

# GARRETT I. HALYDIER

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## RESEARCH AGENDA

My research explores the dynamics between regulation and industry development as well as the legal, economic, and social history of pharmaceutical industries, with a recent focus on these dynamics as embodied by social equity and economic regulations in the cannabis industry. I investigate these dynamics from both technical and social justice perspectives.

For industry growth, the strength of regulations must vary in predictable ways throughout the lifecycle of an industry to develop relevant human capital, protect domestic industry development, and encourage innovation. This necessary evolution of law over time applies to developing countries protecting fledgling industries before interacting with the international market and to developed countries when new industries, like the cannabis industry, emerge. As the regulatory elements of the industry evolve, questions emerge about a regulatory regime's place in addressing societal inequities, beyond the scope of simply developing a new industry.

### **Cannabis Social Equity Regulations and Industry Development**

My job talk paper is a compilation of a two-article project. The first article, *We(ed) Hold These Truths to be Self Evident: All Things Cannabis Are Inequitable*, 19 U. MASS. L. REV. \_\_ (forthcoming 2023), diagnoses why current approaches to social equity in the cannabis industry continue to fail to promote racial equity while simultaneously exacerbating gender, environmental, and other inequities. I first present a multi-disciplinary recounting of not only the racial inequities, but also the stigma, business, research, energy, sex and gender, hemp, and international inequities of the War on Drugs. This serves as the foundation for a comprehensive compilation of the structural and theoretical reasons for *how* current social equity policies will only continue to fail to address the inequities they target. State licensing processes, managed market dynamics, and natural characteristics of the industry conspire to undercut states' attempts to address social inequity solely by reserving limited numbers of "social equity licenses." State community investment programs to address inequities are funded by taxes on the populations they are intended to help, and industry-led initiatives are treated as marketing campaigns. Retroactive pardons and expungement are routinely underfunded, hobbled by technical issues, unused by beneficiaries, and insufficiently comprehensive to provide effective resentencing solutions, all while states maintain arbitrary criminalization limits that continue to exacerbate inequity. Finally, direct cannabis regulations remain only tangentially associated with the employment, child-custody, housing, insurance, bankruptcy, environmental, and medical research issues presented by the ongoing criminality of cannabis, and the associated inequities remain unaddressed by cannabis regulatory regimes to the ongoing detriment of those most negatively impacted by the War on Drugs.

The second article, *We(ed) the People of Cannabis, in Order to Form a More Equitable Industry: A Theory for Imagining New Social Equity Approaches to Cannabis Regulation*, 19 U. MASS. L. REV. \_\_ (forthcoming 2024), develops a theory that states can use to imagine new policies to effectively pursue social equity in the cannabis industry. The article begins with the first historiography to trace the origin of the term "social equity" as used in the cannabis industry. The

term is a recent, accidental portmanteau of the traditional theories of social justice with the modern conception of equity embedded in newer theories of diversity, equity, and inclusions. It has no explicit definition or theory of its own—merely used as shorthand for the discrete collection of failing policies described in my first article. This conflation of terms erases the original theory of “social equity” as developed since the 1960s in the field of public administration. To recenter the “social” and reclaim the more robust, traditional theories of social and restorative justice, I present a new theory that, first, diagnoses *why* cannabis social equity policies will inevitably fail as discussed in my first article, and second, opens space for imagining new solutions with the capacity to address the broad harms of the War on Drugs.

Per my theory, the current policies are fundamentally *administrative* in nature, i.e. a post hoc change in implementation to address the disparate impact of the previous inequitable administration of a government program. The problem arises when states use this model at the *legislative* level to create cannabis regulatory regimes intended to address the broad harms of the War on Drugs, but only provide tools that address (some) of the inequities resulting from the new regulations themselves. My theory adds a new legislative dimension to the traditional public administration theory of social equity that broadens potential solutions by centering the development of cohesive regulatory schema rather than individual policies. I apply the theory to produce a novel solution that uses the level of legalization as an organizing principle for legislation that pursues both administrative equity in the new industry and societal equity for the victims of the War on Drugs.

### **Pharmaceutical Regulations and Industry Development**

My first published piece, *A Hybrid Legal and Economic Development Model that Balances Intellectual Property Protection and Economic Growth: A Case Study of India, Brazil, Indonesia, and Vietnam*, 13 *ASIAN-PAC. L. & POL’Y J.* 86 (2012), developed a general theory of regulatory strength versus industry development based on a legal, historical, and economic comparative analysis. This paper combined insights from law and economics to create a hybrid model that examines the U-shaped relationship between the strength of a country’s intellectual property regime (“IPR”) and its level of economic development over time. India successfully resisted decades of international pressure to implement stronger IPR protections and emerged as a world-leading supplier of affordable generic drugs. Brazil and Indonesia bowed to international pressure to implement stronger IPR protections, and both countries continue to struggle to maintain domestic pharmaceutical industries. As Vietnam entered the world stage, this paper recommended an IPR structure that would foster a nascent, domestic pharmaceutical industry. This paper has been cited approvingly and consistently since it was published, including in the Sage Handbook of Intellectual Property and the Asian Yearbook of International Law, and in law review articles evaluating IPR strength in China, Iran, Pakistan, and the world at large.

### **Works in Progress**

My current writing projects build on my teaching interests in business and commercial law, expand my cannabis social equity writing, and demonstrate a multi-disciplinary approach to legal research in further pursuit of the relationships between industry regulation and industry growth.

*State Cannabis Programs Should be Leary of the 5th Amendment* (work-in-progress). The Court in *U.S. v. Leary* struck down the Marijuana Tax Act of 1937 in its entirety for violating the 5th Amendment by requiring people to register with the federal government, thereby certifying their participation in activities that were illegal under state law. Current state programs require business owners and individuals to do the same, certifying their violation of federal law. These registration provisions are inherent in the structure of a state's regulatory program, and any alternative will necessitate either recriminalization, decriminalization, or outright legalization. I have completed the research survey of all state programs and begun drafting the paper now.

*It Is High Time to Expunge the Past: Evaluating Best Practices for Cannabis Resentencing and Record Clearance Programs* (work-in-progress). States that decriminalize or legalize cannabis possession consider retroactive clemency, executive pardons, resentencing, and expungement programs an essential element of social equity. However, these structures and their implementations vary greatly, and best practices need to be developed to inform future state and federal programs. I am working on this project as an outgrowth of my current advocacy work for pardons and expungement in Hawai'i, and my research is still ongoing.

### **Future Research Questions**

First, *Leaf(v)ing the Industry: Current State Approaches to Cannabis Industry Insolvencies*. Cannabis illegality at the state and federal level inhibits cannabis industry access to both banking and bankruptcy systems. State specific alternatives have seen some success and should inform federal bankruptcy approaches once cannabis is federally legal. I have addressed this issue in several classroom and professional lectures and will continue to expand on those ideas.

Second, the current regulatory ambiguity of Web3 activities and assets, whether they are securities or currency, raises questions about the application, redefinition, and expansion of UCC Article 9. This is an arena where my interests in how to regulate new industries to facilitate industry success can provide insight into the effects of regulatory ambiguity, rather than the strength of a regulatory regime, on the development of new industries.

Third, regulatory approaches to new AI technologies need investigation and standardization to foster the growth of the industry and maintain the United States' technological leadership. Intellectual property protection of both the AI model, its inputs, and its outputs remains in dispute, and the solutions imagined will either foster or stifle the industry at its inception. This project builds on my previous work on the relationship between intellectual property protections and new industry development as well as work I completed this summer while consulting for an AI medical technology startup.

Fourth, I am expanding the work from my first paper by investigating the impact of regulatory regime strength on the creation of nascent pharmaceutical cannabis industries in developed, rather than developing countries. This project will use a post-hoc evaluation of a 2016 quantitative and qualitative pre-analysis of Hawaii's cannabis industry development to analyze the accuracy of those predictions and apply lessons learned to new markets.