Reevaluating Drug Policy: Uruguay's Efforts to Reform Marijuana Laws

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In recent years, many countries have been reevaluating drug policy as a result of changing perceptions and past failures in government strategy. In 2010, marijuana was the most produced, trafficked, and consumed recreational drug throughout the world, with an estimated 119–224 million adult users.1 The United Nations estimates that annual drug consumption from 1998–2008 increased by 8.5 percent for cannabis (from 147.4 to 160 million users).2

In Uruguay alone, the marijuana market is worth an estimated $75 million U.S. dollars annually.3 Because of the significant financial and social implications of illegal drug use, many countries are beginning to consider different methods to modernize and improve their drug policies. New and often increasingly liberal laws are being considered throughout the world that would decriminalize personal using of cannabis, granting many governments the benefits of taxation and regulation while accepting many of the public safety and health risks associated with cannabis consumption.4

This comment will analyze the new trend of decriminalizing personal marijuana possession, consumption, production, and government regulation of its growth, distribution, and sale, using Uruguay as a case study. Legislation is currently pending in the Uruguayan Congress that would create a completely state-managed, legal cannabis industry.5

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5. See Proyecto de Ley CM 534 de 8 Augusto 2012 del Gobierno Uruguayo que Legaliza la Marihuana [Bill Concerning Government Regulation of the Cannabis
Latin and South American nations are under unique pressure to develop strategies to combat the continually spreading and escalating drug-related violence that permeates their nations. Existing law in Uruguay prohibits distribution or sale of marijuana, but does not establish penalties for possession related to personal consumption, focusing instead on illegal trafficking of the drug. A bill has been proposed, and is now under formal consideration in Uruguay that if passed, would establish a new level of cannabis decriminalization, regulation, and state control previously unprecedented in global drug policy.

I. BACKGROUND AND HISTORICAL DEVELOPMENT

Unlike many other nations, Uruguay has a relaxed and informal attitude towards the possession and consumption of "lighter" drugs such as marijuana and, as mentioned, current law does not prohibit nor punish possession or consumption for personal use. In the United States, perceptions have slowly but dramatically started shifting towards this viewpoint, as shown through the difference of President Clinton's "I didn't inhale" statement to President Obama's admission that "I inhaled frequently... that was the point."

Throughout the world, the full spectrum of stances on this issue can be found, from absolute prohibition to President Mujica's new radical platform that will make Uruguay the first nation to completely decriminalize and regulate the sale of cannabis through a national agency.

In 1974, the Uruguayan legislature passed Law 14.294, which avoided establishing any specific quantity level of cannabis possession that would per se be ruled as intended for person consumption. In 1998, Law 14.294 was amended and modified by Law 17.016, which did not define or quantify central terms such as personal consumption. It is therefore the responsibility of the judge to use his or her sole discretion to determine as
a fact issue whether a defendant is in possession of marijuana for the purpose of personal use or, in the alternative, if the purpose of such possession is to engage in trafficking, in which case the defendant would be subject to criminal repercussions if found guilty. This leaves an obvious gap in law that the judiciary has been forced to work around, because while the cultivation of cannabis is prohibited, its possession for the purposes of personal consumption is protected by the same legislation. Forcing interaction between consumers and criminal organizations trafficking prohibited substances or drug cartels is not a policy that Uruguayan drug officials would likely encourage, meaning the proposition expressed in Law 17.016 that individuals have a right to personal consumption, but are prohibited from cultivation, is a tenuous position difficult to explain or justify. This is a chief reason, among many others, that modification of existing regulations is a serious and supported proposal.

In Uruguay, drug policy—at least in a criminal sense—has always been more focused on the “harder” drugs that are readily available because of their more volatile and destructive nature. For example, cocaine use in the region has been constantly evolving since the 1990s, when a “paste” first began to surface. By 2006, smokable cocaine was prevalent, a development the Transnational Institute Drugs and Democracy Programme suggests is a “consequence of the ‘balloon effect’ that has been transforming, expanding, and moving cocaine production from the Andean region to countries in the Southern Cone.” It is not surprising to learn that authorities would allocate their resources to combat the cartels that promote the intrusion and spread of drugs like cocaine and heroin before concerning themselves with the personal consumption of marijuana.

Hard data demonstrates that policy changes—in at least some fashion—may be justified by widespread drug abuse throughout South America. The United Nations Office on Drugs and Crime (UNODC) released a report confirming that marijuana was the most common drug consumed in the region. Furthermore, incidence of use by students ranged from 4 percent in Peru to 23 percent in Chile. While Uruguay has a very low crime rate, especially when compared to the region, violent crimes have increased in recent years, a fact some attribute to drug traffickers increasingly utilizing the country as a base not only to establish domestic operations, but also to ship drugs globally, especially towards

14. Id.
15. Law 17.016, arts. 30-31 (Uru.).
17. Id. at 3.
19. Id.
the European market via Africa.\textsuperscript{20}

\textbf{II. COMPARISON TO OTHER NATIONAL DRUG POLICIES}

An analysis of other national drug policies is relevant to any discussion concerning Uruguay's sweeping new proposal, because just as former policies shape the ones now in place, future policies will also shape those yet to come. Aware of the dramatic implications his legislation will have should it pass, President Mujica's actions stirred other regional leaders to examine their own domestic policies and consider similar legislation.\textsuperscript{21} Similarly, the current agenda in Uruguay is certainly influenced by a number of jurisdictions that have already experimented with unique frameworks to regulate cannabis.

\textbf{A. THE NETHERLANDS}

The classic example of a state embracing a liberal cannabis policy is that of the Netherlands. While Amsterdam is (in)famous for its roughly 220 coffee shops where marijuana and its derivates are openly sold and consumed, the legal status of marijuana in Holland would surprise many.\textsuperscript{22} The Netherlands has made it illegal to "produce, possess, sell, import, and export drugs;" the reason the coffee shop culture has developed is a distinction made in 1976 between "hard" and "soft" drugs.\textsuperscript{23} The Dutch authorities consider hash and weed to be "soft" drugs and less harmful to both consumer health—and society as a whole—because of their status as sedatives.\textsuperscript{24} To further the drug policy of Holland to reduce the demand, supply, risk to user, and impact on the public, the Dutch government allows coffee shops to operate by selling small amounts of soft drugs, a policy known as "toleration" through which the criminal misdemeanor of selling soft drugs is not pursued by prosecutors.\textsuperscript{25} This solution is based on the premise that a policy of prohibition will be ineffective, and that people will continue using drugs regardless of their legal status. It shifts the focus of law enforcement from individual consumers to large-scale traffickers who profit from exploitation of prohibition regulations.\textsuperscript{26} The regulations that dictate the toleration policy include terms that limit sales to individual consumers to five grams of


\textsuperscript{22} David Jolly, \textit{Amsterdam Shops Selling Marijuana to Stay Open}, \textit{N.Y. TIMES}, Nov. 2, 2012, at A10.


\textsuperscript{25} HOLLAND: THE OFFICIAL SITE OF HOLLAND, supra note 23; see also \textit{Gouv't of the NETH.}, supra note 24.

\textsuperscript{26} HOLLAND: THE OFFICIAL SITE OF HOLLAND, supra note 23.
cannabis per day.\textsuperscript{27} Coffee shops are also restricted to the sale of soft drugs (cannabis and some of its derivatives); the sale of hard drugs remains illegal.\textsuperscript{28} Additionally, sales may not be made to minors, and no advertisement may be employed.\textsuperscript{29} It is critical to note that the policy of toleration is not designed to approve of drug use. On the contrary, the purpose of the policy is to limit drug use and its impact on the public by providing a closely monitored forum for cannabis consumers who would otherwise resort to criminal traffickers to obtain their drugs—a sort of subtraction by addition.\textsuperscript{30}

In recent years, the toleration policy has been called into question as the tetrahydrocannabinol (THC) element of cannabis—the primary psychoactive component—has increased dramatically.\textsuperscript{31} Attempting to fight this development, the Netherlands declared that cannabis containing a THC content of 15 percent or more is now classified as a “hard” drug not subject to the toleration policy.\textsuperscript{32} The national government thought to go much further when it announced a proposal to ban foreigners from coffee shops and force local consumers into a “cannabis card” system that would serve to validate their nationality and provide for registration in a government database. As the Netherlands, particularly Amsterdam, developed a reputation as the “Mecca of Marijuana,”\textsuperscript{33} the national government fought hard to eschew the image and the accompanying “late-night revelry, traffic jams, and dealing in hard drugs” emerging as a response to the drug tourist industry.\textsuperscript{34} Prime Minister Mark Rutte attempted to implement regulations that would limit each cannabis shop to a customer base of 2,000 consumers and require shops to maintain records of those clients while categorically prohibiting the sale of cannabis to foreigners.\textsuperscript{35} Facing criticism that little crime is associated with the marijuana industry outside of Amsterdam and that the “cannabis card” system would merely encourage a return to black-market drug sales, the Dutch government abandoned its proposal, opting instead to allow local authorities to determine on a case-by-case basis what type of regulations serve their constituents’ best interests.\textsuperscript{36} The \textit{New York Times} quoted Dutch Justice Minister Io Opstelten as saying, “the best way of seeing which measures

\textsuperscript{27} Gov’t of the Neth., supra note 24.  
\textsuperscript{28} \textit{Id.}  
\textsuperscript{29} \textit{Id.}  
\textsuperscript{30} \textit{Id.}  
\textsuperscript{32} \textit{Gov’t of the Neth.}, supra note 24.  
\textsuperscript{36} \textit{Id.}; see also Amsterdam Ditches Controversial ‘Weed Pass’, supra note 34.
are effective is at the local level." Undoubtedly, the powerful lobby that benefits from the multi-million dollar foreign "drug tourist" industry—which in Amsterdam caters to an estimated one-fifth, or nearly one and half of the seven million annual tourists—influenced this decision. The fierce opposition that major political figures such as Amsterdam Mayor Eberhard van der Laan face when implementing new legislation that impacts the tourist industry makes it clear that cannabis culture has developed into a multi-million dollar industry firmly cemented in Dutch law.

B. PORTUGAL

While the Netherlands is generally thought of as the most liberalized nation in terms of cannabis use and deregulation, Portugal has decriminalized its drug laws to an even higher degree. In 2001, Portugal became the first country in Europe to abolish all criminal penalties for personal possession of drugs. Portugal's decriminalization law is historic in scope. It abolishes criminal sanctions not only for marijuana possession, but also for possession of cocaine, heroin, and methamphetamine, replacing prison sentences with optional therapy opportunities. The concept behind this decriminalization effort is to focus efforts towards health services for addicts rather than incarceration—a policy proponents of the plan argue is more cost effective. A panel of a psychologist, a social worker, and a legal advisor suggest what type of treatment might best help the addict or offender, which he or she is then allowed to accept or refuse without threat of criminal repercussions. The CATO Institute published a paper reporting that following implementation of this decriminalization policy, illegal drug use in Portugal declined and that the percentage of addicts seeking treatment nearly doubled in five years. Author of the paper Glenn Greenwald declared that, "judging by every metric, decriminalization in Portugal has been a resounding success ... it has enabled the Portuguese government to manage and control the drug problem far better than virtually every other Western country does." Time reports that Portugal's rate for lifetime marijuana use is an insignificant 10 percent compared to a staggering 39 percent of American citizens, who despite facing some of the harshest

37. Amsterdam Ditches Controversial 'Weed Pass', supra note 34.
38. Id.
39. Id.
41. Id.
42. Id.
43. Id.
45. Szalavitz, supra note 40.
criminal penalties for drug use, boast the highest rates of usage in the world. Like in Holland, the “Drug Czar” of Portugal, João Castel-Branco Goulão, suggests that the new policy allows authorities to focus their efforts on traffickers rather than consumers, a strategy that has seen early success and produced significant benefits to curb drug-related crime. The central point that many advocates of decriminalization stress is that Portugal provides evidence that decriminalization does not result in increased drug use, while opponents stress serious skepticism that the Portugal case study supports such dramatic conclusions, instead urging that the statistics are the result of cyclical changes or unique conditions.

C. COLORADO AND WASHINGTON STATES

While U.S. law is a separate issue from the development of Uruguayan marijuana policy, the timing of new legislation passed in the states of Washington and Colorado allows for interesting and relevant comparisons between the emerging policies of these jurisdictions and Uruguay. In November 2012, ballot initiatives in Colorado and Washington passed by relatively narrow margins (55 percent in Washington, 52 percent in Colorado) legalizing the recreational possession and consumption of marijuana, creating a state licensed, regulated, and taxed cannabis industry. On the same night, a similar proposal was handily defeated in the state of Oregon, Massachusetts eliminated criminal and civil penalties for consumers with a “debilitating medical condition,” and Arkansas rejected a medical marijuana proposal.

For many marijuana advocates, this was a major political victory. In Colorado, state Amendment 64 was the vehicle that introduced marijuana reform. The legislation immediately legalized possession of one ounce of marijuana for persons aged twenty-one or older when used for personal consumption. Colorado citizens are also now legally entitled to grow up to six plants for the purpose of personal consumption. The State will not begin to issue licenses for commercial marijuana businesses until 2014, once laws governing the regulation of this new industry are passed. It is critical to note that while Amendment 64 legalizes marijuana consumption and possession at the state level, federal law expressly

47. Szalavitz, supra note 40.
49. Id.
51. Id.
52. Id.
prohibits marijuana use under the Controlled Substances Act. Additionally, local county or city government within Colorado may, at its discretion, pass ordinances banning recreational cannabis sale—an example of a jurisdiction that has done precisely this is Douglas County. Amendment 64 also places important limitations on the freedom to smoke cannabis, prohibiting smoking in public areas.

The State of Washington also legalized the possession of less than one ounce of marijuana for the purpose of personal consumption by adults aged 21 or older. As in Colorado, it remains illegal to smoke the drug in public places or to drive a motor vehicle under the influence of marijuana. Washington is also establishing a licensing system and regulations for the industry before sales are legalized (expected to occur by December 2013). Colorado’s regulatory scheme is more similar to the Uruguayan plan because it provides consumers the option to grow up to six plants, while in Washington, users must buy from state-licensed providers.

Allen St. Pierre, executive director of the National Organization for the Reform of Marijuana Laws (NORML) expresses what the passage of these state initiatives means to legalization advocates, writing, “[these] elections have forever changed the playing field regarding cannabis prohibition laws in America (and probably in large parts of the world, too).” On the other side of the issue, it is critical for residents of these states to understand that consumption or possession of marijuana is still a Federal crime, and the Drug Enforcement Agency issued a stark reminder of this, stating “enforcement of the Controlled Substances Act remains unchanged” and that “when enacting the Federal Controlled Substances Act, Congress determined that marijuana is a schedule I controlled substance.”

University of Denver Law Professor Sam Kamin explains the conflict, stating:

Every store that sells marijuana here is violating federal law. The federal government could come in and seize assets. They could charge people criminally. They could send people to jail for scores of years. They have chosen, so far, not to do that. It simply can’t go on the way it is, it can’t be a big industry and a Federal crime at the same time.

As Kamin asserts, the Federal government of the United States still has yet to seriously intervene in the new state regulatory schemes decriminal-
izing marijuana, creating a substantial political question regarding the conflicting state and federal provisions of drug law that will be answered in the near future. Commentators speculate that potential options might include: (1) a hands-off approach; (2) enforcing federal law and raiding state sanctioned facilities and users; (3) filing suit against the states to prevent the construction of the regulatory agencies necessary to carry out duties such as taxation and distribution of licenses, arguing the Federal law preempts such action; or (4) Congressional amendment to the Controlled Substances Act. It is clear that due to limited resources, it is very unlikely that Federal prosecutors will focus on individual consumers operating in concert with state law.

III. DEVELOPMENT OF THE URUGUAYAN PROPOSAL

Uruguay passed two decrees in 1999 in response to increasing problems relating to drug related crimes and health concerns. One decree established penalties and regulations regarding not just the sale and trafficking of drugs, but also the illegal proceeds gained from such transactions and the other addressed a number of public health concerns associated with the infestation of drugs into Uruguayan society. These measures were not enough, because problems remained significant enough to force political groups within Uruguay to consider legalization policies inconceivable in the past.

A. EXISTING LAW

To effectively analyze the impact the new regulatory scheme could create, it is critical to consider Uruguay’s current state of law. Law 17.016 of 1998 is the principle legislative rule governing the control of drugs within Uruguay. Law 17.016 brought about significant change by changing the classification of the term drug within the Uruguayan legal system because “initially drug laws only dealt with narcotic and psychoactive substances (sustancias estupefacientes y psicotrópicas), but Law 17.016 also included ‘chemical precursors or other chemical products.’” Interestingly, rather than define these terms itself, the Uruguayan legislature has deferred to the universal definitions set forth in the United Nations 1961 and 1971 Conventions.

Articles 30 and 31 of Law 17.016 are especially germane to any discussion regarding the criminal consequences of marijuana use. Article 30

64. Id.
66. Id.
67. See generally Bill 534 of August 8, 2012 (Uru.).
68. TRANSNATIONAL INST., supra note 65.
stipulates that those who produce plants to extract drugs inducing psychological or physical dependence unlawfully shall be sentenced to prison for a period between twenty months and ten years.\textsuperscript{70} Article 31 extends the reach of this prohibition by applying the same penalty contained in Article 30 to those who import, export, distribute, or transport the same prohibited drugs or those who possess such drugs for a purpose other than personal consumption.\textsuperscript{71} Together, Articles 30 and 31 of Law 17.016 effectively criminalize production and trafficking of marijuana but do not criminalize personal consumption. While 2012 saw the most significant political action towards decriminalization, the idea is not new. Nearly five years ago, former President Jorge Batlee revealed during an interview that he was in favor of total drug decriminalization.\textsuperscript{72} Explaining his position and rational for supporting a viewpoint that, before, had never been seriously considered, Batlee pointed to the economics of the situation, suggesting that by regulating the drug business, it would provide the state a larger opportunity to attack the drug problem itself, and it would become much less expensive to subsidize the treatment of citizens with health problems stemming from unhealthy drug use.\textsuperscript{73}

B. Initial Proposals

In 2010, it became increasingly likely that decriminalization of marijuana would become an issue the Uruguayan legislature would seriously consider when Congressman Luis Lacalle Pou drafted the first bill to contain language to that effect.\textsuperscript{74} Lacalle Pou's bill would attempt to "separate users from the illicit trade as a way of attacking drug trafficking . . . [and establish] more severe penalties for drug trafficking."\textsuperscript{75} A serious flaw that interested parties exposed with this proposal is that, similar to existing Law 17.016, while decriminalizing personal use and establishing significant penalties for drug traffickers, Pou's bill failed to create any method to effectively separate personal consumers from traffickers, continuing to leave the issue in the hands of the judiciary.\textsuperscript{76}

Congressmen Nicolás Núñez, Fernando Amado, and Sebastián Sabini also introduced three other notable bills legalizing cultivation of marijuana for personal use during 2010.\textsuperscript{77} All three of these congressmen came from distinct political parties, the Socialist Party (Partido Socialista), Colorado Party (Partido Colorado), and Popular Participation Movement (Movimiento de Participación Popular) respectively.\textsuperscript{78} This suggests that the underlying support for new drug policy is fairly uniform

\textsuperscript{70} Law 17.016, supra note 7, art. 30.
\textsuperscript{71} Id. art. 31.
\textsuperscript{73} Id.
\textsuperscript{74} TRANSNATIONAL INST., supra note 65.
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
and difficult to divide by political lines. The Transnational Institute Drug Law Reform Project identifies Sabini’s bill as “the most sweeping of the three” and specifies that it “allow[s] an individual to possess up to twenty-five grams of cannabis and eight plans.”79 Sabini calls the development of these proposals a “profound change in approach” and that one of the key objectives of this policy will be to “separate the market: users from traffickers, marijuana from other drugs like heroin.”80 This distinction between personal consumption and trafficking behavior provides the first bright-line rule that can eliminate judicial discretion by setting objective criteria establishing per se personal consumption levels.

The same limits were used in a revision of the drafted bill released in July of 2011 and signed by Núñez, Amado, and Sabini.81 In the Explanatory Statement accompanying this proposed bill, the purpose is described as “seeking to avoid discretion by judges that generates legal uncertainty, and establish clear mechanisms for access, specifying the amount of cannabis that can be planted for personal consumption . . . [and] to provide [judges] with an objective element to streamline procedures and prosecutions.”82 These procedures have the potential to prevent any miscarriage of justice that can occur under the current discretionary system. For example, while the Uruguayan criminal penalties are meant to apply only to traffickers or commercial growers, those who consume can be mischaracterized as possessing for “non-personal” purposes83 and it is without doubt that occasionally a personal user is judged a commercial producer or distributor and suffers the adverse consequences.

In February 2011, writer Alicia Castilla and craftsman Mauricio B. were arrested and sentenced to incarceration for possessing fifteen and seven plants respectively of cannabis for personal consumption.84 These arrests, combined with Uruguay’s relaxed attitude towards personal marijuana consumption, ignited a wave of protests and a movement to free both Castilla and the other Uruguayan citizens imprisoned for the cultivation of marijuana for personal use.85 When the demonstrators gathered on the steps of the Uruguayan Supreme Court, their efforts culminated in a statement by Court press spokesman Raul Oxandabarant “recognizing the existence of a legal vacuum,” and National Drug Agency Secretary Milton Romani stating that “it seems not prudent and discredits its drug policy that a sixty-six year old woman, clearly not a danger to

79. Id.
82. Id.
83. Law 17.016, arts. 30-31 (Uru.).
84. Transnational Inst., supra note 65 at 3.
public safety, is in prison."\textsuperscript{86} Castilla, a writer from Argentina, alleges that the plants in her home were solely for the purpose of personal consumption and was quoted in the Spanish newspaper \textit{El País} stating, "I think it's an injustice that a person is in prison for planting what they consume."\textsuperscript{87} After Castilla was found guilty under Article 30 prohibiting planting of plants to extract drugs inducing psychological or physical dependence, she was judged a trafficker by default and imprisoned, where she wrote an open letter to gather additional support for her cause.\textsuperscript{88} Through this letter, which received widespread circulation among sympathetic supporters throughout Uruguay, Castilla pointed out that she grows and consumes for personal use, and she moved into the house that was later raided only with the "intention of having a peaceful place to spend [her] old age."\textsuperscript{89} The letter goes on to state that she was "subjected to taunts and various forms of abuse" and that Canelones prison, where she was incarcerated, was a "squalid and violent" prison where inmates included murderers and crack dealers and that rats, cockroaches, and lice were omnipresent.\textsuperscript{90} Congressmen like Mr. Sabini argue that these cases are an unfortunate product of the current law regulating marijuana consumption, production, and transfer, and that further, his proposed legislation would help to cure these undesirable results.

C. Introduction of Bill 534

The Uruguayan Congress was officially presented with the initial draft of Bill 534 decriminalizing the cultivation and harvesting of marijuana plants in May of 2011.\textsuperscript{91} This draft was expressly supported through the signatures of the Independent Party (\textit{Partido Independiente}) and the Colorado Party (\textit{Partido Colorado}) in addition to a number of representatives from the controlling coalition of the Broad Front.\textsuperscript{92} Article 2 of the Bill would overrule Law 17.016 and related decrees by approving state regulation—direct or indirect—of "import, export, planting, cultivation, harvest, production, acquisition in any capacity, storage, marketing, and distribution of cannabis or its derivatives," potentially establishing Uruguay as the first nation in history to regulate marijuana.

According to the version of Bill 534 updated in December, the purpose of state regulation and decriminalization of marijuana is to "protect, promote and improve the public health of the population through a policy designed to minimize risk and reduce the harms of cannabis use, which promotes adequate information, education and prevention on conse-

\textsuperscript{86} Id.
\textsuperscript{87} Id.
\textsuperscript{88} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Id.
\textsuperscript{91} Transnational Inst., supra note 65.
\textsuperscript{92} Id.
quences and adverse effects associated with consumption.” The introduction to the August version of Bill 534 similarly described the intent as establishing a normative framework to permit regulation of the cannabis market with the intent of reducing the risks and potential harm to those people who use marijuana for recreational or medicinal purposes and who, having to obtain supply from the illegal market, have to degrade themselves and become involved in criminal activities and high-risk practices, and, in addition, expose themselves to contact with consumption of drugs that are toxicologically riskier, which is the case of coca paste, among others.

As mentioned previously, the influx of dangerous addictive and detrimental forms of cocaine has been of primary concern to the Uruguay Drug Agency, and it is therefore not surprising to see “coca paste” (a cocaine derivative commonly smoked) explicitly referred to during in the introductory statement. Uruguayan Defense Minister Eleuterio Fernández Huidobro has stated the goal is “strict state control over the distribution and production” of cannabis, and President Mujica calls it an anti-crime measure.

IV. LEGAL IMPACT OF BILL 534 BECOMING LAW

Because President Mujica’s Broad Front coalition “enjoys ample majorities in both houses [of the Uruguayan Congress],” the current proposal to further decriminalize and regulate cannabis is a near certainty. Bill 534 states, “the State will assume control and regulation of the activities of importing, producing, acquiring under any title, storing, commercializing, and distributing cannabis or its derivatives under the terms and conditions established in this respect in the implementing regulation.”

The bill’s text goes on to assume further state control over “all other material activity that is necessary before, concurrent or after, to implement the activities [above]” and that “the activities . . . should be carried out exclusively in the framework of a harm reduction policy that also alerts the population to the consequences and harmful effects of cannabis con-


94. Bill 534 of August 8, 2012, at intro. (Uru.).


96. In order to analyze more specifically the individual sections within Bill 534, the most recent version at time of this writing will be utilized (released December 2012). Because this version of Bill 534 does not have an official English version at the time of this writing, analysis will be derived from independent translation.


98. Bill 534 of August 8, 2012, at 11 (Uru.).
sumption, as well as the effects of lowering the risks and harm to the population that could potentially consume cannabis established in this respect in the implementing regulation." 99

A. Regulation of Cannabis

While Title I of Bill 534 provides a brief description of the interests and goals of the legislation, Title II goes on to address the legal issues directly surrounding cannabis, separating the narcotic laws (Chapter 1) from issues of public safety and health (Chapter 2). 100 Article 3 begins the body of this law by amending Article 3 of Law 17.016 through an outright prohibition of planting, cultivation, harvesting, and commercialization of the cannabis plant, subject to a few important exceptions. 101 These include areas such as scientific research, non-psychotic cannabis—also known as hemp—and most notably, the production for personal consumption or that by membership clubs. 102 Personal consumption is also objectively quantifiable in this bill for the first time in Uruguay’s history of marijuana regulation, and is defined as a harvest of “up to six cannabis plants” and any collection from that planted product in an amount of up to 480 grams. 103 Membership clubs, a concept created by this bill, are to be controlled by the Instituto Nacional del Cannabis (National Cannabis Institute or INC) and are defined to consist of no more than fifteen members, legally entitled to grow up to ninety plants and collect from that planted product an amount of up to 7,200 grams per year. 104 The INC will record these clubs and their memberships in order to implement effective regulation, but the identities of members will remain protected. 105 Articles 30 and 31 of Law 17.016 would be substantially amended by passage of this bill as well as by establishing criminal penalties consisting of incarceration or a period of twenty months to ten years for either unlawful production (Article 30) or unlawful trafficking (Article 31) of cannabis. 106 Furthermore, Article 31 goes on to specify that any person transporting less than forty grams of marijuana will be considered de facto as a personal consumption. 107

B. Public Health Considerations

Chapter 2 of Title II concerns itself with public and consumer health. 108 Prudent measures are taken in these articles, including cooperation with El Sistema Nacional Integrado de Salud (The National Integrated Health

99. Id.
100. December Update to Bill 534, tits. I–II.
101. Id. art. 3.
102. Id. art. 3 § A–E.
103. Id. art. 3 § D.
104. Id. art. 3 § E.
105. Id.
106. Id. arts. 4–5.
107. Id. art. 6.
108. Id. ch. 2.
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Services) and El Sistema Nacional de Educación Pública (The National Public Education System) to establish policies for the promotion of health, methods to stem problematic cannabis use, and in addition, develop avenues for consumers to engage in counseling or guidance to reduce the harmful effects that can accompany marijuana consumption.\(^\text{109}\) Article 9 prohibits advertisement of cannabis products in all prominent forms of media, similar to the type of prohibitions many countries have established against tobacco advertisements.\(^\text{110}\) Together, these provisions attempt to establish safeguards that will curtail the negative effects of abusive marijuana usage that could result from the relaxed avenues to purchase the drug.

C. THE NATIONAL CANNABIS INSTITUTE

Title III is the most substantive section of Bill 534, because it establishes the INC, outlines its purposes, details its internal organization, and most importantly, grants power with which the Institute is to carry out its duties.\(^\text{111}\) The INC’s function will be to regulate all activities of the cannabis industry, from planting to distribution and storage; further, it will highlight actions that could be taken by the Agencies, described in Chapter II, to reduce risk associated with increased or abusive marijuana use, and lastly, the INC will monitor compliance with the provisions outlined in Bill 534.\(^\text{112}\)

The second half of Title III concerns itself with the internal administration of the Institute by establishing positions and specifying organization.\(^\text{113}\) The INC would be composed of a Board, an Executive Director, and a National Advisory Council.\(^\text{114}\) The Executive Director would be appointed for a term of three years by majority of the Board and confirmation by the President.\(^\text{115}\) The positions will be filled by relying on various departments and ministries already established within the Uruguayan government to supply experts from numerous fields including social development, public health, agriculture, education, economics, and narcotics.\(^\text{116}\) While these representatives will undoubtedly help guide the INC reach its goals, the task facing them will be unlike anything they have dealt with in their previous positions. For example, because cannabis is a crop grown like any other, it is prudent to appoint a representative from the Ministry of Agriculture to provide advice and input. However, Uruguay’s major agricultural endeavors up to this point have been wheat, soybeans, and rice—the cultivation of marijuana will pose issues that no one has prior experience with, and this collective group will need to form

\(^{109}\) Id. arts. 7–8.
\(^{110}\) Id. art. 9.
\(^{111}\) Id. tit. III.
\(^{112}\) Id. art. 13.
\(^{113}\) Id. arts. 14–20.
\(^{114}\) Id.
\(^{115}\) Id. arts. 16, 18.
\(^{116}\) Id. arts. 15, 20.
creative solutions.\textsuperscript{117} Citizens will also have a voice through two direct representatives on the Advisory Council; one appointed to represent the membership clubs and another to represent the licensees.\textsuperscript{118} Because the licensees and cannabis clubs will be held to the regulatory standards developed by the INC and violations may result in significant loss of liberty, inclusion of these groups is a practical move designed to negate any potential due process concerns.

The most significant section of Bill 534 is Chapter III of Title III, which outlines the various legal powers and responsibilities given to the administrative bodies of the INC.\textsuperscript{119} The INC is responsible for granting licenses to private entities engaged in the cannabis industry, as well as granting memberships to the cannabis clubs.\textsuperscript{120} Furthermore, the INC must keep records of all "self-cultivation" and use such records to monitor compliance with the provisions of Bill 534 and issue violations.\textsuperscript{121} Violations may be dealt with by warnings, penalties, confiscations, destruction, suspensions, disqualification, or closing of establishments, but it remains within the discretion of the INC to determine what the appropriate response will be for each specific violation.\textsuperscript{122} The INC Board is given a general type of supervisory power, and it is free to delegate specific responsibilities to more specialized entities within the INC, such duties include control of personal decisions, budgetary planning, and setting the cost of licenses.\textsuperscript{123} The Executive Director is responsible for the implementation of the policies designed by the Board.\textsuperscript{124}

Undoubtedly, one of the most significant parts of this Bill is the creation of a massive bureaucratic administration responsible for not only regulation, but—to the extent the responsibilities are not delegated to private entities—the activities of an entire industry.\textsuperscript{125} Many states find it prudent to control certain vital or particularly dangerous industries. For instance, there are hundreds of airlines worldwide in which a state is the majority shareholder, thereby allowing close regulation of the transportation industry.\textsuperscript{126} Likewise, many states own and control their energy industries, the most obvious example being Saudi Aramco.\textsuperscript{127} The INC would face the same challenges that typify many of these regulatory agencies’ day-to-day business should this Bill become law.

\begin{footnotes}
117. Cave, supra note 80.
118. December Update to Bill 534, art. 20.
119. Id. tit. III, ch. III.
120. Id. art. 22.
121. Id.
122. Id. arts. 22, 33-34.
123. Id. art. 23.
124. Id. art. 24.
125. See generally December Update to Bill 534.
\end{footnotes}
There are many arguments suggesting that government control of industries is warranted and necessary when such industries serve critical public interest or pose unique dangers. Certain functions, such as security, are vital to the state and could be considered non-delegable duties of the government to safeguard; but most industries fall into a middle ground, a prime example being the power industry. Many also argue that government intervention in free enterprise restricts individual liberties, is inefficient, and is overly burdensome, raising prices and reducing the quality of service. This is not a new battleground, and there are valid points to be made by both parties. The struggle that the ICN will face is to find an acceptable middle ground where it may achieve the policy goals and regulatory functions prescribed to it through CM 534 while remaining an efficient and effective government entity.

V. ANALYSIS AND JUSTIFICATIONS FOR POLICY CHANGES

Examined in detail, Bill 534 would introduce a number of interesting changes to drug law. Before introducing its substantive changes to law, the August proposal outlines the framework and premises that lead to its conclusions. This analysis begins by examining the history of drug regulation, pointing out that criminal policy is relatively new and is fundamentally based upon the 1961 Single Convention on Narcotic Drugs. For decades, the framework of the Convention was not examined or challenged, as the policy appeared to work well; however, in more recent times, the exacerbated drug violence has demonstrated that inflexible Convention framework has “proven to be an inefficient, in reducing individual and social harm associated with cannabis consumption.”

A. THE (FAILED) WAR ON DRUGS

A report by the Global Commission on Drug Policy states that “the global war on drugs has failed . . . [and that] in practice, the global scale of illegal drug markets—largely controlled by organized crime—has grown dramatically.” South and Central American leaders have abandoned faith in United States strategy to combat drug violence after many years without success; indeed, Time describes the attitude of the Colombian President Juan Manuel Santos and the other participants in the Summit of the Americas as “drug-war-weary.” A regional summit in

130. Brooks, supra note 128.
132. Id.
134. Pagett, supra note 20.
Mexico prompted eleven Latin American nations to issue a joint statement on organized crime and drug trafficking, declaring in point seven that

[w]hat would be desirable, would be a significant reduction in the demand for illegal drugs. Nevertheless, if that is not possible, as recent experience demonstrates, the authorities of the consuming countries ought then to explore the possible alternatives to eliminate the exorbitant profits of the criminals, including regulatory or market oriented options to this end. Thus, the transit of substances that continue provoking high levels of crime and violence in Latin American and Caribbean nations will be avoided.\(^\text{135}\)

From this language, it is clear a different strategy to combat drug crimes has come into favor. The words “market oriented options” plainly support decriminalization and regulatory policies.\(^\text{136}\) Bill 534 suggests that the war on drugs was lost because of four major issues: (1) consumption has increased and product seizure cannot hope to dent this increased demand; (2) state funds have been mismanaged by investment into the “war” and not basic human services; (3) a failure to address the demand for drugs because of the insistence on combating supply; and (4) the creation of a “perfect monopoly for criminal activities” which, by enormous financial incentive, creates a substantial reason to engage in trafficking.\(^\text{137}\)

Expanding on the second point of this examination, Uruguay’s Defense Minister argued that the costs of drug interdictions, criminal prosecutions, criminal penalties, and state-supported medical care are too costly to continue fighting illegal drug trafficking and consumption in a manner that fails to produce results.\(^\text{138}\) In sum, this analysis of the war on drugs concludes by suggesting that “the ‘cure’ has becomes much worse than the ‘disease.’”\(^\text{139}\)

This is a viewpoint that is shared across the world. British press has reported that decriminalization trends are spreading “across much of Europe, Latin America, and beyond.”\(^\text{140}\) These sources point to the Spanish and Dutch policies as well as the fact that inside the United States—the traditional base of support for the war on drugs—more than half of Americans now support cannabis legalization, fourteen states have decriminalized possession, and seventeen allow consumption for medical


\(^{137}\) See Bill 534 of August 8, 2012, no. 2 (Uru.).

\(^{138}\) Id.

\(^{139}\) Id.

American leaders point to domestic reductions in cocaine consumption and an increase in drug prices to assert that winning strides have been made in the drug war.\textsuperscript{142} Moreover, seizures of methamphetamine, heroin, and marijuana are continually increasing.\textsuperscript{143} Whether this data accurately demonstrates success curtailing illegal drug activity is questionable. The National Institute of Drug Abuse reports that drug use among teenagers in the United States continues at a high rate, and that marijuana usage is increasing significantly, for example, the number of high school seniors using marijuana within the past month increased from 18.8 percent in 2007 to 22.9 percent in 2012.\textsuperscript{144} Critics of U.S. drug policy grow louder every year. Mexican President Felipe Calderón has traditionally been a strong ally of the United States in its fight against drugs, but has become a harsh critic as violence along the border grows and has left over 45,000 dead in Mexico.\textsuperscript{145} As the largest illegal drug market in the world, the United States certainly bears some responsibility for the escalating violence through South and Central America that has acted as the catalyst to spur enactment of reform policies.\textsuperscript{146} Nicaraguan President Daniel Ortega explained the situation simply, stating “all of the money, regardless of how much it is multiplied, and all of the blood, no matter how much is spilled [will not stop the drug trade] so long as the north continues consuming.”\textsuperscript{147}

B. PAST CONCLUSIONS BASED ON INACCURATE INFORMATION

Modern policies supporting the prohibition of cannabis were based, in a large part, on the notion that consumption was both a public safety concern and detrimental to an individual’s health. Both sides of the legalization debate generate their own scientific reports and studies regarding the health implications of marijuana consumption, often resulting in conflict and leaving room for argument, but there is evidence of some core scientific premises widely accepted as true.

First, cannabis use by youth is to be avoided because marijuana has a measurably worse propensity to detrimentally affect a younger consumer.\textsuperscript{148} Similar to tobacco and alcohol, as a younger person’s brain continues to develop, the chances it may be negatively affected by canna-

\textsuperscript{141} Id.
\textsuperscript{142} Booth, supra note 136.
\textsuperscript{143} Id.
\textsuperscript{145} Booth, supra note 136.
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{148} INTL. CENTRE FOR SCI. IN DRUG POLICY, TOOLS FOR DEBATE: US FEDERAL GOVERNMENT DATA ON CANNABIS PROHIBITION 7 (Evan Wood, et. al eds. (2010)) [hereinafter ICSDP].
bis are higher than a mature adult's brain. 149 Secondly, because cannabis is most commonly consumed through smoking, typical respiratory concerns are present. 150 Perhaps most importantly, the short-term motor function impairment accompanying "acute intoxication" results in difficulty operating motor vehicles, presenting the greatest health and safety risk. 151 The issue of cognitive impairment, or diminished capacity to learn or recall information, is contested by various reports, but many leading medical journals lean towards the supposition that heavy or chronic marijuana usage may result in lasting, permanent limitations in memory and related mental functions. 152

While these health concerns cannot be ignored or overstated, it is important to view them in context. The International Centre for Science in Drug Policy cites a British report which, "using a nine-category matrix of harm spanning physical and social harms, ranked cannabis as less harmful than alcohol and tobacco." 153 There is widespread support for the notion that marijuana is less dangerous to the public and the individual than alcohol or tobacco. The Beckley Foundation released a report stating, "in terms of relative harms [cannabis] is considerably less harmful than alcohol or tobacco . . . [and] many of the harms associated with cannabis use are the result of the prohibition itself, particularly the social harms arising from arrests and imprisonment." 154

Supporters of a major policy overhaul point to the fact that emerging medical research shows marijuana does not negatively affect the body, and that if used in a responsible manner, it may have credible applications in medicine. 155 Thus far, marijuana has been used in the medical field to reduce the symptoms of cancer, AIDS, multiple sclerosis, pain, glaucoma, epilepsy, and many other conditions. 156 Cannabis consumption is most commonly used to decrease the nausea common from chemotherapy treatment, increase the appetite of AIDS patients, and as a replacement for synthetic pain relief. 157 Researchers at California Pacific Medical Center in San Francisco have even reported that a chemical

149. Id.
150. Id.
151. Id.
153. See ICSDP, supra note 148 at 7.
found in marijuana called cannabidiol has been linked to preventing the spread of cancer; this study was later published in the journal of Molecular Cancer Therapeutics.\textsuperscript{158} Some patients—especially those suffering from symptoms of nausea or loss of appetite—clearly find comfort from medicinal marijuana, but the drug has yet to find an irreplaceable purpose in modern medicine.

The "gateway drug" argument suggests that even if we as a society accept that marijuana is not exceptionally dangerous itself, its use will inevitably lead the consumer towards harder, more dangerous drugs like heroin, cocaine, and methamphetamines.\textsuperscript{159} According to the National Institute on Drug Abuse, someone who smokes marijuana is more than 104 times more likely to use cocaine than a person who never consumes cannabis.\textsuperscript{160} More recently, studies have concluded that while there is certainly a correlation between cannabis consumption and the consumption of other drugs with more serious health consequences, the relationship falls short of causation.\textsuperscript{161} In 1999, the Institute of Medicine of the National Academy of Science wrote in a report to Congress the provides in the relevant sections:

Patterns in progression of drug use from adolescence to adulthood are strikingly regular. Because it is the most widely used illicit drug, marijuana is predictably the first illicit drug most people encounter. Not surprisingly, most users of other illicit drugs have used marijuana first. In fact, most drug users begin with alcohol and nicotine before marijuana—usually before they are of legal age.

In the sense that marijuana use typically precedes rather than follows initiation of other illicit drug use, it is indeed a "gateway" drug. But because underage smoking and alcohol use typically precede marijuana use, marijuana is not the most common, and is rarely the first, "gateway" to illicit drug use. There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs.\textsuperscript{162}

Many theorize that legalizing and regulating the marijuana industry will reduce access to other drugs by separating the consumer from the illegal drug trafficker.\textsuperscript{163} The Netherlands employed this strategy to "close the gateway" through the coffeehouse system and a 2010 Rand Institute reports that there is “some evidence for a weakened gateway,” and that in the least, the data “clearly challenge[s] any claim that the Dutch have strengthened the gateway to hard drug use.”\textsuperscript{164} The effec-

\begin{enumerate}
\item Astaiza, supra note 156.
\item Id.
\item Id.
\item \textsc{Inst. of Med., Marijuana and Medicine: Assessing the Science Base} \textit{6} (Janet E. Joy, et. al eds. (1999)).
\item See Szalavitz, supra note 159.
\item Id. (internal quotation marks omitted).
\end{enumerate}
tiveness of regulation as a tool to close any "gateway" to hard drug use is debatable, but policies that separate drug consumers from traffickers are generally supported by South American nations including Uruguay as a means to reduce collateral drug violence. The Rand Drug Policy Research Center released a study in 2002 that suggests the gateway theory is largely unsubstantiated by hard facts, and that in reality, consumers of hard-drugs would be just as likely to engage in the same behavior without marijuana consumption, providing an alternate explanation to the correlation between marijuana and hard-drug consumption. Because the gateway theory cannot be disproved through this method, the Rand brief suggests that prohibition remains a viable policy so long as the harm it prevents outweighs the cost it incurs.

C. SEPARATING THE CONSUMER FROM THE TRAFFICKER

Another leading rationalization for the legalization platform is the protection of constituent-consumers. Differentiating the marijuana culture from that of "harder" drugs such as heroin or cocaine, advocates hope to minimize consumer exposure to the dangerous criminal gangs that now traffic in outlawed substances while simultaneously cutting the profits and power of those underground organizations. One figure estimates that cannabis consumers spend over $750 million U.S. dollars annually on the product alone. Considering the peripheral market for paraphernalia and related products, Uruguay is certainly looking at an unregulated, untaxed, and illegal $1 billion dollar industry. Uruguayan drug czar Romani explains, "a drug policy that bases regulation on punitive laws has proven to be insufficient and cause harm." Instead, the proposal seeks to follow the Dutch model by separating the marijuana market from other drugs, allowing marijuana consumers to purchase their drugs legally and eliminate the possibility that when seeking marijuana, a customer would be convinced to buy heroin or cocaine paste. Faced with past failures and an uncertain future, countries caught in the middle of the illegal drug trade are not unreasonable to consider new alternatives. As President José Mujica stated regarding the new policy, regulation "would ruin [the market] for marijuana traffickers" breaking new ground by establishing a state operated cannabis market, and that "someone has to be first."

165. See Bill 534 of August 8, 2012, no. 3 (Uru.).
167. Id.
168. See Padgett, supra, note 20.
169. Id.
171. Id.
172. Id.
173. Sánchez & Rolles, supra note 140.
VI. ANALYSIS AND CRITICISM FOR POLICY CHANGES

A state operated marijuana dispensary is not a widely accepted concept. It goes against the traditions established by law. Many international organizations are expressing serious misgivings about the current trend of policy shifting towards the decriminalization and regulation of recreational marijuana usage. Mr. Raymond Yans, President of the International Narcotics Control Board, has expressed "grave concern about inadequately regulated medical cannabis schemes which can lead to increased abuse." In addition, Mr. Yans points out that any move to allow the recreational consumption of cannabis "would be a violation of international law, namely the United Nations Single Convention on Narcotic Drugs of 1961." In many parts of the world, popular opinion concerning the effects of marijuana has not changed in the thirty years since Ronald Reagan asserted that, "I now have absolute proof that smoking even one marijuana cigarette is equal in brain damage to being on Bikini Island during an H-bomb blast."

As outlined above, many advocates of substantial drug reform suggest that the most effective policy is no longer one of prohibition, and that the costs of continued criminalization of cannabis now outweigh the rewards. The Uruguayan platform certainly adopts this position, looking at the Dutch model as evidence that removal of criminal prohibitions surrounding marijuana allows for a desirable separation between the trafficker and the consumer without resulting in substantial health risks or public safety issues former policies were designed to avoid. Critics suggest that contrary to this train of thought, regulation and decriminalization will result in a substantial increase in consumption that creates particularly undesirable results. Robert MacCoun and Peter Reuter suggest that like the legalization of gambling, the proliferation of cigarettes, and the erosion of liquor controls, the decriminalization and regulation of cannabis would result in widespread increase in consumption. Whereas decriminalization without regulation (where sale remains illegal) retains the harms of consumer-trafficker interaction, it also stifles the flow of cannabis by denying advantages provided by the free market. Combining decriminalization with regulation as Bill 534 does allows the proliferation of

178. Id.
179. Id.
marijuana without marketing restrictions, creating a scenario that may produce higher rates of prevalence than anticipated along with possible negative consequences and availability may correlate with abuse.\(^{180}\)

A dramatic increase in marijuana consumption is worrisome for a number of reasons. Chief among concerns is the fact that cannabis is far more potent today than ever before.\(^{181}\) In a letter to the New York Times, former United States Drug Enforcement Agency Administrator Stephen Green explains that in 1970, the THC content of an average marijuana plant was one and a half percent; today, the THC content varies from 8 to 20 percent.\(^{182}\) This dramatic increase in potency creates a situation where drug abuse is far more likely whether intentional or not. Dr. Nora D. Volkow, director of the National Institute on Drug Abuse attributes the increased potency to the dramatic increase in emergency room admission and treatment programs for marijuana.\(^{183}\) Regardless of the precautions taken, an increase in cannabis consumption will also result in an increase in the amount of traffic accidents resulting from driving under the influence.\(^{184}\)

Advocates of legalization are quick to point out that marijuana is not known as a very addictive drug, and that it is virtually impossible to overdose when consuming it.\(^{185}\) While these points are generally true, they disguise some of the true health issues that consumption of marijuana entails. Early exposure to cannabis use consistently results in loser cognitive brain function and a loss in IQ points over time.\(^{186}\) Other effects of marijuana consumption can include acute short-term memory loss, slowed reaction time and impaired motor coordination, altered judgment and decision-making, and increased heart rate.\(^{187}\) The National Institute on Drug Abuse reports that "heavy marijuana users report lower life satisfaction, poorer mental and physical health, relationship problems, and less academic and career success compared to their peers who came from similar backgrounds."\(^{188}\) Furthermore, cannabis users are at nearly five times higher risk of heart attack; they may also experience respiratory illnesses, hallucinations, and paranoia.\(^{189}\) Marijuana consumption during pregnancy is particularly alarming. The exact effects are unknown and

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\(^{180}\) Id.


\(^{182}\) Id.

\(^{183}\) Roni Rabin, Legalizing of Marijuana Raises Health Concerns, N.Y. Times, Jan. 8, 2013, at D.


\(^{185}\) Rabin, supra note 183.

\(^{186}\) Id.


\(^{188}\) DrugFacts: Marijuana, supra note 31.

\(^{189}\) Id.
serious, possibly resulting in inutero fetal death, stillborn children, and infant death shortly after birth. Children that survive may have permanent behavioral and biological abnormalities.190

Supporters of liberalized cannabis policies assert that the implementation of a regulatory scheme would create substantial tax benefits for government and result in substantial job creation, but in truth the economic incentives will be offset by the cost incurred by the public.191 By analyzing tobacco and alcohol—two drugs that are regulated and taxed—and applying to same principles to a cannabis model, it is clear that the societal costs are much higher than any revenue generated by the industry.192 Within the United States, tobacco and alcohol costs, through health care, criminal justice, and lost productivity in the workplace total more than $385 billion, and total government revenue totaled just under $40 billion.193 It seems clear that regulation of marijuana would likely add to a deficit, rather than eliminate one.

VII. CONCLUSION

A. PRINCIPLE REASONS FOR CHANGE IN URUGUAYAN DRUG POLICY

The Single Convention on Narcotic Drugs is now over fifty years old. It is not surprising that some nations do not find that the Convention’s foundation or tenants still serve their interests or accomplish their goals. The framework of the U.N. Convention is no longer a feasible vehicle through which effective drug policy may be orchestrated. As violence tears apart drug-producing nations and wears on the borders of massive drug-consumers such as the United States, nations like Uruguay must make hard decisions to fight for a better future. Rather than continue to pour assets into war and fighting a large, powerful criminal underground with limited resources, Uruguayan leaders are attempting to isolate the enemy. They seek to achieve this by separating the drug consumer and drug trafficker, and treating the two differently.

B. WHAT FORM WILL NEW POLICY TAKE

Uruguay will make history if the legislature passes Bill 534 and the state begins to build an administrative entity responsible for the regulation of commercial, recreation marijuana. An entirely new branch of government, operating in the form of the INC, would be responsible for the nation’s marijuana industry. Not only will the government set prices, grow, transport, and sell under such a scheme, but it will also grant li-

192. Id.
193. Id.
licenses, establish clubs, and set the new norm within the country regarding the transaction of cannabis. Perhaps with time, the INC will delegate its powers and responsibilities to private companies interested in the opportunity to engage in the cannabis trade. Because a government has never before regulated the cannabis industry, many will carefully observe the steps Uruguay takes and the decisions it makes along the way. The regulation of any drug is not an easy task for a government to accomplish. At the very least, Uruguay has the Dutch and the Portuguese models to reference while shaping this innovative new regulatory scheme. It is not inconceivable that—should the current trend of decriminalization continue—Uruguay would pave the road for more nations to follow in its footsteps.

C. Potential Impact on the Region and International Reaction

Uruguay sits in a region where drug policy is incredibly unstable. That fact makes the outcome of the Bill and the INC even more interesting. As drug-related violence continues, Central and South American nations are becoming increasingly desperate for any potential solution. This makes it likely that many countries neighboring Uruguay may adopt a wait-and-see type approach to determine whether there is any probability that a similar scheme could work elsewhere. A region waiting for solutions to drug-related violence is ready to domino into a new era of decriminalized and regulated cannabis. The United States has yet to react to Uruguay's pending legislation, but with its own states enacting legislation of the same tune, it's doubtful that the United States will apply significant diplomatic pressure in order to keep current policies in place. While the war on drugs has not hurt the United States in the same way it has its neighbors to the south, popular opinion is slowly but clearly shifting, and after thirty years, it is apparent that the time has come for new policies. As the largest consumer of drugs in the world and the globe's superpower, U.S. reaction to new policy has tremendous power. Success or failure of the Uruguayan Bill will likely be determined within the next year as President Mujica's legislative coalition remains in power. If successfully passed and implemented, Uruguay's regulation of marijuana will profoundly affect the region. As decriminalization of cannabis gains more political support and more jurisdictions begin implementing similar policies, models like Uruguay's will shape government policy of the future.
Updates