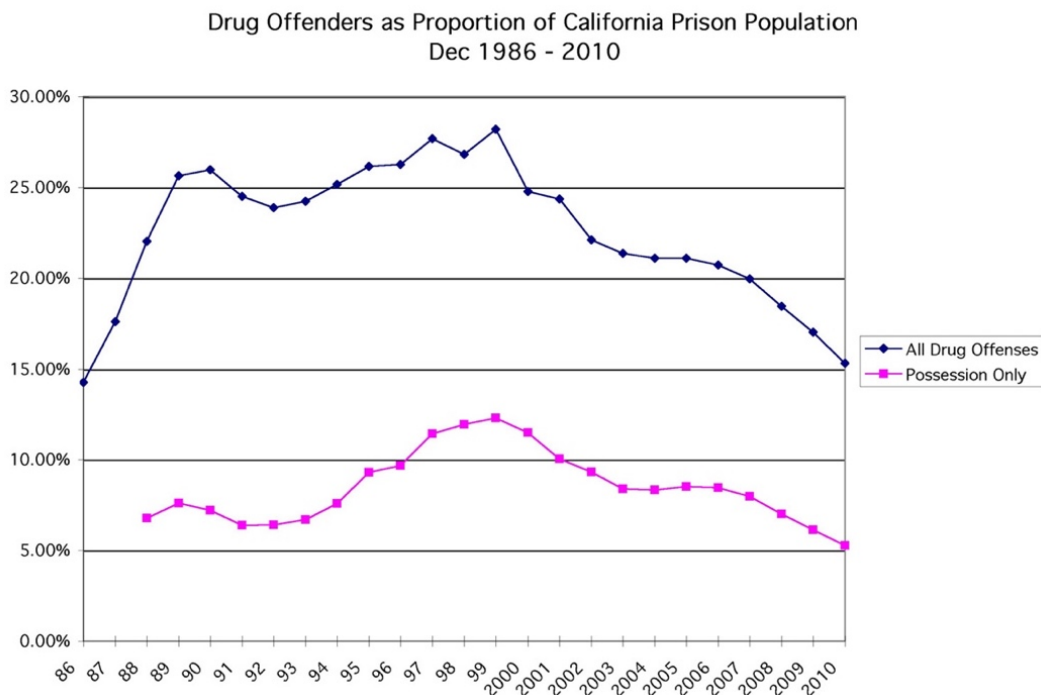
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<sup>120</sup> Longshore D., Urada D. Evaluation of the Substance Abuse and Crime Prevention Act Final Report. University of California Los Angeles, 2007. Available at: <http://www.uclaisap.org/prop36/documents/SACPAEvaluationReport.pdf>

other law enforcement organizations, SACPA shifted the state’s illicit drug policy from a punitive approach to a more rehabilitative model.

Once in treatment, it was hoped that clients could successfully end their drug addictions, and on the long run, supporters believed Proposition 36 could reduce the social and economic costs associated with addiction (Percival, 2009). It also represents an action away from treating the issue as a security one and addresses mass incarceration, one of the consequences of the War on Drugs. Since “Proposition 36”, the number of arrests declined, as the next figures shows:

**Figure 14:**

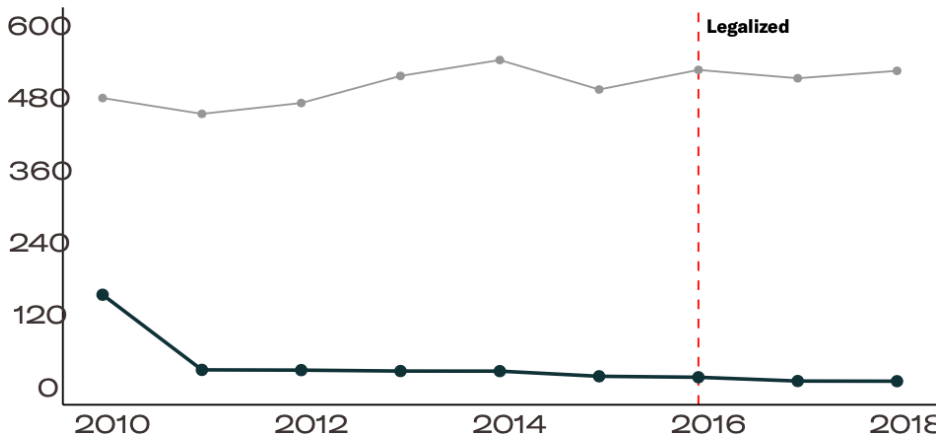


Source: California NORML <https://www.canorml.org/judicial/california-arrest-and-prisoner-data/>



Figure 15: Marijuana possession arrest rates

**Statewide marijuana possession arrest rates compared to all other drug arrest rates, per 100k people**



Source: ACLU research report, A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, 2020.

What is also important to note here is the intrinsically relationship between drug policy, health and criminal justice. Following what seemed like a natural progression of California’s cannabis policy, voters put on the ballot by petition signatures California “Proposition 19” (also known as the Regulate, Control & Tax Cannabis Act) on the November 2, 2010 statewide ballot. The proposal<sup>121</sup> says that “this measure changes state law to (1) legalize the possession and cultivation of limited amounts of marijuana for personal use by individuals age 21 or older, and (2) authorize various commercial marijuana-related activities under certain conditions”.

<sup>121</sup> Proposition 19 Changes California Law to Legalize Marijuana and Allow It to Be Regulated and Taxed. Initiative Statute. Legislative Analyst’s Office 7/12/2010

**Figure 16: Voter Information Guide****WHAT YOUR VOTE MEANS**

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**YES** A YES vote on this measure means: Individuals age 21 or older could, under state law, possess and cultivate limited amounts of marijuana for personal use. In addition, the state and local governments could authorize, regulate, and tax commercial marijuana-related activities under certain conditions. These activities would remain illegal under federal law.

**NO** A NO vote on this measure means: The possession and cultivation of marijuana for personal use and commercial marijuana-related activities would remain illegal under state law, unless allowed under the state's existing medical marijuana law.

Source: Voter Information Guide for 2010, General Election

It was a very comprehensive and detailed proposition to not only allow adult use but also to regulate, tax and profit from the cannabis legal market. For example, local governments could license establishments that could sell marijuana to people 21 years old and older. They also could regulate the location, size, hours of operation, signs and displays of such establishments. In addition, the measure would permit local governments to impose new general, excise, or transfer taxes, as well as benefit assessments and fees, on authorized marijuana-related activities. The purpose of such charges would be to raise revenue for local governments and/or to offset any costs associated with marijuana regulation (Legislative Analyst's Office, 2010). It was a clear attempt towards legalization with a focus on how a regulated market has its leverage. In parallel to this case, Uruguay's regulation is an example of state-controlled marijuana dispensary regime in the international level as I showed in Chapter 3.

"Control and Tax Cannabis, yes on 19" led the campaign in support of the measure and they argued that it would "weaken drug cartels, enforce road and workplace safety, generate billions in revenue and save taxpayers money". "No on Prop 19" campaigned in opposition to the measure and, among other pleas, claimed that the measure "would allow drivers to smoke

marijuana until the moment they climb behind the wheel”. Both groups had a long list of endorsements<sup>122</sup>.

The measure’s main advocate in favor, Richard Lee, an Oakland marijuana entrepreneur, seized the chance to press his case with voters that the state’s decades-old ban on marijuana is a failed policy<sup>123</sup>. Opponents also put together their campaign with a broad coalition that included law enforcement. Nonetheless, according to Ballotpedia<sup>124</sup>, the outcome was 53.46% of California voters chose ‘No’ and 46.54% chose ‘Yes.’ One actor that advocated for this negative result was Attorney General Eric Holder. He vowed to fight “Prop. 19” if it passed and “vigorously enforce” federal drug laws in the state, in a letter to former DEA administrators who had formally urged him to sue California if the law passed. Another actor on this process was Professor Miron, who declare that Proposition 19’s arguments were overblown and overreached<sup>125</sup>.

The LA Times also pointed out that in September that year, the Legislature had passed a bill that reclassified the possession of small amounts of marijuana to a civil infraction, weakening one of the main arguments for the passage of the proposition. Governor Schwarzenegger signed that bill into law a month before the election, which may have left some voters feeling that the proposition was no longer necessary<sup>126</sup>. Or maybe it was just bad timing. Either way, looking through the lenses of the Desecuritization theory, I argue that, with those actions, the issue was moving further on the pendulum away from securitization and back to normal politics, generating debate, discussions and political actions.

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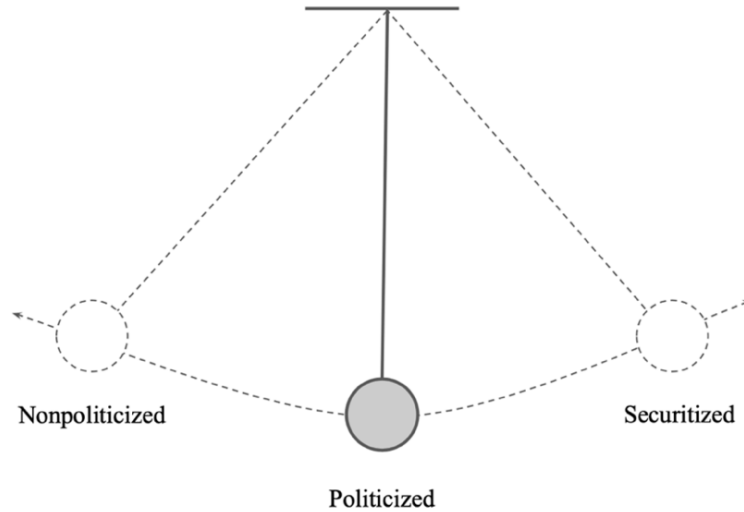
<sup>122</sup> You can find the list at: California Proposition 19, Marijuana Legalization Initiative (2010), Ballotpedia [https://ballotpedia.org/California\\_Proposition\\_19\\_Marijuana\\_Legalization\\_Initiative\\_\(2010\)#cite\\_note-40](https://ballotpedia.org/California_Proposition_19_Marijuana_Legalization_Initiative_(2010)#cite_note-40)

<sup>123</sup> Hoeffel, John. Measure to legalize marijuana will be on California’s November ballot. LA Times, MARCH 25, 2010 <https://www.latimes.com/archives/la-xpm-2010-mar-25-la-me-marijuana-initiative25-2010mar25-story.html>

<sup>124</sup> California Proposition 19, Marijuana Legalization Initiative (2010) [https://ballotpedia.org/California\\_Proposition\\_19\\_Marijuana\\_Legalization\\_Initiative\\_\(2010\)](https://ballotpedia.org/California_Proposition_19_Marijuana_Legalization_Initiative_(2010))

<sup>125</sup> Miron, J. Why did California vote down legal pot? November 3, 2010 <https://edition.cnn.com/2010/OPINION/11/03/miron.pot.vote/index.html>

<sup>126</sup> Lauder, T., Schleuss J. The last time California tried to legalize weed it failed. What happened? Los Angeles Times, NOV. 4, 2016

**Figure 17: Securitization pendulum**

Source: Elaborated by the author

Hansen (2012) explains that to politicize something is thus to do two things: to claim that this is of significance for the society in question and to make it the subject of debate and contestation. Taking this meta-concept of politics to the realm of security, there is a distinction between the securitized and the politicized, as ‘security’ ‘takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or as above politics. The politicized, by contrast, allows for deliberation, discussions and ‘normal bargaining processes.’

Above all, I would highlight that this shift is being put in motion by non-states actors. Advocacy groups, grassroots movements and local entrepreneurs are the ones largely interested in widening and publicizing the debate. In this case, the process of Desecuritization is not tied to a political elite but instead it is a ground-up process. The movement is made up of advocacy and membership-based organizations, a shifting in popular opinion, and wealthy benefactors. Organizations like The Drug Policy Alliance and NORML, have organized many campaigns on drug reform, broadly funded by individuals in favor of the cause.

One way to look at it is as how social problems become more complex and policy makers seek more local flexibility and greater choice in delivery of services. Public policies are increasingly enforced and executed in interdependent “implementation network” structures that involves multiple public agencies, private firms, and organizations (for profit and nonprofit) joining together to provide customized approaches and creative solutions to complicated problems

(Goldsmith and Eggers 2004; Koppenjan and Klijn 2004; Rhodes 1997; van Buren, Klijn, and Koopenjan 2003). Moreover, in the case of drug regulation, I believe that the role of these actors is essential but they are also driven by the consequences and failures of prohibitionist policies.

As mentioned in Chapter 3, one of the most pressing results of the War on Drugs is mass incarceration. In 2014, almost half a million people, disproportionately Black and Latino, were locked up in U.S. prisons and jails because of drug prohibition<sup>127</sup>. In light of that, in November 2014, California voters approved “Proposition 47”, a significant criminal justice reform targeted at lower-level offenders. It goes further than what “Proposition 36” intended. The proposal was for this measure to reduce penalties for certain offenders convicted of non-serious and nonviolent property and drug crimes. The measure also allows certain offenders who have been previously convicted of such crimes to apply for reduced sentences<sup>128</sup>. In addition, the proposition has a reparation feature, making the measure require any state savings that result from the measure to be spent to support truancy (unexcused absences) prevention, mental health, substance abuse treatment and victim services. “Proposition 47” reduced the penalties associated with a certain set of drug and property offenses by requiring that prosecutors charge them as misdemeanors in most cases.

The proposition passed with support from California voters in November 2014, with 59.61% in favor. Previously, offenders could be charged with a misdemeanor or a felony, depending on the amount and type of drug. After the proposition, possession for personal use of most illegal drugs is a misdemeanor under “Proposition 47”. According to the Public Policy Institute of California report<sup>129</sup>, both state prisons and county jails saw reduced populations under “Prop 47” in the months that followed, driven primarily by a reduction in individuals being held or serving time.

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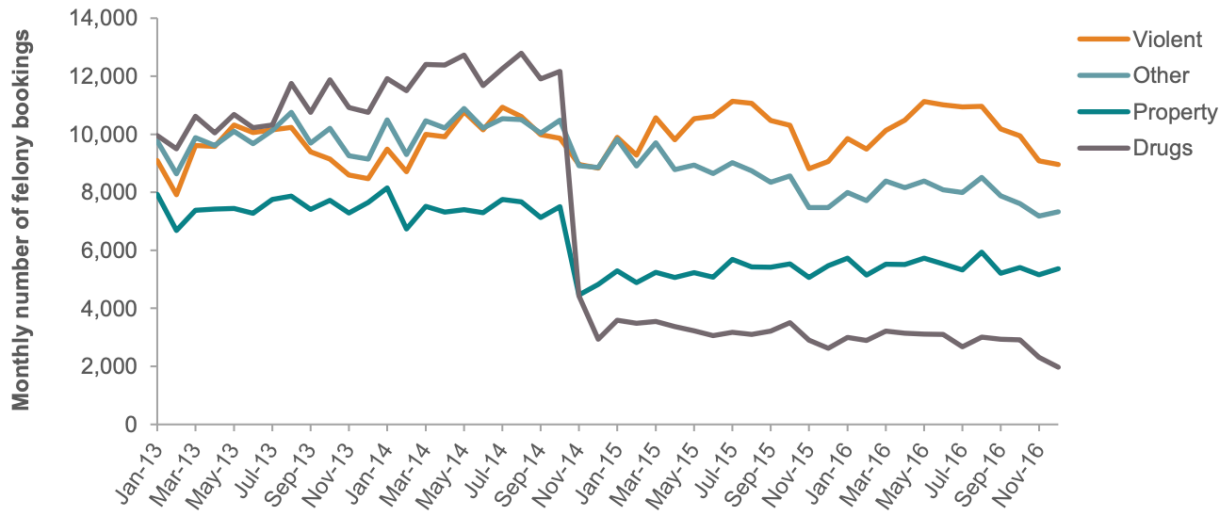
<sup>127</sup> Drug Policy Alliance. **We’re leading the way together**. Drug Policy Alliance Annual Report, 2015. <https://drugpolicy.org/2015/>

<sup>128</sup> Voter Information Guide for 2014, General Election (2014). [http://repository.uchastings.edu/ca\\_ballot\\_props/1328](http://repository.uchastings.edu/ca_ballot_props/1328)

<sup>129</sup> Magnus Lofstrom, Brandon Martin, and Steven Raphael with research support from Alexandria Gumbs and Joseph Hayes. Proposition 47’s Impact on Racial Disparity in Criminal Justice Outcomes. Public Policy Institute of California, 2020.

**Figure 18: Felony booking**

The drop in felony bookings for drug offenses was particularly dramatic after Prop 47 passed



Source: Public Policy Institute of California, 2020.

In order to revise some laws and better regulate cannabis, in 2015 the legislature passed and the governor signed into law three bills: Assembly Bills 243, 266 and Senate Bill 643. They established a regulatory structure for medical cannabis in California. Each of the bills deals with different aspects of the licensing and regulation of commercial medical marijuana cultivation, distributions, manufacturing, sales, transportation and testing. Because legislation concerning medical marijuana continue to pass, it pushed stakeholders such as the union, law enforcement, local government, and portions of the industry to communicate with each other and concur with a possible structure of the regulations that should be portrayed in a certain county or city. This would range from a more lenient perspective or a stricter one (California Legislation Information, 2020). This legislation included the Medical Marijuana Regulation and Safety Act and established the Bureau of Medical Marijuana Regulation, a regulatory body with oversight of physician recommendations, tracking movement of medical marijuana through the supply and distribution chain, and local and state licensing for dispensaries. This reveals how robust medical marijuana reform became.

In fact, public opinion polls<sup>130</sup> from 2022 show that Americans agree on medical marijuana and support exceeds 80%. That is astonishing for a country that leads the War on Drugs and still prohibits marijuana itself on the federal level. Only two states — Nebraska and Idaho — have never passed any medical marijuana law. I argue that these policies are influencing the national level, if the medical marijuana campaigns prevail in those last remaining states, the U.S. could reach a dubious distinction: Cannabis policies in every single state would be in violation of federal law. If anything, it can put more pressure on Congress and the White House to alleviate federal marijuana restrictions, and it could fuel the push to make recreational cannabis legal everywhere. Right now, the Congress just seems far behind from where the public is.

In agreement, Berman and Kreit (2020) believe that the particulars, both in law and in operation, of medical marijuana regimes vary considerably from state to state. What has not varied, however, is the tendency of some states, after having experiences with medical marijuana regimes, to later embrace broader marijuana legalization for all adult uses. Consequently, medical marijuana reform has often been championed not only by those eager to ensure individuals can access marijuana based on a genuine medical need, but also by those eager for marijuana to be fully legal for use by all adults for any reason. Heddleston (2012) argues that the drug policy reform movement uses a combination of legal change to alter drug laws it finds unfavorable and direct action to put new policy modalities in place. While legislative change occurs comprehensively through ballot initiatives and the adoption of new legislation, activists, organizations and providers institute change on the ground slowly through protracted interactions with law enforcement agencies, state and local governments. What is also import to address is that the continuous science-based research provides the evidence to back these changes<sup>131</sup>, which wasn't possible to execute due to the lack of funding or moral impediments.

Additionally, Berman and Kreit (2020) sensibly point out that for the great majority who do not suffer from debilitating pain, or who have not watched a loved one waste away as a result of AIDS-induced anorexia, it doesn't matter much. But for patients suffering from multiple

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<sup>130</sup> Pew Research Center. “Americans overwhelmingly say marijuana should be legal for medical or recreational use”. NOVEMBER 22, 2022 <https://www.pewresearch.org/fact-tank/2022/11/22/americans-overwhelmingly-say-marijuana-should-be-legal-for-medical-or-recreational-use/>

<sup>131</sup> For more on the health effects of medical marijuana, see: National Academies of Sciences, Engineering, and Medicine, 2017. *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24625>.

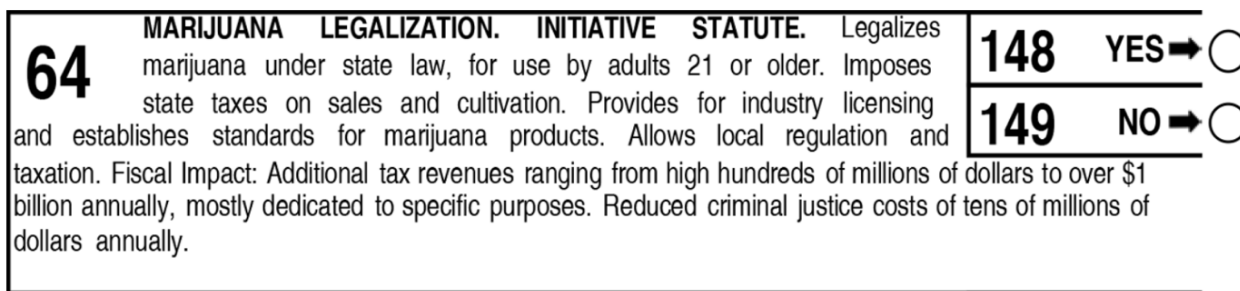
sclerosis, cancer, AIDS or one of the other afflictions, and their loved ones, obtaining candid and reliable information about a possible avenue of relief is of vital importance.

Having covered the preceding milestones, I now progress towards the ultimate and pivotal point in our timeline: the complete legalization of marijuana.

#### 4.5 California Marijuana Legalization

In November 2016, California voters passed “Proposition 64”, which authorizes the possession, transport, purchase, consumption and sharing of up to one ounce of marijuana and up to eight grams of marijuana concentrates for adults aged 21 and older<sup>132</sup>. It also allows adults to grow up to six plants in their household, out of public view. A state inside the country that went to war over cannabis, among other drugs, now allows recreational consumption. To this day, federal law still prohibits the possession, distribution, and production of marijuana.

**Figure 19: Section of a sample ballot for the 2016 general election**



Source: L.A. County Registrar-Recorder/County Clerk

The ‘Yes on 64’ campaign won with 57.13% of the votes<sup>133</sup>. Supporters raised \$22 million in contributions, while ‘No on 64’ raised less than \$2 million<sup>134</sup>. The main contributors, again, were individuals and organizations that sympathized with the cause. California’s two largest newspapers, the Los Angeles Times and the San Francisco Chronicle, endorsed the measure. The California Democratic Party also endorsed “Proposition 64”, and the California Republican Party

<sup>132</sup> Proposition 64: The Adult Use of Marijuana Act, Judicial Council of California. Available at: <https://www.courts.ca.gov/prop64.htm>

<sup>133</sup> Ballotpedia, California Proposition 64, Marijuana Legalization (2016)

<sup>134</sup> California Quick Guide to Propositions <https://quickguidetoprops.sos.ca.gov/propositions/2016-11-08/64>



came out in opposition. The main arguments on the proposition text<sup>135</sup> claimed “Proposition 64” finally creates a safe, legal, and comprehensive system for adult use of marijuana while protecting children. It also points out that marijuana is available nearly everywhere in California— but without any protections for children, without assurances of product safety, and without generating tax revenue for the state. “Prop. 64” controls, regulates and taxes adult use of marijuana, and ends California's criminalization of responsible adult use. It is worthy to note the language that now considers children’ safety, going further from “Prop. 19” that focused on tax revenue.

Besides popular support, another influencing factor is generational turnover leading to a rise in the proportion of the adult population who have direct personal experience with marijuana; those who have used previously are more likely than those who have not to support legalization (Caulkins, Coulson, et al., 2012). Other observers believe that the availability of medical marijuana increased national support for legalization. Although no direct evidence supports that belief, one study found that the availability of medical marijuana in Colorado reduced the perceived risk associated with marijuana use, which could presumably reduce opposition to legalizing the drug (Schuermeyer et al., 2014). Certainly, fewer people see the drug as harmful as they saw it 20 years earlier.

In 2017, regulators, legislators and a wide range of stakeholders worked on developing regulations and protocols for implementing the new law. This process included reconciliation of California’s Medical Cannabis Regulation and Safety Act with “Prop. 64”. While the possession, transport, consumption and sharing of marijuana became legal immediately, retail sales of nonmedical marijuana only began once the state started issuing licenses in 2018.

Legal cannabis has created an emerging industry in California with the potential to generate significant employment opportunities and revenue to the State. A report<sup>136</sup> from the “Applied Development Economics” shows that since its adoption, the legal cannabis market in California has grown steadily and currently supports over \$2 billion in legal sales. Between 2018 and 2019, taxable cannabis sales increased by 62 percent. In addition to direct cannabis sales, the retail cannabis industry in California also generates taxable revenues from accessories and point-of-sale items that increase the overall retail sales associated with cannabis sales to about \$2.7 billion.

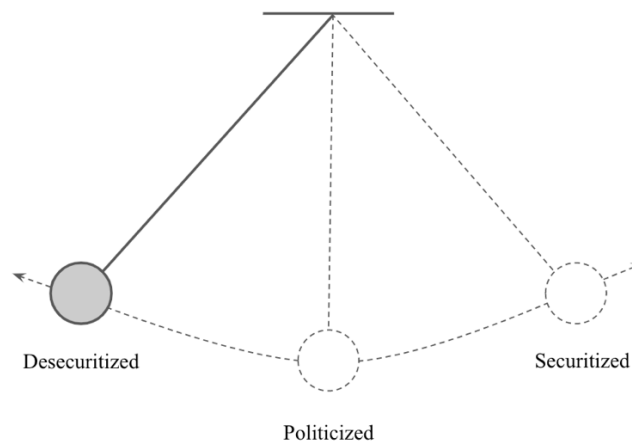
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<sup>135</sup> It can be found at the Legislative Analyst’s Office <https://lao.ca.gov/BallotAnalysis/Proposition?number=64&year=2016>

<sup>136</sup> Analysis of Cannabis Market in California and Case Study Cities. Applied Development Economics, 2020.

Beyond profit, what one can notice see is that the drug issue is not treated as an essential threat carried out by the traditional elites in a heavily top-down approach. Instead, the issue is now at the other end of the pendulum.

**Figure 20: Desecuritization pendulum**



Source: Elaborated by the author

I argue that what non-elite actors did in California is what Hansen (2012) called ‘Desecuritization by Rearticulation’. It refers to the form of Desecuritization that removes an issue from the securitized agenda by actively offering a political solution to the threats, dangers, and grievances in question. At level one, rearticulation refers to fundamental transformations of the public sphere including a move out of the friend-enemy distinction. In California, and other states like Colorado and Washington, the changes in language and discourse were essential to disconnect cannabis from crimes so the public could learn more about the plant and its purposes so it would perceive it differently. However, in one sense, just by taking the issue out of the security realm is a rearticulation per se. Among Hansen’s Desecuritization categories (change through stabilization; replacement; rearticulation and silencing) rearticulation is the most suitable. I do not believe that they are mutually exclusive, rather, there are other possibilities, such as Desecuritization through stabilization followed by silencing the issue or a multi-level Desecuritization.

Thierry Balzacq (2005) presents his concept of the semantic repertoire of security, which is a “combination of textual meaning and cultural meaning – knowledge historically gained through previous interactions and situations.” The specific historical context (whether understood

socially, politically, or both) determines if an audience will be more or less inclined to accept the securitarian framework being posed in the speech act<sup>137</sup>. The audience didn't accept "Prop 19" in 2010 but it was more open to it in 2016. I believe this opening is directly related to the fact that Barack Obama, a democrat, was the president during those years, which reinvented America's approach to issues like health care, education, energy, climate and finance<sup>138</sup>.

Furthermore, desecuritizing moves are often long negotiations, taking place over the course of multiple years or decades. Cohen (2018) believes that, unlike securitizing speech acts, which are often quick and in response to an exogenous shock, desecuritization takes calculated and explicit action over a long period of time to become entrenched. I would add that, in the case of California Marijuana Laws, it became clear that besides taking time, it is not a linear process.

A Berkeley IGS Poll completed by the Institute of Governmental Studies (IGS) at the University of California found that two in three registered voters in California (68%) believe that the passage of "Proposition 64" in 2016 legalizing the possession, sale and personal use of marijuana among adults was a good thing<sup>139</sup>. Just 30% of voters feel it was a bad thing. In addition, by a 63% to 36% margin voters say they favor allowing retail dispensaries to sell cannabis products in the communities where they live. Taking this into consideration, it can be argued that based on theoretical standards and the acceptance by the audience, the process of Desecuritization is now fully accomplished.

Looking at the effects of legalization, one of the advocate's arguments was the profit on a regulated market. More recent data<sup>140</sup> shows that the convergence in prices across states is consistent with the idea that legalization diverts marijuana commerce from underground markets to legal retail shops, allowing retailers to charge a premium price as the preferred sources of supply. In California, the gap between the prices rose after legalization, suggesting that consumers have had an easier time distinguishing different qualities and strains. Overall, the data suggest no major drop in marijuana prices after legalization and consequently, less likelihood of soaring use rates

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<sup>137</sup> Coen, Nick. Beyond Emergency Measures: Normative Politics after a Successful Securitization. *Undergraduate Journal of Humanistic Studies*, Spring 2018, Vol. 6.

<sup>138</sup> For more on Obama's domestic policy legacy, please see: Grunwald, M. "The Nation He Built". Politico Magazine, January/February 2016. <https://www.politico.com/magazine/story/2016/01/obama-biggest-achievements-213487/>

<sup>139</sup> DiCamillo, M. (2019). Release #2019-10: Two in Three Say Legalizing Marijuana in California was a Good Thing; Most Support Allowing Retail Marijuana Dispensaries in the own Community. *UC Berkeley: Institute of Governmental Studies*. Retrieved from <https://escholarship.org/uc/item/9z9330q5>

<sup>140</sup> Dills, Angela, Sietse Goffard, Jeffrey Miron, and Erin Partin. "The Effect of State Marijuana Legalizations: 2021 Update," Policy Analysis no. 908, Cato Institute, Washington, DC, February 2, 2021. <https://doi.org/10.36009/PA.908>

because of cheaper marijuana. Nevertheless, consumers now have a clearer understanding of the substances they are ingesting. Furthermore, the report highlights that California generates over \$50 million in tax revenues every month from recreational marijuana. When it comes to critics of legalization, they often argue that it paves the way for increased consumption of other drugs like cocaine. However, the same report indicates that there is no conclusive link between marijuana legalization and an uptick in cocaine use.

#### 4.6 The California Effect

While I recognize the complexities and challenges of regulating legal cannabis markets, I also comprehend that, nonetheless, California is now seen as a leader in the cannabis arena. In the decades since it legalized medical marijuana, the number of Americans who support legalization has gone up from about one-third to two-thirds<sup>141</sup>, and more than a dozen states have fully legalized marijuana. California is the heart of the nation's marijuana industry and it is important to highlight the impact this successful case of desecuritization is having in the international community.

For instance, Sadiq Khan, mayor of London set up a group looking at whether to decriminalize cannabis in the UK and visited Los Angeles so they could hear from the experts and from those who cultivate and grow marijuana plants<sup>142</sup>. This fact-finding mission shows how the local changes are impacting not only the national level but the foreign sphere and the potential the US has to be a leader in the local desecuritization process.

Announcing the commission, mayor Khan said he believed: “The illegal drugs trade causes huge damage to our society and we need to do more to tackle this epidemic and further the debate around our drugs laws.” Also, he stated: “That’s why I am here in LA, to see first-hand the approach they have taken to cannabis.”<sup>143</sup> This effectively illustrates my argument regarding the bottom-up desecuritization initiated by a local actor, the city of Los Angeles, which has had a significant impact on the international actor, the city of London. It also serves as a compelling example of paradiplomacy.

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<sup>141</sup> Daniller, A. Two-thirds of Americans support marijuana legalization. Pew Research Center, 2019. <http://pewrsr.ch/2E9u3hd>

<sup>142</sup> Low, H. **London Drugs Commission to look at legalising cannabis**. BBC News, May 12, 2022 <https://www.bbc.com/news/uk-england-london-61416295>

<sup>143</sup> Cooney, C. “Sadiq Khan launches commission to examine cannabis legality”. The Guardian. 11 May 2022 <https://www.theguardian.com/society/2022/may/12/sadiq-khan-launches-commission-to-examine-cannabis-legality>

Similarly, in September 2022, a delegation of the Health Committee of the German Federal Parliament at Bundestag examined products of dispensaries with equity licenses to assess cannabis legalization opportunities and risks. They visited a dispensary and met with local stakeholders and activists in Oakland to discuss best practices for legalization as the European country moves toward ending prohibition and regulating marijuana nationwide<sup>144</sup>.

Nationally, California opened up the debate to a wider policy and political discussion. Other states paid close attention to how things would evolve in California so they could implement in their own states, making a national impact. Arizona and Montana are examples of states that allowed recreational use of marijuana more recently, in 2020. Since California first moved legislation to allow for medical cannabis, underlying trends in public opinion have slowly moved away from support of prohibition. As I stated before in this dissertation, public opinion polls have shown a steady increase in support for repeal since the early 2000s, reaching a tipping point in 2013 when a majority of respondents supported legalizing use of cannabis for non-medical purposes (McCarthy, 2017). Figures for support of medical cannabis are higher, though surveys gauge public attitudes on this matter with less frequency. According to Kilmer and MacCoun (2017), support for medical cannabis has ranged from 70–85 percent from 2000–2015. Pardo (2020) notes that growing favorability toward repeal for non-medical use in the last 15 years has coincided with the adoption and expansion of commercial medical cannabis.

The advent of commercial markets and the opening of retail outlets in early medical cannabis states, along with the absence of any immediate or obvious harms, demonstrated the feasibility of repeal to the average voter (Kilmer and MacCoun, 2017). This is important since voters are often passing these initiatives; as is the case for many of the commercial medical and recreational markets. State legislatures, on the other hand, have passed more restrictive medical cannabis laws, since the point is to get medical help there will be no need to look for profit. Vermont, the first state to legalize recreational cannabis through the state legislature, adopted a non-commercial model that prohibits retail sales.

Although one cannot draw a conclusive picture because cannabis politics, as well as the plant, are complex, with hundreds of different strains and varieties, one can say that if the main

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<sup>144</sup> Jaeger, K. “German Lawmakers Tour California Marijuana Businesses To Inform National Legalization Plans”. Marijuana Moment <https://www.marijuanamoment.net/german-lawmakers-tour-california-marijuana-businesses-to-inform-national-legalization-plans/>

driving force is commercialization, the tendency is for more states to adopt legalization. Facing many economic struggles due to the Covid-19 pandemic, the states acknowledge that marijuana production and commerce do employ many thousands of people and can generate tax revenues.

The trend to execute more regulation and legalization follow the public support, the advances on research about medicinal benefits of cannabis and the pursue of profit. Nevertheless, how to make that happen has shown to be a highly complex and not unanimous.

Now I move on to the next with-in case analysis, the state of Texas, in order to understand how the “red state” has treated cannabis and their users in light of the political debate.

## CHAPTER 5 - TEXAS: THE LONE STAR STATE

In the previous chapter I explored the case of the state of California and the driving forces to marijuana legalization there. Part of the Desecuritization of cannabis was achieved by a bottom-up process where actors such as individuals and non-profits organizations voiced their choice through ballot initiatives. In this chapter, I examine the case of the state of Texas to understand how drug policy has been approached in the “Lone Star State”, with the purpose of presenting how drug policy is in a “red” state, which stands for conservative and Republican.

Texas was not my first choice of analysis, but it came to my attention how other works focused on mostly democratic-led states, so I opted for something new. It turned out to be a unique example that illustrates how American culture can blend with its politics. Moreover, it shows how public opinion ‘per se’ and political party ‘per se’ is not the decisive component for drug regulation, but they have to come together so political change can happen.

In this chapter I first lay out what makes the case of Texas so particular for analysis, showing the constitutive elements that support marijuana regulation in Texas but don’t get materialized due to the state’s political restrictions. Second, I unpack important historical and cultural factors that weight on today’s marijuana legislation in Texas. Understanding the influence of culture on Texas’ politics provides insights into the complexities and nuances surrounding drug policy in the state. It highlights the significance of cultural factors in shaping public opinion, political discourse, and the trajectory of policy changes in relation to drug legalization, regulation, or criminalization. Although not initially expected, it was later perceived during interviews, how important those factors are. Third, I take a close look at Texas’ legislature and the actors behind the institutional process to see if cannabis regulation is a bottom-up or top-down mechanism. Here, I review Legislature texts and newspaper records as fundamental evidence to apply the Securitization and Desecuritization theory. Additionally, organizations like “Texans for Responsible Marijuana Policy”, “Texas NORML”, “Texas Cannabis Collective” and “Ground Game Texas” were of great help. Finally, semi-structured interviews are cited and a great source of identifying all the main concepts which arise in the conversations and should be explored. Finally, I analyze state level and local level legislation.

## 5.1 “Everything is Bigger in Texas”

Currently, cannabis in Texas is illegal for recreational use. Possession of up to two ounces is a class B misdemeanor, punishable by up to 180 days in prison and/or a fine of up to \$2000. Having 2 to 4 ounces is also considered a misdemeanor, but comes with up to one year in jail and/or a \$4,000 fine. Medical use is allowed only in the form of low-THC cannabis oil, less than 1% THC with a doctor’s approval and less than 0.3% THC without. Legislation allowing for medical use was first approved in 2015.

What makes this case more interesting is asking why cannabis is still illegal even when the state of Texas shares some of the same characteristics as other states that have taken marijuana out of the security/threat/illegal realm. Like California, the state of Texas borders Mexico, considered by the federal government a “supply” country. Like California, in terms of demography, they have about the same Latino population (39%)<sup>145</sup>. As in California, the city of El Paso, Texas outlawed cannabis in the early 1900s, but later California legalized recreational use and Texas didn’t. Furthermore, Texans’ support for legalizing marijuana has grown significantly over the past decade, the University of Texas and Texas Tribune survey (2021) found that 60% of state voters support making cannabis legal for any use, between small amounts or any amounts<sup>146</sup>. But when it comes to politics, while California is considered a blue state and Texas a red one, I argue that in the case of cannabis policy, this debate goes beyond Democrats versus Republicans.

I try to understand the process of Securitization and Desecuritization of cannabis in the state of Texas considering the societal and regional levels. Although most of the Copenhagen School’s early analysis focused on national or societal elites, Buzan and Wæver have affirmed that securitization theory can be applied at the regional as well as the societal or state level (Buzan et al., 1998).

As Finnemore and Sikking (1998) argue, the norm “cascades” through the rest of the population (in this case, of states), so one would believe that sharing those attributes both states would have similar regulation. Beyond that, other neighboring states like New Mexico and Colorado have advanced marijuana laws. So, I ask: what is stopping cannabis laws from changing

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<sup>145</sup> The U.S. Census Bureau, 2019 <https://www.census.gov/quickfacts/fact/table/TX/PST045219#>

<sup>146</sup> Legalization of Marijuana, University of Texas and Texas Tribune 2021 <https://texaspolitics.utexas.edu/set/legalization-marijuana-february-2021#overall>



in Texas? What is it that other states have that Texas doesn't? The research to date has tended to focus on those advanced cases, far too little attention has been paid to the state of Texas, making this chapter so acute for the debate.

My argument is that the Desecuritization of cannabis is happening from the ground-up, not by elites, but by other actors. In the case of California, organizations like Drug Policy Alliance and California NORML played an essential role in the campaigns, translating the public support for legalization into policy. Since they're both national organizations, one expected to find a similar presence in Texas, however, difficulties arise when an attempt is made to use those same sources. This circumstance brought up the question of how are the people being heard? Who is translating into policy the majority of public support for cannabis regulation? In other words, what actors are involved in the cannabis laws in Texas and what political mechanisms are available?

In order to identify the actors and driving forces in Texas, many factors emerged as reasons for such a particular case, namely, the lack of ballot initiatives and cultural aspects of Texas identity. What my findings show is a strong dependency to a political system that doesn't offer much room for individual initiative, which made me unpack the legislative process in this chapter. While there's no statewide ballot process in place for citizen initiatives in Texas, drug policy reform advanced in the state legislature during 2021's legislature session, but not necessarily at the pace that advocates had hoped to see<sup>147</sup>.

One of the interviewees, an advocate from Texas Harm Reduction Alliance<sup>148</sup>, stated that "Texas cannot collect signatures to place an issue on the ballot for a vote to change state law. Additionally, in 1997, Texas passed a state law requiring that all drug laws be enforced and changed at the state rather than local level." Thereby, because of these limitations, "Texans must rely on our state elected officials, specifically our state representatives and state senators, to enact changes to our marijuana laws." Another pressing issue is how the incarcerated population intersect with racism and the war on drugs rhetoric. This intersection made the case of Texas a relevant example to show the punitive character of the war and its undeniable impact on communities of color. In fact, Dunt (2022) exposes that

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<sup>147</sup> GOP Texas Governor Says People Shouldn't Be Jailed Over Marijuana Possession, But Misstates Current Law. Marijuana Moment, January 11, 2022 <https://www.marijuanamoment.net/gop-texas-governor-says-people-shouldnt-be-jailed-over-marijuana-possession-but-misstates-current-law/>

<sup>148</sup> Texas Harm Reduction Alliance is an Austin-based, statewide organization that aims to end the drug war and its harms through harm reduction outreach, training, advocacy, and organizing.

If there is any way to convince the South about something that matters more than independence, is racism. [...] The southern police forces in the US changed their rifles to 38 calibers rather than 32 calibers, because they believed that a black man that was taking cocaine, his skin was impenetrable to a 32-caliber bullet.

When asked what are the biggest challenges for drug reform in Texas, the interviewees would answer: “In recent years, the only opposition to reform has been the executive chief of police and sheriff associations.” To that point, Texas Police Chiefs Association (TPCA) held a Press Conference on March 26th, 2019, stating that “First, Texas sheriffs oppose further legalization of marijuana in the state of Texas. Two, Texas sheriffs oppose the lowering of any criminal penalties for possession of marijuana as they’re currently set.<sup>149</sup>” Although is not on the scope of this dissertation, the intersection between use of drugs, enforcement and the disproportion in terms of punish for black people permeates the discussion, especially after the death of George Floyd in 2020<sup>150</sup>.

Another layer in the state of Texas is how they consider it a “pro-veterans” state. According to the Census Bureau data<sup>151</sup>, Military veterans in Texas number 1,435,787 and here lies an important feature to legalization: medical cannabis as an alternative pain relief option for veterans with chronic pain, Post-traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). Some regulation bills in Texas rely on the therapeutic potential of marijuana for military veterans as reason to move forward with legalization. In 2014, 9% of Veterans in the U.S. reported using cannabis in the past year, but in 2019-2020, the prevalence of past-6-month cannabis use among Veterans grew up to 11.9%, and was over 20% among Veterans aged 18-44 years old<sup>152</sup>. Those numbers speak loud to the advocates that keep pushing for legalization. The group “Texas Veterans for Medical Marijuana” and the Veterans Educating Texas Coalition (VET) advocate for a comprehensive plant medical cannabis program in the state. I wonder why this expressive support

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<sup>149</sup> You can find the transcripts here: <https://www.texasnorml.org/wp-content/uploads/2019/03/Police-Conference-Transcription.pdf>

<sup>150</sup> For more: Kadijatou Diallo and John Shattuck. “George Floyd and the history of police brutality in America.” June 1, 2020. Boston Globe

<sup>151</sup> <https://data.census.gov/cedsci/table?q=veteran&tid=ACST1Y2018.S2101&vintage=2018>

<sup>152</sup> Hill, M. L., Loflin, M., Nichter, B., Norman, S. B., & Pietrzak, R. H. (2021). Prevalence of cannabis use, disorder, and medical card possession in U.S. military Veterans: Results from the 2019-2020 National Health and Resilience in Veterans Study. *Addictive Behaviors*, 120, 106963. <https://doi.org/10.1016/j.addbeh.2021.106963>

has not been translated to political change, especially if you consider other “red” and pro-veteran states, as Alaska, where cannabis has been legal for recreational use since 2015.

That drive comes along with the potential for profit generated by the cannabis industry and tax revenue. Other states, Colorado for instance, collected over \$423 million in revenue from marijuana sales and surpassed \$2 billion in tax and fee revenue<sup>153</sup>. Texas is six times the size of Colorado, an analysis<sup>154</sup> of potential new revenue, job growth, and savings presents that there are more than 1.5 million adults 21 and older in Texas who consume cannabis on a monthly basis. If the state regulated cannabis for adult use, it would see an estimated \$2.7 billion per year in cannabis sales. More importantly, ending misdemeanor arrests and prosecutions for low-level cannabis possession offenses in Texas would save the state an estimated \$311 million per year, at the same time it would address the problem of the overcrowded prisons.

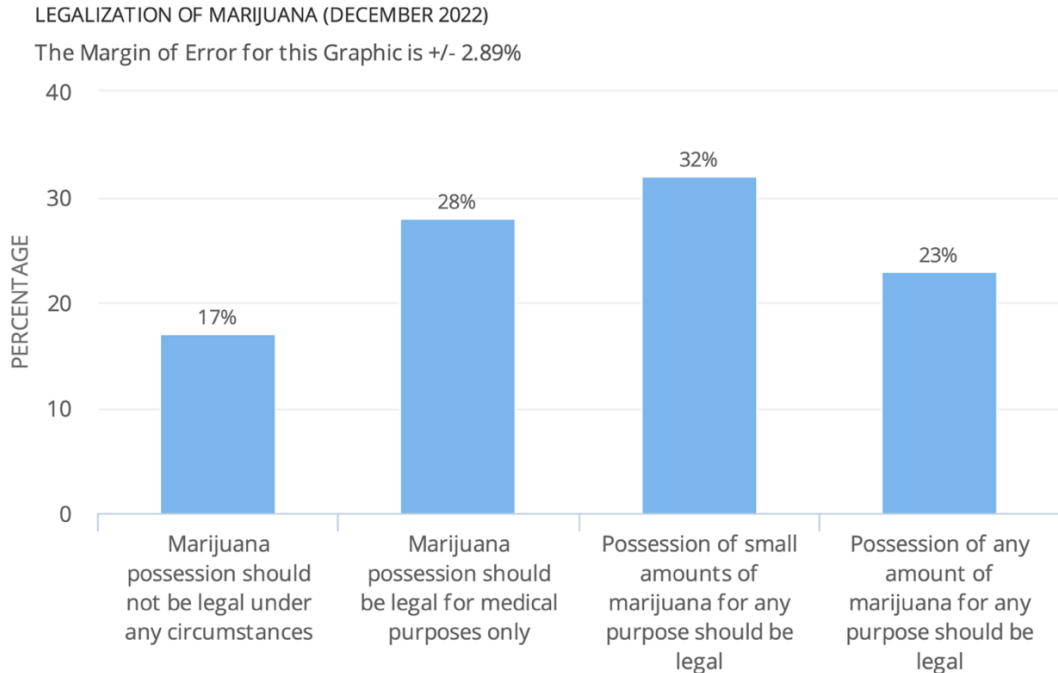
The array of factors presented here builds a compelling argument in favor of legalizing and regulating cannabis in the state. This argument extends beyond economic considerations and encompasses criminal justice and public health aspects, making this chapter pivotal for understanding Drug Policy in the US. Echoing Taureck’s (2006) perspective, I believe that securitization and desecuritization are inherently political acts. In this context, a shift at the highest level of Texas politics would reflect a change in public opinion, as politicians are acutely attuned to voter sentiment. Moreover, it would signify a transformation in popular culture, where the notion of cannabis being a “gateway drug” has been reevaluated, given its legal status in 20 states, the District of Columbia, and its decriminalization in several others. While Texas has yet to join the list of those states, the weight of public opinion on the matter cannot be ignored. For example, University of Texas/Texas Politics Project poll<sup>155</sup> shows the results (Figure 21) when respondents were asked, “What is your opinion on the legalization of marijuana possession?”

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<sup>153</sup> Marijuana Sales Report, The Colorado Department of Revenue (CDOR), Nov 2021 [https://sbg.colorado.gov/sites/sbg/files/220111\\_December\\_and\\_November\\_2021\\_Marijuana\\_Sales\\_and\\_Tax\\_Revenue\\_Press\\_Release.pdf](https://sbg.colorado.gov/sites/sbg/files/220111_December_and_November_2021_Marijuana_Sales_and_Tax_Revenue_Press_Release.pdf)

<sup>154</sup> The Economic Benefits of Regulating and Taxing Cannabis in Texas, Special Report, Oct. 2020, Vicente Sederberg LLP

<sup>155</sup> University of Texas/Texas Politics Project, Legalization of Marijuana, December 2022 <https://texaspolitics.utexas.edu/set/legalization-marijuana-december-2022>

**Figure: 21 – Public opinion in Texas**

Source: University of Texas/Texas Politics Project poll, December 2022

In order to grasp how Texas' drug policy works in this within-case analysis, next I present a historic overview that reveals cultural elements that are crucial to assimilate drug policy in Texas. The cultural session is essential because I believe that interests are constructed through a process of social interaction and security interests are defined by actors who respond to cultural factors (Katzenstein at al. 1996). This cultural perspective not only sheds light on the underlying dynamics but also helps explain why, despite the presence of compelling factors advocating for regulation, political change has not materialized thus far. By examining the intricate relationship between culture and politics, one can gain insights into the complexities that influence drug policy in Texas and the challenges involved in achieving significant political transformations in this context.

## 5.2 Cultural Determinants

When asked about Drug Policy and Reform in Texas, my interviewees answered the same thing, over and over again: "it's a political-cultural issue". Not satisfied with that answer, I would ask: What exactly do you mean? Can you elaborate? How culture impacts the laws?

Soon it became clear that to tell this story I would have to go back to the very fundamental pillars of the Texas state. Taking a constructive approach, I consider that agency and environment are mutually constitutive. As Katzenstein et al. (1996, p. 19) puts it, “cultural-institutional contexts do not merely constrain actors by changing the incentives that shape their behavior. They do not simply regulate behavior. They also help to constitute the very actors whose conduct they seek to regulate”.

Texas is a sizable state, which was a nation of its own for nine years when they declared independence from Mexico, establishing the Republic of Texas and believing in a national destiny and success as their motto. This, according to Lang (2010), made Texas utilize a popular and selective memory of their state’s revolution against Mexico as a key part of their justification for disunion and embrace a deeply romanticized version of the recent revolution. What I explore in this topic is how social factors shape different aspects of policy and identity. Is it this notion of independence that drives Texas in the contrary direction to the wave of cannabis regulation? In this session, I delve into the determinants of the cultural-institutional context of policy and the constructed identity of Texas, its government, and other political actors that later influenced the state’s Drug Policy.

Texas has a strong cultural identity rooted in conservative and traditional values. These values often shape political discourse and policy decisions, including those related to drug policy. Conservative cultural norms may create resistance to progressive drug policy reforms, as there can be a perception that such reforms challenge traditional values or societal norms.

### **5.2.1 The Race Component**

The American Civil War is a historical and cultural component that shaped Texas’ politics. When Abraham Lincoln was elected president in 1860, many southerners, including Texans, felt that his election threatened their personal rights and the right of the state to govern itself, especially because they defended slavery at all costs. The tumultuous months following the November election, which culminated in the secession of the Lower South, fomented a new nationalist identity among many Texans. This was fulfilled, however, in a far different manner from that in most of the southern states, primarily because of Texas’s recent experience as an independent

nation<sup>156</sup>. Individual actions that contributed directly to the war effort, such as collective sacrifice, military service, or even a hatred of northerners, served as practical and tangible instruments that potentially defined Confederate group identity<sup>157</sup>.

The historical context of Texas, including its frontier and cowboy heritage, has contributed to a cultural perception of individualism, self-reliance, and limited government intervention. These cultural ideals can influence political stances on issues such as drug policy, with a preference for minimal government interference and a focus on personal responsibility. Also, Texas has a reputation for being tough on crime, and this emphasis on law and order is deeply ingrained in the state's culture. Drug policy is often viewed through the lens of public safety and crime prevention, which can lead to a more punitive approach to drug offenses rather than a focus on harm reduction or public health.

This is particularly the case for drug law violations. According to a 2020 report by the American Civil Liberties Union, Black Texans were 2,6 times more likely to be arrested for marijuana possession in 2018 than white Texans despite similar usage rates nationwide. In both 2018 and 2019, about 30% of those arrested for marijuana possession in Texas were Black, despite the state population being 12% Black. States that were part of the Confederacy, primarily located in the Southern region of the United States, have been found to have higher arrest rates for marijuana possession compared to other parts of the country. These states include Alabama, Georgia, Louisiana, Mississippi, and South Carolina, among others (Figure 22).

The correlation can be attributed to a combination of factors, including historical legacies of racial discrimination, socio-economic disparities, and varying attitudes towards drug policy. The impacts of these historical factors have persisted over time, leading to disproportionate law enforcement practices that target marginalized communities, particularly African Americans and Hispanics.

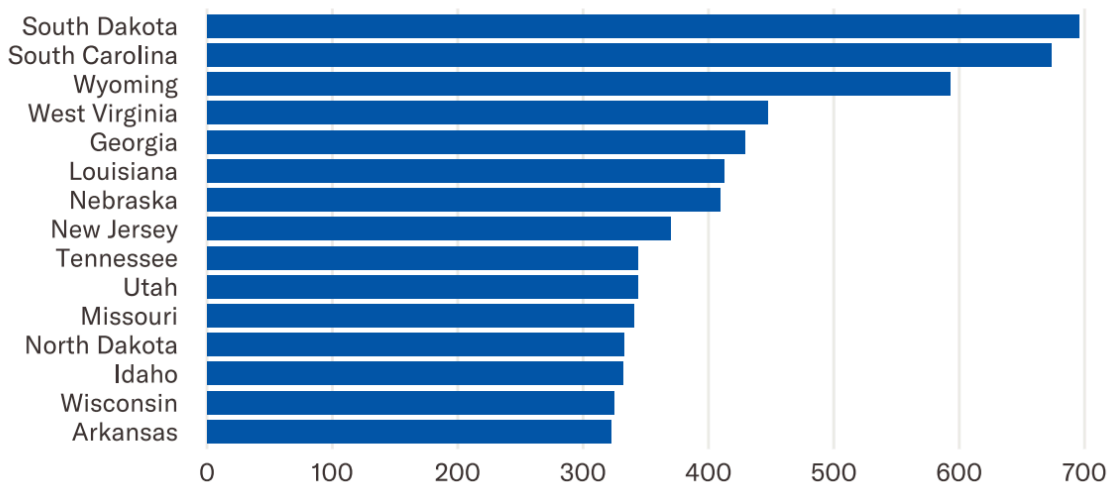
It is important to note that correlation does not necessarily imply causation, and there may be other factors at play. However, the correlation between states in the Confederacy and higher arrest rates for marijuana possession suggests a need for further examination of the underlying dynamics contributing to these disparities.

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<sup>156</sup> Lang, A. Memory, the Texas Revolution, and Secession: The Birth of Confederate Nationalism in the Lone Star State. *Southwestern Historical Quarterly*, Volume 114, Number 1, July 2010, pp. 21-36

<sup>157</sup> Susan-Mary Grant. **North over South: Northern Nationalism and American Identity in the Antebellum Era** Lawrence: University Press of Kansas, 2000

Figure 22:

**States With Highest Marijuana Possession Arrest Rates per 100k (2018)**

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

The enforcement of marijuana possession laws has a ripple effect on the overall criminal justice system, leading to the perpetuation of racial disparities at various stages, including arrests, convictions, sentencing, and post-conviction outcomes. This not only reflects a clear manifestation of institutional racism but also underscores the need for comprehensive criminal justice reform to address these disparities.

### 5.2.2 Jim Crow Laws and the New Jim Crow

Building upon Reconstruction-era racially based violence and oppression of the newly emancipated slave population, the passage of Jim Crow laws enforced racial segregation throughout the southern United States.

That lasted, officially, until the Civil Rights Movement between 1954–1968. However, on her seminal work ‘The New Jim Crow: Mass Incarceration in the Age of Colorblindness’ (2010), Michelle Alexander shows that mass incarceration represents a new legalized discrimination system. One of its main contributors is the War on Drugs. The author explains that for more than a decade, black drug dealers and users became regulars in newspaper stories and saturated the evening TV news, forever changing our conception of who the drug users and dealers are. Once

the enemy in the war was racially defined, a wave of punitiveness took over. Congress and state legislatures nationwide devoted billions of dollars to the drug war and passed harsh mandatory minimum sentences for drug crimes—sentences longer than murderers receive in many countries.

Similarly, Berman and Kreit (2020) point out that marijuana criminalization, as with cocaine and opiates, stemmed from racialized perceptions of users of color as threatening public safety and welfare. In the case of marijuana, racial prejudice against both African Americans and Mexicans merged to prompt states and local governments to outlaw usage. In states with significant Mexican populations, such as Texas, Mexican prejudice was the catalyst for prohibition. Most U.S. drug arrests stem from unlawful possession rather than trafficking drugs, and most of those possession arrests are for marijuana, amounting to nearly a million arrests annually. Millions more have felony records and spend their lives cycling in and out of prison, unable to find work or shelter, unable to vote or to serve on juries. Alexander (2010) explains that this system depends on the prison label, not prison time. And, in fact,

It does not matter whether you have actually spent time in prison; your second-class citizenship begins the moment you are branded a felon. It is this badge of inferiority, the criminal record, that ushers you into a parallel social universe in which discrimination is, once again, perfectly legal.

For these reasons, it is no surprise that Texas surpasses the other states in the business of punishment. According to Perkinson (2010), Texas has even more prisoners than California, despite the fact that its overall population is 50% smaller. In addition, he writes that Texas ranks first among the states in supermax lockdowns, executions, and prison growth. Additionally, the author contends that Texas leads the nation in for-profit imprisonment. In agreement with Alexander, Perkinson asserts that Jim Crow laws are still alive and well; they have simply “gone behind bars.” Rapid prison population growth in the late 1980s permanently expanded government partnerships with private corporations, nonprofits, and other public agencies, generating an industry of incarceration. A report<sup>158</sup> from the Texas Department of Criminal Justice (TDCJ) says that during the Fiscal Year of 2019 the number of offenders incarcerated continued to decrease.

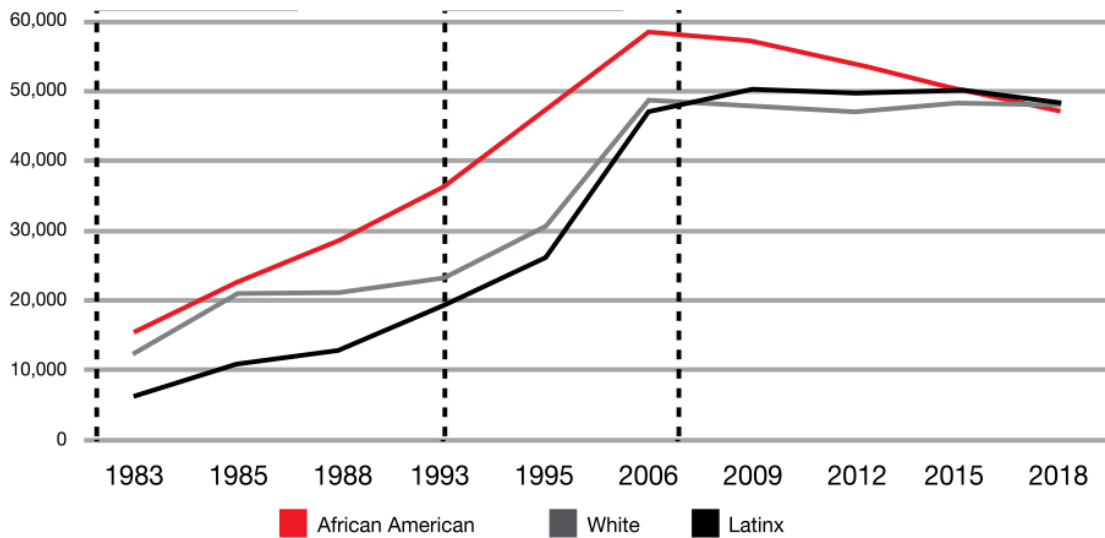
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<sup>158</sup> Annual Review for Fiscal Year 2019 for the Texas Department of Criminal Justice (TDCJ) [https://www.tdcj.texas.gov/documents/Annual\\_Review\\_2019.pdf](https://www.tdcj.texas.gov/documents/Annual_Review_2019.pdf)



Still, the population is 122,000 prisoners, the majority being African Americans. As of December 2021, there was a total of 133,772 prisoners in the state of Texas, the most out of any state<sup>159</sup>.

**Figure 23: Incarceration by race**



Source: Lyceum Fellow Policy Brief, 2020

These key elements help to articulate how Texas shaped their approach to Drug Policy and expands the understanding of the intersection of drug war, race and criminal justice. Texas has largely focused on punitive measures; marijuana is its own distinct category when it comes to drug possession charges and penalties. Unlike in many other states where marijuana legalization and decriminalization are on the rise, you can still face criminal drug possession charges in Texas because cannabis is illegal under state law. In Texas, drug penalties are separated into different penalty groups depending on the type of drug in question by the Texas Controlled Substances Act<sup>160</sup>. The penalty groups include 1, 1-A, 2, 3, and 4. Marijuana is classified as a group 2 substance. In Texas, anyone caught with high-THC marijuana faces potential jail and/or a fine.

<sup>159</sup> Statista, Number of prisoners under federal or state jurisdiction in the United States in 2021, by state <https://www.statista.com/statistics/203757/number-of-prisoners-in-the-us-by-states/#:~:text=As%20of%20December%202021%2C%20there,prisoners%20in%20the%20United%20States.>

<sup>160</sup> Texas Health and Safety Code, 1973. Title 6 Food, Drugs, Alcohol, and Hazardous Substances Sec. 481.031 Nomenclature Sec. 481.032 Schedules

Which means that it can be worse than a federal offense and that the dichotomy is not always legal/illegal but sometimes illegal/more illegal.

Depending on the amount of marijuana and type you're caught with, you could be facing life imprisonment over small possession. Texas has some of the harshest penalties for marijuana, and highest arrest rates. With this in mind, now I adjust the lenses to zoom in more closely on the political side of cannabis policy in the state.

### 5.3 Texas Political Process

The year of 2022 marked the 20th year that Texas has been a solid red state, with the full Republican trifecta: governor, Senate, and House of Representatives. Texas Republicans have majorities in the State House and Senate, an entirely Republican Texas Supreme Court, and two Republican Senators in US Congress<sup>161</sup>. This has been claimed by many as the main reason why marijuana is not legalized in Texas. However, I argue that is not about being a red state, but about the unique political mechanisms in the lone star state.

Due to the fact that ballot initiatives are not allowed, the voters' preferences are only met via elected representatives. Normally, marijuana decriminalization generates great voter turnout, especially among the young people. However, citizens are not obligated to vote, making voter turnout a challenge in the US, even more in the state of Texas. In fact, it is harder to vote in Texas than in any other state in the country. In particular, a study<sup>162</sup> reveals that Texas has an in-person voter registration deadline 30 days prior to Election Day, has reduced the number of polling stations in some parts of the state by more than 50 percent, and has the most restrictive pre-registration law in the country. According to the United States Election Project<sup>163</sup>, Texas has one of the lowest voter turnout rates in the country, turning out 45.6% of its population of eligible voters in 2018, compared with a national average of 49.4%.

Before I turn to the legislature on drugs it is necessary to understand the political and law-making processes in Texas. As mentioned on the 5.2.1 topic, Texans were not very fond of the

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<sup>161</sup> Rice, S. "Texas Is Entering Third Decade of Republican Control". Texas Scorecard, November 23, 2022. Available at: <https://texasscorecard.com/state/texas-is-entering-third-decade-of-republican-control/>

<sup>162</sup> Scot Schraufnagel, Michael J. Pomante II, and Quan Li. Election Law Journal: Rules, Politics, and Policy. Dec 2020. 503-509. <http://doi.org/10.1089/elj.2020.0666>

<sup>163</sup> The United States Elections Project <https://www.electproject.org/national-1789-present>

government. In fact, the secessionist sentiment is still alive. As recent as January 2021, State Representative Kyle Biedermann filed HB 1359, which would bring a vote for Texas independence to the citizens of Texas in November 2021, they called it “Texit”<sup>164</sup>. So, when they were rewriting the state constitution after the conflict, they decided that Texas lawmakers would meet as infrequently as possible. According to the Texas House of Representatives, the state has a bicameral legislature, named the Texas Legislature, which consists of the Texas House of Representatives and the Texas Senate. The House has 150 members representing 150 districts, with members serving a two-year term. The Senate has 31 members representing 31 districts, serving either a two-year or four-year term, chosen by lottery. Members of the Texas Legislature do not have term limits.

The Texas Legislature meets in Regular Session for about five months every other year. Regular Sessions begin at noon on the second Tuesday in January of odd numbered years and can last no more than 140 days, ending during the last week of May or the first week of June. Special Sessions may be called by the Governor and can last up to 30 days (Texas House of Representatives). The process of how a Bill becomes a law in Texas is a complex one<sup>165</sup>, but what one needs to know is that in Texas, as in the Congress and most other states, the lawmaking process involves four major stages: introduction, committee action, floor action, and enrollment.

In a bicameral legislature like Texas’, with both a house and a senate, the first three stages must occur in each of the houses consecutively. After the house in which the bill is introduced completes action on the measure, the bill is sent to the second house, where the process is repeated through the three stages. The fourth stage, enrollment, occurs in the originating house after both houses have agreed on the final form of the proposal (Texas House of Representatives).

Through the Security studies lenses, whenever an issue, cannabis policy for instance, is going through this normal (democratic) rules and regulations of policy-making, one can point as the issue is politicized, making it subject of debate, deliberation and contestation.

It seems that the path to politicization is especially bumpy in Texas. With this background settled, I now look at the practical side of the securitization and desecuritization of cannabis in Texas. To that end, I explore the history and legislation on the topic.

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<sup>164</sup> Texas Nationalist Movement. “TEXIT Referendum Bill Is Now Official”. January, 2021. Available at: <https://tnm.me/news/political/textit-referendum-bill-is-now-official/>

<sup>165</sup> For detailed information, see: <https://house.texas.gov/resources/frequently-asked-questions/bill-becomes-a-law/>

## 5.4 Early History of Cannabis Policy in Texas

The more I researched drug policy in Texas the more evident became the importance of Geography. First the geographic line drawn between “the North” and “the South” states during the national civil war. Second, Geography also weighed when facing the United States-Mexico border because it is an actor itself, which plays an important role defining how Texans see drugs, cannabis specifically. As in California, most of the literature says that the Mexicans brought it to Texas, with the narrative of producer/provider.

John Gregory Bourke, a captain in the United States Army, wrote about the American Old West. He identified “Mariguan” as *Cannabis Indica*, Indian Hemp. Also, he claimed that “many of the Mexicans add powdered mariguan to their cigarrito tobacco, or to their mescal”<sup>166</sup>. However, as I discussed before, there is no definitive evidence of that. Later, one can notice the morality rhetoric taking over the narrative. He states that

Indian hemp is the basis of the hasheesh of the East; the phantoms seen by and the tendencies manifested in those who are intoxicated with hasheesh generally indicate the usual habits of thought and moral character of the intoxicated person, or the thoughts and passions by which the man was possessed on the day that he became intoxicated or at the moment in which the symptoms of poisoning began to make themselves manifest. Persons given to the use of hasheesh who become maniacs are apt to commit all sorts of acts of violence and murder.

Along with those ideas, other impressions of cannabis in Texas can be found at an edition of June, 1912 newspaper El Paso Herald. The piece is about patterns of drug use in the border towns of El Paso, Texas and Ciudad Juarez, Mexico<sup>167</sup>. The author argued that experts considered “Marihuana, Cannabis Indica, or [more] commonly called Indian hemp ... to be the deadliest in its effects.” However, he declared, “Juarez drug stores keep it on hand, and sell it to anyone who has the purchase price.” Smoked in cigarettes, marijuana most resembled “green tea.”

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<sup>166</sup> Bourke, John G. January 5, 1984. Popular medicine, customs, and superstitions of the Rio Grande. *Journal of American Folklore*. 7–8: 138

<sup>167</sup> El Paso herald. (El Paso, Tex.), 15 June 1912. Chronicling America: Historic American Newspapers. Lib. of Congress. <https://chroniclingamerica.loc.gov/lccn/sn88084272/1912-06-15/ed-1/seq-10/>

The path to the prohibition in Texas began the next year, in Jan. 1, 1913, after a Mexican man “ran amuck, killing one policeman, wounding another and cutting two horses before he was knocked unconscious and arrested”, according to an article in the El Paso Morning Times<sup>168</sup>. Further it says that “according to the police, the man was a victim of ‘marihuana’, the ‘Mexican opium’, and had been smoking the drug all day.”

Since my argument is based on Securitization theory this is also a matter of language. The episode was reported by the media outlets emphasizing a man from Mexico committing the crime and the violence under the influence of drugs coming from Mexico. This narrative is normally pursued by the government, as a problem from outside the US. Campos (2018) points out that El Paso served as the way station for Mexican immigration to the U.S. during this period, and Texas eventually received more Mexican immigrants than any other state. If one wanted to find evidence of Mexicans engaged in just about anything, one would most likely find it in south Texas, and especially El Paso.

The incident on Jan 1<sup>st</sup> 1913 also triggered the Deputy Sheriff of El Paso, Stanley Good, to lobby both El Paso’s City Council and the Federal Government for new restrictions on the cannabis’s distribution. I would say Stanley Good was for El Paso (local) what Anslinger was for the FBN (federal), a fierce prohibitionist. In May of 1915, the sheriff took his efforts to local newspapers to outline the dangers of marijuana and the need for legislation against its sale. He stressed that there were laws against the sale of “morphine, cocaine and kindred drugs” but nothing of the sort against marijuana, which was “considered the deadliest in its effects of any known drug.” Chief Deputy Good also claimed that marijuana spurred people toward violence and cited recent examples confronted by local law enforcement (Rathge, 2017).

As a result of his lobby, El Paso became the first city in the nation to outlaw the use of marijuana in 1915, because it was considered dangerous — it was described then as causing “a lust for human blood” in its users (El Paso Times, 2015). El Paso enacted a city ordinance which banned the sale and possession of “any marihuana or Indian hemp” within the city limits. The rationale for this ordinance was the belief that cannabis consumption caused violent behavior among “Mexicans, Negroes, prostitutes, pimps, and a criminal class of whites.<sup>169</sup>” This assumption

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<sup>168</sup> El Paso Morning Times (El Paso, Tex.), Vol. 32, Ed. 1 Thursday, January 2, 1913 Page: 1 of 12 <https://texashistory.unt.edu/ark:/67531/metaph583477/m1/1/>

<sup>169</sup> Report of Investigation in the State of Texas, particularly along the Mexican Border, of the Traffic in, and Consumption of the Drug Generally known as “Indian Hemp,” or Cannabis Indica, known in Mexico and States

was representative of the prevailing view among policymakers of the time. According to much of the existing literature<sup>170</sup>, many of these prohibitive measures at the state and local level appeared prior to any significant concern about cannabis from the press or the public.

Bonnie and Whitebread (1974) point out that this was especially true in states west of the Mississippi River. By their research: California and Utah in 1915; Colorado in 1917; Texas in 1919; Iowa in 1921; New Mexico, Arkansas, Nevada, Oregon, and Washington in 1923; Idaho, Kansas, Montana, and Nebraska in 1927; Wyoming in 1929; South Dakota in 1931; and North Dakota and Oklahoma in 1933, all passed marijuana laws. The fact that these laws appeared to spread north from the border and correspond with the arrival of Mexican immigrants led Bonnie and Whitebread to conclude they were the result of a xenophobic reaction to Mexican immigrants and their marijuana smoking. At the basis of this interpretation was the belief that marijuana was “a causal adjunct to life in the Mexican community.” In sum, they wrote, “From this brief survey of marijuana prohibition in the western states, we have concluded that its Mexican use pattern was ordinarily enough to warrant its prohibition” (Bonnie and Whitebread, 1974, p. 42)

The day after El Paso City Council passed the ordinance, Stanley Good, acting as a securitization actor gave the following statement to the El Paso Herald<sup>171</sup> on June 4, 1915: “We officers have had the best opportunity to study the effects of the drug upon the human system, and we know that its use must be curbed, in the interest of society.” The language begins with a medical rhetoric but gets to a security one as he continues: “Much of the crime in this city is committed by men under the influence of marihuana. The drug is especially dangerous in view of the fact that it makes the coward brave. The administration is therefore to be congratulated on taking the first step towards the elimination of the evil in El Paso.” The statement attributes a significant portion of the city’s crime to individuals under the influence of marijuana, highlighting the perceived dangers of the drug. By framing the issue in terms of public safety and the potential for increased criminal behavior, the administration is portrayed as taking a commendable step towards addressing the problem.

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Bordering on the Rio Grande as “Marihuana”; Sometimes also referred to as “Rosa Maria,” or “Juanita.” Federal Bureau of Narcotics files (Apr. 13, 1917), p. 13. <http://antiquecannabisbook.com/TexasReport1917/TexasReport1917.htm>

<sup>170</sup> Bonnie and Whitebread, *The Marijuana Conviction*, 32–52; Musto, *The American Disease*, 1999, 219; Himmelstein, *The Strange Career of Marihuana*, 37–48.

<sup>171</sup> El Paso Herald (El Paso, Tex.), Ed. 1, Friday, June 4, 1915 <https://texashistory.unt.edu/ark:/67531/metapth137433/>

From a Securitization Theory standpoint, this statement can be considered a speech act. Securitization Theory posits that issues are securitized through discursive practices; wherein specific actors construct and present certain issues as security threats to gain exceptional measures and resources to address them. In this case, the language used aims to securitize marijuana use by portraying it as a dangerous substance linked to criminal behavior. By framing marijuana as a threat to public safety, the administration seeks to legitimize its actions and garner support for measures aimed at eliminating the perceived problem. Analyzing the statement through the lens of Securitization Theory helps to elucidate how political discourse and framing can shape public perception, policy responses, and the allocation of resources in addressing societal issues.

Between 1912 and 1915, the El Paso Herald alone carried some twenty stories on the dangers of marijuana and the outlandish crimes allegedly committed by marijuana users – many of them connected to Mexicans<sup>172</sup>. This first and local episode set the tone for the state regulation, which I will explore in the following topic.

## **5.5 State level Prohibition**

The significance of El Paso being the first city in the nation to outlaw marijuana cannot be understated. This decision set the tone for the rest of the state of Texas, as it influenced subsequent legislation and policy discussions on marijuana.

The transcripts from the “Hearing before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary” in 1975 provide insights into the state-level perspective on marijuana in Texas. At that time, there was a perception that marijuana use was primarily a local issue limited to the border towns, generating little statewide interest. The legislature’s hesitation to prohibit simple possession or use was rooted in a reluctance to interfere with private conduct.

However, it is important to challenge the narrative that Texas has historically maintained a strong commitment to non-interference in private behavior. The emergence of Stanley Good’s campaign and the subsequent echoes of state and federal prohibitions indicate a shifting attitude

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<sup>172</sup> For example: “Wanted a Prisoner to See the Blue Monkeys,” El Paso Herald, July 29, 1913, Monday edition, 5; “Prisoner Tries to Destroy a Cell in the City Jail,” El Paso Herald, July 29, 1913, Monday edition, 5; “Drug Crazed Mexican Shoots at Bystander,” El Paso Herald, September 8, 1913, sec. Sport and Society, 11.

towards marijuana. This suggests that the initial reluctance to regulate marijuana on the state level was not necessarily a steadfast commitment to personal freedom, but rather a reflection of limited interest and a regionalized perspective. The influence of El Paso's early actions on marijuana prohibition demonstrates how local decisions can shape broader state policies and public opinion. Understanding the historical context and evolving narratives surrounding marijuana in Texas is crucial for comprehending the complex dynamics and motivations behind drug policy in the state.

On September 25, 1915, the United States Treasury Department issued Treasury Decision 35719, determining “that some importations of the drug known as the dried flowering tops of the pistillate plants of *Cannabis sativa* Linne are being used for purposes other than in the preparation of medicines”, which was considered absurd to a point that “unless used in medicinal preparations, this drug is believed to be injurious to health; importation thereof denied if intended for other than medical purposes.” The decision was reportedly prompted by requests from Stanley Good, who three months earlier had persuaded the local city council to prohibit the possession of “any marihuana or Indian hemp” (Rathge, 2017).

Legislators relied on existing regulatory structures built around the sale of medicines and poisons to regulate cannabis statewide in 1919, much like California did. Texas lawmakers revised the state's narcotics law aimed at restricting the sale or giving away of many drugs, including the opiates and cocaine and updated them including cannabis. The amendment added “cannabis indica, cannabis sativa, or preparation of any drug or preparation from any cannabis variety, or any preparation known and sold under the Spanish name of ‘MARIHUANA’.”<sup>173</sup>

Analyzing the law, Rathge (2017) asserts that

Given the state's border with Mexico, significant exposure to a population of Mexican migrants, and documented familiarity with the drug and its Mexican users, it is not surprising to find the term marijuana in the Texas law. The character of the law also reflects the significant influence of existing medical perceptions and terminology as well as the growing bifurcation of the drug market into licit and illicit uses, thereby illuminating the role both sets of factors

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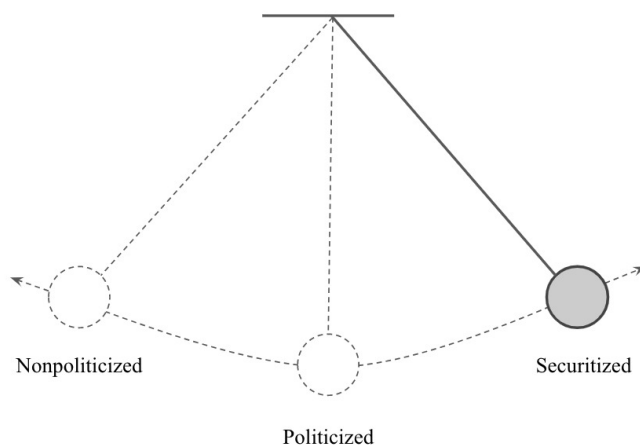
<sup>173</sup> Supplement to Vernon's Texas Civil and Criminal Statutes Embracing All Laws of General Application Passed at the Fourth Called Session of the 35th and the Regular and Called Sessions of the 36th and 37<sup>th</sup> Legislatures, 2:2207-08.



played in shaping the nature of cannabis regulations in Texas.

In addition, Bonnie and Whitebread (1970) reported that “state by state, whether motivated by outright prejudice or simple discriminatory disinterest, the result was the same in each legislature – little if any public attention, no debate, pointed references to the drug’s Mexican origins, and sometimes vociferous allusion to the criminal conduct inevitably generated when Mexicans ate ‘the killer weed.’” By 1923, Texas eventually declared cannabis a “narcotic”, which makes it easier to condemn since there was little research on cannabis effects. At that time, the state became the only place in the United States where a marijuana conviction faced life in prison, which consequently increased the number of marijuana arrests in the state. This is important to highlight because this is a “tough on crime” approach that connects directly with the mass incarceration problem and it is highly securitized, putting our pendulum to its extreme.

**Figure 24: Securitization pendulum**



Source: Elaborated by the author

A few years later, in 1931, the Texas Legislature prohibited possession of any amount of marihuana, still considered a narcotic. With the exception of other “narcotic” offenses, possession of marijuana was the fourth most serious offense in Texas, ranking just below rape, robbery by firearms, and murder with malice<sup>174</sup>. The San Antonio Light (1931) reported that: “At last the state

<sup>174</sup> National Governors' Conference, Marijuana A Study of State Policies & Penalties, Center for Policy Research and Analysis, November 1977

legislature has taken a definite step toward suppression of traffic in a dangerous and insanity-producing narcotic easily compounded of a weed (marihuana) indigenous to this section". This period from 1913 to 1931 sedimented how Texas treated cannabis: a Mexican drug that caused violent behavior and you should spend your entire life in prison for it. Accrediting this view has obscured any other possible use cannabis could have. It remained classified as a narcotic with the possibility of life sentences imposed for possession of small amounts until 1973.

Noticing the 40-year gap in legislation, one would wonder what was going on during that time. The Lonestar state still considered cannabis a narcotic and during decades the marijuana laws in Texas became progressively harsh following the federal government's dramatic shift in the 1950s towards a more punitive approach to narcotics policy. Horvath (2020) argues that Texas Senator Price Daniel, who chaired a nationwide narcotics probe and spearheaded the 1956 Narcotic Control Act in the Senate, successfully employed this experience to secure the 1956 Democratic nomination for Texas Governor in a contested primary.

At the time, Harry Anslinger's status as the ruling "czar" of a federal bureau granted him legitimacy in Congress to pursue a punitive approach that treated addicts like narcotic traffickers. Senator Price Daniel (D-TX) chaired the Special Subcommittee on Improvement in the Federal Criminal Code of the Judiciary Committee, and he held a large number of field hearings throughout the country in 1955 and 1956. These focused predominantly on drug enforcement.

In terms of actors, Horvath compares Daniel and Anslinger, arguing that they both "profited off of the narcotics trade by using fears of it to improve his political standing". Alternatively, I would add that Price Daniel continued the work Deputy Sheriff of El Paso, Stanley Good, started back in the early 1900s. The harsh legislation proved to be exceedingly popular with Daniel's constituents, and he made effective use of the legislation in his successful 1956 Texas gubernatorial campaign, highlighting how political (mal)incentives contributed to the federal government's turn to the punitive approach in the 1950s (Horvath, 2020).

The aforementioned probe raised Daniel's profile across his home state, given that he held hearings in Austin, Dallas, Fort Worth, Houston, and San Antonio. Texas was significantly overrepresented at these national hearings, with Daniel holding ten days of open hearings in its largest cities<sup>175</sup>. The fact that Daniel's probe attracted significant attention and raised his profile

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<sup>175</sup> U.S. Congress, Senate Subcommittee on Improvements in the Federal Criminal Code, "Illicit Narcotics Traffic Hearings: Part 7," October 12, 13, 14, 17, 18, 19, 20, 21 and December 14, 15, 1955, 1321.

across Texas is indicative of the interest and concern among his constituents regarding narcotics use, particularly among teenagers. Daniel's active participation in the hearings held in Austin, Dallas, Fort Worth, Houston, and San Antonio allowed him to engage with a wide range of stakeholders and amplify the discourse on the issue.

The overrepresentation of Texas in these national hearings highlights the state's commitment to addressing the perceived epidemic of narcotics use. Daniel emerged as a champion against this epidemic, aligning himself with the concerns and interests of his constituents. The media played a role in amplifying the narrative surrounding the issue, drawing attention to the urgency of combating narcotics use, including marijuana.

The "Marijuana - A Study of State Policies & Penalties" report by the National Governors' Conference Center for Policy Research and Analysis provides further insight into legislative efforts in Texas. In 1971, six bills aimed at reducing penalties related to marijuana were introduced in the House. While the first bill (HB 549) passed the House Criminal Jurisprudence Committee, it was ultimately defeated on the House floor. This defeat can be attributed to efforts to further increase the proposed penalties, reflecting a complex and evolving debate around drug policy in Texas during that time. The combination of Daniel's active engagement, the heightened concerns among constituents, and the legislative efforts reflects a dynamic landscape in Texas regarding drug policy. It showcases the interplay between public sentiment, legislative processes, and the broader national discourse on narcotics use and its associated penalties.

### 5.5.1 Senate Committee on Drug Study

After two decades where "marijuana laws are the harshest in the world", Texas' Senate Interim Drug Study Committee was created in 1972 to conduct a systematic analysis of the Texas drug laws in the state, in the same year the War on Drugs was declared by Nixon. The legislative study is a comprehensive analysis covering Drug Treatment and Rehabilitation; Criminal and Regulatory Law; Drug Education and Drug Research. Introducing its final report<sup>176</sup>, the committee declares that "The archaic Texas Narcotics Act and Dangerous Drug Law attempt to deal with

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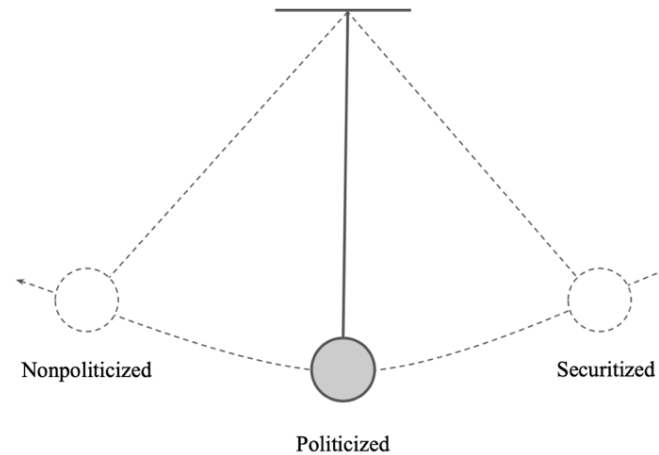
<sup>176</sup> Senate Committee on Drug Study, Interim - 62nd R.S. (1971) <https://lrl.texas.gov/committees/reportDisplay.cfm?cmtelID=7431&session=&isSupport=0&report=true&minutes=&from=&page=report&requests=&passsearchparams=#>

rapidly changing, steadily escalating patterns of drug use in a chaotic and inconsistent manner”. Pointing out the state’s conservatism, they say that the “majority of the states and the federal government itself have fundamentally revised their drug laws in the past two years. Our laws in Texas are virtually unique for their disorder and harshness”.

The fact that this committee was put together signals a movement towards the debate, what we call here “politicization”, meaning “to make the issue appear to be open, a matter of choice/something that is decided upon” (Buzan et al. 1998). As a matter of fact, the

Committee members or staff have conferred personally with law enforcement officials in Austin, Fort Worth, Dallas, Houston, Stephenville, San Antonio and Laredo, and with state officials and employees engaged in treatment activities. We have attended the meetings and sought the recommendations of such diverse groups as the San Antonio Drug Abuse Central, the Dallas and Austin Junior Bar Associations, and the Houston-Galveston Area Council of Government. We have examined the research facilities of the University of Texas Medical School at Galveston and the Texas Research Institute of Mental Sciences in Houston. We have discussed drug law reform in person with legislators and staff from California, New Jersey, New York, Florida, Arkansas, and Nebraska; by telephone we have obtained advice and comment from other states too numerous to mention.

The committee brought the issue to public discussion, what Åtland (2008) calls “desecuritizing move”, and reintroduced it to the sphere of everyday politics. Here, I start to look at the Desecuritization process in Texas as the drug laws began to be challenged forty years after the state prohibition. The visual aspect of it also means a move on the pendulum towards the center of it:

**Figure 25: Politization pendulum**

Source: Elaborated by the author

Presenting the results, the senate committee “reflect our realization that ‘the drug problem’ is not an isolated phenomenon in a youthful counterculture: it pervades our entire society, adult and youth alike. We are a drug-using society;”. In that sense, they argue that “our society is riddled with mood-altering chemical substances which are used daily by millions of Americans in non-medical ways. Some of these we freely permit (caffeine, tobacco), others we regulate (alcohol, barbiturates, amphetamines), still others we forbid entirely (marijuana, LSD).”

When talking about the user, the committee states that “In an ideal world, the addict should be regarded as a sick person; he should be treated as such and not as a criminal, provided he does not resort to criminal acts.” Based on their study they drafted a law suggesting less harsh punishments since the maximum penalty for many drug offenses under Texas law was life imprisonment, or even death in some cases. Ultimately, the heart of the recommendations is a concept of ‘decriminalization.’ Despite the Senate committee’s belief that marijuana should be treated similarly to alcohol during the prohibition era, with the sale carrying felony penalties but private use not being a criminal offense, lawmakers did not heed their recommendations. This raises the question of why they chose to disregard the committee’s advice, especially considering the extensive research conducted.

The continued preference for prohibition, despite the available research, prompts speculation about the true objective behind drug control measures. One might question whether the aim was genuinely to control drugs or if there were other underlying motivations, such as

exerting control over people. The committee's proposal aimed to strike a balance between regulating marijuana sales and respecting individual freedoms in private use. By drawing a parallel to alcohol prohibition, they sought to provide a framework that differentiated between public sale and private consumption. However, the lawmakers' decision to maintain a prohibitionist stance indicates a divergence in priorities and perspectives.

The reasons behind lawmakers not listening to the committee could be multifaceted. It could stem from concerns over public opinion, political considerations, cultural attitudes, or even the influence of vested interests. Understanding these dynamics is essential to comprehending the complex interplay between drug policy, societal values, and the decision-making processes within the legislative framework. By critically examining the lawmakers' choices in favor of prohibition, despite the committee's evidence-based recommendations, one can raise valid questions about the true objectives and consequences of such drug control measures.

In face of what they probably thought was extreme, to fight the committee's suggestion of decriminalization, the Governor presented a bill of his own initiating a legislative dispute. They couldn't agree on how much marijuana would be considered enough to be a misdemeanor or a felony. Because of the polarization, the Senate convened a conference committee to develop proposals on which both the Senate and the House could agree. Finally, the Senate passed the bill by a vote of 24 to 7, and the House voted 84 to 58 to accept the conference committee bill. Two weeks later, the Governor signed the bill into law on June 14, 1973, and the new act went into effect on August 27, 1973. That was the beginning of the contemporary marijuana legislation in Texas, which I now go through in details.

## **5.6 State Level Legislation**

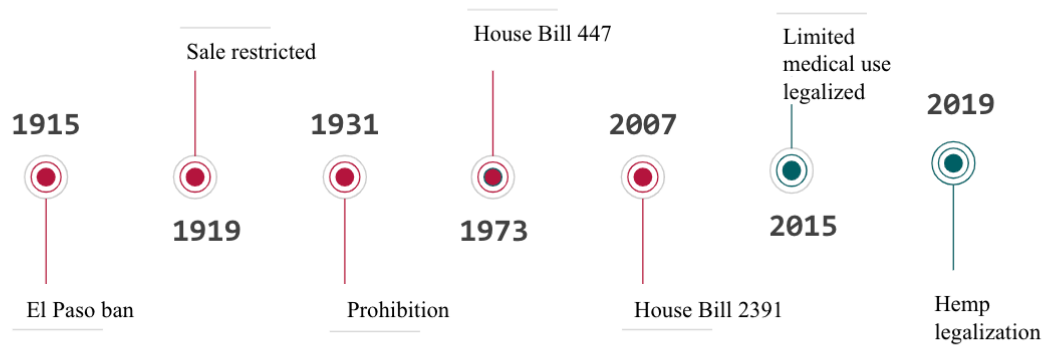
The highlighted dates that follow the state-level legislation in Texas reveal a relatively short and sporadic timeline of marijuana laws compared to California. As discussed earlier in the topic of the early history of cannabis in Texas, this disparity can be attributed to various factors related to the intricacies of the political process and cultural influences.

The legislative gaps in Texas' marijuana law timeline can be understood in the context of the state's political landscape and cultural dynamics. Unlike California, which has witnessed more comprehensive and progressive marijuana policy reforms over time, Texas has experienced slower

progress in this area. The political process, with its inherent complexities and competing priorities, has contributed to the slower pace of marijuana legislation in Texas. Additionally, cultural factors play a role in shaping public opinion and influencing lawmakers' attitudes towards drug policy. These cultural aspects have influenced the perception of marijuana and its associated risks within the state. Understanding the nuances of the political and cultural landscape in Texas is crucial to comprehending the gaps and differences in marijuana legislation compared to states like California. It highlights the unique dynamics at play in shaping drug policy and underscores the importance of considering these factors when analyzing the evolution of marijuana laws at the state level.

**Figure 26: Texas's Timeline**

### Texas Marijuana Law



Source: Elaborated by the author

The timeline presented here serves as a visual tool to enhance the understanding of the topics to be explored. When compared to California's timeline discussed in Chapter Four, the timeline for Texas appears more linear in nature. This distinction arises primarily from the absence of ballot initiatives in Texas, which limits opportunities for direct public participation and swift political change.

Ballot initiatives, as seen in California, allow citizens to directly propose and vote on specific policies or changes, including those related to marijuana legalization. These initiatives

often provide avenues for direct public engagement and can lead to significant shifts in policy. In contrast, Texas follows a more traditional legislative process, where policy changes are primarily driven by lawmakers and the political establishment.

The absence of ballot initiatives in Texas narrows the scope for direct citizen participation and can result in a more gradual and incremental approach to policy change. The legislative process in Texas typically involves navigating complex political dynamics and building consensus among lawmakers, which can contribute to a more linear progression of marijuana-related legislation. By acknowledging these differences, one can better appreciate the distinctive pathways through which marijuana policy evolves in different states.

### **5.6.1 House Bill 447**

In 1973, the Texas legislature voted to reduce possession of two ounces or less to a “low misdemeanor” punishable by a fine of up to \$1,000 or a jail sentence of up to six months, which is a big change since they had the most rigid penalties for cannabis possession. The “Bill Analysis” by the Committee of Criminal Jurisprudence explains that “In light of recent medical findings, public opinion, research studies, etc., the present drug laws in Texas are in many instances, outdated, faulty, unnecessary and contradictory and in some areas in definite need for change.” Additionally, what the Bill proposes to do is “To amend, rewrite and change certain portions of the drug statutes and to make necessary additions etc. in light of new knowledge and findings.”

However, beyond the new medical findings, the 63rd Regular legislative Session learned that access to marijuana was widespread in the population. Testimonies from young students and surveys at the universities made clear that the student body had smoked marijuana and smoked regularly. Griffin Smith Jr. (1973) wrote that the new law was passed because “too many of the wrong kids were being arrested. But none of this would have happened had not marijuana jumped the tracks from the barrios and black neighborhoods to River Oaks, Highland Park, and Alamo Heights.<sup>177</sup>” In agreement, Dick Cowan testified at the Lone Star State hearings saying that he would like to think “that the senators were impressed by the fact that marijuana is lower on the hazard scale than tobacco or alcohol. I’d like to think they were swayed by civil libertarian

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<sup>177</sup> Smith Jr., G. How the new drug law was made, 1973. Texas Monthly <https://www.texasmonthly.com/news-politics/how-the-new-drug-law-was-made/>

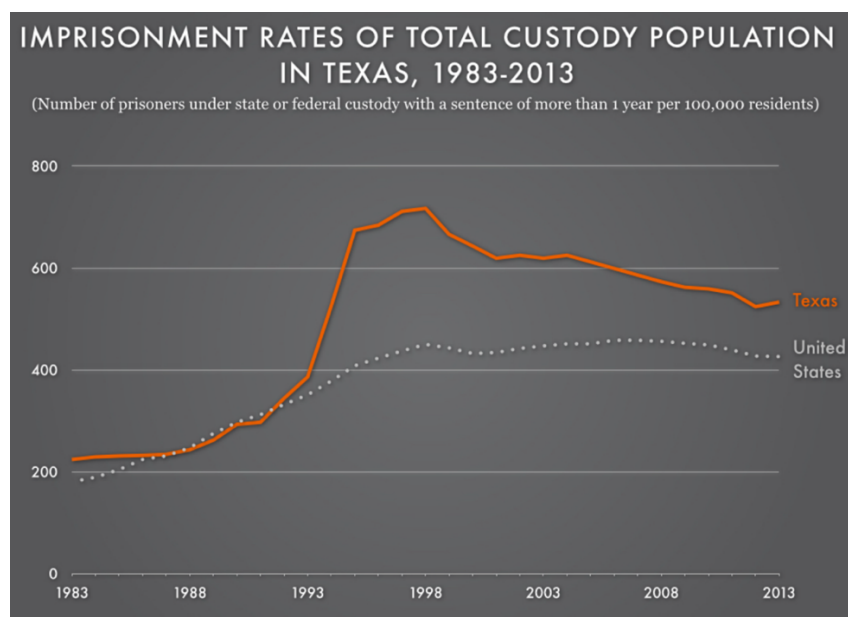


arguments.” But that was not the case and he continues to state how the marijuana consumer’s profile changed: “Unfortunately, our biggest selling point is that we had over 700 people in jail with an average sentence of nine and a half years and they were mostly middle-class White Anglo-Saxon Protestants (WASPs). As long as we were arresting 40-year-old Mexicans and blacks, it was OK. But when we started jailing their kids, that made them think twice.”<sup>178</sup>

As elucidated earlier in this chapter, the majority of prisoners were people of color and there was no change in the law for forty years. When young and white people started to get arrested and change the prisoner’s profile, the law changed. According to this, a change in the consumption’s profile equals a change in the law.

Nonetheless, even after this adjustment in the law, incarceration rates in Texas continued to be higher than in the rest of the country. The graph below shows that the imprisonment rate in Texas has been generally equal to or higher than the national imprisonment rate. This fact was no surprise to Gandy (2015), who believes this was “because Texas has been known for its tough-on-crime mentality”<sup>179</sup>, a cultural determinant.

**Figure 27: Number of prisoners - Texas**



<sup>178</sup> Cahill, T. The New Pot Advocates: Mr. Natural Goes to Washington, 1974. Rolling Stone. <https://www.rollingstone.com/culture/culture-news/the-new-pot-advocates-mr-natural-goes-to-washington-241480/>

<sup>179</sup> Gandy, R. Explaining Texas’ overnight prison boom. August 7, 2015 [https://www.prisonpolicy.org/blog/2015/08/07/texas\\_overnight\\_boom/](https://www.prisonpolicy.org/blog/2015/08/07/texas_overnight_boom/)

Source: Compiled by the Prison Policy Initiative from the Bureau of Justice Statistics Corrections Statistical Analysis Tool (CSAT)

Observing the data, the author accredits that “driven by the War on Drugs, prison admission rates increased steadily in the 1980s”. Additionally, the graph shows that this pattern changed in 1993, to which Deitch (1993) states that first, faced with lawsuits from county officials over jail overcrowding, Texas legislators approved the building of over 100,000 new prison beds within less than five years. Second, in response to public outrage over short prison stays, lawmakers passed legislation to ensure that incarcerated people served a greater proportion of their sentences behind bars. Taking this into consideration, I believe that the high levels of incarceration dialogues with the cultural components of Texas and how they securitized the war on drugs. This criminal justice aspect demonstrates how these issues are connected. Also, considering the argument that Texas is a red – republican and conservative – state, I believe the drug issue goes beyond that, especially if you look at the 1970s and ’80s, when Texas Democrats controlled both houses of the State Legislature and most statewide offices, however, no progressive laws passed and drugs are still considered a threat.

This observation challenges the notion that political ideology alone dictates drug policy outcomes. The persistence of drug-related concerns and the securitization of drugs in Texas reflect a broader societal perception that extends beyond political affiliations. Cultural factors, historical contexts, and public sentiments regarding drug use and its perceived impact on society contribute to the shaping of drug policy in the state. This suggests that the issue of drugs in Texas goes beyond partisan politics and requires a deeper understanding of the complex interplay between culture, public opinion, and policy decisions.

By examining the historical landscape of Texas and the dynamics of drug policy during different political eras, one can discern the nuanced factors that influence drug-related legislation in the state. Understanding the interconnectedness of these factors is crucial to gaining a comprehensive view of the complexities surrounding drug policy in Texas and the various forces that shape its trajectory.

### 5.6.2 House Bill 2391

The escalation of prison population and police efforts against drugs in Texas is a genuine connection to the War on Drugs' strategy inaugurated by Nixon. According to the Texas Department of Public Safety, of the 62,741 persons arrested in 2005 for marijuana violations, 61,076 of them (97 percent) were for possession offenses. So, in 2007, HB 2391 was proposed "Considering the overcrowded nature of county jails in Texas, granting local governments the choice and flexibility to reserve jail beds for violent offenders would be in the public's best interest" (Texas Legislature). This bill is directly related to enforcement and it allowed the police to "cite and release" for possession of up to 4 oz. of cannabis. In other words, the same harsh penalties still applied, but the offender was not immediately arrested.

Even after being given the choice, many Texas law enforcement personnel said that they would continue to arrest and jail minor pot offenders: "Marijuana is an introduction to more dangerous drugs and we are going to keep fighting drug use of any kind as long as I am in office," Lamar County Sheriff B.J. McCoy told news outlets. With securitized language, he added: "They are going to jail no matter how much they've got."<sup>180</sup> Which makes the police enforcement a strong and consistent actor against the Desecuritization of cannabis in Texas, as mentioned before. Despite shifting public opinions and discussions surrounding the decriminalization or legalization of marijuana, law enforcement personnel like Sheriff McCoy remain steadfast in their approach, viewing any form of drug use as a threat that must be combated through arrests and incarceration.

The resistance to desecuritization by law enforcement personnel underscores the challenges faced by those advocating for drug policy reform in Texas. The entrenched perspective of law enforcement, rooted in the belief that marijuana is a gateway to more dangerous substances, perpetuates the continued enforcement of strict drug laws and inhibits the progress towards more progressive drug policies.

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<sup>180</sup> NORML. Texas: Cops Say They Will Continue to Jail Minor Pot Possession Offenders Despite New Law. SEPTEMBER 5, 2007 <https://norml.org/news/2007/09/05/texas-cops-say-they-will-continue-to-jail-minor-pot-possession-offenders-despite-new-law>

### 5.6.3 Senate Bill 339 – Texas Compassionate Use Act

After eight years without any novelty on Texas' legislation, Governor Greg Abbott signed Senate Bill 339 in 2015 allowing medical use of low-THC cannabis for patients with epilepsy. Different from the legislation so far, this act has a medical language and it was reported out of the Senate committee on Health & Human Services and out of the House committee on Public Health, not Criminal Jurisprudence. Under the bill, "low-THC cannabis" would mean the plant *Cannabis sativa* L. and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin or oil of that plant that contained up to 0.5 percent by weight of tetrahydrocannabinols (THC) and at least 10 percent by weight of cannabidiol<sup>181</sup>.

The only medical condition covered by this bill is intractable epilepsy, including children, for whom other treatments have not controlled their seizures. It does not offer access to cancer patients or veterans suffering from post-traumatic stress disorder. The bill analysis makes it clear that "SB 339 is not a recreational marijuana or broad medical marijuana bill; it is narrowly drafted to give people with epilepsy another tool where others have failed." It is a very restricted bill not only when it comes to the condition covered, but also when it comes to access, registry, prescribing physicians and dispensing organizations.

This bill marked a significant milestone as it allowed for the medical use of low-THC cannabis specifically for patients with epilepsy. The signing of Senate Bill 339 represented a shift towards a more health-oriented approach to cannabis in Texas. The focus of this legislation was to provide potential relief and therapeutic benefits to individuals suffering from epilepsy, a condition known to be difficult to manage with traditional medications alone.

By permitting the medical use of low-THC cannabis, Texas acknowledged the potential therapeutic value of certain components found in cannabis, particularly for epilepsy patients. This marked a departure from the strict prohibitionist stance that had previously dominated the state's drug policy. The introduction of this medical cannabis legislation demonstrated an evolving understanding of the medical applications of cannabis and the importance of providing alternative treatment options for individuals with specific medical conditions. It reflected a recognition that cannabis, when used under medical supervision and with appropriate restrictions, could offer

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<sup>181</sup>Texas Legislature. **Legislative Session:** 84(R9) SB 339 Bill analysis. Eltife, et al; Klick, et al., 2015.

potential benefits in terms of symptom management and improving patients' quality of life. It opened the door for further discussions and potential expansions of medical cannabis access in the state in subsequent years.

According to the Bill Analysis (SB 339, 84th R.S.), a physician would be qualified to prescribe low-THC cannabis to a patient with intractable epilepsy if the physician dedicated a significant portion of clinical practice to the evaluation and treatment of epilepsy and held certain board certifications in epilepsy, neurology, neurology with special qualification in child neurology, or neurophysiology. Nonetheless, Phillip Martin, deputy director of the liberal group Progress Texas, said in a statement that the bill is an important step and "while the bill is not the full-scale medical marijuana bill that many advocate for, we recognize that change takes time and this is certainly a step in the right direction"<sup>182</sup>.

The opponents of this bill claimed that the fact that other states have enacted similar legislation is not a reason for Texas to move forward and do the same. Which is controversial, since back when Jim Crow was originally established, it spread from state to state like a virus, including Texas. It seems that if the law is republican and restrictive, Texas will follow. Recent evidence of that is the passing of anti-trans and anti-abortion laws<sup>183</sup> cooperates with that assumption. Blow (2021) thinks that Texas is a leader in oppression. It is institutionalizing and legalizing racism, misogyny and transphobia. And the Lone Star State is hardly alone in its oppressive ambitions. Other states are watching and waiting, poised to follow its lead.

In an interview<sup>184</sup>, Naldemann (2012) stated that:

When we win an initiative or change a law in California or New York or Connecticut or Washington state, people are interested. But when you say something changed in Texas, state legislators around the country say 'Even in Texas? Well then maybe we can look at it in New Jersey or Virginia or Alabama or something like that.' So, reforms here have more credibility precisely because of Texas' reputation.

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<sup>182</sup> Hershaw, Eva. "Senate Gives High Sign to Limited Medical Marijuana." The Texas Tribune, May 7, 2015

<sup>183</sup> For context see Meryl Kornfield, Caroline Anders and Audra Heinrichs. "Texas created a blueprint for abortion restrictions. Republican-controlled states may follow suit." The Washington Post, September 3, 2021.

<sup>184</sup> Ethan Nadelmann: The TT Interview <https://www.texastribune.org/2012/03/29/texas-tribune-interview-ethan-nadelmann/>

But again, even if Texas is the leader of the South, when it comes to marijuana laws, it is still the one behind. The states cited by Naldemann have already passed, if not just medical (Alabama), medical and recreational use of cannabis.

The Texas Compassionate Use Act was only expanded in 2019, when a new bill (HB 3703) added terminal cancer, autism, multiple sclerosis, amyotrophic lateral sclerosis (ALS), seizure disorders, and incurable neurological disorders such as Alzheimer's, Parkinson's, and Huntington's Disease to the list of qualifying conditions.

#### **5.6.4 House Bill 1325 – Hemp legalization**

As I demonstrated in the first pages of this dissertation, the cannabis plant has many parts and capabilities. Hemp is one them and it has shown to be an efficient input source for many industries including, but not limited to, food products, cosmetics, paper, automotive parts, clothing, and biofuel<sup>185</sup>. As recent as 2018, the federal government passed the “Hemp Farming Act”. It legalizes industrial hemp that has a tetrahydrocannabinol (THC, the psychoactive component of marijuana) concentration of no more than 0.3% by removing it from schedule I of the Controlled Substances Act. States and Indian tribes may regulate the production of hemp by submitting a plan to the Department of Agriculture (USDA). The bill also makes hemp producers eligible for the federal crop insurance program and certain USDA research grants (S.2667 — 115th Congress 2017-2018). Only after the federal government removed hemp from the CSA, the state of Texas passed legislation to legalize the cultivation of industrial hemp.

In this case, the bill specifies that hemp, as defined by the bill, was not a controlled substance or included in the definition of marijuana under state law. Within the Texas Department of Agriculture, supporters of the bill argued that it would be a state-regulated commercial hemp industry in Texas, providing new economic opportunities. Considering the fact that every part of the hemp plant has commercial use and is a valuable commodity that is drought and heat resistant and not water intensive, making it well suited for Texas. The bill would not legalize marijuana; rather, it would make Texas the primary regulatory authority over the cultivation of hemp and production of hemp products in the state (HB 1325, House Research Organization, 2019).

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<sup>185</sup> Keller, NM (2013), "The Legalization of Industrial Hemp and What it Could Mean for Indiana's Biofuel Industry" (PDF), *Indiana International & Comparative Law Review*, 23 (3): 555, doi:10.18060/17887

Manufacturing, however, is a separate issue. While hemp is legal to buy, sell and possess, the Texas Department of State Health Services bans the processing and manufacturing of smokable hemp within the state.

On the other hand, opponents argued that HB 1325 should provide greater clarity in defining hemp products intended to be smoked to allow for better determination between marijuana and hemp-derived products. They were right in arguing this. After the bill was signed into law, among other provisions, House Bill 1325 changed the definition of marijuana from certain parts of the cannabis plant to those parts that contain a higher level of tetrahydrocannabinol. It's a difference numerous district attorneys, the state's prosecutor's association and state crime labs say they don't have the resources to detect, weakening marijuana cases where defendants could claim the substance is instead hemp<sup>186</sup>.

According to data provided by the Texas Department of Public Safety (DPS), in 2018 there were about 63,000 marijuana prosecutions in the state—and that went down to just over 45,000 arrests in 2019<sup>187</sup>. Prosecutors have dismissed hundreds of low-level cannabis cases since hemp was legalized, causing a drop on the number of cases (see figure 28). And state officials announced in February that labs wouldn't be performing testing in misdemeanor cases, with DPS saying it “will not have the capacity to accept those.”<sup>188</sup>

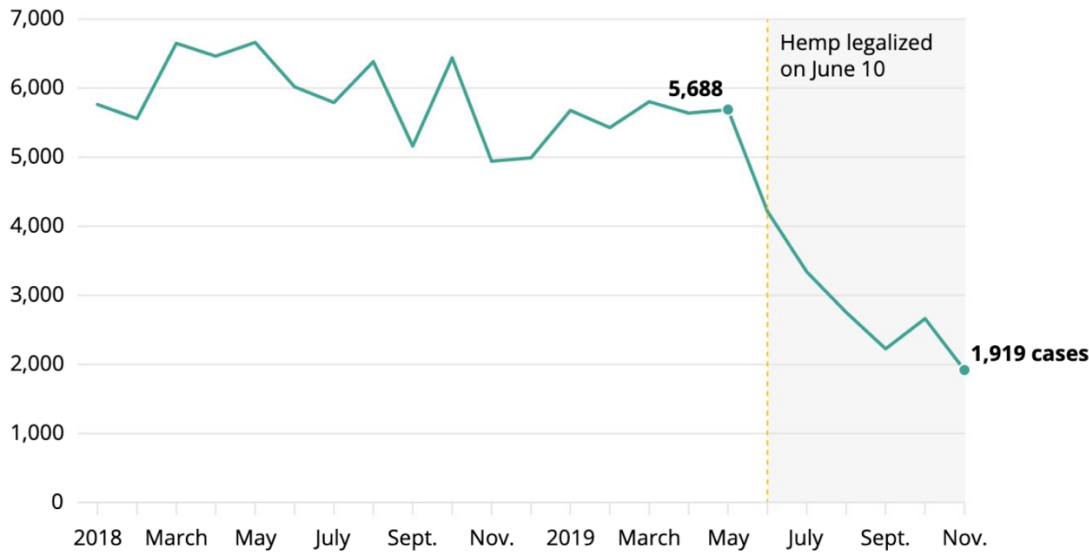
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<sup>186</sup> McCullough J; Samuels A. “This year, Texas passed a law legalizing hemp. It also has prosecutors dropping hundreds of marijuana cases.” The Texas Tribune, July 3, 2019 <https://www.texastribune.org/2019/07/03/texas-marijuana-hemp-testing-prosecution/>

<sup>187</sup> The Texas Department of Public Safety (DPS). **Crime in Texas**, 2020. Available at: <https://www.dps.texas.gov/sites/default/files/documents/crimereports/20/2020cit.pdf>

<sup>188</sup> McCraw S. The Texas Department of Public Safety (DPS). Letter available at: <https://www.dps.texas.gov/sites/default/files/documents/crimelaboratory/documents/thcmethodologyupdate.pdf>

**Figure 28: Texas Misdemeanor Marijuana Cases Drop After Hemp is Legalized**



Source: Texas Office of Court Administration, 2020

In 2019, because of this confusion, Greg Abbott (Governor of Texas), Dan Patrick (Lieutenant Governor of Texas), Dennis Bonnen (Speaker of the Texas House Representatives) and Ken Paxton (Attorney General of Texas) signed a letter addressed to Texas District and County Attorneys clarifying that

Some of you have recently dismissed marijuana possession cases or announced you will not prosecute misdemeanor marijuana possession cases without a lab test. Such actions relate to House Bill 1325 taking effect, which aligns Texas law with federal law by distinguishing hemp from marijuana in the same way federal law does. As explained below, marijuana has not been decriminalized in Texas, and these actions demonstrate a misunderstanding of how H.B. 1325 works. First, a person claiming to transport hemp must have a certificate. Failure to have the required certificate while transporting hemp is a separate crime. Second, lab tests are not required



in every case and are more affordable than initial reporting indicated. Failing to enforce marijuana laws cannot be blamed on legislation that did not decriminalize marijuana in Texas.

The message was to prosecute more, not less. The “tough on crime” narrative gained a new layer with the hemp regulation. The state of Texas continues to be consistent on prohibiting and moving in the contrary direction for legalization.

In terms of state policy, no progress in the direction of legalization was made after this. However, local organizations have pushed proposals to establish city ordinances that end low-level enforcement, including citations and arrests for possessing less than four ounces of marijuana and related drug paraphernalia, which I now explore some examples.

### **5.7 Local level efforts**

The current state of cannabis laws in Texas paints a stark picture, revealing that the decriminalization of cannabis has not been realized, and the process of desecuritization has not been achieved at the state level. Despite shifting attitudes and evolving drug policies in other parts of the United States, Texas remains steadfast in its adherence to strict prohibitionist measures concerning cannabis. While other states have taken steps towards decriminalization or even full legalization of cannabis, Texas continues to uphold stringent laws that categorize cannabis as an illegal substance. The consequences for possessing, distributing, or cultivating cannabis in the state can be severe, with potential penalties ranging from fines to imprisonment, depending on the quantity and specific circumstances. Both the public sphere and the friend-enemy distinction were not fundamentally changed.

However, one must acknowledge the efforts, specially at the county and municipal level, to change this prohibitionist narrative. In accordance with my hypothesis of a bottom-up Desecuritization led by local and non-elite actors, several attempts to reduce penalties or treat the issue of drugs out of the security realm were made.

At the local level, there are limited cases where activists can leverage home rule laws that allow for policy changes. Activists in the Texas’ city of Denton say they’re confident that they’ve collected enough signatures to place a marijuana decriminalization initiative on the local ballot in

2022. If their proposal<sup>189</sup> passes into law it would: eliminate all citations and arrests for possession of misdemeanor amounts of marijuana, except in some limited circumstances; prevent Denton police from giving citations for drug paraphernalia in lieu of a possession of marijuana charge; prohibit Denton police from using the odor of marijuana or hemp as probable cause for search or seizure and save the city valuable law enforcement resources and municipal court resources, including labor and filing costs. This initiative would also ban costly THC testing.

Another example is the city of Austin, Texas voters have approved a local ballot measure to decriminalize marijuana—a victory for activists who are also pursuing similar reforms in other cities in the Lone Star state. The measure, which was spearheaded by the non-profit “Ground Game Texas”, passed by a margin of 85 percent to 15 percent. Besides decriminalizing cannabis, the measure also bans “no-knock” warrants by police. Activists turned in more than 33,000 signatures to qualify the measure, after which point the Austin City Council approved a resolution to put it on the ballot<sup>190</sup>.

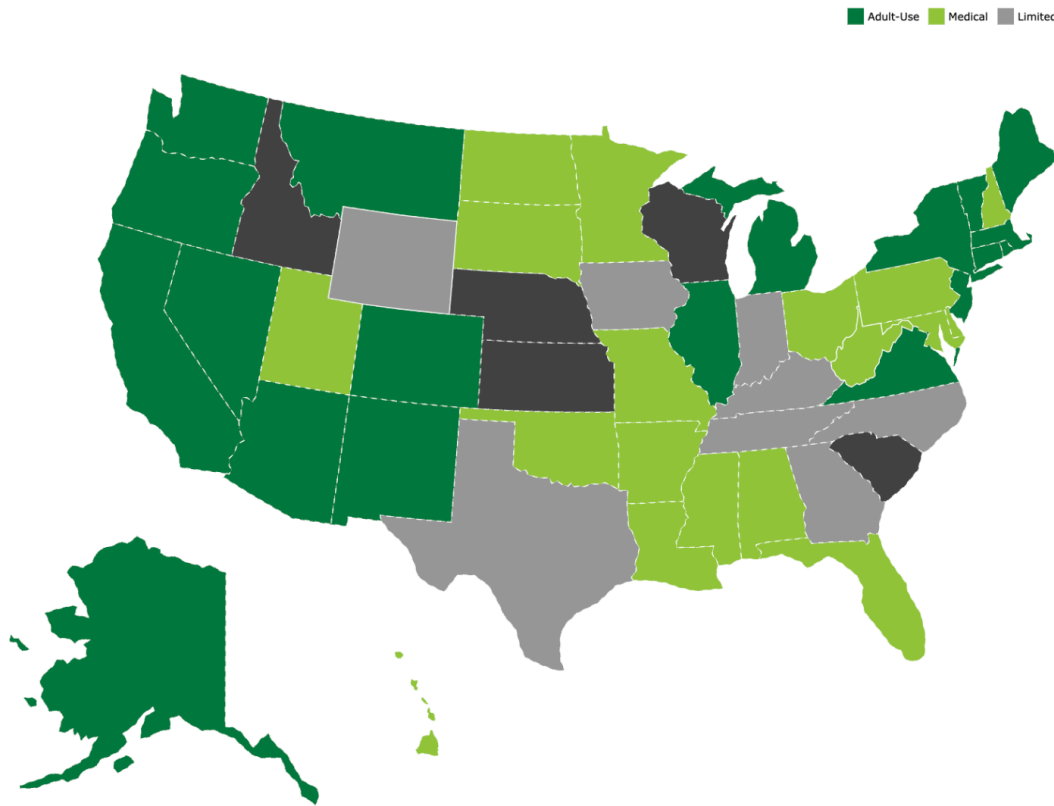
At the legislative level, for instance, state representative from El Paso, Marisa Marquez, introduced a medical marijuana bill. Another El Paso Democrat, Joe Moody, proposed a bill to decriminalize the possession of small amounts of marijuana. Beto O’Rourke, a Democratic US congressman from El Paso, co-wrote a 2011 book calling for drug policy reform and won election in 2012 with a pro-marijuana legalization stance.

As the map shows in Figure 29, every state around Texas has regulated cannabis in some form. New Mexico is the first state bordering Texas to fully legalize marijuana. Neighboring states Oklahoma and Louisiana have fully legalized medical marijuana usage. Texas remains the largest prohibition state in the country. This raises the question of what factors may be influencing Texas’ approach and what it would take for the state to change its stance.

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<sup>189</sup> Petition for a City of Denton Initiative Election. <https://www.decrimdenton.org/>

<sup>190</sup> Jaeger, K. “Austin, Texas Voters Approve Local Marijuana Decriminalization Ballot Initiative”. Marijuana Moment, May 7, 2022 <https://www.marijuanamoment.net/austin-texas-voters-approve-local-marijuana-decriminalization-ballot-initiative/>

**Figure 29: Map of marijuana regulation in the US, 2022**

Source: The National Cannabis Industry Association

One possibility is that Texas is waiting for federal legalization before considering significant changes to its marijuana laws. The state may be cautious about taking unilateral action, preferring to align with federal guidelines to ensure consistency and avoid potential conflicts with federal law enforcement agencies. As seen in the case of hemp regulation, where Texas followed federal guidelines, the state might adopt a similar approach if federal legalization of marijuana were to occur.

Another factor that could impact Texas' marijuana policy is the political landscape, particularly the role of the governor. Currently, Texas has a Republican governor, and historically, the state has been characterized as conservative in its approach to drug policy. However, political dynamics can change over time, and it is possible that with a Democrat governor, there may be a greater likelihood of progressing marijuana-related bills into law. The political climate and the

stance of the governor can play a significant role in shaping the trajectory of drug policy reform within the state.

Ultimately, the path to marijuana legalization in Texas is influenced by a complex interplay of factors, including federal regulations, political leadership, public opinion, and the evolving understanding of the benefits and risks associated with cannabis. As the public discourse around marijuana continues to evolve and more states enact progressive legislation, the pressure for Texas to reassess its marijuana policies may increase. Whether Texas waits for federal legalization or experiences a political shift in leadership, the ongoing discussions and advocacy surrounding marijuana policy will play a critical role in shaping the future of cannabis regulation in the state.

As Hansen (2012) reminds us, the reinvigoration of the public sphere, that desecuritization implies, facilitates the engagement of a wider range of actors than if an issue is constituted as one of securitization. But a desecuritizing move might not ‘only’ expand the number and kind of agents, but transform the identities and interests of Self and Others. Taking into consideration Texas’ legislation and the analysis done in this chapter, one can tell that cannabis identification as an enemy has not changed. The objective here was to find out why.

Texas and its cultural elements play an important role in shaping the sociopolitical landscape and influencing decision-making processes. And they evolve, so looking at the 2020 census<sup>191</sup> we can tell those elements are changing. First, it is growing. It added 4.2 million residents between 2000 and 2010, and another four million in the last decade for a growth rate of almost 40 percent. Since 2010, over 95 percent of them have been people of color, the most affected by the war on drugs. The changing demographics, influenced by population growth and the experiences of communities affected by the war on drugs, are reshaping the sociopolitical dynamics of the state. Understanding and addressing the concerns, values, and aspirations of the diverse population in Texas will be crucial in shaping the state’s future drug policies and ensuring that they align with the needs and interests of all Texans. However, Pedigo (2021) argues that the current governor and the Republican Party in Texas have adopted a top-down policy agenda that may not align with the values and aspirations of the state’s diverse population. This approach, which is perceived as backward-looking and exclusionary, runs counter to the changing demographics and values of many new stakeholders in Texas. As the cultural landscape of the state continues to evolve, there

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<sup>191</sup> Demographic Profile, Census 2020 <https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-main.html>

is a growing tension between the political agenda of the current leadership and the values held by a significant portion of Texas's population. Although there is no statewide, citizen-led initiative process that would enable advocates to put an issue like marijuana decriminalization or legalization on the Texas ballot, at least the local level there are limited cases where activists can leverage home rule laws that allow for policy changes.

The most striking result to emerge from the data is the importance of a direct form of participation in the decision-making process, such as ballot initiatives. The polls show support for marijuana regulation and numerous attempts were made to change the legislation, leading us to believe that if a ballot initiative regulating cannabis was put to vote, it would pass and leave behind the combination of gerrymandering<sup>192</sup>, voter suppression and relentless cultural warfare. But as long as there is no statewide, citizen-led initiative process that would enable advocates to put an issue like decriminalization or legalization on the Texas ballot is likely that there will not be advances.

In the next chapter I analyze the results of the data collection from both California and Texas. I also take a look at the political constraints that make marijuana legalization in the United States such a paradox. By shedding light on these complexities, the chapter aims to deepen the understanding of the ongoing debate and challenges surrounding marijuana legalization in the United States. It emphasizes the need for a comprehensive and nuanced approach that takes into account not only public sentiment but also the intricate political dynamics at play. Ultimately, this analysis will contribute to the broader discourse on drug policy and inform future discussions and efforts towards achieving meaningful reform.

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<sup>192</sup> The practice of manipulating district boundaries to achieve a certain result, often to advantage one party or protect incumbents (Engstrom, 2013).

## CHAPTER SIX: Analysis of Results

In the previous two chapters I presented a within-case analyses of marijuana in the state of California and marijuana in the state of Texas. Its history, politics and cultural weight. Here, the purpose is to bridge theory and empirical analysis. I now look at the results of the collected and presented data in light of the Securitization and Desecuritization theories. This analysis contributes to the broader scholarly discourse on drug policy, offering valuable insights into the dynamics of securitization, desecuritization, and their implications for societal attitudes and legal frameworks. I then explain how Federalism became impossible to ignore and its impact on the decision-making process. The tension between federal and state laws regarding marijuana has created a complex landscape for decision-makers. While some states have chosen to legalize or decriminalize marijuana, it remains illegal under federal law. This disparity has given rise to numerous challenges and uncertainties, making federalism an issue that cannot be ignored in the discussion of marijuana policy.

As I presented in Chapter 3, the Copenhagen School has explored how to move Security Studies beyond a narrow agenda which focuses on military relations between states. Within this context, they have developed the following concepts/frameworks: the notion of security sectors, regional security complex theory and the concepts of securitization and desecuritization (Coskun, 2011). As Wæver claims, the aim of securitization theory is to construct a “neo-conventional security analysis (which) sticks to the traditional core of the concept of security (existential threats, survival), but is undogmatic as to both sectors (not only military) and referent objects (not only states)” (Wæver 1996, p. 110). According to the Copenhagen scholars, what is needed is an understanding of the cultural process of securitization, by which actors construct issues as threats to security, as the United States constructed the threat of drugs and declare a war on it.

Within this context, Wæver argues that threats and security are not objective matters; rather “security is a practice, a specific way of framing an issue. Security discourse is characterized by dramatizing an issue as having absolute priority. Something is presented as an absolute threat...” (1996, p.108). I argue that the practice of framing drugs as an enemy was and it is perpetuated by the US on a federal and international levels, but has been questioned in the state level. Also, that the process of cannabis regulation in the United States is a case of desecuritization from the ground-up, civil society and local organizations being the actors carrying the load for political

change. Barthwal-Datta (2009) argues that the Copenhagen School's inherent bias for the role of the state as the securitizing actor means it overlooks the role of non-state actors such as NGOs, research organizations and civil society groups as possible securitizing actors. I argue that in the case of marijuana legislation it is precisely the non-state actors who act as desecuritizing actors.

Securitization theory suggests that certain issues can be framed as existential threats to society, thereby justifying extraordinary measures and policies. In the context of marijuana, the historical securitization of the drug has led to its criminalization and the establishment of strict legal frameworks to combat its use. The data collected from California and Texas highlights the influence of securitization on drug policy, with varying degrees of enforcement, penalties, and cultural perceptions.

On the other hand, Desecuritization theory emphasizes the process of deescalating an issue from the realm of security and treating it as a normal policy concern. As the data shows, California has made significant strides towards desecuritization through the decriminalization and legalization of marijuana. This shift in policy and public opinion has been accompanied by a broader understanding of cannabis as a regulated product rather than a criminal offense. However, in Texas, the process of desecuritization has been limited, with marijuana remaining largely prohibited and criminalized.

The analysis of the collected data in light of these theories highlights the divergent paths taken by California and Texas in relation to marijuana policy. While California has experienced a more pronounced desecuritization process, Texas has lagged behind, perpetuating the securitization of cannabis. This discrepancy can be attributed to various factors, including cultural attitudes, political ideologies, and the influence of key stakeholders.

The reaffirmation of these results underscores the importance of understanding the interplay between securitization and desecuritization dynamics in shaping drug policy. It serves as a reminder that the process of shifting societal perceptions and dismantling entrenched securitization frameworks is a complex and multifaceted endeavor. Furthermore, it highlights the potential implications and consequences of these divergent approaches, both in terms of criminal justice outcomes and public health considerations.

## 6.1 California is “America on fast-forward”

The legalization of medical marijuana in California in 1996 marked a significant milestone in the history of cannabis reform in the United States. As the pioneering state, California has been at the forefront of progressive policies surrounding marijuana and has continued to push the boundaries of societal acceptance and understanding. Beyond the legal framework, the discourse surrounding cannabis use in California has also exhibited a progressive mindset, reflecting the state’s unique cultural and political landscape. From its inception, California has set a precedent for other states and has fostered an environment that encourages open dialogue and exploration of the benefits and implications of cannabis use, it has also shown to be progressive in other areas as well<sup>193</sup>. It was no surprise to notice that the discourse around cannabis use in California is progressive too. However, after process-tracing the laws and discourses, the surprise was to acknowledge that progressive politics themselves don’t make changes, it is the ability of making one’s progressive ideas valuable through vote that makes the difference. It is worthwhile to consider that such a shifting of a securitized issue out of the emergency mode can also be initiated through local level action and popular mobilization. The ballot initiative process gives California citizens a way to propose laws and constitutional amendments without direct support of the Governor or the Legislature.

Securitization emerges through discursive practices adopted by governments and political elites with the aim of creating perceptions of threats that consequently enable the application of corresponding policies. The state of California challenged that narrative, through local leadership, when it proposed the first ballot measure in the history of the US aiming decriminalization of marijuana while the federal government launched a war on it, in 1972. They confronted the security discourse again in the 1990s, by advocating for medical cannabis access. Grassroot movement and organized civil society rearticulated the issue defining marijuana use for therapeutic purposes amid the AIDS crises. Rearticulation of an issue refers to fundamental transformations of the public sphere including a move out of the friend-enemy distinction (Hansen, 2012). I believe the

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<sup>193</sup> Taxes: California has the Most Progressive Income Taxes, see: <https://taxfoundation.org/which-states-have-most-progressive-income-taxes-0/> ; Politics: “THE GOLDEN State, it is often said, is where the future happens first”, see: <https://www.economist.com/podcasts/2022/06/10/is-california-revealing-the-limits-of-progressive-politics>



possibility of rearticulation as a wider societal transformation, along with the chance of a ground-up approach, were essential for the marijuana reform in California.

The main result from the within-case analysis is that the socio-political structures within which practices took place, were created and sustained, are possible because California allows direct participation in the democratic elections via ballot initiative. Actors in the process, from NGOs and civil society groups to political groups, journalists, academics and local communities and societies; rearticulated the drug issue following the public support shown in the polls, the advances on research for cannabis as a medicine and the argument of generating profit for the state and the population with a regulated market.

I argue that the full legalization of cannabis in California in 2016 is a successful case of Desecuritization from the ground-up. It was not the government or an elite actor who passed the legislations, but the collective effort of supporters who handed in more than 600,000 signatures of the 365,000 certified signatures that were required. Considering that cannabis remains illegal at the federal level since the U.S. Drug Enforcement Administration considers it a Schedule I drug, the legalization of cannabis in California stands as a remarkable victory and a testament to the power of grassroots movements in challenging and reshaping established norms and policies. Their power also lies in their ability to mobilize communities, engage in dialogue, and challenge the existing power structures. Through their persistence and collective action, they disrupt the securitized framing of certain issues, advocating for alternative approaches that prioritize social equity, harm reduction, and individual freedom. By challenging the established norms and policies through grassroots activism, these movements pave the way for a more inclusive and progressive society, exemplifying the transformative potential of desecuritization from the ground up.

When I started working on this dissertation, I believed that achieving cannabis legalization was the biggest challenge for the states. However, as the research advanced, I saw brand new disputes inside the regulated market. For instance, a state license (and most times also a city license) is required to engage in commercial cannabis activity in California. The licensing process has extensive requirements<sup>194</sup> and it can be a source of confusion and debate. For example, The Manufactured Cannabis Safety Branch (MCSB) is responsible for licensing and regulating commercial cannabis manufacturing in the state and for the application, one will be required to

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<sup>194</sup> To learn about the types of licenses and requirements in the state of California, visit: <https://cannabis.ca.gov/applicants/license-types/>

provide information regarding: the operating premises, operational activities (extraction, infusion, packaging, and/or labeling), local fire code approvals, security, compliance with city and county ordinances, etc. Many individuals, who were excited to start a new business, struggled to meet the requirements.

Legalizing cannabis and the potential benefits, including advances in natural medicine, relief from mass incarceration, safer communities, and economic opportunity, didn't come for all. People and communities impacted by the War on Drugs have been frozen out of the booming legal cannabis market. The deep-rooted impacts of the War on Drugs have disproportionately affected certain communities, leading to lasting racial and economic disparities. As the legal cannabis market expands and thrives, it becomes apparent that these marginalized groups have been largely excluded and unable to reap the benefits of this burgeoning industry. This glaring inequality has sparked the emergence of Social Equity movements, which seek to address and rectify the systemic injustices by providing opportunities and support for those who have been historically impacted by drug-related policies. By advocating for equitable access and participation in the cannabis market, these movements strive to mitigate the worsening disparities and foster a more inclusive and fair industry. Equity, as used here, is different from the concept of equality. While equality generally focuses on ensuring that everyone has access to the same resources, I consider the concept of equity as accounting for different starting points and the unique needs of different populations as a result of long-standing systemic and legislated barriers to opportunities to access those resources (Kilmer *et al*, 2021). It was only fair that the most harmed by the war would get access to the regulated market, therefore cities and states have created Social Equity programs to address the disproportionate impacts of the War on Drugs.

Also, Cannabis business owners face many challenges to getting started, for instance: getting access to capital, understanding complex regulatory requirements, finding locations where cannabis businesses can operate, developing business relationships and getting technical support (California Department of Cannabis Control, DCC). Because marijuana is still prohibited in the federal level, getting access to banking and loans are a challenge. As much as some banks are supportive of getting in business with the cannabis industry, they have to comply with federal regulation, which makes Cannabis businesses transact in cash only.

Even with so many challenges, it is important to highlight the evolution of the drug issue in California: from prohibition to equity programs, the conversation has since shifted into a

nuanced discussion of how to legalize cannabis, not whether to. Now the discussions surrounding cannabis and social equity have evolved beyond the scope of legalization and now encompass crucial aspects such as the allocation of cannabis tax revenues, equitable business ownership, and inclusive employment opportunities within the newly established legal market. Recognizing the historical injustices and disparities caused by the War on Drugs, there is a growing emphasis on utilizing the revenue generated from the cannabis industry to reinvest in communities disproportionately affected by past drug policies. This includes funding programs and initiatives aimed at promoting economic empowerment, supporting entrepreneurship, and providing job opportunities for individuals from marginalized backgrounds. By broadening the conversation to encompass these vital areas, the goal is to not only create a legal cannabis market but also to foster social and economic justice, ensuring that the benefits of this industry are shared equitably among all communities.

## **6.2 Texas is not “the lone star state”, but the lonely one**

Researching marijuana policy in the state of Texas has been both a challenging and a nice surprise. It opened up many features I was not anticipating, especially when it comes to cultural phenomenon. Despite recent local advancements, Texas still lags far behind of the rest of the country when it comes to access to legal cannabis. As I showed in Chapter five, Texas’ marijuana Compassionate Use Program, one of the most conservative in the nation, operates with very few prescribing doctors and has limited eligibility requirements for medical marijuana. When it comes to adult (recreational) use of cannabis, Texas still prohibits it.

After analyzing the material collected, my conclusion is that marijuana is not legal in Texas because of the lack of ballot initiatives, not because is a “red state”. The population, both Democrats and Republicans, support cannabis regulation (as showed in Chapter 5), but they don’t have access to direct participation in the democratic elections as California and other states voters do. Nonetheless, they continue to fight and submit proposals at jurisdictions that are able to create ordinances if they are not explicitly forbidden by Texas or federal law.

As I explored in Chapter 3, the Copenhagen School believes that the securitization of an issue comes into being through the manipulation of utterances, production and reproduction of discursive practices, and linguistic labels that portray something or someone as threatening. The

discourse of the War on Drug is still strong in Texas, especially among the enforcement agencies. Discussing about possibilities of desecuritization, De Campos (2022) argue that for the desecuritization process to take root within the public sphere, social expressions and collective actions should be carried out by ordinary members of civil society. In doing so at a macro level, civil societies would be working towards a desirable shift of the securitized issue out of the emergency mode imposed by the state.

Although Texas didn't achieve desecuritization of cannabis in the sense of taking it out of friend-enemy sphere, my believe and hypothesis are that local actors will continue to fight politically to allow for counties and municipalities to make their own decisions on the use of the recreational use of cannabis for Texans. It has been proved right, although at slow pace, in the results of the 2022 election. By the end of Election Day in November, five Texas cities have voted to decriminalize low-level marijuana possession.

After Austin voters overwhelmingly approved the proposition to decriminalize carrying small amounts of marijuana in May, Ground Game Texas — the progressive group behind that effort — successfully worked with local organizations and pushed for similar measures to appear on the ballots of Denton, San Marcos, Killeen, Elgin and Harker Heights for the midterms cycle<sup>195</sup>. These local victories are examples of desecuritization from the ground-up, made possible by these non-state actors and local leaders.

What I see as obstacles for cannabis regulation in the state of Texas are voter turn-out and partisan gerrymandering. Cannabis makes a popular issue among young voters, but as I showed in the previous chapter, Texas makes it really hard for people to vote. One has to consider the gerrymandering process, well put by Wegman (2022):

This is the harm of partisan gerrymanders: Partisan politicians draw lines in order to distribute their voters more efficiently, ensuring they can win the most seats with the fewest votes. They shore up their strongholds and help eliminate any meaningful electoral competition. It's the opposite of how representative democracy is supposed to work.

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<sup>195</sup> NGUYEN, A. "Five Texas cities vote to decriminalize having small amounts of marijuana". The Texas Tribune <https://www.texastribune.org/2022/11/09/texas-cities-marijuana-decriminalization-election/>

This process prevents the voters to be heard, which argue that is precisely the point that is making cannabis reform possible in other states. When examining the achievements of municipal ballot initiatives, it becomes evident that while the state of Texas may not yet be considered a successful case of desecuritization, it has demonstrated great potential for such a transformation. Municipal ballot initiatives have allowed individual cities within Texas to challenge the existing securitized approach to cannabis and pave the way for change on a smaller, localized scale.

These initiatives have provided an avenue for grassroots movements and community activists to mobilize and advocate for progressive drug policies at the municipal level. By organizing campaigns, gathering support, and engaging in public discourse, these activists have been able to raise awareness about the benefits of desecuritizing cannabis and highlight the need for alternative approaches. While the outcomes of these initiatives may vary from city to city, their presence alone demonstrates the shifting attitudes and evolving perspectives within Texas communities. They reflect a growing recognition that the securitized approach to cannabis has not effectively addressed the complex issues surrounding drug use and has instead perpetuated social and racial disparities.

Furthermore, the successes achieved through these municipal ballot initiatives can serve as a catalyst for broader change at the state level. As more cities within Texas embrace desecuritization, it creates momentum and pressure for statewide reforms. It highlights the disconnect between local communities and the overarching securitized policies enforced at the state level, thus necessitating a reevaluation of the current approach.

### **6.3 Federalism and the Green Wave**

In this session I analyze an important feature of the United States' political system, federalism, and its impact on this dissertation' subject: state marijuana reform. Characteristically, the language here carries more Legal and Judicial terminology. This session is also a path to the national level of the drug issue. I explore some of the national constrains and possibilities for a different drug policy. At the beginning of this research, it seemed a bit obvious that federalism plays a role in how the US makes its politics, but as the research evolved that role and its extent became more evident. Here, I also explore the political dispute between the federal government's

powers and those powers reserved to the states as an essential mechanism for modern cannabis regulation.

The driving question of this research is what makes it possible for the United States to prohibit drugs outside medical use as a federal policy, champion this prohibition internationally, but legalize it in some of its states. I needed to understand how marijuana possession and distribution can simultaneously be both lawful and unlawful. As I unfolded and processed-traced the reasons, it became clear I couldn't ignore how the US' federalist system operates and is playing an important role in the marijuana policy debate. The previously explored failure of the War on Drugs and the public support for changing the legal landscape for marijuana have created this green wave across the country and this is possible due to the autonomy the states hold.

Historically, America's earliest political associations were forged at a local level. Early colonists found themselves separated from their sovereign's authority and protection by a vast ocean and from their fellow colonists by a vast geographic expanse. As a consequence, they organized and largely governed their day-to-day lives independently and locally (Rosenthal and Joseph, 2017). This shaped American culture and politics in fundamental ways and nowadays cannabis regulation has been both benefiting from and putting it to test.

To illustrate this in terms of law, the Tenth Amendment describes that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (Constitution of the United States). At the same time, the Controlled Substances Act (CSA) is the federal law that prohibits the cultivation, distribution, and possession of marijuana. Yet, so many states have medical marijuana programs and, for example, when one is legally consuming medical cannabis in Arizona one is at the same time in violation of federal law and potentially subject to prosecution by federal authorities.

In the event of a conflict between federal law and state law, the Supremacy Clause of the Constitution, or the "supreme law of the land" (Article VI, Clause 2) would generally evoke the constitutional principle of preemption — potentially resulting in a conclusion that because the states permit conduct that the federal government has expressly prohibited, such laws are void (Garvey, 2012). Pre-emption power is further limited by a concept known as the 'anti-

commandeering’ principle, which provides that the federal government may not ‘commandeer’ the state legislative process, by forcing states to enact legislation or enforce federal legislation<sup>196</sup>.

Since medical marijuana laws in actuality are exemptions from the states’ own penal codes, the federal government can no more force the states to repeal these exemptions than it could have forced the enactment of the statutes to begin with. Since the states continue to regulate marijuana, I understand that this preemption is not taking place in the case of state cannabis laws, which made this constitutional question more puzzling. Other relevant constitutional consideration is the Commerce Clause, which grants Congress the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes,”<sup>197</sup> and has historically been used to control the application of state law in interstate contexts<sup>198</sup>. Baker *at al.* (2015) believe that when viewed through the lens of both the Supremacy Clause and the anticommandeering doctrine, the tenuous balance can be largely reduced to the following legal reality: states cannot prevent the federal government from enforcing its laws within their borders, but the federal government cannot require the states to do its bidding. Naturally, this paradox became the second question on my interviews, which my interviewees would try to answer while acknowledging that it is a confusing topic even for them, US citizens.

From the Department of Justice (DOJ), the interviewee pointed out the technicalities of the dilemma between state and federal laws, explaining that “The way it is supposed to work is that the states are repository of the police power and the Constitution only gives the federal government limited categories of power”. More specifically, they clarify that

Anything that is not specifically within the power of the federal government goes to the states. As a matter of exercising what they call ‘prosecutorial discretion’ the federal government is not enforcing the Supremacy clause. So, the law exists, state laws are technically in contravention of the federal law but the only entity that has the authority to enforce the federal law has decided not to do it. It comes down to enforcement.

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<sup>196</sup> Mikos, p. 10 (citing *Printz v. United States*, 521 U.S. 898, 935 (1997); *New York v. United States*, 505 U.S. 144, 188 (1992))

<sup>197</sup> U.S. Const. art. I, § 8, cl. 3

<sup>198</sup> Harold W. Horowitz, *The Commerce Clause as a Limitation of State Choice-of-Law Doctrine*, 84 HARV. L. REV. 806, 807 (1971).

Although this answer elucidated parts of the question, it also brought to light the issue of enforcement. If “it comes down to enforcement” and the DEA’s mission is to enforce the controlled substances laws and regulations of the United States and bring to the criminal and civil justice system of the United States (with an ever-growing budget as noted in chapter 3), why are they not enforcing it? To what the interviewee only answered: “They’re just not enforcing it. It is a weird dynamic. My theory is that the federal government is trying to avoid political responsibility. The states are a laboratory of experiments, smaller political subdivisions that you let do things, see if it works and if it does, you nationalize it.”

In the context of cannabis legalization and desecuritization, democracy laboratories refer to states that have taken the lead in implementing progressive drug policies, such as the legalization of recreational or medical marijuana. These states serve as testing grounds where the effects and implications of such policies can be observed and evaluated. However, it is crucial to recognize that democracy laboratories are influenced by a range of other factors within the political process. These include public opinion, interest groups, political ideologies, economic considerations, and the actions of lawmakers and policymakers at both the state and federal levels. The success or failure of democracy laboratories in effecting change also depends on various interplay dynamics. The transferability of policy lessons from one state to another, the potential for legal challenges, and the response of federal authorities all shape the outcomes and broader implications of these experiments.

When it comes to better understand of the enforcement issue, Mikos (2012) shows that the main reason is that the federal government lacks the resources needed to enforce its own ban vigorously. The federal ban may be strict—and its penalties severe—but without the wholehearted cooperation of state law enforcement authorities, its impact on private behavior will remain limited. In other words, if a state doesn’t have police power or choose not to use its power to enforce marijuana laws, their residents might be safe from federal prosecution.

In the same vein, Adler (2020) explains that the ability of the federal government to enforce this policy on the ground (using various methods such as investigation cooperation, referrals, and shared forfeiture) is largely dependent on state cooperation. He continues to say that the federal government is not responsible for the local cop on the beat, and the federal law enforcement agencies have neither the resources nor the inclination to try to enforce the federal marijuana prohibition nationwide.



This is not to say that prosecution hasn't take place at all. In *Gonzales v. Raich*, two patients using doctor-recommended marijuana to treat serious medical conditions under California's medical marijuana law had their cannabis plants seized and destroyed by federal agents. The patients sued the Attorney General of the United States and the head of the Drug Enforcement Agency, alleging that the government's use of the CSA to regulate activity not directly affecting interstate commerce violates the Commerce Clause of the Constitution (*Gonzales v. Raich*, 545 U.S. 1, 7, 2005). The case ultimately reached the Supreme Court, which ruled in favor of the federal government. The Court held that the federal government had the authority to regulate marijuana possession and use, even if it was for medicinal purposes and in compliance with state law. The decision was based on the interpretation that the regulation of marijuana, even when confined to intrastate activities, could still have an impact on the overall illicit drug market, which falls under the purview of the federal government's authority to regulate interstate commerce.

The *Gonzales v. Raich* decision had significant implications for the conflict between state and federal marijuana laws. It affirmed the federal government's power to enforce prohibition in states that had legalized medical or recreational marijuana. This ruling created challenges for states seeking to implement their own cannabis policies in defiance of federal law. The case exemplifies the complex legal landscape surrounding marijuana policy in the United States, with tensions between state-level reforms and federal prohibition. It highlights the ongoing debate and legal battles over the jurisdictional authority and the extent of federal power in regulating cannabis, particularly in the context of states' rights and individual liberties.

#### **6.4 Defining Justice Priorities**

In view of the aforementioned, efforts to legalize cannabis by individual states are inherently unstable. To address this issue, during the Obama administration, in October 19, 2009, Deputy Attorney General David Ogden issued a memorandum (the "Ogden Memorandum"). The document gave U.S. Attorneys "guidance and clarification" on how to enforce the Controlled Substances Act in states where medical marijuana had been legalized.<sup>199</sup>

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<sup>199</sup> Memorandum from David W. Ogden, Deputy Att'y Gen., to U.S. Attorneys 1 (Oct. 19, 2009) <https://www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states>

The Ogden memo oriented the prosecutors to “not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana” (p. 2). The memorandum stated clearly that the Department of Justice’s decision to prioritize the prosecution of some crimes over others could not be invoked as a legal defense in any particular case. Also, the Ogden memorandum made clear that it did not “provide a legal defense to a violation of federal law” and was “intended solely as a guide to the exercise of investigative and prosecutorial discretion.”<sup>200</sup> However, many states saw it as a green light and, as a consequence, “the number of medical marijuana patients and dispensaries in the states that have enacted legislation legalizing the possession, cultivation, and use of marijuana for the treatment of certain illnesses” increased dramatically (Sekhon, 2010).

Even at risk of prosecution, some local governments relied on the Ogden Memorandum in designing their policies. For instance, the State of Delaware and the City of Oakland both relied on the Ogden Memorandum when deciding to grant permits to marijuana dispensaries within their jurisdictions. The Solicitor General of Delaware stated that Delaware licensed medical marijuana dispensaries because of “guidance from the U.S. Department of Justice that federal prosecution resources” would not be steered towards prosecuting the medical marijuana industry.<sup>201</sup> In addition, the City of Oakland claimed in litigation that, “in reliance on the government’s statements and conduct [in the Ogden Memorandum], Oakland permitted and regulated the growth of the medical cannabis industry within Oakland.”<sup>202</sup> They continued to state that “substantial resources to administering the medical cannabis dispensary permit program” because of the Ogden Memorandum<sup>203</sup>.

In light of more states regulating marijuana, a follow-up memorandum was issued by Ogden’s successor, James Cole in 2011. The “Cole memo” made sure to clarify that “the Department’s view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed”<sup>204</sup>. During those years of the Obama presidency many states articulated their cannabis regulation and a new “Cole Memo” was issued in 2013. It recognized

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<sup>200</sup> Ogden Memorandum, *supra* note 1, at 2.

<sup>201</sup> Letter from Michael A. Barlow, Del. Solicitor Gen., to Charles M. Oberly III, U.S. Attorney for the Dist. of Del. (Dec. 7, 2011), <http://medicalmarijuana.procon.org/sourcefiles/charles-oberly-delaware-medical-marijuana.pdf>.

<sup>202</sup> City of Oakland’s Response to Defendants’ Motion to Dismiss at 6-7, *City of Oakland v. Holder*, 901 F. Supp. 2d 1188 (N.D. Cal. 2013) (No. V 12-5245 EJ).

<sup>203</sup> *Id.* at 7

<sup>204</sup> Memorandum from James M. Cole, Deputy Att’y Gen., to U.S. Att’ys 1-2. June 29, 2011

that “the states regulatory scheme affects the traditional joint federal-state approach to narcotics enforcement” and affirms that the states “implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”<sup>205</sup> In a hearing held by the Senate Judiciary Committee on the issue, the US Deputy Attorney General and author of the memorandum, addressed the paradox between state law and federal law. He stated that

On August 29, 2013, the Department notified the Governors of Colorado and Washington that we were not at this time seeking to preempt their states’ ballot initiatives. We advised the Governors that we expected their States to implement strong and effective regulatory and enforcement systems to fully protect against the public health and safety harms that are the focus of our marijuana enforcement priorities, and that the Department would continue to investigate and prosecute cases in Washington and in Colorado in which the underlying conduct implicated our federal interests<sup>206</sup>.

Not long after, since 2014, Congress has approved a rider to the annual Justice Department appropriations bill that provides that the funds may not be used to interfere with the implementation of state medical marijuana laws. It is called Rohrabacher–Farr amendment and passed after six previously failed attempts, becoming law in December 2014 as part of an omnibus spending bill and it has been renewed through the signing of the subsequent fiscal years. Without the limitations of the Rohrabacher-Blumenauer amendment, the Department of Justice would be free to invest their resources in prosecuting dispensaries and medical marijuana users for violations of federal law<sup>207</sup>. Overall, the amendment has played a significant role in shaping drug policy reform in the United States by allowing for greater state autonomy in implementing and regulating

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<sup>205</sup> Memorandum from James M. Cole, Deputy Att’y Gen., to U.S. Att’ys 1-3 (Aug. 29, 2013), <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

<sup>206</sup> US Senate Judiciary Committee Hearing, “Conflicts Between State and Federal Marijuana Laws.” 10th September 2013 <https://www.govinfo.gov/content/pkg/CHRG-113shrg93426/html/CHRG-113shrg93426.htm>

<sup>207</sup> Trela, H. “The Coming Federal and State Power Showdown — House Blocks Amendment to Protect Medical Marijuana in the States”. Rockefeller Institute of Government, August 8, 2017. <https://rockinst.org/blog/coming-federal-state-power-showdown-house-blocks-amendment-protect-medical-marijuana-states/>

medical marijuana programs and reflecting changing attitudes towards cannabis use for medical purposes. However, it's important to note that the amendment specifically pertains to medical marijuana and does not provide explicit protection for states that have legalized recreational cannabis. This means that the DOJ can still enforce federal marijuana laws in states where recreational use is permitted, even if they have implemented regulations and systems for its control and taxation. The amendment's language has been subject to interpretation, and there have been ongoing debates and legal challenges regarding its scope and applicability. While it provides some level of protection for medical marijuana programs, it does not offer the same safeguards for states with recreational cannabis laws.

As a result, states that have legalized recreational marijuana must navigate the potential risk of federal intervention, as marijuana remains illegal under federal law. The lack of explicit protection for recreational cannabis has created a complex and uncertain legal environment, with states and businesses operating in the industry facing potential legal consequences despite complying with state regulations.

What it seems to be happening since the memorandums is a policy of non-interference. I argue that the actors involved are waiting each other out. In other words, the states are waiting for the federal law to change and protect them, while the federal government is waiting to see if the democracy laboratories are doing a good job so they validate it. In consequence, neither side is protected, the consumer is harmed and the war on drugs continue.

Moreover, the definition of priority by the Department of Justice (DOJ) gives the attorney general power to make the decisions, which leads to volatility. When Attorney General Jeff Sessions, appointed by republican President Donald Trump, issued the "Sessions Memorandum" all the Obama era DOJ guidance were rescinded. The document declares: "Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately".<sup>208</sup> Sessions' stance on marijuana was notably conservative, aligning with his broader approach to law and order. He opposed the legalization and decriminalization of marijuana and believed in strict federal enforcement of drug laws. His position on marijuana clashed with the growing number of states that had legalized medical or recreational cannabis.

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<sup>208</sup> Memorandum from Jeff Sessions. Department of Justice, Office of Public Affairs, Thursday, January 4, 2018 <https://www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement>

At the time, the move was called “the new war on drugs”. The decision by Attorney General Sessions to abandon the strategy outlined in the Cole memo does not come as a surprise, as Sessions has been a longtime opponent of marijuana, famously saying that “good people don’t smoke marijuana.”<sup>209</sup> It is worth mentioning that the Sessions Memorandum was subsequently rescinded on January 24, 2018, by a new memorandum issued by Deputy Attorney General Rod Rosenstein. The new memorandum reinstated some aspects of the previous guidance, including the principles of the previous Cole Memo, but also emphasized the need to combat organized crime and protect public health and safety.

As I explored in chapter two, once again the decision of prohibiting or not goes to one individual emphasizing moral or ideological considerations, such as personal values, religious beliefs, or concerns about potential negative societal consequences. This raises uncertainty and deviates from a drug policy approach based on evidence, harm reduction, and public health.

## 6.5 The Federal Landscape

While some states have taken steps to legalize and regulate marijuana, federal law still prohibits its use and possession. The federal government’s stance on marijuana enforcement has varied over time, with shifts in policy priorities from administration to administration. The federal landscape for marijuana reform is dynamic, with ongoing debates and legislative efforts to reconcile state and federal laws and address issues of criminal justice, social equity, and public opinion. As I explain in the second chapter of this dissertation, the Controlled Substance Act was enacted in 1970 to replace what had been “[a] patchwork of regulatory, revenue, and criminal measures” with a single comprehensive statutory scheme for federal drug control.

The CSA gives the Drug Enforcement Administration (DEA) the power to prohibit and regulate drugs pursuant to a five-schedule system. Bills trying to amend, revisit or simply change the CSA have been sent to Congress and here I discuss the most comprehensive one: The Marijuana Opportunity Reinvestment & Expungement Act (“MORE Act”). It aims to remove cannabis from the list of controlled substances at the federal level and is the most far-reaching

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<sup>209</sup> “Jeff Sessions: ‘Good people don’t smoke marijuana,’” remarks at the US Senate Caucus on International Narcotics Control, April 5, 2016, <https://www.washingtonpost.com/video/c/embed/bab3b09a-add8-11e6-8f19-21a1c65d2043>.

marijuana reform bill ever in Congress. This would be a groundbreaking step towards decriminalizing marijuana and allowing individual states to establish their own cannabis laws without the threat of federal intervention. Also, the MORE Act addresses the injustices and disparities caused by the war on drugs. It includes provisions for expunging prior marijuana convictions and resentencing individuals who have been incarcerated for marijuana-related offenses. This is crucial for rectifying the disproportionate impact of marijuana prohibition on marginalized communities, particularly communities of color.

Sponsored in the Senate by then-Senator Kamala Harris and passed by the House on December 4, 2020, the MORE Act decriminalizes cannabis by amending the CSA and removing marijuana from Schedule I<sup>210</sup>. The historic vote marked the first time a bill to permanently solve the conflict between state and federal marijuana laws passed a chamber of Congress. The act's introduction and passage in the House of Representatives demonstrate the increasing momentum and political will to address marijuana reform at the federal level. However, The MORE Act stalled in the Senate, where it did not receive a vote yet.

According to its text, the “bill decriminalizes marijuana. Specifically, it removes marijuana from the list of scheduled substances under the Controlled Substances Act and eliminates criminal penalties for an individual who manufactures, distributes, or possesses marijuana.” In addition, the bill also makes other changes, including the following:

- replaces statutory references to marijuana and marihuana with cannabis,
- requires the Bureau of Labor Statistics to regularly publish demographic data on cannabis business owners and employees,
- establishes a trust fund to support various programs and services for individuals and businesses in communities impacted by the war on drugs,
- imposes an excise tax on cannabis products produced in or imported into the United States and an occupational tax on cannabis production facilities and export warehouses,
- makes Small Business Administration loans and services available to entities that are cannabis-related legitimate businesses or service providers,
- prohibits the denial of federal public benefits to a person on the basis of certain cannabis-related conduct or convictions,

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<sup>210</sup> MORE Act of 2020, H.R. 3884, 116th Cong. (2020); Actions Overview H.R. 3884 — 116th Congress (2019-2020), CONGRESS.GOV, <https://www.congress.gov/bill/116thcongress/house-bill/3884/actions>

- prohibits the denial of benefits and protections under immigration laws on the basis of a cannabis-related event (e.g., conduct or a conviction),
- establishes a process to expunge convictions and conduct sentencing review hearings related to federal cannabis offenses,
- directs the Government Accountability Office to study the societal impact of state legalization of recreational cannabis,
- directs the National Highway Traffic Safety Administration to study methods for determining whether a driver is impaired by marijuana,
- directs the National Institute for Occupational Safety and Health to study the impact of state legalization of recreational cannabis on the workplace, and
- directs the Department of Education to study the impact of state legalization of recreational cannabis on schools and school-aged children.

If approved, the states that retain criminal penalties become the outliers facing a conflict with federal law. At the same time, by removing federal prohibition, the MORE Act recognizes the authority of individual states to regulate marijuana according to their own laws and policies. This allows states to implement their own approaches to marijuana legalization and regulation without conflicting with federal law. It empowers states to make decisions that reflect the will of their constituents and respond to the unique needs and values of their communities.

Congress has the authority to shape federal marijuana policy, including the option to either let states continue experimenting with their own regulations or establish a uniform approach nationwide. This could involve criminalizing or decriminalizing marijuana at the federal level, or finding a middle ground. However, it's important to note that Congress has limited power to directly impact state laws. While federal legislation can establish a consistent federal policy, it cannot force states to adopt specific regulations or change their existing marijuana laws. States retain a certain level of autonomy to enact their own marijuana policies, which has led to a patchwork of differing regulations across the country.

Yet, most pressing is how the disparity between public support, state actions, and federal inaction underscores the need for comprehensive federal marijuana reform. Efforts such as the proposed MORE Act aim to address this disparity by decriminalizing marijuana at the federal level, expunging prior convictions, and implementing social equity provisions. However, until

federal laws are amended or revised, the discord between public sentiment, state laws, and federal policy will likely persist.

## 6.6 Presidential Pardon

According to Drug Policy Alliance, drug possession is one of the most arrested offenses in the United States. In fact, every 90 seconds on average, someone is arrested for a marijuana offense<sup>211</sup>. Amidst this troubling landscape, a glimmer of hope emerged in October 2022, when President Biden made an unprecedented move. He granted “a full, complete, and unconditional pardon to all current United States citizens and lawful permanent residents who committed the offense of simple possession of marijuana in violation of the Controlled Substances Act”<sup>212</sup>. It serves as a timely reminder that the landscape surrounding cannabis is evolving, and the possibility of comprehensive federal regulation is becoming increasingly tangible. In terms of the securitization framework, President Biden’s statement can be seen as a speech act that challenges the prevailing security logic and calls for alternative approaches. It disrupts the securitizing discourse by emphasizing the need to address racial disparities and promote fairness in drug policy. This speech act can have implications for subsequent debates and policy developments by reshaping the discursive terrain and framing the issue in terms of social justice.

As discussed earlier in this dissertation, it is important to remind that having a criminal record prevents individuals from obtaining employment, housing, and countless other opportunities, so this pardon can also address that. Authors have discussed a range of additional consequences such as reduced income for future generations, deportation, barriers to adoption and child custody, and the inability to vote in some places<sup>213</sup>. There are also additional sanctions that are specific to being convicted for a drug offense.

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<sup>211</sup> Drug Policy Alliance. “Drug War Statistics.” Constantly updated and available at: <https://drugpolicy.org/issues/drug-war-statistics>

<sup>212</sup> A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/06/granting-pardon-for-the-offense-of-simple-possession-of-marijuana/>

<sup>213</sup> PABLO A. MITNIK & DAVID B. GRUSKY, PEW CHARITABLE TRS. & RUSSELL SAGE FOUND., ECONOMIC MOBILITY IN THE UNITED STATES 5 (2015), [https://www.pewtrusts.org/-/media/assets/2015/07/fsm-irs-report\\_artfinal.pdf](https://www.pewtrusts.org/-/media/assets/2015/07/fsm-irs-report_artfinal.pdf) [<https://perma.cc/EUX2-9V6T>]; Deborah M. Ahrens, Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform, 110



According to an analysis by the U.S. Sentencing Commission of federal arrest data dating back to 1992, the President’s directive provides forgiveness to an estimated 6,557 citizens<sup>214</sup>, a small number considering the alarming numbers of people affected by the War on Drugs, as I showed in Chapter 3.

In a video<sup>215</sup>, Biden addressed the racial disparity when it comes to enforcement: “While white and Black and brown people use marijuana at similar rates, Black and brown people are arrested, prosecuted and convicted at disproportionately higher rates.” By addressing this racial disparity, President Biden signals a commitment to rectifying the injustices of the past and working towards a more equitable and just system. This acknowledgement can bring attention to the need for policy reforms aimed at reducing racial disparities in drug enforcement, such as decriminalization, expungement of past convictions, and the implementation of social equity programs. Moreover, President Biden’s statement can serve as a catalyst for public awareness and support for reforms that prioritize fairness and equality in drug policy. It sheds light on the intersection of drug policy, racial justice, and social equity, prompting discussions and actions to address the systemic issues that contribute to racial disparities in drug enforcement.

Also significantly, he acknowledged that “The federal government currently classifies marijuana as a Schedule 1 substance,” he said, “the same as heroin and LSD and more serious than fentanyl. It makes no sense.” The announcement was considered “the biggest shakeup in federal weed policy in more than half a century”<sup>216</sup>. In fact, his discourse changed the narrative at the federal level but it is still limited. A vast majority of marijuana arrests fall under the jurisdiction of states and its police power, as I explained in session 6.3.

President Joe Biden has voiced some support for decriminalizing cannabis possession; however, his position while campaigning was that states should continue to set their own policies. A Biden spokesperson stated that the President “supports decriminalizing marijuana and automatically expunging prior criminal records for marijuana possession, so those affected don’t have to figure out how to petition for it or pay for a lawyer.” Also, that “He would allow states to

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<sup>214</sup> U.S. Sentencing Commission, 1992 - 2021 Datafiles, USSCFY92 - USSCFY21. Number of Federal Offenders Convicted Only of 21 U.S.C. § 844 Involving Marijuana Fiscal Years 1992 – 2021 [https://www.ussc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/news-advisories/20221012\\_Updated-News-Advisory-Data-Analysis.pdf](https://www.ussc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/news-advisories/20221012_Updated-News-Advisory-Data-Analysis.pdf)

<sup>215</sup> President Biden on Marijuana Reform, The White House Youtube Channel [https://www.youtube.com/watch?v=7c4mQBw5n58&ab\\_channel=TheWhiteHouse](https://www.youtube.com/watch?v=7c4mQBw5n58&ab_channel=TheWhiteHouse)

<sup>216</sup> Paul Demko and Mona Zhang. “Don’t expect governors to heed Biden’s weed plea”, Politico 13/10/2022 <https://www.politico.com/news/2022/10/13/governors-biden-weed-plea-00061554>

continue to make their own choices regarding legalization and would seek to make it easier to conduct research on marijuana's positive and negative health impacts by rescheduling it as a schedule 2 drug.<sup>217</sup> Under his administration the Office of National Drug Control Policy<sup>218</sup> began spending slightly more money on treatment and prevention than on law enforcement and interdiction, for the first time in a generation.

President Biden's discourse on drug policy has undoubtedly contributed to the ongoing debate surrounding the issue. By recognizing the harms of the war on drugs, he brought attention to the need for change. His calls to action directed towards Congress and governors demonstrated a willingness to address the shortcomings of current drug policies. Moreover, his expressed support for reclassifying marijuana from a Schedule I substance under the Controlled Substances Act indicated a recognition of the evolving attitudes towards cannabis. However, it is important to note that while President Biden's statements have shown a shift in perspective, they have not brought an immediate end to the overarching war on drugs. The complexity and entrenched nature of the issue require comprehensive and sustained efforts from various stakeholders to truly bring about transformative change. The dynamic between Congress, the President, and the states in the realm of drug policy reform reflects a complex interplay of actions and expectations. Congress often looks to the President for leadership and direction on key policy issues, including drug policy. On the other hand, the President may seek support and cooperation from Congress to advance their policy agenda. This interdependency can sometimes create a situation of waiting and anticipation, as each branch of government looks to the other for action.

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<sup>217</sup> Saenz A. "Joe Biden supports decriminalizing marijuana, stops short of calling for legalization" CNN, May 16, 2019 <https://edition.cnn.com/2019/05/16/politics/joe-biden-marijuana-decriminalization/index.html>

<sup>218</sup> White House. National Drug Control Budget. FY 2022 Funding Highlights, p. 2. May 2021 <https://www.whitehouse.gov/wp-content/uploads/2021/05/National-Drug-Control-Budget-FY-2022-Funding-Highlights.pdf>

## FINAL REMARKS

The topic of drugs and international relations explores the intersections between drug policy, illicit drug markets, and global governance. It examines how the production, trafficking, and consumption of drugs impact international relations and shape interactions among states, non-state actors, and international organizations. Drug-related issues have wide-ranging implications for security, public health, human rights, development, and governance at the global level. The illicit drug trade can fuel organized crime, corruption and violence, posing challenges to domestic stability and regional security. It also has socio-economic consequences, affecting vulnerable populations and hindering sustainable development efforts.

Cannabis policy in the United States has implications for international relations by shaping global drug policy norms, raising questions about treaty obligations, impacting trade and economic relations, and intersecting with human rights and public health discourses. It is an area of policy that can generate discussions, debates, and collaborations among nations as they navigate the complex and evolving landscape of drug policy at the national and international levels. It is also a dynamic process.

At the same time, the US has sustained an intact narrative of prohibition, war and incarceration for decades. Because it is such a nuanced issue, many theories and approaches could be valid for analysis. For instance, criminal justice, health and social ones. However, what I saw as most enduring is language. The discourses and intentional rhetoric to portray substance use as a threat or as personal choice defined political actions and its consequences. Consequently, I turned to the Copenhagen School literature and their focus on security language to provide the best tools for analysis.

I argue that the United States securitized the drug issue via speech act when Nixon declared the War on Drugs in 1971, a top-down move from the government. I also argue that, in turn, the American states are desecuritizing drugs, from the ground-up via ballot initiatives organized by local actors. My two main objectives were: finding out how the US' discourse on drugs could be prohibitionist at the federal level and flexible towards other approaches internally; and explore what actors are involved in the marijuana reform happening inside the United States. By doing so, my dissertation's main contribution in theoretical terms is expanding the Desecuritization theory to consider actors as NGOs, local community leaders and individuals to be legitimate agents able

to take issues out of the security realm and bring them to day-to-day politics. In empirical terms, my dissertation made valuable contributions through interviews that shed light on unforeseen aspects of the topic, particularly the role of culture and the paradoxical relationship between federal and state laws. These interviews provided unique insights and perspectives from individuals directly involved in the cannabis industry, policy advocacy, law enforcement, and affected communities. The inclusion of cultural factors in the analysis offered a deeper understanding of how cultural norms, beliefs, and values influence the implementation and reception of cannabis policies at the state and local levels. The interviews provided rich qualitative data that captured the nuances of cultural dynamics and their impact on the interpretation and enforcement of marijuana laws. Additionally, the interviews revealed the complex interplay between federal laws and state laws, highlighting the challenges and contradictions that arise from the divergence between federal prohibition and state-level legalization or decriminalization efforts. The perspectives shared by interviewees offered valuable insights into the practical implications and consequences of this legal tension, including the legal grey areas, conflicts between law enforcement agencies, and the experiences of individuals navigating this complex legal landscape.

Reflecting on a decade-long trend of decriminalization and legalization of marijuana for medical purposes, recreational purposes (or both), my hypothesis maintained that non-state actors like individuals, organizations and organized community are the actors responsible for the marijuana reform in the states. The second hypothesis is that when and how non-state actors are able to influence security policies, for instance via direct participation in the democratic elections, is a key to understanding marijuana policy. The literature on cannabis legalization is nascent and it turns obsolete quickly due the fast changings in policy and what is considered measures to success or failure. Recognizing this, I believe that my dissertation contributes to this literature, especially with the within-case analyses of the states of California and Texas, it adds to the literature by examining the implications of cannabis policy from multiple angles, including social equity, criminal justice reform, public health, and economic considerations. By incorporating diverse perspectives and exploring the multifaceted impacts of cannabis legalization, my research enriches the existing knowledge base and provides a more comprehensive understanding of this complex policy issue.

In Chapter one I laid out my approach to the drug issue, objectives of this dissertation, the methods and material collected for analysis. I justified my choices of theory and explained that the

aim of this research is to understand how a very powerful discourse that has been in place for so long is gradually becoming challenged. In chapter two I showed that Drug policy in the U.S. has been shaped not only by the cultural context of stigma and biases about people who use drugs but also by systemic issues that have reinforced the prohibition model. Also, historically, much of the misunderstanding about drugs has been driven by racism, classism, and stigma about people who use illegal drugs and has resulted in punitive and largely ineffectual policies (Mauer, 1999; McKim, 2017; Sales & Murphy, 2007). I then explained the International Drug Control Regime and its main mechanisms with the United Nations as an important international feature.

In chapter three I addressed the Copenhagen School theories of Securitization and Desecuritization. I demonstrated that the declaration of War on Drugs by the American President Richard Nixon defined the security approach to the drug issue, with militarization action both nationally and internationally. The logic of urgency and exception caused by the War on Drugs provoked consequences as the criminalization of drug users, excessive levels of imprisonment, and punitive sentencing. On top of that, the goal of achieving a ‘drug-free world’ has failed. I also explained the novelty of my argument of a desecuritization from the ground-up for marijuana reform. To represent these theories, I developed a visual effect in the form of a pendulum so the reader can better understand how an issue can move from Securitization to Desecuritization, which became useful when visualizing the theory application on the cases.

I proceeded to chapter four to analyze the state of California and how the drug issue, cannabis specifically, has been approached there. Now there is a robust commercial medical cannabis markets that predate non-medical recreational cannabis laws because California was the first to legalize marijuana for medical purposes. Besides the majority of politicians and laws having a progressive concept, it became clear that is not enough to pass cannabis legislation. The public support and ability to use the instrument of ballot measures are the causal mechanism for marijuana reform. I argue that is a successful case of desecuritization from the ground-up.

In Chapter five, when I look to the state of Texas, a state similar to California in many ways, but I didn’t find the same causal mechanism because the lack of ballot initiatives on state level. Surprisingly, an already nuanced issue as cannabis policy, has more layers in the case of Texas. Geography, culture, the roots of the political system and tough on crime rhetoric are deep features that impact on marijuana reform. However, the local efforts and municipalities that allow ballot measures show that a ground-up desecuritization is the way to regulation there too.

Analyzing the results in chapter six I demonstrated the federal landscape and how American Federalism is making it possible for states to advance marijuana reform. At the same time, the tension between state and federal law will not resolve itself and the distance and incongruence and disconnection between folks and government even in a direct democracy should be eliminated. Also, the government must redirect resources towards effective evidence-based policies, to reschedule drugs, such as cannabis and psychedelics, to promote research on their therapeutic uses. It needs to work collaboratively across boundaries of discipline and profession to answer the field's most challenging and urgent questions. Moreover, because of the moralism and bias previously mentioned, substance use is a topic that requires a radical change in perspective.

I recognize that these political instruments are specifics to the United States: state ballot initiatives and federalism, but I argue that the path to marijuana reform is direct democracy. One can see when voters across the country approved every ballot measure on scaling back the war on drugs in 2020 and 2022 elections. From Arizona, Oregon, New Jersey, and Washington D.C., Americans turned out in droves to say that it's time to stop criminalizing drug use. Opinion polls analyzed here indicate that, regardless of political party affiliation, the public now generally supports cannabis reform, with the greatest support for medical marijuana laws. Yet, a disconnect seems to exist between public support and the government.

The impact of the states' experimentations with cannabis regulation can be seen nationally with, for example, the passage of the MORE Act and Biden's address to the Nation with the Presidential Pardon. Also, internationally with delegations from London and Germany visiting California to learn what is working in terms of law and implement it in their government. Besides California, Oregon is now the first state in the nation to decriminalize all drugs, laying the foundation for reorienting the government's response to drugs to a public health approach rather than a criminal law one.

I highlight the evolution from declaring a war on drugs to policy analysts and advocates debating the impact federal legalization might have on existing state industries. There are already discussions on how and when such large-scale change should be implemented to minimize negative impacts on public health and safety and adequately address the interests of patients, users, and small businesses.

At the same time, I acknowledge there is a long way to go. Marijuana reform opens space for research in so many different realms. Moreover, deaths from drug overdoses rose again to record-breaking levels in 2021, nearing 108,000, the result of an ever-worsening fentanyl crisis, according to data from the Centers for Disease Control and Prevention.

The response to America's opioid crisis through harm reduction strategies represents a significant departure from traditional approaches centered around criminalization and punishment. Harm reduction emphasizes providing essential services and support to individuals struggling with addiction, recognizing their inherent worth and dignity. By advocating for measures such as clean needle exchanges, safe injection sites, access to social services, and medications like methadone or buprenorphine, harm reduction seeks to minimize the harms associated with drug use and provide a pathway towards recovery.

What makes harm reduction particularly compelling is the grassroots nature of its implementation. Local actors, often driven by personal experiences and a desire to help others, have been instrumental in establishing and advocating for these services. I believe that their efforts reflect a bottom-up approach to addressing the opioid crisis, as communities take matters into their own hands to provide essential support and resources. This can be seen as a form of desecuritization, challenging the dominant securitized discourse that frames drug use as a criminal issue rather than a public health concern.

The role of local actors in driving harm reduction initiatives offers an exciting avenue for further research and exploration. Understanding the motivations, strategies, and impacts of these individuals and organizations can provide valuable insights into the potential for community-led desecuritization efforts. By studying these grassroots movements and their influence on policy and practice, I can contribute to the ongoing dialogue surrounding drug policy reform, public health approaches, and the broader implications for social change.

Moreover, the success and potential of harm reduction strategies in addressing the opioid crisis should not be overlooked. Evidence has shown that harm reduction interventions save lives, reduce transmission of infectious diseases, and facilitate access to crucial support services. By shifting the focus from punishment to compassion, harm reduction not only improves the well-being of individuals affected by addiction but also contributes to the overall health and safety of communities.

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