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**Actors and incentives in cannabis policy change:  
an interdisciplinary approach to legalization processes  
in the United States and in Uruguay**

São Paulo  
2020

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Ph.D. Thesis presented to the Graduate Program in International Relations at the International Relations Institute, Universidade de São Paulo, Brazil, to obtain the degree of Doctor in Science.

Advisor: Prof. Dr. Leandro Piquet Carneiro

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a Marcos, Flora e Cecília,  
por estarem tão próximos durante um  
processo em que eu deles tive de estar tão distante

## ABSTRACT

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In 2012, three different territories in the Americas –Uruguay and the states of Colorado and Washington in the United States– took the unprecedented step of legalizing and regulating adult-use cannabis markets, permitting the production, trade, and consumption of non-medical cannabis, a psychotropic substance prohibited under international treaties ratified by the governments of these territories. This paradigm shift has raised challenges to the power institutionalized by the so called international drug control regime (IDCR). Such conflict between domestic drug policy change and international drug control paradigm has been eroding the regime's integrity while undermining respect for international law. This thesis analyzes the three pioneer cannabis legalization experiments through its actors and incentives. It employs process tracing methods and historical descriptive analysis, proposing a causal model for drug policy change starting with externalities and grievances generated by national implementation of IDCR norms and rules. The study draws on John Kingdon's multiple streams model of policy cycle to identify a constellation of players and forces operating as impetus or constraints for the advent of new legal cannabis markets. Among them, it focuses on the role of three non-state actors: local social movements organizations, epistemic communities and transnational advocacy networks. It evidences how these actors furthered the recognition of drug-related political problems, the proposition of alternative policies and the identification of political opportunities for change. In the US, a bottom-up process led to market-friendly regulatory frameworks focused on tax revenue while the Uruguayan top-down decision-making process have resulted in model strictly controlled by the state and focused on health and prevention.

Keywords: Cannabis. Drug Policy. International regime theory. Social movements. Epistemic communities. Policy cycle.

## RESUMO

Mena, Fernanda (2020). *Actors and incentives in cannabis policy change: an interdisciplinary approach to legalization processes in the United States and in Uruguay* (Tese de Doutorado). Instituto de Relações Internacionais, Universidade de São Paulo

Em 2012, três diferentes territórios nas Américas –Uruguai e os estados norte-americanos do Colorado e de Washington– tomaram uma medida inédita: a legalização e regulação de mercados de cânabis para uso adulto, permitindo a produção, o comércio e o consumo de maconha para fins não-medicinais, uma substância psicotrópica proibida pelos tratados internacionais ratificados pelos governos destes mesmos territórios. Essa mudança de paradigma desafiou os poderes institucionalizados pelo chamado regime internacional de controle de drogas (RICD). Esse conflito entre mudanças em políticas de drogas domésticas e o paradigma internacional de controle de drogas vem deteriorando a integridade do regime ao mesmo tempo em que enfraquece o respeito pelo direito internacional. Esta tese analisa os três experimentos pioneiros de legalização da cânabis por meio de seus atores e incentivos. Ela emprega métodos de *process-tracing* e análise histórica descritiva para propor um modelo causal para mudanças de política de drogas deflagradas por externalidades geradas pela implementação nacional das normas e regras do RICD. O estudo se baseia no modelo de múltiplos fluxos criado por John Kingdon para identificar uma constelação de agentes e forças operando na forma de impulso ou de limitação para o advento de novos mercados legais de maconha. Entre estes agentes, o estudo focaliza o papel de três atores não-estatais: organizações locais de movimentos sociais, comunidades epistêmicas e redes transnacionais de *advocacy*. A tese evidencia como estes agentes promoveram o reconhecimento de problemas políticos ligados a drogas, a proposição de políticas alternativas e a identificação de oportunidades políticas para a implementação desta mudança. Nos EUA, o processo se articulou de baixo para cima (*bottom-up*) gerando um modelo regulatório amigável para o mercado com foco na arrecadação de impostos enquanto o processo de decisão uruguaio, articulado de cima para baixo (*top-down*), resultou em um modelo controlado de maneira estrita pelo Estado com foco em prevenção e saúde.

Palavras-chave: Cânabis. Política de drogas. Teoria de regimes internacionais. Movimentos sociais. Comunidades epistêmicas. Ciclo de políticas públicas.

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## 1. INTRODUCTION

In 2012, three different territories in the Americas – Uruguay and the states of Colorado and Washington in the United States – took the unprecedented step of legalizing and regulating the adult-use cannabis market, permitting the production, trade, and consumption of non-medical cannabis, a psychotropic substance prohibited under international treaties ratified by the governments of these territories.

By 2019, a further nine US states (Alaska, California, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, and Vermont), along with Washington DC, had taken the same step. In 2018, Canada has also changed its cannabis policy, becoming the first G7 country to breach international law by legalizing and regulating the recreational cannabis market.

Consequently, the proportion of the population of the Americas living under laws legalizing the production and purchase of cannabis has increased sevenfold in seven years: from around 16 million people (less than 2%) in 2012 to more than 132 million people (more than 13%) in 2019.

The paradigm shift taking place in both North and South America poses challenges to the institutionalized powers of the so-called international drug control regime (IDCR), comprising the following three treaties: the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol; the 1971 Convention on Psychotropic Substances; and the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychoactive Substances.

The progress made on cannabis legalization and regulation in the Americas has eroded the regime's integrity and undermines international law.

How and why did this happen?

This thesis aims to answer this question by investigating the processes that resulted in the adoption of innovative cannabis regulations by these governments despite the constraints imposed by international law and their obligation to comply with the prohibitive legal framework governing psychotropic substances.

It does so by highlighting the particular features of the IDCR that encouraged adhering states to pursue "myopic self-interest" (Keohane, 1984) and, faced with regime's externalities, breach international law. I then go on to illustrate the constellation

of global and local actors that influenced agenda-setting on cannabis legalization, analyze the international and domestic actors and incentives that encouraged legalization as a rational and legitimate alternative policy, and describe the historical context of intense change that led to the rethinking of values, perceived threats, social stigmas, and policy cost-effectiveness.

The analytical process consists of developing a causal model in which the array of global and local actors mentioned above are used as independent variables to explore the factors that led to the advent of adult-use cannabis market legalization and regulation, the dependent variable.

The theoretical model is built around the comparative approach and process-tracing. Firstly, I detail how the IDCR was shaped by diplomatic, economic, and moral entrepreneurship interests advanced by states and transnational advocacy networks. I then go on to describe how grievances of domestic interest groups stemming from the intended and unintended consequences of the regime at national level have created political opportunities for the creation of new drug policies that challenge the international drug control system.

To this end, I adopt a relational approach to explore the dynamics between the IDCR and the three pioneering policy initiatives, drawing on international relations theory, comparative politics, policy cycle models, and collective action theory, intertwined with an historical account of international drug control.

The thesis is divided into four sections, apart from this introduction: the international drug control regime (Chapter 2), domestic impact and collective action (Chapter 3), cannabis legalization (Chapter 4), case studies (Chapter 5), and conclusion (Chapter 6).

In Chapter 2, I review the incremental process that gave rise to the establishment of the IDCR, the incentives behind its creation, and its key actors, through the lens of regime theory. I argue that the IDCR reconciles the realist view that regimes are influenced by the domestic politics of the most powerful states (Waltz, 1959) both with the liberal perspective, which suggests that country interests converge through regimes and resonate in domestic institutions and norms (Keohane, 1984), and the cognitivist approach, which emphasizes the role ideas play in shaping state interests and attitudes (Haas, E.B., 1982).

Chapter 3 addresses the nationalization of international drug control rules and norms and the domestic developments emanating from this process, ranging from local reactions to its seemingly harmful consequences to the production of scientific knowledge about drug policy. It shows that the grievances of different interest groups affected by drug prohibition and criminalization generated political opportunity for collective action, leading to the emergence of a pro-legalization movement.

Sidney Tarrow (2011 [1994]) defines social movements as "sequences of contentious politics based on underlying social networks, on resonant collective action frames, and on the capacity to maintain sustained challenges against powerful opponents" (p. 7). These sequences of contentious politics engaged different identities and constituencies in the pursuit of a common purpose – the legalization of the cannabis market – affirming new values and defying international and domestic authorities.

Chapter 4 will explore the advent of cannabis legalization as an alternative drug policy. To delineate this paradigm shift, I will resort to John Kingdon's (1984) Multiple Streams policy cycle model, illustrating how the three streams –problems, policies, and politics– apply to changes in cannabis laws. To this end, I outline how cannabis policy externalities were recognized as political problems, how alternative policies were generated, and the political opportunities that arose, opening a window of opportunity for policy change.

In the US, cannabis market legalization was a lengthy, incremental, bottom-up process led by social entrepreneurship, starting with decriminalization and propelled by the legalization of medical marijuana market (Hudak, 2016; Kilmer & MacCoun, 2017; Pacula & Smart, 2017). Pioneering alternative drug policies came into force as a result of ballot initiatives in a model mirroring the US principle of the sovereignty of the people (De Tocqueville, 1835).

In Uruguay, a top-down process driven by political elites resulted in a rapid paradigm shift informed by cannabis legalization activists, epistemic communities, and transnational advocacy networks (Repetto, 2014; Sanjurjo, 2013b; Walsh & Ramsey, 2015; Queirolo et al., 2018). An alternative drug policy was proposed by the President and approved by a coalition of lawmakers favorable to the measure.

In Chapter 5, I examine three case studies: Uruguay, Colorado, and Washington. These cases were selected because of the pioneering role their governments played in

legalizing and regulating the entire adult-use cannabis supply chain, from crop to consumer. Given the groundbreaking nature of these policy initiatives, these cases provide a unique opportunity to gain an in-depth insight into what prompted this policy shift, regarded as a violation of international drug treaties.

Using descriptive case studies, I test the following hypothesis: the key factor determining the advent of adult-use cannabis market legalization in the United States and Uruguay was collective action promoted by social movements and transnational advocacy networks.

In the US, social movements forged a majority in favor of cannabis legalization through the mobilization of a vibrant network of think tanks, political marketing professionals, academic researchers, transnational advocacy networks, and professional associations. The process was quite different in Uruguay, where a small elite group in the Executive Branch managed to push a new drug law through Congress. Although social movements and civil society organizations had long been advocating for drug policy change, they were mere bystanders in the decision-making process.

The resulting features of cannabis legalization and regulation are strikingly different. The US's dynamic emerging cannabis market is not mirrored in Uruguay. While the US created a market-driven model focused on tax revenue, Uruguay produced a tightly regulated environment that focus on health and prevention, but is exhibiting market-efficiency problems.

Chapter 6 concludes that different critical causal factors led to the adoption of distinct regulatory models, showing that the effectiveness of legalization from a market perspective is compromised when the process is not driven by social movements.

### 1.1. A brief overview of the argument

The IDCR attained virtually universal resonance and was heavy-handed on domestic policy-making, despite uncertainty regarding the effectiveness of its rules and norms.

By prohibiting and criminalizing the production, trade, and consumption of previously legal commodities such as opium, cocaine, and cannabis, the IDCR created a highly profitable illicit market, resulting in a shift in market leadership from big (legitimate) business, to small (illegitimate) business willing to operate outside of the law and encouraged by economic incentives.

At the same time, "repressive policies affected the smallest and least corrupt of the small businesses, creating a natural selection where bigger, better organized and more sophisticated drug traffickers became more dominant" (Braithwaite & Drahos, 2000, p. 373). Violence and corruption are the main mechanisms used by organized crime to control illicit markets, jeopardizing public safety, compromising the accountability of public institutions, and undermining political stability and the capacity of the state to provide public goods.

Against this backdrop, violence is driven not only by traffickers competing for a market share, but also by state efforts to fight illegal businesses, resulting in a high number of deaths in many parts of the globe. Scholars have found a systematic causal link between drug prohibition and violence (Keefer, Loayza & Soares, 2010, p. 19-20), giving rise to security and human rights incentives for the development of alternative drug policies. These incentives played a key role in setting the agenda for the legalization of the cannabis market in Uruguay.

Uruguay has historically taken a more liberal approach to drugs than the US. Consumption was never a crime under its domestic law and a supra-ministerial institution created in the 1980s furthered progressive approaches to drug use through education and harm reduction. It was the threat of escalating drug trade-related urban violence that led the government to introduce a radical policy shift to enable it to compete with the illicit drug trade.

Drug law enforcement also places a heavy burden on government spending, diverting resources from other basic areas and compromising the provision of public goods. According to Phillip Keefer, Norman Loayza & Rodrigo Soares (2010), in 2010 the US were spending "\$40 billion annually on the war on drugs, up substantially from \$10 billion in the mid-1980s (Reuter, 2001)". The authors cite Robert MacCoun and Reuter (2001) and Rosalie Pacula (2008), who concludes that three-fourths of these resources were spent on apprehending and punishing dealers and users (p. 12).

As a result, incarceration has risen sharply, providing even greater economic and human rights incentives for policy change. In the US, 2.3 million people were incarcerated in 2010, compared to only 500,000 in 1980. One in every four prisoners were sentenced for drug-related offenses, mostly for nonviolent crimes (Caulkins & Chandler 2006), mirroring the situation in most countries in the Americas.

The ongoing debate surrounding the role of incarceration in crime control involves key issues, including productivity losses associated with imprisonment, the burden prisons place on public expenditure, and racial asymmetries in the enforcement of drug laws (Alexander, 2010).

The IDCR also created health-related incentives for drug policy change. The criminalization of drug use stigmatizes and marginalizes users, creating barriers to seeking help and treatment for addiction. Illicit markets do not pay due regard to quality assurance and poor quality substances aggravate the health harms arising from illicit drug use. This was an important incentive for the reform of Uruguay's cannabis law, which aimed to separate the cannabis market from other illicit markets for more harmful and addictive drugs such as *paco*, a type of crack cocaine.

The IDCR has also denied the medical properties of cannabis by classifying it as a Schedule 1 drug, considered to have no medical value and a high level of harm. By doing so, it prevents access to cannabis by those who could benefit from its use as a medicine, undermining their health and welfare. This was a key incentive for the legalization of medical cannabis in the US, which was a middle step towards adult-use cannabis legalization.

These processes emanating from the IDCR have been studied by different academic fields and other players such as consultancy firms, international institutions, and NGOs. These actors have provided useful insights into the intended and unintended domestic impacts of the IDCR. They have also helped formulate alternative policies to overcome the negative externalities of the regime's norms and rules. These players will be referred to here as epistemic communities, defined by Peter Haas (1992) as a "network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (p. 3).

Knowledge produced by epistemic communities played a crucial role in setting the cannabis legalization agenda, providing activists, social movements, and transnational advocacy networks with reliable information and identifying the harmful effects of drug criminalization.

Armed with this knowledge and their experience of drug prohibition, these groups have influenced public opinion and decision-makers, directly or through the media. This framing process involved learning mechanisms and collective action, ranging from

campaigns and demonstrations to court battles, lobbying, and ballot initiatives. Framing and collective action were key tools in the American cannabis market legalization model.

Epistemic communities, transnational advocacy networks, and the IDCR itself have also provided legitimate incentives for governments to violate drug treaties and test alternative drug policies: the recognition of the externalities of the domestic implementation of regime rules and norms; and the inertia of the regime in the face of new challenges.

## 1.2 Challenging the IDCR

Despite being an international relations problem, the analysis of these violations of the regime extends beyond international relations theories because it is embedded in domestic processes. As Robert Keohane and Joseph Nye (1987) assert, analyzing changes in the self-interests of states as a result of "evolving international institutions, individual or group learning, or domestic political change" entails the "blurring of boundaries between the fields of international relations and comparative politics" (p. 753).

Drug control and drug policy formulation involve an array of international and domestic forces (Putnam, 1988; Finnemore, 1996, Drezner, 2003), ranging from national and transnational actors to local and global institutions (Price, 2003; Murkin, 2014; Hudak, 2016; Von Hoffman, 2016). It implies political, economic, and moral inputs (McAllister, 2002; Haas, E.B., 1982) with pervasive outcomes impacting many different areas of global and local societies (Costa, 2008; Mena & Hobbs, 2010; Stevens, 2011).

Throughout the history of the IDCR, drug control issues have unfolded into criminal issues, security issues, civil rights issues, science issues, health issues, racial issues, human rights issues, foreign policy issues, and economic and political issues. Therefore, the study of this system cannot be tackled by a single discipline or theory without losing best part of its substance.

The US plays a prominent role in promoting the international drug control agenda, disseminating values to sustain and legitimize prohibition and effectively creating a parallel sanction system through which it can unilaterally withdraw direct aid and backing for international financial aid if a country's level of counter-narcotic efforts is considered insufficient (Bewley-Taylor, 2012).

States were coerced into joining the regime's institutions, which continuously reinforced the urgency of cooperation based on the principle that drugs were a threat to the "health and welfare of mankind", enshrined in the Preamble of the 1961 Single Convention.

The fact that virtually all the world's nations adhered to and complied with the IDCR can be explained by three overlapping factors: the US's realist-based hegemonic influence and coercion after World War II; cognitivist-based persuasive ideas and values disseminated by reformist transnational advocacy networks (TANs) emerging at the turn of the twentieth century; and a liberal-based structure which imposes high reputational costs for transgressors in the absence of internal material sanction mechanisms.

The stringency of the regime's rules and norms is illustrated by its excessive intrusiveness into domestic affairs (Babor et al., 2010) when regulating what are considered to be hazardous commodities. Comparing the 1961 Single Convention with the 2003 Framework Convention on Tobacco Control, Thomas Babor et al. highlight that the drug treaty provides for the criminalization of drug users in possession of illegally obtained substances, "an unusually strong requirement even in the context of national laws on contraband commodities" (p. 206). They also note that the US's alcohol prohibition laws contained no such provision.

This intrusiveness has left state parties with limited flexibility, creating major impediments for states in dealing with domestic problems revolving around national drug policies framed according to the parameters laid out in the three international drug control conventions.

Three incentives have contributed to treaty violations: first, the insistence on unrealistic "one-size-fits-all" arrangements, applying universal rules to an asymmetrical international context and placing a disproportionate burden on more vulnerable state parties and social groups; second, the acknowledgment of the "unintended consequences" of drug prohibition (Costa, 2008); and third, the failure to modify the conventions' principles, norms, and rules in light of new scientific evidence of its flaws and harmful consequences (Babor et al., 2010; Jelsma et al., 2018).

The regime was frozen in space and time.

The violation of these treaties cannot be properly understood without an in-depth analysis of the domestic incentives that led to the defection from and violation of the international drug conventions as legitimate and rational choices.

These incentives are rooted in two main problems: first, the security, human rights, economic, and health incentives mentioned above are a result of the impacts of the IDCR on the ground and the recognition that they are political problems; second, by acknowledging the "unintended consequences" of the regime, yet insisting on maintaining the same principles, rules, and norms that led to these consequences, the IDCR has altered state parties' perceptions of cost-effectiveness, effectively legitimizing the introduction of alternative policies. Given the adverse effects of the regime at domestic level and the failure to act to solve the drug policy puzzle, state parties were left with no alternative but to violate the conventions and experiment alternative drug policies to protect public health and welfare and to promote stability.

John Kingdon's account of policy making and policy change provides a powerful tool for analyzing this process. He argues that when a political problem is recognized (in this case negative domestic externalities caused by inflexible rules and norms), when an alternative policy is generated (such as the decriminalization of drug use or legalization of cannabis), and when the winds of politics blow in a favorable direction (swings in national moods, interest group campaigns, and government turnover), a policy window is opened, creating the potential for institutional change (2011 [1984], p.165). The author called each of these aspects (problems, policy, and politics) streams and proposed that these three streams need to couple to open a policy window.

In the three cases considered here – Colorado, Washington, and Uruguay – the harms resulting from IDCR rules and norms were identified, alternative policies were developed to tackle this problem, and different political opportunities arose, coupling to open a policy window that enabled the legalization of the cannabis market.

This thesis highlights problems stemming from the new cannabis market regulations that require further research, ranging from corporate capture to the potential increase in use, as well as the exclusion of previous market operators, mostly from vulnerable social groups, under the new legal arrangements.

## **2. INTERNATIONAL DRUG CONTROL REGIME: HISTORY, INSTITUTIONS AND THEORETICAL APPROACHES**

This chapter compiles an historical review of drug prohibition, from commodities to evildoers, outlining its actors, interests, incentives and mechanisms.

Global drug control was inaugurated with debates about opium trade and use, which laid the foundation for international law concerning other psychotropic substances presently under the scope of the international regime. Therefore it will be necessary to introduce international developments around opium as a basis for the debate around cannabis global prohibition.

I will discriminate all the multilateral treaties that have preceded, in the Twentieth Century, the enactment of the international drug control regime (IDCR), inaugurated with the 1961's Single Convention on Narcotic Drugs. This description will demonstrate the incremental feature of this process, furthered by transnational advocacy networks of moral entrepreneurs coupled with the US economic and diplomatic interests. It will also illuminate the correlations between US and international drug control measures.

The intimate connection between IDCR and US foreign and domestic policies will be key in order to understand how important features of the international regime mirrors the rise of that country as the world's hegemonic power. I will analyze the US discursive production on drugs, focusing on the cannabis case. Cannabis was progressively regarded as a violence and crime generator substance, shaping public opinion and policy-makers' perception towards it, which have legitimated its control as a "evildoer" and a "menace" to that country and, more broadly, to mankind.

It will then recount each of the three treaties compounding the IDCR and the role of each of the institutions settled to manage the regime or involved in its periodical monitoring, reevaluation and eventual change. This account will evidence the intrusiveness aspect of the regime's norms and rules in the domestic fora as well as its criminalizing determination.

Subsequently, this chapter will analyze the IDCR quasi-universal character through theories of international regime, adherence to it and compliance to international law, challenging principles of self-interest and rational choice as explanations for states

willingness to cooperate. It will argue that the IDCR requires the reconciliation of realist, liberal and cognitivist approaches in order to be fully understood.

## 2.1 Drugs: from commodities to evildoers

International drug control regime's milestone was settled in 1909 during the first global meeting ever arranged for a multilateral debate about psychoactive substances: the Shanghai Opium Conference, held in China. The meeting took place just a few decades after the latter of Great Britain's Opium Wars (1856-1860) against China. The war's purpose was, confusingly, to assure the import of opium to China.

This is because, until the Shanghai conference, opium —as well as cocaine and cannabis— was treated as a commodity and was traded worldwide. Opium 'was one of the most important globally traded commodities in the international market" and it had become so in the 18th Century with Western efforts to expand their commercial and colonial presence in Asia" (Buxton 2010, p. 65).

Introduced by the Portuguese, opium global trade consisted in one of the commodities that furthered European navigation expansion and is considered one of the seven goods central to capitalism history, along with sugar, alcohol, cocoa, coffee, tea and tobacco (Carneiro 2019, p. 68).

Opium global trade was fostered by the Dutch and the Spanish and improved by the British, which held a monopoly of opium international trade, through the British East India Company, from 1773. In all cases, opium trade served to finance costs of colonial enterprises in the East. In the British case, improving and maximizing opium trade was also a way to revert commercial deficit among the United Kingdom and China, from which the British imported tea, spices and silk but had little to offer back. And this is the reason why opium trade worth fighting a war against China's attempt to prohibit the UK from commercializing it.

Until the emergence of the idea of regulating trade on psychotropic substances, then restricting its use to medical and scientific purposes and, ultimately, prohibiting it, opium, cocaine and cannabis were consumed for different reasons, among which pain relief was the main one.

The first register of cannabis described as a medicine dates from the 28th Century before Christ, in a Chinese document attributed to Emperor Shen Nung, regarded as the father of Chinese medicine (Merlin, 1972; Frazier, 1974; Abel, 1976; Lee, 2012; Goode, 2017). Cannabis ("Ma", in Chinese) was recommended by the emperor, together with other herbs, for "rheumatic pains, disorders of the female reproductive tract, absentmindedness and malaria — probably for the headache caused by the disease" (Mechoulan, 1986).

Cannabis was mentioned as a medicine in the US since 1843 and was listed in the US Dispensatory in 1854. The book describes medicines, their preparation and uses, and cannabis was there indicated for treating "gout, rheumatism, tetanus, opiate withdrawal symptoms, alcohol withdrawal, loss of appetite, menstrual cramps, convulsions, depression, delirium tremens, insanity and asthma" (Hollinger, 2002). Marijuana was officially recognized as a medicine in the US Pharmacopoeia and was used in a variety of remedies until 1937 (Grinspoon, 1977; Himmelstein, 1983), when the US Congress passed the Marijuana Tax Act, *de facto* prohibiting its purchase and use.

Curiously, the first official cannabis prohibition act was done in Rio de Janeiro, in Brazil, in 1830: those who sold it would be subjected to a fine and slaves using it in public spaces could be sentenced to a maximum of three days of prison. Apparently, the measure was taken because cannabis use was pervasive in the city, mostly through African slaves (Hutchinson, 1975, p. 175).

Buxton (2010) describes how opium and coca-leaf based medicines gained market. Opium was popularized in the 1680s, when an opium-based medicine called Sydenham's Laudanum was initially commercialized in the UK. German pharmaceutical firm E. Merck and Company have isolated morphine from opium in 1803 and German company Bayer have created a synthesized and ten times more potent version of it, called heroin, in 1874. Morphine and heroin were used as medicines for cough and bronchial problems, as well as sedatives.

With the emergence of an urban working class in the Nineteenth Century, illness and infections promoted by chaotic mass urbanization conditions and exhausting factory labour have raised demand for self-medication, incrementing opium-based patent

medicine market. Products directed to sedate babies and children, improve their strength or even make them gain weight were sold without prescription or regulation in grocery stores (Berridge, 2001; Hodgson, 2001, cited in Buxton, 2010, p. 63). Alerts of habit forming, an early term for addiction or dependence, have regulated these remedies from the mid to late Nineteenth Century, starting in the United Kingdom, were upsurge in babies and children overdose deaths pressured the government to regulate such products, since 1868 labelled as "poison".

Cocaine was identified as an active constituent of coca leaves in 1859 and emerged as a remedy for physical and psychological illness, such as allergies, nasal congestion and nymphomania, besides being recommended by The British Medical Journal for eye surgery anesthesia. It was produced and marketed by the German Merck and the American firm Parke, Davis. It was also used as a tonic for physical stimulation, commercialized under labels such as Vin Mariani and Wine Coca, later relabelled as Coca-Cola (Buxton, 2010, p. 64).

All the three plant-based psychotropic substances —opium, coca-leaf and cannabis— have had indigenous cultural or religious uses, either as a stimulant for agricultural work (such as chewing coca leaf in the Andean region) or as a means of transcendence, such as the use of smoking cannabis in Hindi festivals. Cannabis, under the name of hemp, has had also nutrition (seed and oil) and industrial uses (as a basis for rope, textile and paper products). And through the course of history, all these substances started having relaxation and recreational uses.

The advent of the IDCR entails a radical shift on drugs perception, from commodities to evildoers, allowed an economic liberal perspective, based on free market and profit, to be substituted by a prohibitionist one, based on moral degeneration and deviance.

This change laid the groundwork for the drug control treaties currently in force and can be regarded as a product of a constellation of interests propelled both domestically and internationally. These interests range from diplomatic and economic ones, generally embraced by state actors, to the ones based on business, religion and morality, which were furthered by non-state actors.

Crucial to this paradigm shift was a labelling international campaign led by medical and pharmaceutical associations and transnational reformers movements, profoundly imbricated by religious missionary entrepreneurship, which has provided a conduit for the articulation of international networks of communication and identity, all embraced by the idea of temperance.

Mark Lawrence Schrad (2010) reassembles the creation of a transnational temperance movement, between the Seventeenth and Nineteenth Centuries, developed upon Anglo-American religious linkages and based on the exaltation of sobriety in the face of a perceived rise in society's demand for intoxication. This growth in drunkenness is contested by the scholar, according to which the rise of the temperance movement, in the latter half of the Nineteenth Century, was not preceded by an increase in alcohol consumption in Europe and North America and was concomitant to a period of decline in its consumption (Bureau Fédéral de Statistique 1884, p. 672, as cited in Schrad 2010, p. 274).

Other accounts are more nuanced. According to historian William Joseph Rorabaugh (1976), from 1790 to 1830 American consumption of alcoholic beverages generally rose, with an increased use of spirits. "Intake of absolute alcohol peaked in 1830, at a rate twice that estimated for 1970. From 1830 to 1860 consumption fell sharply, but since 1860 consumption has fluctuated much less". His study would actually provide a correlation between the proliferation of temperance organizations as an aftermath of 1830 peak in the US alcohol consumption.

#### 2.1.1 Transnational moral entrepreneurs and US foreign policy

The spread of temperance advocacy followed the discovery of addiction, between 1785 and 1835 (Levine, 1978), and became one of the most influential reform movements of the Nineteenth Century. Although its initial target was alcohol abuse, leading to the famigerated years of US Prohibition (1920-1933), the Temperance Movement has thrived globally when shaping perceptions towards other drugs regulation (Courtwright, 2012, p. 18). This agency has led historian Arnold H. Taylor to describe the international campaign for drugs prohibition as a "missionary diplomacy" (1969, p. 29).

The first of the temperance organizations were the Society for the Reformation of Manners, established in England in 1691. And, from 1802, the Society for the Suppression of Vice and Encouragement of Religion and Virtue has spread throughout the United Kingdom (Webb & Webb, 1903, cited in Braithwaite & Drahos, 2000, p. 380).

In the mid Nineteenth Century, in Britain, the clergy, especially the Quakers, founded several anti-opium societies, publicizing the drug trade as immoral and gathering Parliamentary allies to their cause (Nadelmann, 1990, p. 503).

Questions raised in the British House of Commons by temperance crusaders regarding the effects of cannabis production and consumption in India would lead the government to commission a study on it. The result was a seven-volume report by The Indian Hemp Drugs Commission, released in 1894.

The report concluded that "the moderate use of hemp drugs produces no injurious effects on the mind". It also stated that "as a rule, these drugs do not tend to crime and violence", that moderate use was "the rule, and that the excessive use is comparatively exceptional" (Bewley-Taylor & Jelsma, 2014, p.9).

Also by force of temperance activists questions raised in 1893, the British government has settled the Royal Opium Commission. Its report, released in 1895, stated that "the movement" for the suppression of the opium habit in India "has proceeded from an exaggerated impression" of "moral and physical degradation" that "have not being accepted by the witnesses representing the people of India<sup>1</sup>". This conclusion repealed opium questions from the British civil society agenda for the next 15 years as well as questions on the morality of opium trade (Richards, 2002, p. 378).

In the United States, the first temperance society was formed in 1789 and, to give a dimension of its pervasiveness; by 1836 US temperance organizations claimed over 1.5 million members, which would account for one in every five American adults (Blocker, 1989, p. 11-14, as cited in Schrad, 2010).

By then, alcohol and other psychotropic substances were all targeted by US Temperance Movement, intimately related to religious groups but also to abolitionists

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<sup>1</sup>Great Britain, Sessional Papers of the House of Commons, 1885, XLII, Final Report of the Royal Commission of Opium, p. 94

and women's rights movements. These features are evidenced by the names of some of its prominent groups: the Woman's Christian Temperance Union (WCTU), the Catholic Total Abstinence Union of America and the Women's Anti-Opium Urgency Committee.

These American organizations have built a transnational network of missionaries, which sown the seeds of US hegemony as a moral empire (Tyrell, 2013). Their proselytism against intoxication were drawn on the perceived need to reform a considered obstacle to Christianity, to reduce drunkenness as means to protect women and their children from domestic violence, and to control rowdiness among the wage-earning working class so to promote order and productivity (Gusfield, 1991).

In India, Temperance Movement was encamped by Mahatma Gandhi (1869-1948), pacifist and leader of the former British colony's independence movement. Gandhi regarded alcohol as a foreign importation to the Indian culture and concluded that it was not prohibited in the Indian territory only because of colonization.

Following the contentious repertoire of the Abolitionist Movement, which was also part of the reformers movements of the late Nineteenth Century, the Temperance Movement has taken two of its efficient measures: it has developed printed newspapers as a way of informing, communicating and even teaching its constituencies in different parts of the globe and it has settled periodical international meetings to promote face to face socialization and planning, some of them named "World Temperance Conventions", started as early as in the 1850s.

These international conventions built a transnational community based upon a shared opposition to alcohol, opium, cocaine and cannabis, bringing attention to the international dimension of their causes and bolstering "advocate's perceptions of the rightness of their cause", which "was part of a universal struggle necessitating an international response" (Schrad, 2010, p. 266). These meetings also served as channels the transnational circulation of ideas and information, framing them in ways that 'resonate or fit with the larger belief systems" (Keck & Sikkink, 1998, p. 201-204).

They were, progressively, frequented by government representatives, which would interact more intensively with temperance activists and their ideas.

This evolution of international temperance conventions has corroborated to a tactical change within the movement. While early temperance activists encouraged partial or total abstinence through mechanisms of moral persuasion, later groups would also focus on promoting local legislative changes (Schrad, 2010, p. 260-262), advocating for coercive means of abstinence, including production, trade and consumption prohibition and criminalization.

One of these activists was Charles Henry Brent (1862-1929), Protestant episcopal bishop in Manila, the capital of the Philippines, a territory that came under the US responsibility in 1898 as a result of the Spanish-American War. At that time, the Philippines had more than 190 opium retail outlets, which forced the US to enter the opium debate. Its first measure was to keep the opium sales while financing education with its revenue, provoking 'vigorous response from Christian missionaries', including Charles Brent (Buxton, 2010, p. 70).

Brent's claim for the institution of an opium commission to inquiry on its use effects in the Philippines was allowed by the US federal government. Its findings contradicted those of earlier British Royal Opium Commission. The Philippine Commission in 1903 founded opium use had grave effects on the health and moral capacity of users and recommended that production and sales should be constrained to medical use. The recommendation was accepted and implemented in the Philippines by the US government (McAllister, 2000).

After the Commission, the missionary has also lobbied the Theodore Roosevelt's (1858-1919) presidency to convene an international opium conference in order to curb opium supply, without which domestic Philippine initiatives would fail.

William McAllister (2000) and Frank Dikotter (2003) emphasize that drug control was not an end in itself but a means to achieve state's political and economic aspirations. They highlight that China have boycotted US businesses and products after Americans have issued the Chinese Exclusion Act in 1882, forbidding the immigration of Chinese laborers. The act was supposed to last ten years but was renewed in 1892 and made permanent in 1902. Chinese merchants organized a voluntary embargo against American goods from 1905, agitating American traders and pressing President Roosevelt (Musto, 1999).

Charles Brent's claims that the US should lead an international anti-opium crusade was a perfect mean for the US economic aspirations: it would approximate US to the promising Chinese market through foreign affairs laces and, at the same time, it would put the British in a less favorable position in international trade (Musto, 1999).

As intended, the preparations for the 1909 Shanghai Opium Conference, presided by Charles Brent, have strengthened the US and China trade and political relations (McAllister, 2000; Braithwaite & Drahos, 2000; Dikotter, 2003).

In the face of the US position regarding opium and Brent's claims, Ian Tyrrell argued that the "American government adapted to the new moral lobby and used drug reform as an instrument in regional and ultimately global policy" (Tyrrell, 2013, p.147).

According to Braithwaite and Drahos (2000), apart from Temperance Movement pressures, another reason for the US to lead an international debate over controlling opium (and, later, other psychotropic substances) was that big European manufacturers were the ones importing opium in large quantities to the West and obtaining substantial revenue from opium-based remedies. The US tobacco production and manufacture, on the contrary, faced a much more modest opposition.

Most of the great powers of that time have accepted the US invitation for the international meeting, understanding that its aftermath would not bound nations to any compromise. The main absence was the major opium cultivator: Ottoman Empire.

In the Shanghai meeting, the US has pressed for a complete elimination of opium trade and other delegations have expressed their willingness to accede on some sort of regulation. As stated by McAllister (2000), because the US was not involved in the opium market, eliminating it 'required little sacrifice from Americans while demanding fundamental social and institutional change from others" (McAllister, 2000, p. 66).

In general, 'governments demonstrated their inclination to protect interests at the expense of pursuing moral objectives." (MacAllister, 2000, p. 31-32) and, although it came to its end without a formal agreement among powers, the Shanghai Conference has inaugurated the international dialogue on drugs and has settled some recommendations, among which was one that opium could not be exported to nations prohibiting it by domestic legislation. That was the case of China.

Coincidentally or not, the main commodity to benefit from the prohibition of opium imports to China, gaining the Chinese market, were ready-made cigarettes, exported by the US and the UK (Dikotter, 2003).

As argued by Philip Keefer and Norman Loayza (2010), "more so than with other public policy issues, the interplay of deep-seated ideological stances and entrenched economic interests seem to have dictated government responses to the drug trade".

Just before the international meeting, the US delegation has pressed for an exemplary anti-opium legislation. The first and only US federal law to ever mention such substances was the 1906 Pure Drug and Food Act, which inaugurated state control over production and manufacture of commercialized drugs, a role that would only increase along the years. The act has settled the basis for the current US Food and Drug Administration agency.

The absence of a domestic anti-opium law was a reflection of the prominence of alcohol as a habit forming substance of concern, which use was pervasive in the country (Bancroft, 2009). It was seen as a cause of potential embarrassment in front of other delegations meeting in Shanghai. They might not understand the complexities of the US federation system. In a letter, US diplomat Robert Bacon (1860-1919) expressed the reason for a hurry in the introduction of the Smoking Opium Exclusion Act, in 1909, which forbidden non-medical import and use of this substance: "to save our face in the conference at Shanghai" (Musto, 1999, p. 34).

The act was outlined to be an exemplary opium law, legitimizing the US international position against the opium trade. Seen by the Temperance Movement and by the Christian missionaries as a triumph, the act was supported by discourses articulating racist language and imagery, which would become "a core feature of anti-drug measures in the United States" (Buxton, 2010, p. 73).

The xenophobic and criminalizing narrative towards drugs was publicly inaugurated by doctor Hamilton Wright (1846-1916), a State Department official and US representative in the Shanghai conference. In a report to the US Congress, he stated that "the use of cocaine by the negroes of the South is one of the most elusive and troublesome questions which confront the enforcement of the law in most of the Southern states" because it "is often the direct incentive to the crime of rape" (1910, p.

58). Despite contestations from other researchers, which stated that the use of cocaine was higher among whites than blacks, the association between blacks, drugs and crime has been increasingly reiterated through the media, laying ground for future racial asymmetries in drug policy enforcement in the US (Provine, 2007).

In a story published by *The New York Times* in 1914, another doctor, a supposedly legitimate voice, describes cocaine use among African Americans as a menace to white American society, claiming that cocainized "negroes" became rapists and that Southern sheriffs had to increase the caliber of their weapons to bring them down, since, under cocaine effect, they would become resistant to police bullets<sup>2</sup>.

Public discourses coupling drugs, crime and ethnic groups would be constant all throughout the modern history of the United States, influencing local and global perceptions towards psychoactive and its users.

#### 2.1.2 The Versailles Treaty as a coercive tool for adherence

The same missionary groups that have fostered the Shanghai Opium Conference have successfully lobbied for a follow-up conference, held in The Hague in 1912, in which delegates had plenipotentiary powers, bounding countries to the resulting 1912 International Opium Convention. Charles Brent and Hamilton Wright were again the US representatives along with the Californian pharmacist Henry J. Finger, which urged that the conference should embrace the "cannabis issue" brought to his attention since "a large influx of Hindoos" flew to the Golden State, California.

The involvement of physicians and pharmacists professional classes in the drug control agenda remounts the late Nineteenth Century. They have advanced a path to professionalization by claiming the right to control prescriptions of habit forming substances (Musto, 1999). Their unionizing efforts revolved around the idea that "instituting controls reinforced the authority of the medical profession" (McAllister, 2000, pp. 17-18) as well as demand and profit from its services. As an example: "The

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<sup>2</sup> February, 8th, 1914: "Negro cocaine 'fiends' are a new Southern menace", *The New York Times*, <https://www.nytimes.com/1914/02/08/archives/negro-cocaine-fiends-are-a-new-southern-menace-murder-and-insanity.html>, accessed in November 2019.

American Medical Association supported alcohol prohibition from 1917 and by 1928 its members were making US\$ 40 million a year writing prescriptions for whisky" (Braithwaite & Drahos, 2000, p. 361).

Internationally, pharmaceutical firms forecasted that some sort of drug regulation might actually be interesting. Braithwaite and Drahos (2000) explain that pharmacies were family business in the Nineteenth Century and early Twentieth Century, mixing their own formulas sold on local groceries. "Regulation has favored international companies, crushing their small business competitors" (p. 360), which had difficulties in coping with new bureaucracies.

The Hague Conference invitation was refused by Turkey, Switzerland, Bolivia and Peru, all deeply involved in production and manufacture of opium and cocaine. The Austria-Hungary, that have attended the Shanghai meeting, this time refused to attend the conference. England had its position smoothed through lobby promoted by the acquaintance of Bishop Brent with the Archbishop of Canterbury and other Temperance Movement activists. Germany sought to defend its industry from production limitations. And Italy insisted that the conference included the subject of "Indian hemp". A protocol on the study of the matter "with a view on regulating its abuses" either by internal legislation or by international law was settled (Musto, 1999, p 50).

Scholars in the liberal or social constructivist perspectives have found that the process of socialization, in which new members come to adopt certain ways of behaving, can result from the action of 'non-state actors and may involve the use of soft power resources, such as moral leverage and technical knowledge" (Cortell & Davis, 2000, p. 83), which seems to be the case with the Temperance Movement.

Britain, India, Germany, Japan, Persia and the Netherlands initially resisted total prohibition in the international fora, while supporting progressive regulation (Musto 1999, p. 198).

The Hague resulting convention 'raised the obligation to cooperate in the international campaign against the drug evil from a purely moral one to the level of a duty under international law" (May, 1950, p.2), and national governments were required to enact 'effective laws and regulations" to control substances according to medical need and to restrict ports through which cocaine and opiates were exported.

Parties would have to estimate production for medical use and register what was effectively traded, placing the burden of narcotic control on domestic legislation. Only five countries ratified it: the United States, China, the Netherlands, Norway and Honduras (McAllister, 2000). An international effort to promote adherence to it was released in the subsequent years, with the US persuading Latin American countries to sign the convention.

There is ground to assert that international drug control was already perceived as a matter of complex interdependence, a concept characterized asymmetric power relations with absence of military use of force among countries with multiple channels of contact connecting societies (Keohane & Nye, 1977, p. 24-25): traders, governments, religious groups and missionaries acting on the same case-issue with different perspectives.

According to Ethan Nadelmann, the most important inducement for the advent of the IDCR was "the inadequacy of unilateral and bilateral law enforcement measures in the face of criminal activities that transcend national borders" (1990, p. 481).

With that key interdependence aspect in mind, it is natural to aim that an international agreement regarding drugs involve the vast majority of countries as possible. So, after World War I, a consensus was coercively achieved and the ratification of the International Opium Convention was conjoined to the Versailles Peace Agreement of 1919 (McAllister, 2000). Article 295, inserted during the Paris Peace Conference, evidenced military coercion to establishing an international drug control regime (Braithwaite & Drahos, 2000, p. 390). Among the powers defeated in World War I were some of the most reluctant ones in adhering to the anti-opium treaty: Austria-Hungary and Turkey.

The League of Nations then assumed responsibility for overseeing the Convention's implementation, creating specialized bodies for regime development (Buxton, 2010, p. 75), which were built up through subsequent conferences taking place in Geneva in 1924, 1931 and 1936. These conferences have established a complex system of psychotropic medical demand prediction that could not be surpassed in terms of production.

Under the influence of the Egyptian delegation's claim that cannabis led to insanity and hysteria and, if not included in the international controlled substances, could substitute opium and cocaine use, the 1925 International Opium Convention have included cannabis among the controlled substances. At that time, other delegations didn't have information or experience with cannabis to contradict Egypt. Nor the findings of the Indian Hemp Drugs Commission report, commissioned by the UK in the late Nineteenth Century, were evoked to present evidence on the contrary to the Egyptian claims.

Therefore, European countries gradually outlawed cannabis possession, as in 1928 UK's Dangerous Drugs Act and in a 1928 revised Dutch Opium Law. These laws exceeded the obligations in the convention, despite the absence of problems related to cannabis use in those countries, entangling themselves in the increasing drug criminalization measures (Bewley-Taylor & Jelsma, 2015, p.16).

Internationally, the demand prediction system did not prevent legitimate manufacture of drugs to follow into a growing global illegitimate market.

As a consequence, the International Police Commission, a forerunner of the Interpol, requested more compromising enforcement measures, furthering the most vigorous of interwar treaties: the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs. It was the first time drug illicit market was addressed, calling for cooperation among states and determining punitive and criminal penalties for traffickers. It recommended the establishment, at national level, of 'imprisonment or other penalties of deprivation of liberty' to international law violators.

The US was not part of these treaties on the basis that they were not harsh enough. It has signed bilateral policy agreement with 22 countries during the interwar period, which allowed it to extradite and prosecute drug traffickers independently of international law (Anslinger & Tompkins, 1953).

All international law and bilateral agreements of the interwar period have resulted in stringent decline in drug manufacture: opium production fell 82% between 1907 and 1934 (McCoy, 1972). This was considered a major achievement of global cooperation, reinforcing two groundbreaking characteristics of such treaties. Firstly, state-parties' surrendering parts of its sovereignty to international bodies (Buxton, 2010). Secondly,

the constitution of drug trafficking as a crime under customary international law (Murphy, 1999) at a time when there was no such thing as international criminal law (Schwarzenberger, 1950), leading to "the introduction of uniform penal sanctions across countries" (Buxton 2010, p. 78) and "paving the way for subsequent international criminal law of terrorism, genocide and the like" (Braithwaite & Drahos, 2000, p. 397).

### 2.1.3 US hegemony and cannabis criminalization

An expressive parcel of academics (Musto 1999; Nadelmann, 1990; McAllister, 2000; Bewley-Taylor, 2005; Buxton, 2008; Bancroft, 2009, Babor et al., 2010, Keefer & Loayza, 2010; Rolles, 2016) evaluates the role of US as primordial to the success of the prohibitionist approach to drugs. Why?

As illustrated below, the US was vector of the first international drug conference and the main defender of heavier measures to control substances production, trade and consumption, under the influence of temperance crusaders, which have accomplished domestic alcohol Prohibition, from 1920 to 1933, and influenced rigid local legislations on opium, cocaine and cannabis.

In 1914, the US Congress passed the Harrison Act, creating a prescription registry system and imposing a special tax of one dollar per year for anyone manufacturing, distributing or dispensing opium and cocaine. In 1922, Jones-Miller Act established the Narcotics Control Board, limiting the importation of opium and cocaine when not authorized by the board—a feature that would be later emulated in the international fora—and establishing criminal penalties for illegal importation, eliciting "xenophobic fears about Asian immigrants and cultures" (Hudak, 2016, p. 34). The 1930's Porter Act closed the Narcotic Control Board and transferred its powers from the already vanishing Bureau of [Alcohol] Prohibition to the new Bureau of Narcotics within the Treasury Department.

The Federal Bureau of Narcotics would be directed by one of the most infamous and successful of the US drug czars: Harry Jacob Anslinger (1892-1975). He was a former US Foreign Service civil servant who later worked on the Bureau of Prohibition, enforcing laws that had banned alcohol since the Volstead Act in 1919.

Head of the US's Federal Bureau of Narcotics (FBN) from 1930 to 1962, he was key to the resilience of drug prohibition, besides alcohol prohibition revocation, and his agency has furthered the US leadership in the globalization of narcotics prohibition.

As FBN's chief, Anslinger could transfer criminalization from alcohol to other substances under his department's responsibility. "If drugs cease to matter, so too is FBN" (Manderson 1993, p. 66, cited in Braithwaite & Drahos 2000, p. 380).

He had initially focused his anti-drugs campaigns on opium, heroin and cocaine, working closely with the powerful Hearst newspapers' chain —belonging to William Randolph Hearst (1863-1951), later portrayed in Orson Welles' "Citizen Kane" film (1941)— to incorporate anti-drugs publicity on accounts for sensational crimes, with racist flavors, reported in the news. These accounts have set forth a demonizing discourse about the "evil of drug" and the "drug menace".

Anxiety among American elites towards drugs domestic use, particularly among minority groups, was mirrored in progressively harder legislations to control substances import and use, as will be detailed in subchapter 2.1.3.1.

Domestic accounts for the relation between drugs and crime were internationally advertised and coupled with former transnational advocacy claims of drugs undermining the health and moral fiber of mankind, which were advanced by US foreign policy along with its diplomatic and economic interests.

According to David Bewley-Taylor, the evolution of the treaty-based drug control "must be understood as a confluence of perceptions, interests and moral notions among dominant sectors of the most powerful states within the international community" (2012, p.8). However, the scholar argues that the US role in shaping the regime "according to its preferred norms cannot be underestimated", with individuals and anti-narcotic groups managing to export US-style prohibition policies into the international system, such as law enforcement aiming to "eliminate supply by targeting producers and traffickers outside the USA and dealers within its borders" (Bewley-Taylor, 2012, p.8).

This account for US prominence in advancing prohibition as the best drug control international policy has been progressively contested by new work by historians that argue about the role of Britain as a regulatory actor from 1912 onwards (Mills, 2014), about prohibition's birthplace being in Asia in the Eighteenth and Nineteenth Centuries

(Windle, 2013) as well as about cannabis prohibition emanating from Mexico (Campos 2012).

Nevertheless, post-World War II accounts for the rise of the US political, economic and military hegemony, consolidating its powers and leverage in the drug control subject-matter regardless of the origins of prohibitionists' ideas embraced by the new global hegemon.

This process was started with the defeat of Japan in 1945 and consequent occupation of its territories in Asia by the United States, "dismantling the state opium monopolies that supplied addicts, forcibly installing instead its prohibitionist policy" (Braithwaite & Drahos, 2000, p. 364). The US has also implemented prohibition in West-Germany and Japan.

In the aftermath of World War II, already occupying the place of world superpower, the US has launched an initiative to sum up all previous conventions into one: the 1961 Single Convention on Narcotic Drugs.

The Single Convention has inaugurated the international drug control regime, its norms and apparatus. Its preamble has labelled drugs as an 'evil' and a threat to 'health and welfare of mankind' that states had the duty to prevent and combat, calling 'universal action for international cooperation guided by the same principles'.

The US agency in promoting global drug prohibition, however, was not restricted by fostering the Single Convention. As the treaty was progressively being signed and ratified, the US has created a unilateral certification system in 1961 to enforce compliance to the IDCR treaty upon the threat to provide or withdraw aid according to the countries counter-narcotics efforts and performance.

The incremental emergence of an international prohibitive framework for drug control, furthered by the United States, led Craig Murphy (1994) to analyze that surrender of national sovereignty to US illicit drug policy was hegemonic. The US would be the exception to the rule as it "sustained national sovereignty with illicit drugs by dominating the rest of the world to do things the US way, hegemonically, with unusually heavy use of military coercion and rewards as mechanisms" (Braithwaite & Drahos 2000, p. 397).

### 2.1.3.1 Cannabis in the US before the IDCR

Throughout the United States' history, cannabis had conflicting and opposed functions. From medicine to poison then back to medicine. From commodity to evil doer then object of disputes between the two.

In the 17th and 18th Centuries, cannabis, known as Indian hemp, was an important agricultural input for paper and textile productions with relevance for the economy of various US states (Andrews and Vinkenoog, 1967; Rosevar, 1967; Brecher, 1972). The cannabis seeds produce oil with industrial and nutritional properties for humans as well as for birds.

It was so versatile, strategic and valuable that in 1619 Virginia Assembly required that every farmer in the state would have to grow it (Billings, 2012).

Even George Washington (1732-1799), one of the country's Founding Fathers, grew cannabis himself in Mount Vernon (Virginia) for its fiber strategic applications. The first US president has written in one of his notebooks that he wished to "make the most of the Indian hemp seed...and sow it everywhere" (Washington, 1794).

Hemp production has declined after the US Civil War (1861-1865), when cotton and wool machinery made these fabrics cheaper alternatives (Brecher, 1972). Nevertheless, its valuable industrial properties would later give rise to a crop revival.

In the medical field, cannabis was listed in the US Pharmacopoeia, an annual compendium of drug information, as a substance proper for therapeutic applications and was effectively used as medicine until 1937, when the federal Marijuana Tax Act has de facto criminalized its production (Grinspoon, 1977; Himmelstein, 1983; Hudak, 2016).

Cannabis was also an important component of different pharmaceutical remedies, as cocaine and morphine also was at that time.

In 1906, cannabis was first mentioned in a US democratic piece of legislation when the Food and Drugs Act was issued as the first federal effort to regulate and standard commercial products in the name of safe public consumption. The act has inaugurated the government's business in controlling drugs (Hudak, 2016).

In the 1910s, most of US society has never heard of marijuana, a term derived from "marihuanos", which was a highly uncomplimentary designation used by middle-class Mexicans and Mexican-Americans to name Mexican lower-class cannabis smokers (Chasteen, 2016, p. 21).

What might have contributed to the stigmatization of Mexicans as troublemakers or criminals bringing "loco weed" to US territory was the context of the Mexican Revolution from 1910 to 1917. The Revolution involved a dispute around a 1,625,000 acre land belonging to the family of the Hearst newspapers.

Hearst's Mexican territory was occupied by Francisco Pancho Villa (1878-1923). William Hearst tried to get his land back by influencing a US intervention in the Mexican Revolution through reporting on the rebels on his newspapers, pressuring public opinion against them.

President Woodrow Wilson (1916-1920) has sent a troop of 10,000 soldiers to unsuccessfully pursue Villa until 1917, when the First World War precipitated the end of the US army's Mexican mission. Cannabis was used by many of Mexican rebels, later accused of infecting American troops along the border (Bonnie & Whitebread 1974, p. 25).

As Mexican immigrants flooded across the US-Mexico border, Americans from the Southwest were progressively uncomfortable with the wave of strangers, blamed since then for a variety of problems.

It was during the 1910s that cannabis was banned by law for the first time in the US. In 1914, the city of El Paso, Texas, enshrined a municipal ban of cannabis after a fight between Mexicans and North Americans that ended up in the local police station (Chasteen, 2016, p. 21).

Marijuana was soon object of media attention, and disparity among cannabis mentions pre-1900, in which its pharmaceutical properties were hailed, and post-1900, when it was described as related to crime, are striking. "It is almost as though the papers are describing two different drugs" (Thompson, 2013).

Pressure for cannabis criminalization firstly came not from the Federal Bureau of Narcotics (FBN) but rather from South and Southwest law enforcement officials who saw it as "directly linked to violent crime and to the 'problem' of Mexican immigrants" (Walton, 1938, Galliher & Walker, 1977, as cited in Weisheit, 1992, p. 17). Previous efforts to control other psychotropic such as opium and cocaine were also strongly related to racial overtones towards Chinese and blacks, respectively (Musto, 1999; Himmelstein, 1983; Mena & Hobbs, 2010).

The race tons of cannabis accounts in the US were firstly labelled against Mexicans and followed by a process of general criminalization of its users, as if the

substance use was the cause of crime itself, disseminating the idea that not only bad people used marijuana but mainly that marijuana made people bad.

Robert Walton (1938) provides myriad examples of the association process between cannabis and deviant behaviors. In one of them, the Los Angeles police department chief of detectives states that his officers were "shot and killed by marijuana addicts and we have traced the act of murder directly to the influence of marijuana with no other motive", concluding that "marijuana is probably the most dangerous of all our narcotic drugs" (p. 32-33).

In 1930, the Federal Bureau of Narcotics was created as part of the Treasury Department, under the leadership of Commissioner Harry Anslinger, a former US Foreign Service civil servant who later worked on the Bureau of Prohibition, enforcing laws that had banned alcohol. The alcohol prohibition, enacted by the Volstead Act in 1919 would be repealed in 1933.

Opium and cocaine were already de facto illegal in the US. Firstly, 1914 Harrison Act had created prescription registry and a special tax for anyone manufacturing or dispensing opium and cocaine, incorporating to the US legislation important decisions made at The Hague Conference, in 1912 (McAllister, 2000). "One of the main decisions of the conference was to establish a criterion for the legality of otherwise a psychoactive drug whether or not it had any medical application" (Labate & Rodrigues, 2016, p.17).

According to John Hudak (2016), these laws "not only flexed the regulatory muscle of the US government but they also marked a period in American history in which drug control policy was executed through taxation" (p. 19).

Anslinger would soon endorse anti-marijuana claims, using manipulated data and compelling stories to associate cannabis use, still legal in the federal scope, with crime. During the 1930s, many states have outlawed cannabis in the name of public order with little or no debate about it. Among them were Texas and California.

In 1932, Uniform State Narcotic Act, supported by Anslinger, pushed states to unify their local narcotic laws and to include cannabis under the "narcotic" designation, labelling it as a substance entitled to FBN's control and enforcement. The act prescribed criminal punishment for state laws violators.

Anslinger would assert on his public speeches and interviews that marijuana was an "evil weed" capable of producing homicides and sex crimes, brought to the US by Mexicans and, from them spread to blacks in New Orleans and, from then, up to the

North of the country following the very spread of jazz "satanic" music (Weisheit 1992, Gerber 2004, Barcott, 2015, Chasteen 2016). Anslinger also wrote an article titled "Marijuana: Assassin of Youth", in which he dissertates about young marijuana addicts who had murdered police forces, friends and relatives or had abused children because of the so called "reefer".

In 1936, Anslinger's battle gained a reinforcement financed by moral entrepreneurs (a church group, in the case) in the form of a propaganda film intended to alarm parents about the dangers of cannabis used. Initially called "Tell Your Children", the film was bought by a larger audience by a professional film producer, who re-edited the shootings before releasing it at the commercial circuit in 1938 under a new name: "Reefer Madness". The plot was about high school students who try marijuana and get into a vicious circle of crime, suicide, rape, hallucinations and, finally, what is regarded as madness and insanity due to cannabis addiction.

Between the propaganda and the commercial films releases, Congress opened hearings for the Marijuana Tax Act, which included speeches from Harry Anslinger, US drug czar and chief of FBN, as well as from Dr. William Woodward, from the American Medical Association (AMA), among others. In that occasion, Anslinger exposed how marijuana was related to crime, murder and debauchery. He had passed as an authority on the issue "because few people knew or cared about it", raising awareness on cannabis in line with the imagery spread by "Reefer Madness" (Chasteen, 2016, p.27).

Approved in 1937, the Marijuana Tax Act made all forms of cannabis *de facto* illegal at the federal level by creating a commercial annual tax and registration required for any American who "imports, manufactures, produces, compounds, sells, deals in dispenses, prescribes, administers or gives away marijuana". Failure to do so would imply a high fine and terms of imprisonment.

New York City mayor, Fiorello La Guardia (1882-1947), reacted to Anslinger accounts for cannabis to cause such evil behaviors by commissioning a five years study (1939-1944) on cannabis that involved medical, sociological and criminological approaches, and entailed a survey done school by school in NYC in order to understand the marijuana menace among students.

Its final report, known as LaGuardia Committee Report, was released in 1944 and stated that cannabis was not addictive, debunked the idea of the murderous marijuana fiend and stated that there was no significant marijuana addiction problem

among students, which were more prone to smoking tobacco (Deitch, 2003; Chasteen, 2016; Hudak, 2016; Rolles, 2016). It concluded that marijuana was not a threat to America and that it would be treated differently from other drugs.

At the same time, the Second World War (1939-1944) period would bring evidence of cannabis prohibition's inconvenience. Hemp cultivation for fiber production was encouraged by the government because of Japan's cut off of US supplies of hemp from the Philippines (Weisheit, 1992). The slogan "Hemp for Victory" was disseminated by the US Department of Agriculture, which provided seeds, fertilizers and planting instructions for farmers (Frazier, 1974, p.65). The fiber was used to make military items: rigging and ropes, parachute webbing, boots stitching and firehose (Herer, 1990).

All this industrial applications of hemp fiber ceased as the war came to an end and were replaced by new synthetic fibers.

This was a time in which a cultural novelty would seed changes in the social perception on marijuana. A group of writers, some of them from Columbia University, in New York City, meddled with black Americans in jazz clubs and behaved in unconventional ways, with little regard for current social norms, which included smoking marijuana. They were called the Beatniks and their avant-garde cultural dissidence gave voice to a small intellectual white middle-class youth that were sympathetic to the black culture and pursued a separate cultural identity that would year later become a mass phenomenon. It was the first step of cannabis from outside Mexican and black communities and into white mainstream.

Meanwhile, cannabis consumption and trade was fought through the US criminal justice system. In the 1950s, penalties for drug law offences were increased both at state and federal levels. Nationally, 1951's Boggs Act has identified cannabis as a narcotic and demanded minimum mandatory sentences for drug law offences.

After its approval, FBN's director has publicly campaigned for state laws "as responsibly as the federal government" ones (Deitch, 2003). In Missouri, for instance, a second offence for mere possession could bring a life sentence and, in Georgia, a second conviction for sale to minors could be punishable with death (Inciardi, 1981; Himmelstein, 1986).

Anslinger has also lobbied at Congress for the 1954 Narcotics Control Act, which increased criminal penalties for possession of narcotics to a minimum sentence of five years. In the same year, the federal government has established an Interdepartmental

Committee on Narcotics with a mandate to survey the extent of drug addiction in order to promote cooperation among the US states.

In 1963, President John F. Kennedy (1917-1963) has created the Advisor Commission on Narcotic and Drug Abuse, which final report suggested the amendment of mandatory minimum sentences and probation and parole prohibition for drug offences to "fit the gravity of the particular offence so as to provide a greater incentive for rehabilitation". The report, however, reached the Kennedy just before he went to Dallas and got murdered.

One of its recommendations, to move drug licit importation issues from the FBN, under Treasury Department, to the Department of Health, Education and Welfare, was actually done in 1965, when the Bureau of Drug Abuse Control was created.

One year later, President Lyndon Johnson (1908-1973) has urged Congress to treat drug addiction "realistically". "Seizure of illegal narcotics and marijuana rose 62 percent from 1962 to 1965. But our continued insistence on treating drug addicts, once apprehended, as criminals, is neither humane nor effective. It has neither curtailed addiction nor prevented crime" (Johnson, 1966, p. 296).

The US had not yet ratified the 1961 Single Convention on Narcotic Drugs until May 1967.

## 2.2 Treaties, institutions and norms

The IDCR is compounded by the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol; the 1971 Convention on Psychotropic Substances; and the 1988 Convention against the Illicit Traffic in Narcotic Drugs and Psychoactive Substances.

Before the first of the contemporary regime conventions was designed, the Lake Success protocol of 1946 had transferred drug conventions management from the vanishing League of Nations to the new United Nations (UN). The UN Economic and Social Council (Ecosoc) was chosen to oversee the conventions with support from the newly established Commission on Narcotic Drugs (CND).

The CND would become the legislative and policy-making body of the drug regime. Consisting of representatives of 53 states elected by the Ecosoc, it decides on

drug scheduling based on recommendation of World Health Organization (WHO), another newly created institution by then.

They were supposed to hold annual meetings in which nations negotiate and pass, by consensus, resolutions on how to operate the system and policy issues.

John Collins (2015) stresses how the UN secretariat has shaped narratives around drug consumption. He cites a survey on drug control circulated among member states in 1947 in which "questions were designed to suggest repressive and strict measures as the natural response" (p. 172). As a consequence, according to the scholar, "states began vying to outdo each other at CND in highlighting the severity of control and punishment" and soon arrest of addicts, users and traffickers started being used as a metric for success in international control (Collins, 2015, p. 172).

Collins cites a striking example in which Iran declared its police forces being authorized to enter people's homes and its Parliament considering the death penalty for drug use, which CND publicly noted with satisfaction (UN CND 2nd Session, "Record of the Seventeenth Meeting", 5 August 1947, Cited in: Collins, 2015, p.172).

As part of the new UN structure, WHO have assumed the drug advisory responsibility formerly exercised by the Health Committee of the League of Nations and to its Drug Dependence Expert Committee was given the task of determining the addictive potential of drugs and their position on the international schedule of controls (Fazey, 2003). Scholars have noted, however, that the IDCR have been "increasingly inclined to disregard the scientific advice it receives from the WHO" (Babor et al. 2010, p. 213).

### 2.2.1 The 1961 Single Convention on Narcotic Drugs

The 1961 Single Convention marked the birth of the contemporary international regime. It was meant to unify the set of international conventions settled since the 1912 Hague Opium Convention. However, while the pre-1961 conventions were "restrictive commodities agreement" (May, 1950, p. 305), the Single Convention was a "stricter and wider-ranging multilateral instrument which (...) became more prohibitionist in tenor" (Bewley-Taylor, 2012, p. 22).

It has expanded the controlling measures of opium poppies, coca bushes and cannabis plants and other products derived from them while has required that such plants and plant-based psychotropic non-medical use should be outlawed and punished, addressing an increasing focus on individual drug users compared to its predecessors treaties (Bewley-Taylor, 2012).

This new feature is entrenched on its Article 4, which prescribes "General obligations" to state-parties, such as to take legislative and administrative measures "to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs".

Article 36 prescribes "Penal Provisions" as follows:

"Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty."

Harry Levine (2003) argues that the Single Convention stands for international law in a similar manner that the Eighteenth Amendment and the Volstead Act stood in the US law when implementing alcohol prohibition. The US federal law has restricted the way the federal units must deal with alcohol. The Single Convention has limited the way sovereign state parties must approach other drugs (p. 150).

The Single Convention has also created four lists of substances, called schedules, scaled according to the substance's harm and medical utility. This scale was applied upon more than one hundred substances. Cannabis was classified as a Schedule 1 psychoactive, along with substances such as heroin and cocaine. Schedule 1 classifies drugs considered the most harmful ones in terms of liability to abuse, risk and actual damage to users' health. Schedule 1 substances are also the ones that bear no medical use.

According to Dave Bewley-Taylor (2012), cannabis scheduling had "little to do with consideration of the available scientific evidence concerning harms and addictive properties and much to do with the endeavors of a succession of US delegations to international drug control conferences" (p. 173).

The Single Convention has incremented drug control international institutions creating the International Narcotic Control Board (INCB), which is self-defined as "an independent and quasi-judicial control organ", a guardian of the conventions, although it may not even be considered a UN body (Collins, 2016, p.11).

INCB has 13 members elected by the Ecosoc as experts (three of them are picked from a list put forward by the WHO). In the advent of an apparent violation of the conventions, the INCB is the one asking nations for explanations and proposing measures for problem reparation to governments. It also monitors the manufacture and trade of controlled substances through an import/export authorization system based on state-parties self-reports as well as on demand and production estimates.

It is important to outline that, although the US has worked for the Single Convention to happen, its delegation has rejected its final document framework as too weak. Harry Anslinger wanted the convention to provide greater embargo-powers to the INCB for non-compliant states and more stringent rules for opium production, and the US demanded that the convention should be amended.

Within the context of President Nixon's increasingly punitive posturing, Washington worked hard in the early 1970s to initiate a plenipotentiary conference in Geneva to amend the Single Convention; a procedure permitted under article 47" (Bewley-Taylor & Jelsma, 2012, p. 78). But the Amending Protocol did not provide dramatic changes in the convention's articles. It 'fine-tuned existing provisions", such as data collection, estimates system and extradition. It has also directed special attention to the provision of facilities for medical treatment, care and rehabilitation of drug addicts, creating an obligation to take 'all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, aftercare, rehabilitation and social reintegration of persons involved".

This provision has subsidized forcible detention and compulsory treatment for drug users and abusers as a 'prevention of abuse" policy by countries such as Mexico,

China, Russia, India and Vietnam, creating further tensions between the international drug laws and the human rights regime.

### 2.2.2 The 1971 Psychotropic Substances Convention and the “war on drugs”

Ten years after the first of the IDCR treaties, the 1971 Convention on Psychotropic Substances has expanded the scope of the substances controlled by the regime to include manufactured and synthetic drugs, resulting of increasing global concern for the effects of substances such as barbiturates, amphetamines and Lysergic Acid Diethylamide (LSD), all of which fell outside the scope of existing instruments. It has established a much weaker system of controls than the 1961 Convention placed over the plant-based psychoactive, which is regarded to be an evidence of pressures made by developed and industrialized countries who did not want strict controls on their chemicals and pharmaceutical industries (Bewley-Taylor & Jelsma, 2012).

This aspect can be also regarded as a consequence of cultural developments in the 1960s and 1970s drawn on openness to diversity, disputing the severity of punitive approaches to drugs, especially toward cannabis, which increase in use was measured by Gallup.

The first Gallup poll on marijuana was done in 1969 and accounted that 4% of the US population had used cannabis at least once in their lifetime. By 1977, this percentage had increased to 24%. This raise in marijuana use is directly related to a marked escalation in cannabis related arrests from 18,815 cases in 1965 to 118,903 in 1969 and, then, to 457,600 in 1977 (Gettman, 2005).

The burgeoning of the Counterculture movement, in which youth elite from the powerful Western countries developed a cultural identity around peace, free love and mind-altering experiences upon the use of substances ranging from cannabis to LSD, would lead to a change in perception of drug use and users. Although such behaviour would still fall into the deviating stigma, the rise of such groups would challenge common sense perceptions that until then have correlated drug use with murder and crime.

Because hippies shared some of the "risk behaviors of the underclass", they have taken "race out of the equation when it came to certain laws the establishment had traditionally used to keep down minorities". "They forced a confrontation and set the stage for social change" (Deitch, 2003, p. 167).

Actually, Dave Bewley-Taylor and Martin Jelsma (2012) describe the unprecedented tone of the Chilean delegation's speech during the conference meeting. They argued that man has always used drugs for transcendental purposes and that "the hippies and others who used drugs, connecting them with flowers and love, did not perhaps realize that they were the modern representatives of a long tradition", claiming that the use of such substances could not "be fought against by repressive and prohibitory legislation alone" (E/CONF.58/7/Add.I, pp. 11–12, as cited in p. 79).

The establishment of the two conventions was followed, domestically, by the institution of repressive policies based in law enforcement and severe penal punishments including mandatory life sentence for some types of drug related crimes and also death penalty.

According to Julia Buxton (2010), critics of this approach have highlighted that they respond to internal pressures "stemming from youth rebellion, protest movements, revolutionary ideologies, social experimentation, and profound East-West tensions", in which criminal justice repressive measures made it possible to suppress political dissent (p. 86). She illustrates the argument with domestic response in the United States, in which counternarcotic domestic policies were politically applied and incorporated into foreign policy, citing the launching of the "war on drugs" in 1969 as the most distinguished case.

As an example, it is interesting to look at what John Ehrlichman (1925-1999), President Richard Nixon's (1913-1994) aide on domestic affairs, told journalist Dan Baum in an interview done in 1994 but revealed only in 2016. According to Baum, Ehrlichman, who would eventually get convicted in the Watergate scandal, said:

"The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies

with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news."<sup>3</sup>

The War on Drugs was based on the "reconceptualization of the drugs issue as a matter of national security" (Buxton, 2010), inaugurating a new pattern of drug traffic enforcement based on the militarization of the fight against the international supply to the US. One of its expressions was the 1969 Operation Intercept, a multi-day effort to shutter the U.S.-Mexico border to search vehicles for illegal drugs. The expensive operation yielded relatively little in terms of seizures of contraband. On the other hand, it led to an aggressive counter operation by the Mexican government, and was widely considered a failure, generating incentives for Americans to grow cannabis in the United States soil.

The definitive incentive for US citizens to produce their own cannabis and, moreover, to turn outdoors crop management to the development of indoors cultivation techniques was an extensive campaign of paraquat spraying in Mexican cannabis fields. Paraquat was a toxic herbicide used for general weed control that could kill a pot plant within a day. According to Landrigan et al. (1983), from 1975 to 1978, the US government has spent US\$ 30 million per year toward "indirect support" of the cannabis paraquat spraying program. In order to avoid poisonous herbs, US users have developed a local and indoor cannabis production.

"War on drugs" was followed by the US enactment of the Comprehensive Drug Abuse Prevention and Control Act, in 1970, which formalized the Single Convention scheduling into domestic law and established a commission for the study of cannabis, the causes of its abuse and its relative significance.

Nixon pointed nine of the commission's thirteen members as a way to produce propaganda in support of the War on Drugs, and selected Raymond Shafer—a former Pennsylvania governor, a Republican, and an old friend—as chairman of the commission (Hudak, 2016).

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<sup>3</sup> Baum, Dan 2016 "Legalize it all: How to win the war on drugs", Harper's Magazine, April 2016. <https://harpers.org/archive/2016/04/legalize-it-all/> (retrieved in November 2, 2019).

Commission work was funded by US\$ 1 million and its final report, entitled "Marijuana: A Signal of Misunderstanding", was delivered to the US Congress in March 1972, just days after the Drug Abuse Office and Treatment Act of 1972 was approved, providing extra resources for Nixon's War on Drugs.

The report explicitly opposed the legalization of recreational marijuana, stating that 'society should not approve or encourage the recreational use of any drug' because it would encourage abuses. Nevertheless, the document "challenged the historical, scientific, legal and sociological underpinnings of the prohibition of marijuana" as well as the "legitimacy of reports connecting the use of marijuana with increases in criminal activity" (Hudak, 2016, p. 60-61), exploring the societal and financial costs of criminalizing cannabis use and possession: 'The Commission is of the unanimous opinion that marihuana use is not such a grave problem that individuals who smoke marihuana, and possess it for that purpose, should be subject to criminal procedures' (as cited in Hudak, 2016, p. 61).

Conscious of its content, Nixon has publicly overlooked the Shafer Commission final report, which influenced demand for cannabis possession decriminalization in 11 federal units of the country, at the same time that Uruguay has created what was called a "flexible system" for the decriminalization of all drugs possession for personal use in 1974 and the Netherlands have created its cannabis tolerance policy, from 1976. These initiatives would open the door for new interpretation of the IDCR's rules in a more flexible manner, as will be detailed in Chapter 3. As precursors for cannabis legalization, the decriminalization policy has also challenged the sanction power of the IDCR, producing incentives for the elaboration of alternative policies from total prohibition and criminalization.

Nixon was too busy with his War on Drugs and, as his last act on the drugs field, he has created of the Drug Enforcement Administration (FDA), in 1973, after the closure of the FBN.

The US foreign efforts are evident through DEA operations data. In 1973, there were already 124 DEA agents in 33 countries (Andreas & Nadelmann, 2006, p. 129). In early 2014, the DEA had 793 staff posted in a total of 68 countries (Sledge, 2014, as

cited in Babor et al., 2010). Between 1973 and 2012, when it has reached its peak, DEA employees has increased 300% and its budget was supplemented 4.330%<sup>4</sup>.

According to Peter Braithwaite and Peter Drahos (2000), the 'war on drugs' was literally a military coercion period. Action were "increasingly funded from the military rather than from the health or criminal justice budgets, and assassination of key drug distributors became part of the strategy" (Epstein, 1990, as cited in p. 390). US military technology was supplied for controlling crops and factories in developing countries as well as for foreign policy to the goal of defeating communism. The Central Intelligence Agency (CIA) has protected anti-communist groups that relied on illicit drugs funding, such as Manuel Noriega (1934-2017) in Panama, Kuomintang insurgents in North China, Burmanese drug lords, Nicaraguan contras and Mujaheddins in Afghanistan. This has created 'bigger and more ruthless controllers of drug trafficking and linking organized traffickers into new markets" (p. 390).

The rubric of the "war on drugs" was used as a flexible instrument for forwarding general American policy interests as well as drug concerns. The prominence of foreign affairs or drug concerns would depend on the case. As an example, after the fall of the Taliban in Afghanistan, the US "foreign policy interests have overridden US drug concerns" with the major opium producer territory (Babor et al 2010 p. 234).

Scholars from the Copenhagen School in the 1990s have interpreted drug control mechanism as "securitizations" (Buzan et al., 1997), describing a process in which an "existential threat" is identified by "an actor" and alarmed through "a speech act", demanding "extraordinary measures" to be nullified.

According to this theory, the process of securitization of drugs in international and domestic mechanisms of control has two phases. In the first one, by defining drugs as an "evil" and a "threat to mankind" in its preamble, the 1961 Single Convention has legitimated demand for extraordinary measures, which some authors argue as a process underdone in the absence of any democratic input (Kushlick, 2011). The second securitization process was towards organized crime, strengthened after prohibition has created a powerful illicit drug market.

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<sup>4</sup>DEA Staffing & Budget [www.dea.gov/staffing-and-budget](http://www.dea.gov/staffing-and-budget) (retrieved in January 2019).

For drug related organized crime securitization, the extraordinary measure was the militarization of drug laws enforcement, entrenched in the National Security Decision Directive 221 (NSDD-211), signed by US president Ronald Reagan in 1986, and the adoption of harsher criminal penalties, with mandatory minimum convictions, which sometimes would overcome the very penalties applied to rape or even homicide (CEDD, 2012).

In both cases, measures to tackle securitized issues were developed in a vacuum of scientific and evidence-based analysis, without provisions for evaluation and revision, and regardless of the impracticality of its main objective: a drug free world.

For securitization scholars, to securitize something is to move it "beyond politics", meaning that, reactions in the face of a threat are capable of altering the rules of the democratic game, extrapolating established frameworks of politics and policy making.

### 2.2.3 The 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychoactive Substances and regime's intrusiveness

In 1924, Professor Quincy Wright wrote in the American Journal of International Law that international drug control had three stages. The first starts in 1729, when Chinese Emperor Youngzheng issued the first edict prohibiting opium smoking and then the Portuguese started recording its opium trade. The second phase covers from the 1909 Shanghai Opium Conference to the end of the World War I. The third begins with the foundation of the League of Nations, in 1920, and develops with an increasing commitment to international cooperation in drug control.

Accordingly, Richard Lines (2017) has recently presented what could be regarded as a fourth phase, marked by the increasing use of penal laws to suppress drugs "resulting in what the UNODC describes as the negative 'unintended consequences' of the regime" (p. 4). The author identifies his fourth phase initiation with the advent of the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychoactive Substances.

The 1988 convention reflects a shift in international drug policy from drug consumption to crime control and its relation to drug markets. It made more stringent

demands for the criminalization and punishment, under domestic criminal law, of possession and purchase of illegal drugs.

Article 3 prescribes "Offenses and Sanctions" in which state-parties shall adopt measures to "establish as criminal offences under domestic law" a series of actions related to drugs: from production, extraction, manufacture and offering to cultivation, purchase and possession. Switzerland and the Netherlands filled reservation to the criminal offence for possession of substances, nullifying this provision for them.

As a reaction to the increase in globalization flows, the convention has called state-parties to create domestic criminal legislation to "prevent money laundering and to allow for asset seizure and extradition" (Buxton, 2010, p. 88). Controls over chemical precursors required in the production of synthetic drugs were also demanded. Moreover, it has set out a process of national drug laws harmonization.

As stressed by Julia Buxton (2010), obligation entrenched in the treaty pertains to all states, "irrespective of their position in the narcotic drug market, their financial capacity to dedicate resources to drug control measures, or the social, political, and structural consequences" of such policies (p. 61).

Krzysztof Krajewski (1999) states that international conventions constitute not only legal but also political documents, which he regards as evident in the drug control treaties, involving disputes between consumer countries from the industrialized global North and producing countries from developing regions of Asia and South America.

He argues that the 1988 Convention can be perceived as embodying exclusively the interests of the industrialized nations. However, its Article 3, paragraph 2, introduced on the motion of the Mexican delegation, "attempt to strike a political balance between the obligations of producing and consumer countries" and implies while producing countries have the duty to suppress illicit supply, consumer countries have the duty to suppress their domestic demand for drugs (Albrecht, 1998, p. 681, as cited in Krajewski 1999, p. 334).

During the 1988 meeting, Bolivia also made a move through a formal reservation to the convention on the basis that the country's legal system recognized the ancestral nature of coca leaf use, which would, therefore, be licit. (Bewley-Taylor, 2012, p. 275)

Such allegation might have influenced the recognition of traditional consumption in article 14, paragraph 2, of that treaty and the inclusion of "respect fundamental human rights" provision in the treaty text.

According to Dave Bewley-Taylor (2012), these novelties have generated several ambiguities and debates on allowance for traditional use because the convention is "prefaced by a US-supported clause stressing that any measures should not be 'less stringent' than those contained within earlier treaties" (p. 275).

They can also be interpreted as a consequence of the US direct intervention on Latin American sovereign countries under the realm of fighting against drug supply. During the twelve years of Ronald Reagan and George Bush administrations, from 1981 to 1993, American anti-drug operations extended into Colombia, Mexico, Honduras, Panama, and other Latin American nations.

In 1991, UN agencies that were geographically dispersed would be unified in the UN Drug Control Program, which, in 1997, would embrace global issues of transnational crime and criminal organizations, money laundering, arms traffic, human trafficking etc. to become the United Nations Office for Drugs and Crime (UNODC).

The UNODC is the Secretariat for the International Drug Control Regime and "has played a role in advocating repressive policies and setting national policy trajectories toward the 'war on drugs'. However, this arose through agenda-setting, policy dissemination and nudging toward repressive policies by suggesting they were based in best-practice evidence" (Collins, 2016, p. 12).

As a whole, the IDCR conventions hold "substantial implications for domestic legislations" for the "extensiveness and detail of its concerns with domestic matters in ratifying nations", a feature that is not that common in treaties that are usually concerned with the relations between countries (Babor et al., 2010, p. 205-206).

Thomas Babor et al. provide an important comparison to highlight the intrusiveness of the IDCR in controlling domestic decision-making. It contrasts main provisions from 1961 and 1971 drug conventions with the equivalent provisions in the 2003 Framework Convention on Tobacco Control.

Although all three conventions regulate considered hazardous commodities and are interested in controlling illicit trade, while 1961 and 1971 require that governments control domestic markets by licensing sellers and keeping records of all transactions, requiring medical prescriptions for use, none of those requirements is present in the Tobacco Convention. In addition to those mandatory controls, 1961 and 1971 conventions require the criminalization of drug users in possession of substances that were not legally obtained (p. 206). Authors regard this requirement as "unusually strong", note that such request is absent in the context of laws on contraband commodities and that the US federal alcohol Prohibition laws did not had such punishment provision. The WHO evaluation of risk factors contribution to the global burden of disease in 2002 has estimated that tobacco and alcohol contribute five times more than illicit drugs to it (Babor et al. 2010, p. 218).

In terms of international cooperation, while the drug conventions require import authorizations before matching export authorizations, Tobacco Convention has no such detailed control, only considering the development of a tracking and tracing regime. Even the provisions for international control of firearms, enshrined in the 2001 protocol against the Illicit Manufacturing of and Trafficking in Firearms, are weaker than the international drug control ones. And it would be hard to argue that drugs represent more risk than firearms.

All these features of the IDCR in comparison to other controlled substances and products evidence the excessive intrusiveness of drug control conventions on domestic sovereign states.

International drug control regime intrusiveness in domestic politics along with draconian interpretation of its norms and rules as a monolithic and uniform drug policy to be applied into completely different domestic realities are at the core of state-parties perceived impediments for dealing with their local problems revolving around drugs, as will be demonstrated along Chapter 3.

Regime's strict norms and their heavy-handed domestic interpretation allowed for limited flexibility in developing national drug policies, imposing what the scholar Dani Rodrik (2011) called a "golden straitjacket", meaning a situation in which sovereign states agree to cooperate in deep integration, regardless of their internal democratic

inputs. This concept was developed in the light of potential conflicts between the rise of economic globalization vis a vis the increase of democracy as the preferable political regime and reflects nations' subjection to international rules and norms.

Rodrik's concept illuminates contentions between the IDCR and the role of state-parties' policy-makers in coping with drug production, traffic, abuse and their externalities within the regime framework. This policy restraint in the face of particular problems emanating from international drug policy prescriptions will render incentives for states to defect and violate the regime's international law.

### 2.3 Quasi-universal ratification: how "vice would pay homage to virtue"<sup>5</sup>

When the 1961 Single Convention on Narcotic Drugs came into force, in 1964, only 41 states have ratified it. In 2014, 186 countries were parties of the Single Convention, with 11 remaining to accede to it<sup>6</sup>. That same year, 183 states were parties of the 1971 Convention on Psychotropic Substances and 14 were yet to become parties<sup>7</sup>. As for the 1988 Convention against the Illicit Traffic in Narcotic Drugs and Psychoactive Substances, 188 states were parties to it with nine remaining to ratify it<sup>8</sup>.

These numbers make the set of three treaties, which comprises the International Drug Control Regime, as quasi-universal ones, meaning almost all nations in the globe have adhered to the IDCR regardless of the high costs they pose to certain local governments.

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<sup>5</sup> Robert Keohane uses this precise phrase in "After Hegemony" (1984, p. 141) when describing the role of moral claims as a binding factor for states' rationality and self-interest. He stresses how moral claims are convenient for defending an idea and explains that, applied to international regimes, "publicly accepting a set of principles as morally binding may perform a labeling function" for the adherent state as a "political cooperator", which is desirable.

<sup>6</sup> Countries remaining to accede to the 1961 Convention were Equatorial Guinea, South Sudan, East Timor, Palestine State, Cook Island, Kiribati, Nauru, Niue, Samoa, Tuvalu, Vanuatu

<sup>7</sup> States yet to become parties to the 1971 convention were Equatorial Guinea, South Sudan, Liberia, Haiti, East Timor, Palestine State, Cook Island, Kiribati, Nauru, Niue, Samoa, Solomon Island, Tuvalu and Vanuatu.

<sup>8</sup> Nations yet to ratify the 1988 Convention were Equatorial Guinea, Somalia, South Sudan, Palestine State, Kiribati, Palau, Papua New Guinea, Solomon Island and Tuvalu.

This was the case of countries with immemorial traditional and indigenous use of raw plants therefore prohibited, such as Bolivia, Peru (Ledebur, 2005) and India; territories with previous considerable revenue on drugs international production, such as Turkey and Iran; states with considerable revenue based on international drug trade, such as Portugal, the United Kingdom and the Netherlands; and parties whose industry relied partially on manufacture upon hence forbidden substances, such as Germany and Switzerland (McAllister, 2000; Bewley-Taylor & Jelsma, 2014).

What can explain the fact that these countries have ratified international conventions that would undermine their cultural heritages or economic development?

This contradictory characteristic of the IDCR puzzles international regime theories and their approaches to states adherence and compliance.

In order to debate it, I will first define international regimes, present its three basic theoretical schools and then apply these theories to the case of the IDCR, reconciling them as complementary ones to better understand the complex network of forces, interests and ideas that both shaped the regime and have emanated from it.

John Gerard Ruggie (1975) has settled the milestone conceptualization for international regime's theory by defining them as "a set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states" (p. 570).

The prolific academic literature inspired by the idea of international regimes have consecrated Stephen D. Krasner's international regimes definition as the classic one: 'a set of implicit or explicit conform principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations" (1983, p.2).

The scholar has designated principles as "beliefs of fact, causation and rectitude", which is here interpreted as the moral claim behind the regime's purpose and as the values on its basis. Krasner has explained norms as "standards of behavior defined in terms of rights and obligations", and rules as "specific prescriptions and proscriptions for action", a division interpreted by other scholars as conceptually blurred.

Decision-making procedures were characterized by the academic as "prevailing practices for making and implementing collective choice".

This thesis will draw on Krasner's definition to describe the international drug control regime according to the following interpretation. IDCR's principles were enshrined in the 1961 Single Convention's Preamble: 'addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind'; state parties have the 'duty to prevent and combat this evil' for the sake of the 'health and welfare of mankind'.

Its norms refer to the right of states to maintain certain psychotropic substances production, trade and consumption constrained only to medical and scientific purposes, allowing parties to cultivate, manufacture, offer or purchase such drugs within this functional limitation according to the conventions scheduling. Such norms also obliged them to eliminate cultivation, manufacturing, offering, purchasing and using of such drugs for any other end.

Its rules will be here regarded as prescriptions such as the demand for parties to license cultivation, production and manufacture of psychotropic substances subjected to treaties scheduling; the requirement of authorization for import such drugs, with the matching export authorization; and, above all, the proscription for criminalizing a series of practices related to henceforth illicit drugs under domestic law \_in a feature that compose the central part of the IDCR intrusiveness.

There are three schools of international regimes: realist, liberal and cognitivist.

The realist school focus on the power relationships (power-based), according to which states adherence to international regimes is an exercise of self-interest (Waltz, 1959). Realism emphasizes states' demands for power and security, illustrated by the importance of military force as the main resource in world politics. Accordingly, states must rely on their own resources to maintain their prominent relative positions in the system (Keohane and Nye, 1987, p. 729). For realists, power is the explanatory variable for regimes to be created, which in turn would express domestic interests of the most powerful states.

The liberal school finds its analyses on constellations of interests (interest-based), which emphasizes the role of institutions in equalizing asymmetries among parties, helping states realize their common interests and influencing states willingness to cooperate (Keohane, 1984). Liberalism regards economic incentives as something as important as concerns for security, drawing on economic theories of information and transaction costs and on game-theory. Accordingly, international regimes are functional and adherence to it is a rational choice. For liberals and neoliberals, states preferences drive the institution of international regimes, which will express common interests as a means for achieving a predictable and rational system that will incentive cooperation among parties and the role of institutions on it.

The cognitivist school emphasizes knowledge dynamics, communication and identities (knowledge-based), which stresses the role of perception, practices and social norms in both forming and changing states' interests (Finnemore, 1996). Their interpretation about regimes is based on the perception of international problems and their key mechanism is learning. As Andreas Hasenclever, Peter Mayer, and Volker Rittberger (1997) have defined, for cognitivists, knowledge is the explanatory variable for international relations.

The creation of the international drug control regime reconciles the realist view that regimes are influenced by domestic politics of the most powerful states (Waltz 1979) with the liberal one which sees interests converging internationally through regimes and resonating in domestic institutions and norms (Cortell & Davis, 2000) with the cognitivist approach that stresses the role of ideas shaping states interests and attitudes (Haas, E., 1984).

The previous historical review of multilateral developments that lead to the incremental process of international law and international organizations building, even before the advent of the IDCR, in subchapter 2.1, has evidenced such process has intertwined the three approaches.

Firstly, IDCR is a product of "a confluence of the perceptions, interests and moral notions among dominant sectors of the more powerful states" (Nadelmann 1990, p. 503), therefore, it is a projection of domestic policies in the international arena through hegemonic leverage.

The United States, Egypt and China led the pre-regime international debates on cooperation for drugs regulation while already having domestic laws prohibiting psychotropic substances such as opium, cocaine and cannabis (Bewley-Taylor & Jelsma, 2014). Their preferred norms were later incorporated and synthesized in the first of the three IDCR conventions, the 1961 Single Convention on Narcotic Drugs, with determinant US support and promotion.

As a consequence, countries that did not have local drug policies have found themselves bound by systemic international influence to implement domestically the drug treaties criminalizing framework, even if they have never had internal debates about drugs and, therefore, were not aware of their preferences in dealing with them, challenging the self-interest reasoning about adherence.

The rise of the US as the world's military, economic and political hegemonic power after World War II have reinforced his role as a drug policy initiator —among many other US policy initiations—, with greater agenda-setting powers, which other parties would follow as ratifiers (Drezner, 2003; Evans, Jacobson & Putnam, 1993).

Robert Gilpin exemplified hegemonic leverage expressed by the creation and enforcement of liberal international economic order designed by the United Kingdom and the US (1981, p.144).

This feature is grounded in one of the two central propositions of the theory of hegemonic stability (Keohane, 1980): that order in world politics is typically created by a single dominant power. 'Since regimes constitute elements of an international order, this implies that the formation of international regimes normally depends on hegemony' (Keohane, 1984, p. 31). The other central tenet of the same theory is that the resilience of such order requires continued hegemony, which Robert Keohane would question in his book *After Hegemony* (1984).

If creation of order was true with something as crucial as the world's new monetary system and economic order post-World War II, what to say about the US leverage on a peripheral matter such as international drug policy?

Scholars have observed that when a superpower exhibits a high degree of involvement in a certain function "there is unlikely to be much resistance or

unresponsiveness on the part of the countries appealed to support, unless such support is contrary to national interests” (Bewley-Taylor, 2015).

Although being a lateral issue in foreign affairs, the domestic drug policy prescribed by the IDCR was a laborious one and required annual reports from each state-party to regime's institutions, also demanding import and export authorizations issued by the INCB. This high level of demand has promoted intense interaction between countries and regime institutions, strengthening cooperation and building up institution's legitimacy and importance.

From a liberal perspective, as described by Robert Keohane and Joseph Nye (1987), the regime has created a focal point around which expectations converge, reducing uncertainty about international actors behavior and providing legitimate frameworks of action for bureaucrats and policymakers. In the long run, the authors argue, one may even see changes in how governments define their own self-interest in directions that conform to the rules of the regime.

The authors regard realist and liberal schools as complementary ones on the basis that both rely on individual actors pursuing their interests by responding to incentives, in processes of political and economic bargain (Keohane & Nye, 1987, p.728).

Although self-interest may explain regime's adherence and compliance by a fraction of its state-parties, this argument is undermined when one observes that the IDCR has posed economic or social burdens, or both, to part of its signatories.

And here is the puzzle: Why did countries take such a step that would put them in such a disadvantaged position? It could be argued that Europe was collapsed after WW2 and needed to follow US leadership in order to guarantee their reconstruction. But what about the case of Asian and Latin American countries, where opium and coca bushes flourished? What has driven their decision to enter a prohibitionist regime?

Scholars have already explored the fact that national interests are not inherent or obvious to every state, and that this aspect is neglected by both paradigmatic international relations approaches: realism and idealism (or liberalism). Martha Finnemore (1996) argues that states sometimes do not know what their interests are

and that "international systems can change what states want" by supplying nations, externally, with both the problem and the solutions to it (p.12), in a cognitivist approach.

Even Keohane acknowledges that some regimes may contain norms and principles justified on the basis of values extending beyond self-interest, and regarded as obligatory on moral grounds by governments. (1984, p. 57-8).

Among such values were international cooperation but specially the regime foundational idea of drugs as evil, a moral claim disseminated for such a long time, since the turn to the Twentieth Century, it became internationally salient.

On his account for prohibitionist international regimes, Ethan Nadelmann (1990) argued that, although they tend to reflect hegemonic economic and political interests, "it is also true —despite the inattentions of most international relations scholars— that moral and emotional factors" play important roles in regime's creation and evolution (p. 480). The author describes moral and emotional factors as those involving 'religious beliefs, humanitarian sentiments, faith in universalism, compassion, conscience, paternalism, fear, prejudice" (Nadelmann, 1990, p. 480).

The rhetoric created and disseminated by religious groups since the Shanghai Conference, targeting drug use as morally wrong and ultimately entrenching strong terminology towards it, such as 'evil" and 'threat to mankind", can be regarded as 'a mechanism for generating collective understandings and the domestic salience" of this norm (Cortell & Davis, 2000, p. 76). These authors, when evaluating domestic impact of international norms, state that 'a single pronouncement of this type is unlikely to establish domestic salience. Instead, the effect of these declarations is cumulative".

Normative pronouncements from authoritative officials 'become part of the society's legitimating discourse, establish intersubjective understandings and expectations at both domestic and international levels, and constrain policy options". Also, when a norm 'is salient in a particular social discourse, its invocation by relevant actors legitimates particular behavior or action, creating a prima facie obligation" (Cortell & Davis, 2000, p. 69).

Michael Woodiwiss and Dick Hobbs (2008) have stated that 'by employing the rhetoric of moral panic (...), the supporters of global drug prohibition could exert

considerable pressure on nations to conform to the established norms of behavior regarding control policies". States that flouted regime's principles or refused to adhere to it were labelled as deviants, risking condemnation by the international community.

Indifference towards these values may incur costs to states reputation, and therefore to their ability to make future agreements (Keohane & Nye, 1987, p. 743). The stringency of regime's rules may suggest high reputational costs for transgressors.

In this sense, as illustrated in *After Hegemony*, 'publicly accepting a set of principles as morally binding can perform a labelling function" (Keohane, 1984, p. 141). Therefore, adhering to the drug treaties moral values would potentially identify an actor as a political cooperator, modelled by Robert Axelrod (1981) as a players with whom mutually beneficial agreements can be made. Keohane completes the reasoning:

'If the code were too passive —turn the other cheek— the moralist could be exploited by the egoist, but if the code prescribes reciprocity in a "tit-for-tat" manner, it may be a valuable label for its adherents. Each egoistic government could privately dismiss moral scruples, but if a moral code based on reciprocity were widely professed, it would be advantageous for even those governments to behave as if they believed it. Vice would pay homage to virtue.'" (1984, p. 127)

The fact that drug policy was a matter of low importance in foreign policy when compared to war, arms and trade might have promoted the IDCR. John Braithwaite and Peter Drahos (2000) have argued that the relative low importance for foreign policy made global drug control to "piece by piece put together a jigsaw of domestic policy", which development was driven, paradoxically, by its "relative unimportance, the absence of domestic or political controversy and the consequent influence of international and bureaucratic factors" (p. 390).

They write that the structure of modern drug laws took shape, 'each brick depending on those below to support and validity, few remembered or even thought to question why the bricks had ever been laid". And they cite Desmond Manderson (1993), who has drawn on the Australian drug law to conclude that, brick by brick, drug laws have been entrenched so effectively that alternative processes soon became unthinkable (p. 75). This assertion resembles Judith Goldstein's work on US trade

policy, in which she asserts that liberal ideas has become 'institutionalized in a way that systematically conditions the propensity to cooperate, even where defection might be more rational' (as cited in Haggard & Simmons, 1987, p. 512).

The authors also argue that bricks were put in place hegemonically. "The sequence of narcotic conventions strategically fostered consensus globally while gradually pouring content and national commitments (Haggard & Simmons, 1987, p. 390).

According to Harry Levine (2003) global drug prohibition also became a useful feature for other state-parties purposes. This includes increased military and national police powers, legitimating actions that would not be allowed outside the drug war justification, such as raids and surveillance, inside or outside the state's boundaries; and an excuse for governments and politicians to justify long standing problems of criminality, corruption, juvenile delinquency, sexual promiscuity, low productivity etc.: all could be blamed on drugs use and users (Reinarman & Levine, 1997). Drugs prohibition is also used to blur political divergence since it could unify opponents under a single and common goal.

In the case of the IDCR, as evidenced along this Chapter 2, hegemonic economic and political interests, mingled with transnational entrepreneurship values, have fostered an international regulatory framework that achieved almost universal adherence by a mixture of self-interest (an issue that was peripheral to most countries but highly estimated by the world's hegemonic power), rational choice (become an active member of the international community and cooperate, useful feature for further purposes) and changes in parties perception about the relevance of drug policy coordination (moral salience of the theme and potential reputational effect for non-adherents or non-complaints), altering actors interests and changing basic definitions of reality (Haggard & Simmons, 1987, p. 510-14). Therefore, it reconciles the three schools of international regime theory: power-based, interest-based and knowledge-based.

Adherence and compliance were exogenously reinforced by a system of certification implemented by the United States to unilaterally coerce states to take action against drugs inside their territories, in the absence of a IDCR sanction system, as will

be explored in the next subchapter. Once part of the regime, member-states tended to cooperate, internalizing its principles, norms and rules by a repeated habit of obedience, which would, ultimately, make them value rule compliance.

### 2.3.1 The lack of a sanction system and the US unilateral certification

Although many scholars have emphasized the role of morality as a mechanism of adherence to international conventions in the drug areas (Smith, 2002; MacAllister, 2000; Nadelmann, 1990; Musto, 1999; Pearce & Woodiwiss, 1993; Reinerman, 1979) and in international regimes in general (Keohane, 1984), it is required to look on agencies enforcing compliance, either internal or external to the IDCR, in order to fully understand why states-parties, once joined the regime, have not deliberately broken its rules during the first 50 years of its existence.

According to Dave Bewley-Taylor (2012), the conventions are 'not self-executing and thus apply indirect control". This means that while they impose obligations on states 'to apply international law, such a law is not directly or immediately enforceable by a UN body" (p. 7).

The Commission on Narcotic Drugs (CND) and the International Narcotics Control Board (INBC) are responsible for monitoring parties' compliance with the drug treaties. However, they have limited ability to enforce compliance and "no police power", relying on "informal pressure" to facilitate compliance (Bewley-Taylor, 2012).

Article 8 of the Single Convention provides that the CND can 'call the attention of the Board to any matter which may be relevant to the functions of the Board". Article 14 prescribes 'measures by the Board to ensure the execution of the provisions of the Convention" and describes that in the face of objective reasons to believe that 'the aim of this Convention are being seriously endangered by reason of the failure" of a party, the INBC shall, firstly, open 'consultations" or request 'explanations".

Secondly, it may develop 'remedial measures" and call upon the government to adopt them. It may also ask for the government to conduct a study on the matter and communicate its results to the Board.

After all, if the INBC finds that the government has failed to give satisfactory explanations and to adopt remedial measures, and evaluates that the situation requires cooperation, it 'may call the attention of the Parties, the Council [Ecosoc] and the Commission [CND] to the matter". Nevertheless, when taken the previous step, the Board may also recommend to the Parties that they 'stop the import of drugs, the export of drugs, or both, from or to the country of territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country".

Richard Friman (2015) analyzes such steps in the light of "naming and shaming" techniques to promote compliance in international drug control. "Naming and shaming" derives from the human rights field and was defined by Ann Marie Clark (2013) as a "shorthand for the act of framing and publicizing human rights information in order to pressure states to comply with human rights standards" (p. 126).

Friman evaluates that naming and shaming plays a central role in the IDCR and is exercised by two overlapping paths. "The first entails a monitoring and consultation procedure backed by the potential threat of material sanction in the event of noncompliance" while the second entails "high-profile annual reporting" (Friman, 2015, p.149).

While the first procedural path of sanctions has never been applied, "they are a persuasive mechanism for encouraging what the Board considers to be treaty adherence" (Bewley-Taylor, 2012, p. 222). The second path addresses challenges facing countries and regions and is a mechanism "through which the INCB exercises moral leverage, backed by the perception of the Board as a moral authority in the issue" (Friman, 2015, p. 150). Public naming and stigmatization have been rare and, since 2000, it has only been applied to Afghanistan, called to take "remedial measures" for noncompliance with conventions provisions by being the center for international opium and heroin production and trade.

The 1988 Convention Against the Illicit Traffic in Narcotic and Psychotropic Substances advanced in the direction of a stricter enforcement through the international system of justice, a strategy that is in line with the convention's securitization of illicit drug markets as threats and, therefore, to its criminalizing framework.

Article 32(1) prescribes that disputes should be preferably settled by 'negotiating, inquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice". Article 32(2), however, states that nation parties consent to having disputes within the regime resolved by the International Court of Justice (ICJ) when legal matters cannot be solved with means stretched in the first paragraph.

If decision made by the ICJ is not accomplished by one of the parties, the other may recourse to the Security Council. The Council will decide on appropriate measures to be taken, which might involve economic sanctions for failure to comply with a judgment of the Court (Gurule, 1998, p.111-112).

Robin Room (2012) highlights that 'no such case has ever been filed concerning the drug treaties", particularly because 'a number of countries filed a reservation against the jurisdiction of the Court when they acceded to drug treaties" (p. 345), weakening the structures settled by the convention to enforce compliance.

The United States was one of them. It has signed the 1988 Convention with a reservation to Article 32(2), meaning that it does not consider the country bound by the ICJ's judgment on drug control disputes.

In contrast to that, the US has created its own system to enforce compliance through aid provision or withdraw: the 22 U.S.C. § 2291h of the Foreign Assistance Act. This law created in 1961 and amended eleven times, especially in the 1980s, during Ronald Reagan's (1911-2004) presidency. It reorganizes the existing US foreign assistance programs in military and non-military aid, comprising a system of unilateral certification and decertification based on the evaluation of whether a country has cooperated with the US counter-narcotic goals and objectives.

The list is released on an annual basis by the US federal government upon a report that provides information on countries identified as "significant or indirect sources of illicit narcotics and psychotropic drugs and other controlled substances affecting the

United States"<sup>9</sup>, which evidences the concern with domestic drug trade and use as an issue of national security.

Report findings would serve as basis for Congress deliberation over sanctions, in a document known as the Major List. These countries would be thereof threatened with US sanctions, since they could be removed from the list by presidential veto. The President could certify countries qualified with the noncompliance label if in "the vital national interest of the United States" and, therefore, "require the provision of such assistance" (Perl, 1988, p. 20).

A certified country was considered to meet the goals of the 1988 Convention, but also to accomplish the goals described in any bilateral narcotics agreement with the US. Consideration of whether it had taken action to punish and prevent public drug-related corruption was also relevant to certification (Ayling, 2005, p. 377). The process was later considered to threaten states sovereignty (Bewley-Taylor, 2012).

The denial of certification involves US foreign assistance sanctions as well as mandatory US vote against multilateral development bank loans (Gurule, 1998, p. 87-88). The US would hold financial assistance and support in multilateral lending institutions, and in preferential trade agreements (Friman, 2015).

Martin Jelsma (2011) argued that the procedure for certification 'was highly politicized, effectively working as a compliance mechanism to coerce countries to carry out the forced eradication of a specified number of hectares; tighten drug laws and arrest quotas' (p.7). Nevertheless, the system of certification seems to have had a great impact on the international drug control conventions' adherence and compliance.

Nigeria, for instance, was decertified from 1994 to 1998. The decertification years, however, have already "affected foreign investment and overseas borrowings (with consequences for Nigerian infrastructure) and resulted in a suspension of military training and sales of arms and equipment, a denial of aid to the education and health sectors" besides imposing difficulties for "Nigerians travelling overseas and a severe breach in previously positive diplomatic relations with the US" (Obot, 2004, p. 21). In 1998, it has acceded to the 1988 UN drug convention, ratifying it the next year.

<sup>9</sup> See Foreign Assistance Act, Section 481 (e) (1-7). See US Code (1983,1053-1056).

According to John Collins (2016), bilateral political relations were responsible for pressures toward a more prohibitive regulation model, which were "determined by, and subservient to, broader geopolitical interests" (p.11).

Afghanistan, for instance, pointed as a country to be decertified in 2002 by the US Congress, had this process vetoed by President George W. Bush on the ground that it was a national interest waiver (Storrs, 2004).

According to Julie Ayling (2015), it should be noted that, although the Major List covers any country that fits the Foreign Assistance Act's definition, "most debate in the US Congress has revolved around the certification (or not) of Latin American countries", which have been the most critical ones about the certification process. Ernesto Zedillo, President of Mexico from 1994 to 2000, called the certification process an offence and suggested that the US should itself be made subject to the process (Ayling, 2005).

Because drugs control policies have historically focused on the supply side of drugs trade, the higher costs of compliance to prohibition were faced by developing countries in Latin America and Asia, which produced or were used as transshipment territories (Mejia & Restrepo, 2014, p. 29). Those were the countries that also needed financial aid by US agencies so they were pushed to harsher measures of control enforcement by the US certification system.

By conditioning aid provision or withdraw to drug control efforts (which were based on the ratification of treaties but could be extended to crop eradication through poisoning spraying over cultivation — and people), the US has established a type of linkage that is, at the same time, "blackmailing" and "back scratching" in Kenneth Oye's conceptualization (as cited in Keohane & Nye, 1987, p. 735-736). This fact also is aligned with Robert Gilpin's view of hegemon as a coercive leader, enforcing regime rules with positive and negative sanctions (as cited in Haggard & Simmons 1987, p. 502).

Some scholars acknowledge that regimes are harder to create than to maintain (Keohane, 1984; Goldstein, 1998), thanks to certain inertia that is key to its resilience. 'Once created, regimes affect the incentives of all member states and may be valued even without great power support' (Goldstein, 1998, p. 137).

In his study named "Why do nations obey international law?" (1997), Harold Hongju Koh reviews different theories for explaining why powerful states obey powerless rules, defined as those without sanction systems.

Abraham Chayes and Antonia Handler Chayes (1995) argue that nations obey international laws not because they are threatened with sanctions but because they are "persuaded to comply by the dynamic created by the treaty regimes to which they belong" through an interactive process of "discourses among the parties, the treaty organization and the wider public" (as cited in Koh, 1997, p. 2601). In this process, "repeated compliance gradually becomes habitual obedience", which is ultimately internalized in domestic legal system (as cited in Koh, 1997, p. 2603). Compliance would consecrate states existence as a member of the international system.

Thomas M. Franck (1995), on the other hand, asserts that nations obey powerless rules because "they are pulled toward compliance by considerations and distributive justice" in the sense that nations perceive "the rule and its institutional penumbra to have a high degree of legitimacy" (cited in Koh, 1997, p. 2628).

Both cases would apply to the IDCR, the former on a more liberal perspective, the later more aligned with the cognitivist perspective and with the argument that a moral claim binding states can overrule self-interest and rationality (Keohane, 1984, p. 141).

The lack of more severe sanctions than the name-shame and the morally binding claim of drugs as evil and threat to mankind would be progressively tested by state-parties facing externalities emanating from drugs production, trade and consumption in their territories. Ultimately, it will perform as an incentive to regime's defection and breach, leading to the adult-use cannabis market legalization experiments.

### **3. REGIME'S INTRUSIVENESS AND DOMESTIC IMPACT: EXTERNALITIES, COLLECTIVE ACTION AND DEFECTION**

Intrusiveness of the International Drug Control Regime, guided by the principle that state-parties have "duty to prevent and combat this evil", have demanded signatories to "take such legislative and administrative measures as may be necessary" in order to "give effect to and carry out the provisions" of the conventions within their own territories to limit "exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs", creating national agencies for controlling licit production and adopting "such measures as may be necessary to prevent the misuse of, and illicit traffic" (Single Convention, 1961).

According to the conventions, parties' agency against illicit production and trade shall be taken "having due regard to their constitutional, legal and administrative systems" in order to coordinate "preventive and repressive action" against the illicit traffic. The treaties also prescribe that, "subject to its constitutional limitations, each Party shall adopt such measures as will ensure that" activities involved in drug production, trade and use "shall be punishable offences when committed intentionally" and that serious offences shall be subjected "to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty".

Nevertheless, 1971 and 1988 IDCR's conventions also state that parties may adopt "more strict or severe measures of control than those provided by" the conventions if "such measures are desirable or necessary for the protection of the public health and welfare". And the 1988 convention's preamble stresses that the suppression of illicit traffic "demands urgent attention and the highest priority".

As analyzed in Chapter 2, IDCR's inputs emanate from transnational advocacy networks of moral entrepreneurs as well as from economic and diplomatic interests. Its outcomes and spillover effects emanate from the requirement that sovereign state-

parties take serious measures in order to control and punish illicit drug production, trade and consumption. Together, they constitute a domestic-international entanglement.

Mostly, pre-regime international drug control agreements, as described in Chapter 2, were undertaken in the absence of countries' internal experience with drugs or local debates about them. This means that there was no clear national self-interest on the issue when governments were negotiating its regulations and prohibition internationally, and adherence was fostered by mechanisms of coercion and contracting.

Drugs have been a marginal matter in foreign policy (Braithwaite & Drahos, 2000), leading countries to adhere to pre-regime conventions, pushed forward by countries like the United States, China, Egypt and Italy, without much awareness of the burden it would impose them domestically and driven by other interests: be part of the international community and be labelled as a political cooperative country in a morally binding set of principles (Keohane, 1984), both of which would potentially benefit the country in future international agreements.

This dynamic challenges Robert Putnam's two-level game theory. Considering both levels circumscribed in the drug issue, the absence of clear national interests and of local coalitions would constitute a domestic level vacuum in international level negotiations. Considering drugs but also other economic and political issues, the two-level game can be established in such manner as "neither a purely domestic nor a purely international analysis", in isolation, is enough to explain the phenomenon:

Interpretation cast in terms either of domestic causes and international effects (Waltz's 1959 "Second Image") or in terms of international causes and domestic effects (Gourevitch's 1978 "Second Image Reversed") would represent merely "partial equilibrium" analysis and would miss an important part of the story, namely, how the domestic politics of several countries became entangled via an international negotiation (Putnam, 1988, p. 430).

In the case of the IDCR, the question to be posed is slightly different: how an international negotiation has entangled several countries' domestic politics? The difference, more than wordplay, reflects different causal mechanisms.

Putnam is investigating the process in which domestic coalitions constitute a win-set in order to guarantee their interests in international negotiations, where national governments would seek to "maximize their own ability to satisfy domestic pressures while minimizing adverse consequences of foreign developments", ensuring its sovereignty (Putnam, 1988, p. 434).

In doing so, however, Putnam —as well as the majority of international regimes scholars— is basing his theoretical approach in political economy and trade models, which are guided by liberal principles, norms and rules, promoting and coordinating the exchange of goods and services while maximizing benefit among parties.

The nature of the international drug control regime, however, is different. Firstly contrary to most of international economic regimes, it is quasi-universal. Secondly, it can be considered almost as an "illiberal" regime, aiming to cease flows of goods for certain purposes deemed immoral and harmful while constraining trade to a minimum necessary level, with major spillover effects, as will be evidenced along this Chapter 3.

In order to better understand how the international drug control negotiation has entangled several countries' domestic politics, it is helpful to bring to the debate Daniel Drezner's (2003) account for the three frameworks in which international institutions influence domestic politics: contracting, coercion and persuasion.

Contracting is an interaction in which all of the negotiating parties can be made better off relative to the status quo. It is a process in which calculation based in self-interest makes up for states choice regardless of worries about sanctions or punishments. And incentives can be issued in order to further cooperation.

Contracting would be the logic of political economy scholars, who describes interaction between states and international organizations as based in contracting processes that promote cooperation and reduce uncertainty.

Coercion presumes states having a clear notion of their self-interest and pursuing ends accordingly. Ian Hurd (1999) differentiates one from the other on the basis that while contracting involves "self-restraint on the part of an actor", coercion involves an "external restraint" (as cited in Drezner, 2003, p. 12). Coercion, therefore, might leave at least one actor worse off than the status quo. In contracting and coercion, actors

guarantee cooperation by "manipulating the external material environment of incentives and disincentives" (Drezner, 2003, p. 14).

While countries that faced internal pressure for restricting or prohibiting certain drugs production, trade and consumption, such as China, the US, Britain and Egypt, may constitute a contracting parcel of the IDCR, the US certification process, explored in Chapter 2, is a clear example of coercion through the manipulation of material incentives and disincentives.

Drezner's third framework, persuasion, allows for states to alter their internal preferences through new shared modes of understanding, reordering actors' values. This process requires the introduction of "new concepts and analogies, new information and ways in which they can be processed, expanding their conceptual kit and altering their perception of the world". Persuasion "can also occur through the creation of social ties that generate non-material incentives to go along with transnational policy elites" (Drezner, 2003, p. 14).

International dissemination of moral discourses about drug use and trade by transnational advocacy networks is an example of persuasion of domestic politics, which have agreed in conceding part of its sovereignty to an international regime and to develop national drug policies according to the regime's severe prescriptions.

Either by contracting, by external coercive mechanisms or by persuasion, countries have adhered to the IDCR, a case where these three ways in which international institutions influence domestic politics overlap.

National implementation of the IDCR's norms has blindly followed its strict principles irrespectively of domestic social, economic and institutional features. There are many local factors in contention with international rules: traditional, religious or ancestral use of substances prohibited by the treaties; vast territories dedicated to the production of plants used in psychotropic production; high levels of economic deprivation favoring engagement in illicit activities; democratic deficit; arbitrary and biased institutions; structural racism; lack of human rights protection by the rule of law; lack of equal treatment and due process by criminal justice system etc.

This implies two correlated factors that would, eventually, generate incentives for IDCR defections and violations, among which are the legalization and regulation of adult-use cannabis markets in parts of the US and in Uruguay.

The first factor is the resulting asymmetric consequences from application of regime's universal principles, norms and rules upon asymmetric state-parties, which have strengthened some nations while undermining others.

The international control system was developed on the basis of two interconnected tenets: that the best way to reduce problems caused by the drugs trade and use is to minimize the scale of the illicit drug market; and that this can be successfully achieved through a reliance on prohibition-oriented supply-side measures.

Supply-driven enforcement has proven not to mitigate drug production, trade and consumption. On the contrary, it seems to be promoting drug supply-demand chain, besides exacerbating harmful consequences at both social and individual levels.

Although dynamics involving illicit drug markets have similarities in different parts of the globe, they in fact have particular inputs and operate in local structures (with or without transnational connections), with specific substances, constrained by domestic institutions with uneven levels of expertise and accountability, generating different outcomes for good or bad. And, while good outcomes were attributed to the prohibitionist drug policy, the bad outcomes were associated, not with drug policy, but with drugs, reinforcing the maintenance of the same criminalizing approach that might have been generating them.

This leads to the second factor, here named as IDCR's "golden straitjacket": restrictions in the development of national drug policies imposed by the regime framework have left national governments with little room to respond to their unique political problems and social demands according to their own culture and willingness to experiment (Room, 2012).

Scholars have pointed out that "it is clear that the Convention's provisions requiring criminalization of use have been a major impediment to efforts at national level to move away from prohibition towards regulatory drug regimes" (Babor et al., 2010, p.

209), besides the fact that the conceptions and categorizations of substances embedded in the treaties "are increasingly at odds with current knowledge" (Babor et al. 2010, p. 218).

However, as Robert Keohane has noted, "policies that are incorporated in international agreements are much more difficult for future governments to alter", and they remain obliged to keep abiding by the principles, norms and rules agreed by its predecessors unless choosing "to run the risk of international retaliation" (1984, p. 117).

Therefore, the IDCR have incremented global asymmetries since rules were "one-size-fits-all" and supply-oriented, placing a harder burden on producing and transshipment territories. Such countries are generally less developed in social, political and institutional terms, therefore more vulnerable to the economic incentives promoted by drug illicit market and less able to combat its flourishing. This conjecture would compromise these countries social and economic development as well as their political stability.

### 3.1 Cost-effectiveness

Regimes and institutions may be more or less effective. This debate can be separated into two types of effectiveness. First, a regime can be effective in terms of holding its parties accountable to its norms and rules, an attribute that can also be translated into regime strength. Secondly, a regime is effective when it accomplishes its objectives and purposes.

As a virtually universal regime, IDCR can be regarded as highly effective in holding state-parties compliance while, counterintuitively, it can be regarded as highly ineffective in achieving its objective of banning certain drugs production, trade and consumption for non-medical and non-scientific purposes: production has increased, consumption has increased and the prices of substances have fluctuated, but generally on a decreasing curve.

As an example, in 2003, an estimated 185 million people (or 4.7% of global population) between 15 and 64 years old, have used an illicit substance in the past 12 months. In 2017, this number has risen to 188 million, or 5.5% of the world population

aged 15 to 64, according to the World Drug Report 2019, produced by the United Nations Office for Drugs and Crime (UNODC).

Data from the UNODC shows that, in 2010, a gram of marijuana in Australia cost US\$ 23 and, in 2017, its price had decreased to US\$ 15 per gram while marijuana herb seizures have increased during the same period from 1.7 tons in 2010 to 19.2 tons in 2017. Although UNODC reports do not make such an assertion, increase in drug seizures along with decrease on its price per gram is suggestive that the quantity of such substance in illicit markets has escalated.

The price of cocaine in the United States and Europe declined to its lowest historical level in the mid-2000s, while purity seemed to have stayed roughly unchanged (Mej a & Posada, 2008; Grossman, 2004). Heroin prices have followed a similarly declining trend in the United States and Europe, which does not reflect the contraction in poppy cultivation during the Taliban regime (Byrd & Ward, 2004; Thoumi, 2009).

There are exceptions. In Chile, the marijuana price per gram has increased from US\$ 2 in 2010 to US\$ 6 in 2017 while its seizure has doubled from 8 tons in 2010 to 16 tons in 2017. Chilean data suggests repressive policies might have seizure enough marijuana to make the market prices go up, which would potentially prevent use and abuse. Nevertheless, annual Chilean cannabis use prevalence, from 15 to 64 years old, has increased during the same period, from 4.8% in 2010 to 15.1% in 2017. How come? There is no single speculative answer. Among the possibilities are the supposed increasing willingness of Chileans to admit marijuana use in 2017 compared to 2010 or consumers conditional elasticity (prices go up, purchase shrinks in terms of quantity acquired, while use prevalence still increases).

There was a time in which it was believed that demand for illegal drugs, because of its addictive component, was inelastic. This means that, regardless of price, users would get it no matter how, an idea that reinforced the correlation between drug use and property crimes. However, recent studies by prominent economists have suggested that demand for illegal drugs is sensitive to price fluctuations (Becker, Murphy & Grossman, 2006). Elasticity could be classified as participation elasticity, when number of buyers fluctuates, and as conditional elasticity when quantity purchased fluctuate.

In terms of participation elasticity, Pacula et al. (2001) found that marijuana youth demand in the US between 1986 and 1996 was elastic in  $-0.3$ , which means that 10% increase in the price for cannabis would lower the number of youth reporting past 30 days of use in about 3%. Other studies have pointed to the same dynamics, suggesting that increase in price could regulate either participation elasticity or conditional one. Another seminal work on illegal goods price elasticity, *The Market for Illegal Goods: the case of drugs* (2006), by Gary S. Becker, Kevin M. Murphy and Michael Grossman, has contributed to legitimate alternatives to prohibition in economic terms when demonstrating that "fighting a war against drugs by legalizing drug use and taxing consumption may be more efficient in reducing consumption than continuing to prohibit the legal use of drugs" (p. 4) by calculating the financial, institutional and human resources required to enforce drug law: either for discovering illegal production or for punishing producers and users.

When evaluating prohibitionist international regimes, Ethan Nadelmann (1990) has explained that they rely on the force of criminal justice and military measures partially because its violators —be them slave traders, pirates or drug traffickers— are themselves armed and inclined to perform violence to defend their illicit deeds. However, he states, this military and criminal choice is also partially due to the fact that "efforts to prohibit anything that many people desire are bound to require some degree of coercion" and the criminal justice measures are so far the considered most punitive means "of dealing with those who defy the norms of developed societies" (p. 481).

"A disproportionate amount of drug-related costs stem from crime and criminal justice expenditures" (Babor et al., 2010, p. 60). Criminal justice and military measures as means to enforce drug policy locally would account for externalities described below: public insecurity and violence, human rights violations, mass incarceration, loss of human capital, lack of public resources for governments' public good provisions, marginalization of drug abusers and their consequent alienation from accessing treatment, undermining public health.

Actually, studies have found that illicit substances economic cost are typically much smaller than that for legal drugs like alcohol and tobacco. In Canada, for instance, illicit drugs cost were estimated as about 20.7% of the total cost attributed to substance misuse, including alcohol and tobacco, in 2002 (Rehms et al., 2006).

On the other hand, it took decades for epistemic communities, by means of investigations, researches and econometric models, to realize the causal mechanisms of such harms as related to drugs but also, and sometimes mainly, to drug policy - something that would change perceptions about remedies away from law enforcement and into health and harm reduction approaches.

It all started when global prohibition caused big pharmaceutical business to quit the markets for cannabis, cocaine, opium and heroin, and their production "shifted from big legitimate business to small illegitimate business", which were more affected by repressive policies the less corrupt and worst organized they were, "creating a natural selection where bigger, better organized and more sophisticated drug traffickers became more dominant" (Braithwaite & Drahos, 2000, p. 373).

John Braithwaite and Peter Drahos also emphasize that the same racism that advocated drug prohibition by associating its users with crime would harm minority groups on a second front. Because such groups were "denied a respected place in the Western business world", which limited their opportunities in legitimate business, "the very racism that enabled global prohibition" would create "stupendous opportunities for ethnic minority business who were willing to operate outside the law" (Braithwaite & Drahos, 2000, p. 364).

The comparative advantage of organized crime resides in its use of violence, because it cannot rely on Justice to arbitrate on conflicts within its illicit activity, and on corruption for setting up production, trade and sale networks. "Although much violence results from traffickers' competition for market share, state efforts to fight traffickers also unleash substantial violence" (Keefer, Loayza & Soares, 2010, p.19-20). Large-scale police and army operations to fight drug traffic organizations have resulted in high numbers of deaths in different parts of the globe.

In his study on the logics of violence in criminal wars such as cartels and other drug related organized crime disputes, Benjamin Lessing (2015) highlights that such criminal actors do not seek to seize formal state power, but to conquer turf and clients. Therefore, they do not fight state forces to "conquer the state but to constrain it —to change its behavior, which in the case of states means policy outcomes" (p. 4). This adds a puzzle to the drug law enforcement: since illegal drug markets operate under the

same supply-demand principles as any other, the state repression or elimination of one illegal drug entrepreneur would generally help its competitors, making them stronger and more powerful. This dynamic illustrates that there is no definitive state victory over drug related organized crime, challenging IDCR's goals and their feasibility.

"Adding to the multitude of concrete examples, the academic literature on the subject has found a clear and systematic causal link between drug prohibition and violence" (Dills, Miron, Summers, 2008; Fajnzylber, Lederman, & Loayza, 2002).

One of the expressions of such violence is in the Latin American homicide rate. The region concentrates many drug producing and transshipment countries and, according to the United Nations Development Program (UNDP), while it holds 8 percent of the world's population, Latin America holds 42% of the world's homicides.

Phillip Keefer, Norman Loayza and Rodrigo Soares (2010) analyze how organized crime undermines social and political stability by linking with other opponents of state institutions, magnifying its negative effects. "This connection is clear in the association among drug trafficking, guerrilla activities, and terrorism that has become common in South America, South Asia, and other drug-producing regions" (2010, p. 21). It also promotes a "culture of corruption, arbitrariness and lawlessness", weakening the state and other institutions (Keefer, Loayza & Soares, 2010, p. 23).

The large potential profits to drug traders induce them to innovate constantly in the face of stronger enforcement by changing cultivation areas and sale spots as well as their methods of transportation.

In order to curb such innovative industry, enforcement has received increasing budgets, displacing resources from other public provision areas. Using the United States as an example, the war on drugs was receiving around US\$ 40 billion annually by the beginning of the 2000s, up from US\$ 10 billion per year in the mid-1980s (Reuter, 2001).

Robert MacCoun and Peter Reuter (2001) and Rosalie Pacula (2008) have concluded that at least three-fourths of the US national expenditures on drugs have been spent on apprehending and punishing dealers and users. Treatment expenditures

account for, at most, one-sixth of total federal expenditures (cited in Keefer, Loayza & Soares, 2010, p. 12).

This feature leads to the mass incarceration problem incremented along with the War on Drugs year: one in every four prisoners are in jail for drug-related offences, mostly nonviolent ones (Caulkins & Chandler, 2006). Incarceration leads to costs and productivity losses of approximately US\$ 40 billion annually from the 660,000 drug offenders in prisons in the US (Executive Office of the President, the White House, 2004, as cited in Keefer, Loayza & Soares, 2010, p. 13). It also generates subsequent lifelong stigma that makes it difficult for those individuals to re-enter legitimate labor markets, extending their social and economic harm in time.

Attempts to purge drug dealing have led to extreme measures, either officially or extra-officially. In Thailand, in 2003, the government campaign against drug trafficking was highly controversial, implying in the death of more than 2,500 people associated with a government "shoot-to-kill" policy. However, "The Economist"<sup>10</sup> (2008) magazine's investigation highlighted evidence that at least half of those killed had no link with drugs whatsoever.

Richard Lines (2017) shows how the decade following the entry into force of the 1988 drug convention have witnessed a raising number of states legislating to impose capital punishment for drug offenses without any sort of condemnation from the IDCR.

In terms of substance potency, Richard Cowan (1986) has coined the term "the iron law of prohibition", in which he asserts that the more intense the enforcement, the higher the potency of prohibited substances because the higher would be the costs of illegality, demanding higher benefits from the potentially fewer successful operations. This would account for the invention of crack and *paco* as substitutes for cocaine, the creation of fentanyl as a substitute for heroin and the development of higher THC potency cannabis strains as well as synthetic cannabis.

Thomas Babor et al. (2010), when analyzing effects of production and trade on source and transit countries as well as market-related harms in rich countries,

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<sup>10</sup> Back on the offensive: <http://www.economist.com/asia/2003/02/20/slaughter-of-the-drug-dealers> (retrieved in in December 2019)

concluded that these harms are consequences "of efforts to reduce drug use, most notably the laws and associated programs prohibiting the production, distribution and possession of illicit drugs", which led to the question whether "alternative legal regimes might reduce the combined total harm associated with both drug use and drug markets", providing public good (p. 79).

This is because, according to Keefer, Loayza and Soares (2010), drug policy and enforcement are surrounded by uncertainties in terms of effectiveness. And, in the absence of such assurance, public interventions should avoid "aggressive responses [that] are justified only when the potential for error and large welfare losses is small" besides constantly evaluating the merits of policies in the face of their outcomes (p. 11).

Even then, indicators of success of drug control efforts have been regarded as hectares of crops destroyed, tons of drugs seized by law enforcement institutions, number of people arrested and successfully prosecuted for drug law offences, number of people voluntary or involuntary placed in drug treatment, "number of successful military operations against insurgents or criminal gangs, which are all indicators of human rights risks if not actual evidence of humans rights violations" (Barrett & Nowak, 2009, p. 468).

Besides uncertainty regarding the benefits and effectiveness of prohibition, many scholars, consultants and researchers have evidenced the little uncertainty regarding prohibition's costs, as evidenced above, which hits developing countries disproportionately when their territories are used for drug production or serves as trade routes to drug consumers, which are mostly in rich developed countries. These costs range from the "direct expropriation of the wealth of poor farmers to the violence, corruption, and political instability brought about by organized crime" (Keefer, Loayza & Soares, 2010, p. 50).

The inability of repressive policies privileged by the international drug control system to reduce the scale of the illicit market has had a profound influence upon regime effectiveness, in terms of members abiding by its rules (Bewley-Taylor, 2010), as will be evidenced by defection and breach cases to be analyzed along this Chapter.

The fact is that no policy-maker in the 1950s, when the United Nations drug control was gestated, was able to foresee that, by the 2000s, so many harm would have

emanated from the attempt to solve the "drug problem". This is evidenced in the 1966 review of the Commission on Narcotic Drugs (CND) work, called "Twenty Years of Narcotic Control Under the United Nations", which stated:

"By now the problems have been clearly defined and some of them have been solved, or the instruments of their solution have been created: non-medical consumption of opium, coca-leaf, cannabis and of the drugs manufactured from them is outlawed in principle and is bound to disappear after transitional periods of adaptation" (Brunn, Pan & Rexed, 1975, p, 33, cited in Braithwaite & Drahos, 2000, p. 368).

This prognosis couldn't be more distant from what actually happened since the 1960s. The United Nations have, however, insisted on such projections along the UNGASS (United Nations General Assembly Special Session on Drugs) years, starting in 1998, when it proclaimed the slogan "A Drug Free World: We Can Do It!" —a claim that is clearly unrealistic, with pervasive harmful consequences.

By 2008, the regime has firstly acknowledged a series of cause-effect linkages between drug policy and harmful consequences. In a document called "Making drug control 'fit for purpose'" (2008), the head of UNODC, Antonio Maria da Costa, have admitted that the regime had generated five "unintended" and "unexpected" consequences: the rise of a "huge criminal black market" as an outcome of drug prohibition; a "policy displacement" when resources were withdrawn from vital public goods provisions in order to finance expensive drug law enforcement; a "geographical displacement" derived from the balloon effect in which drug production and trade would simply be pushed away from areas with harsher enforcement to those with less institutional capacity to do so; a "substance displacement" that favored substances subjected to flawed or weaker control or those with higher potency; and, finally, marginalization and social exclusion of drug users (Costa, 2008, p. 10-11).

Although admitting such harmful outcomes of prohibitive drug policies, the document argued that such externalities represented "serious challenges", underlining that the regime's "normative focus remained appropriate and that the international drug control system had made significant achievements" (Bewley-Taylor, 2012, p. 12).

Nevertheless, admission of regime's harmful outcomes by its primary and most legitimate source and institution motivated by epistemic communities causality findings have acknowledged what governments and civil society organizations were experiencing on the ground, creating incentives for the investigation of alternative drug policies that would be increasingly considered by policy-makers even if they implicate in defection or violation of the IDCR.

This change in perception and in evidence about the vector of different sorts of harms as emanating from drug policy instead of drugs themselves can be regarded as to what Helmut Breitmeier, Oran Kousser and Michael L. (2006) defined as "changes in the status of the original problem that occur in the aftermath of regime formation" (p. 7), generating new sources of pressure for domestic governments and for the IDCR.

### 3.2 Epistemic communities, social movements organizations and transnational advocacy networks

The systematic scientific evaluation of psychoactive substance properties, drug use prevalence, drug abuse prevention, dependence treatment, organized crime, violence, drug law enforcement and corruption has not begun before the 1970s.

The expansion of epidemiological research tools and other scientific inference methods created the necessary infrastructure to "support an international cadre of policy researchers focusing on the problems associated with psychoactive drugs" (Babor et al., 2010), which is illustrated by the increasing number of journals, research centers, career professionals, consultancies and think tanks dedicated to such subjects (Babor et al., 2010, p.8).

Although science can and should inform the development of drug policy, Babor et al. (2010) stress that consideration of the scientific evidence does not rule out other factors influencing how societies respond to harmful drug use, among which they cite democratic processes, religious values, cultural norms and social traditions (p.9). And This imply in resistance to epistemic communities' findings about drugs and drug policy.

Epistemic communities were defined by Peter Haas as networks "of professionals with recognized expertise and competence in a particular domain and an

authoritative claim to policy-relevant knowledge within that domain or issue-area" (1992, p. 3). Such nets of professionals comprise scholars, academic researchers, consultants and scientists working in universities, foundations, think tanks and other knowledge-producing organizations.

They are able to identify political problems and to investigate their causes and consequences, which make them play a significant role in policy-making by "the introduction of policy alternatives, the selection of policies and the building of national and international coalitions in support of policies" (Haas, P., 1992, p. 16).

According to Emmanuel Adler and Peter Haas (1992), epistemic communities exert influence on policy innovations by framing the range of political controversy surrounding an issue, by defining states interests and by setting standards. "Identification of national interests is a natural consequence of how issues are framed. Framing the context may also create a climate favorable to the further acceptance and diffusion of epistemic community beliefs" (Adler & Haas, 1992, p. 375).

This way, epistemic communities can influence the "positions adopted by a wide range of actors", from international agencies to local governments, from legislative to corporate bodies, from social movement organizations (SMOs) to transnational advocacy networks (TANs).

Epistemic communities are different from advocacy coalitions, as explained by Geoffrey Dudley and Jeremy Richardson (1996), because while the latter are based on values, the former are based on knowledge (p. 69, as cited in Murkin 2014, p. 12). However, the concept of epistemic communities has been criticized upon the idea that, because they use scientific methods, it is taken for granted that they produce results legitimized as "value-free" (Fraser & Moore, 2011; Toke, 1999, p. 101, as cited in Murkin 2014, p. 13). However, Peter Haas has illuminated the fact that knowledge is a social process, describing epistemic communities' work as "the product of human interpretation of social and physical phenomena" (1992, p. 4).

Alisson Ritter (2009) has pointed to the tensions between the type of information that policy-makers look for and the ones that researchers produce: the latter is "largely academic publications that are nuanced and complex" while the former is "simple, single-message, summative and accessible".

Given that the drug policy debate is embedded in a profound dichotomy between prohibition and liberalization, epistemic communities have traditionally been seen as actors with a side, whose beliefs are intertwined with the evidence they produce, which in turn would be necessarily biased. This might explain the degree of resistance in acknowledging studies results pointing to correlations between the IDCR norms and rules and harm, as described above. Without recognizing the existence of a problem, debating solutions is not even on the table. And the acknowledgment of the existence of regimes' "unintended" and "unexpected" consequences by UNODC head has merely inaugurated the debate.

George Murkin (2014) gathered different approaches to the role of epistemic communities in the drug policy reform debate. He cites Mark Monaghan (2008) notion that drug policy-making is "a case of survival of the evidence that fits" (p. 149), suggesting that the influence of epistemic communities on drug policy "is largely contingent on whether the knowledge or evidence that they draw upon can be used to legitimize pre-existing viewpoints or policy decisions that are already in motion" (p. 13-14).

According to Murkin, policy-makers resistance to evidence stems from what James Pitts (2000) terms the 'politics of electoral anxiety': "regardless of the evidence that exists in support of a given policy reform, if that reform is perceived to be potentially controversial or unpopular, then policy-makers and, in particular, politicians will tend to not pursue or endorse it" (Murkin, 2014, p. 14). Reactions of policy-makers to the result of reports such as the LaGuardia Committee Report (1944) and the Shafer Commission final report (1972) can be used as examples of such behavior, which I would name as a state of denial (Cohen, 2013).

Keefer, Loayza and Soares (2010) have shown that drug policy and enforcement are surrounded by uncertainties in terms of effectiveness and of certainty in terms of their significant social and economic costs. Murkin (2014) notes that decision makers tend to turn to epistemic communities under conditions of uncertainty and cites Ritter and Lancaster (2013) argument that that drug policy is a prime example of a field in which specialist knowledge is required to resolve ambiguities and ensure research evidence is interpreted correctly.

Daniel Drezner (2003) agrees that "in a world of uncertainty, international actors provide means of signaling preferences and/or outcomes" and that epistemic communities can provide expertise and knowledge to uninformed domestic actors (p. 5)

Adam Standing (2011) adds that drug policy is "an ideal arena in which epistemic communities can flourish, because not only is it complex, but it also lacks data, is highly political and subjective, and features a strong moral aspect" (as cited in Murkin, 2014, p. 14).

For John Braithwaite and Peter Drahos, epistemic communities are particularly central in importance in the drug field because of the highwater-mark of professionalism in the health domain. "The health-care professions have constituted strong epistemic communities that have included participants from government, business and NGOs" (Braithwaite & Drahos 2000, p. 398).

It is not a coincidence that the first body of scientific evidence on harms related to the prohibitionist approach to drugs and on the value of alternative drug policies were produced among health-oriented researchers. By the early 1990s, studies on harm reduction strategies, such as needle exchange programs, have found that their presence was correlated to a decrease in HIV seroprevalence while their absence was correlated to an increase in HIV seroprevalence. By the 2000s, a "significant body of research has warned of the adverse effects of intolerant drug policy towards people who inject drugs on the levels of HIV-Aids" (Bastos & Strathdee, 2000; Maher & Dixon, 1999; Moore & Dietze, 2005; as cited in Reuter, 2013, p. 90)

Furthermore, "the gains from prohibition, if any, in terms of fewer users and addicts are hard to identify empirically" (Reuter, 2013, p. 78).

Therefore, epistemic communities have generated incentives for drug policy reform by producing scientific evidence on at least four different fronts. First, evidence on the benefits of health-oriented approaches in terms of costs and human capital. Second, evidence on psychotropic substances' properties, justifying grievances from cannabis users, growers and medical patients on their right to health by having access to their medicine of preference. Third, on the harmful effects of drug criminalization to individuals, groups and societies, validating objections to IDCR based drug policy from public health, human rights, anti-racism, criminal justice and public resources

perspectives. Finally, epistemic communities work has illuminated how producing and transshipment territories have been particularly burdened by drug prohibition, by blossom of organized crime and institutional corruption as well as by military interventions, legitimizing objections raised by voices such as those of former Latin American Presidents Fernando Henrique Cardoso (Brazil), Ernesto Zedillo (Mexico) and César Gaviria (Colombia), who formed the Latin American Commission on Drugs and Democracy in 2009.

Accordingly, knowledge produced by epistemic communities was an essential incentive for moving the cannabis legalization agenda-setting. It has provided activists, social movements organizations and transnational advocacy networks with accurate information upon which they could articulate collective action.

According to Steve Rolles (2016), a critical factor for change in the perspective regarding drug prohibition was the evolution of public understanding about what were the vectors of problems certain societies were so dramatically facing: corruption and skyrocket increase in violence and death emanating from illicit drug markets in the context of the War on Drugs. "Credit for this growing understanding falls to a broad array of domestic and international media opinion formers, public figures and civil society groups" (p. 252).

### 3.2.1 Social movement organizations and drug political problems

Many authors have emphasized the human propensity to form groups and organizations, from Aristoteles to modern sociologists, like Max Weber (who called them "associative groups"), and political scientists, such as Harold Laski ("associations exist to fulfill purposes which a group of men have in common") and Arthur Bentley (1908).

These authors and many others have developed that associations and groups are potentially driven by some sort of solidarity and, fundamentally, by common interests (Maclver, 1932). According to Marc Olson (1965) this shared interest provides an incentive for the formation and maintenance of the modern voluntary association in groups and organizations.

Grievances against drug prohibition as intrusion on peoples' right to privacy and as a source of harmful externalities damaging minorities and vulnerable groups led to the formation of what Sidney Tarrow (2011) calls social movements organizations—in this case, for drug policy reform.

Anti-prohibitionists social movement organizations and groups have so far been more diligent around debates for cannabis legalization. They derive from counterculture movements and have focused on cannabis for the symbolic status it has achieved among Western youth (Himmelstein, 1983), as it will be analyzed along this subchapter.

Tarrow (2011) has defined social movements as "sequences of contentious politics based on underlying social networks, on resonant collective action frames, and on the capacity to maintain sustained challenges against powerful opponents" (p. 7). According to the scholar, collective contention action can emerge from people's alienation, deprivation and disruption, from external financial and professional support for local grievances and from political opportunities.

The case of drug policy reform as a claim and an objective of social movements organizations (SMO) is an interesting one because it has entangled a miscellaneous of activists from different grassroots backgrounds in a network of collective action and advocacy that goes far beyond the stereotype of the hippie cannabis user.

Libertarians and civil liberties activists, black liberation movement and anti-racism militants, LGBT and HIV-Aids rights partisans, medical associations and health policy-makers, Bolivian peasant coca farmers, human rights activists and patients' rights pressure groups eventually found themselves having drug prohibition and the War on Drugs as a common ground of contention in a complex constellation of grievances.

There are three foundations for drug policy contention when one observes collective action contesting IDCR's norms and rules: philosophical, ethical and empirical.

Some activists would oppose a prohibitionist approach to drug policy on philosophical grounds. This was the case of libertarians and civil liberties activists, who would claim that such restriction represents a violation of an individual's freedom. Their philosophical basis can be drawn on a variety of thinkers, ranging from Baruch Spinoza

(1632-1677) —"He who seeks to regulate everything by law is more likely to arouse vices than to reform them. It is best to grant what cannot be abolished, even though it be in itself harmful"— to John Stuart Mills' (1806-1873) "On Liberty" (1859: 1975): 'Over himself, over his own body and mind, the individual is sovereign" (p.11). One of the most active SMOs in this field is the American Civil Liberties Union (ACLU).

Others' confrontation with drug policy would be built upon ethical foundations, like in the case of human rights activists, whose objections are based on the observation of IDCR norms and rules' externalities as implying in human rights violations far beyond the right to privacy (article 12 of the Universal Declaration of Human Rights), but also related to cases of torture (article 5 of the UDHR) applied against drug offenders suspects, extrajudicial killings (article 3) legitimized in the name of drug use and traffic combat, discrimination (article 7) against drug users, arbitrary arrest (article 9) and so forth. This line of argument, however, has taken decades to be developed, emerging in the 1990s but, mainly, after 2008 (Gilmore, 1995; Barrett, 2008; Mena & Hobbs, 2010; Lines 2017).

This line of reasoning entails disputes based on national and international law. At the domestic level, states Constitutions enshrine general rights and obligations with which national drug laws could not be in conflict. At the global level, the UN Charter underlines that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". There are several SMOs and Transnational Advocacy Networks (TANs) in this field, such as Human Rights Watch, Transnational Institute and Global Commission on Drug Policy.

Finally, drug policy contention is founded in empiricism, meaning, in the experience of individuals' and groups' with IDCR's externalities, be it crop eradication strategies, prohibition of psychotropic traditional and indigenous use, denial of cannabis medical properties, discriminatory law enforcement, extensive incarceration for drug offences, restriction on the harm reduction strategies etc.

As such, grievances from these individuals and groups performed as warning signs of drug policy harmful consequences even before these externalities were

scientifically identified by epistemic communities as deriving from drug policy and drug law enforcement.

It took a while for certain social movements organizations (SMO) to identify drug policy as an important source of their political problems. Two examples of grievances deriving from drug policy related harms stands out and, although not exclusively associated to cannabis, they can illustrate the mechanisms of collective action in the drugs field.

The first example relates to the advent of strategies of syringe exchange developed by practitioners and health policy-makers in order to curb HIV-Aids epidemic among intravenous drug users, which were contaminating each other by sharing syringes. The logical remedy was to provide them with syringes so that each drug user would have its own, preventing the spread of HIV virus. This practice, however, was condemned by the International Narcotic Control Board (INCB) as "contrary to the provision of the conventions" (UNODC 2002).

Harm reduction generally refers to strategies to reduce the adverse consequences of drug use among those who are unable to abstain from illicit drug use or unwilling to do so. Harm reduction measures range from needle exchange programs and safe injection rooms to allow intravenous drug use under medical supervision in order to avoid overdose and the share of syringe as well as access to free water in party clubs where synthetic drug use, such as ecstasy or MDMA, might be concentrated, avoiding death by dehydration.

Since 1993, the INCB has been advocating that harm reduction programs "diverted the attention (and in some cases, funds) of Governments from important demand reduction activities such as primary prevention or abstinence-oriented treatment"<sup>11</sup>. And the US government has cut funding for harm reduction programs.

In Brazil, a doctor implementing needle exchange services in the city of Santos in 1989 was criminally prosecuted by the Public Ministry of São Paulo upon the argument that the initiative would "stimulate the consumption of drugs" (Fonseca et al., 2006).

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<sup>11</sup> International Narcotics Control Board, Report of the International Narcotics Control Board for 2000, E/INCB/2000/1 (Vienna, 2001), para 446.

Obstacles to the implementation of harm reduction strategies argued on the basis of drug policy established under IDCR's principles, norms and rules led to the advent of drug users and medical practitioners social movements (Bluthenthal 2009) in order to guarantee the right to health of drug users by demanding drug policy reform and, ultimately, drug regime reform.

As a set of strategies that improved the health of drug users, undermining drug harms as well as governmental costs with them, states became increasingly aware that such harm reduction programs were an important tool in dealing with their drug problems regardless of the regime's pressure against them. Therefore, harm reduction became "crucial to a fracturing of the consensus" among IDCR state-parties (Bewley-Taylor, 2012, p. 30).

The second example comes from black liberation and anti-racism movements. They would elaborate that institutional racism was the motor behind a staggering increase in policing of communities of color and behind the fact that black Americans were being disproportionately incarcerated, something earlier attributed to "consequences of poverty, racial segregation, unequal educational opportunities, and the presumed realities of the drug market, including the mistaken belief that most drug dealers were black or brown" (Alexander, 2010, p. 22).

In the case of the United States, prison rates have exploded from the declaration of the War on Drugs. It increased from around 501,000 in 1980 (8% for drug offences) to around 2.3 million in 2000 (21% were incarcerated for drug offences). However, only by 2000, Human Rights Watch stated that "the racially disproportionate nature of the War on Drugs is not just devastating to black Americans. It contradicts faith in the principles of justice and equal protection of the laws that should be the bedrock of any constitutional democracy". Other SMOs would be more direct in advocating that "The War on Drugs is the new Jim Crow" (Boyd, 2001; Scotti & Kronenberg, 2001), referring to US laws that enforced racial segregation in the Nineteenth and Twentieth Century, until 1965, when Civil Rights movements made them unconstitutional.

In her book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, jurist Michelle Alexander gathers data that evidences the option for drug

enforcement instead of drug treatment, as well as on the explosion of drug offence convictions among the black US population.

When Reagan unleashed his War on Drugs in 1982, polls pointed out that less than 2% of Americans saw drugs as the most important issue facing the nation (Becket, 1999, as cited in Alexander, 2010, p. 96). In 1989, The New York Times/CBS survey pointed out that this percentage has escalated to 64%<sup>12</sup>.

From 1980 to 1984, FBI anti-drugs budget increased from US\$ 8 million to US\$ 95 million and DEA budget hiked from US\$ 86 million in 1981 to US\$ 1,062 billion in 1991<sup>13</sup>. At the same time, from 1980 to 1984, National Institute on Drug Abuse's budget was shortened from US\$ 274 million to US\$ 57 million and anti-drugs budget for the Education Department was diminished from US\$ 14 million to US\$ 3 million<sup>14</sup>.

Alexander (2010) stresses that crack cocaine epidemic got black communities on an economic collapse. Scholars have argued that drug use increases according to political, economic and market changes. While some studies have found that increase in the availability of a certain substance has promoted more spread and intense use (Hall et al., 2000), others have related changes in use patterns with political changes (Higgins et al., 2004) and with economic crisis (Bretteville-Jensen, 2011).

Legislation in the late 1980s have created minimum sentences for crack related drug offences, including possession, expanding sanctions for the civil sphere, according to which student loans and housing public benefits would be officially denied to former drug offenders. Curiously, such measures were not taken in relation to powder cocaine, which is the identical substance in chemical terms, but was more used by white elites.

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<sup>12</sup> The New York Times, Poll finds most in US back Bush strategy on drugs, 12.sept.1989. <https://www.nytimes.com/1989/09/12/us/poll-finds-most-in-us-back-bush-strategy-on-drugs.html> (accessed in December 2019)

<sup>13</sup> Katherine Beckett, Making Crime Pay, citing the Executive Office of the President, Budget of the US Government (1990) and the Office of the National Drug Control Policy, *National Drug Control Strategy 1992*.

<sup>14</sup> Idem ibidem, citing the Office of the National Drug Control Policy, *National Drug Control Strategy 1992*

In the early 1990s, President Bill Clinton has further increased penal sanctions for drug offence, creating new federal crimes punishable with death and mandated life sentences (Alexander, 2010, p. 132).

Since 1980, drug arrests have tripled, resulting in the incarceration of more than 31 million people since then, according to the Sentencing Project<sup>15</sup>, and 80% of the growth in drug arrests since 1990 relates to mere cannabis possession<sup>16</sup>. And, whereas in 1990 the black arrest rates for marijuana possession "were twice those for whites (219 vs. 108 per 100,000) by 2010 the ratio was 3.5 to 1 (716 vs. 217), even though marijuana use is similar in the two groups, according to population surveys" (Reuter, 2013, p. 91).

According to the American Civil Liberties Union (ACLU), from 2001 to 2010 there were 7 million marijuana arrests, 88 per cent of which merely for possession, and disparities among blacks and whites increased significantly. Researchers have also found, in a study in New York City, that racial disparities in marijuana arrests extended to punishment and sentencing (Golub, Johnson & Dunlap, 2007).

Alexander (2010) describes studies that shows black Americans have been disproportionately stopped by police on the streets and roads<sup>17</sup>, something called racial profiling, and were subjected to more severe drug sentences than white Americans for cases with similar contexts and similar drug quantities.

Studies have also consistently found a disproportional higher "incidence of marijuana possession arrests in areas with high rates of poverty and proportions of minority residents" in New York City (Johnson, Golup & Dunlap, 2006; Levine et al., 2008, as cited in Reuter, 2013, p. 90).

Such disparities have been pointed by civil rights organizations during court battles that argue drug law enforcement has been used as a legalized form of racial discrimination. Organizations such as the American Civil Liberties Union (ACLU) and

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<sup>15</sup> See Marc Mauer and Ryan King (2007) *A 25-Year Quagmire: The "War on Drugs" and the Impact on American Society* (Washington, DC, Sentencing Project), p. 2

<sup>16</sup> See Ryan King and Marc Mauer (2005) *The War on Marijuana: The Transformation of the War on Drugs in the 1990s* (New York: Sentencing Project)

<sup>17</sup> See David Harris (2002) *Profiles in Injustice: Why Racial Profiling Cannot Work* (New York, The New Press) and Al Baker and Emily Vazquez "Number of People Stopped by Police Soars in New York" (The New York Times, 3.fev.2007)

the National Association for the Advancement of Colored People (NAACP) got involved in such cases.

Although there is no record on a black SMO dedicated to drug policy reform, this agenda has penetrated traditional black liberation organizations, such as the NAACP (founded in 1909) and CR (Critical Resistance, founded by activist Angela Davis), and is part of discourses of new movements such as Black Lives Matter. On the other hand, racial bias of drug law enforcement and incarceration has also penetrated the agenda of civil liberties and drug policy reform organizations, such as the American Civil Liberties, the Drug Policy Alliance, Human Rights Watch and so forth.

These distinct organizations have exerted pressures at local, national and international levels. Nevertheless, their agency are generally not coordinated, contrary to what has happened among medical marijuana and cannabis legalization movements.

### 3.2.2 Cannabis legalization movement in the US and medical marijuana regulation

A third example of collective action in the drug field is fundamental for the US cannabis regulation and, contrary to the ones analyzed above, has always been in contention to drug policy to the extent that it prohibits cannabis medical use. Although the medical marijuana movement embraces activists that have never claimed for cannabis recreational legalization, the main collective actions for medical marijuana market regulation derive from a longer tradition of cannabis legalization movements.

Socially organized opposition to cannabis criminalization was generated by four developments in the American society since the 1960s: the sharp increase in cannabis use, the significant change in cannabis users profile, the burgeoning of Counterculture and the success of civil rights movements strategies.

After the return of Vietnam soldiers and the advent of the Counterculture, cannabis use had turned from marginal to mainstream, challenging previous views on marijuana users as potential criminals. "People began to think that marijuana users were not all crazed monsters who should murder without a moment's hesitation" (Weisheit, 1992, p. 23).

The redefinition of the typical marijuana user has put political pressure to change the law, something that was intensified when members of politically influential groups got caught as drug law offenders.

Nebraska, for instance, was one of the first states to reduce marijuana possession from a felony to a misdemeanor in 1969 as a result of a case in which the sons of a notorious county prosecutor and of a university professor were charged with cannabis possession. The same happened to the son of a US senator, who had to spend time in jail for simple cannabis possession (Weisheit, 1992, p. 23).

The reason for parts of US youth elite to be meddling with "killer week" is directly related to the rise of the Counterculture, when the Baby Boom generation got to high schools and colleges, developing a cultural identity that would separate them from the cultural values and tastes of their parents, challenging American consensus about anti-Communism through anti-Vietnam war demonstrations, and making cannabis one of its symbols (Himmelstein, 1983). Relevant to the cannabis legalization developments was the fact that this new American youth rebellion was formed in an environment of profound social structural changes promoted by the civil rights movements.

The black movement fighting against law based racial segregation was a long battle that was intensified in the 1950s and 1960s through tactics of civil disobedience and courts battles that were questioning the constitutionality of state laws and federal laws. In many cases, they were successful in repealing those discriminatory laws.

This experience provided a powerful advice to the new generation: not all laws deserve obedience and organized groups have the power to challenge the *status quo* (Chasteen, 2016, p. 31-32) through repertoires of contentious politics like demonstrations and judicial activism. As explained by Doug McAdam (1995), "early challengers who achieve success reveal the vulnerability of elites and institutions to weaker players, who may believe they will enjoy the same advantages of their predecessors", and this may act as an incentive for these players to better organized themselves.

It was upon this social fabric that the first cannabis law reform civil organizations was created between 1960 and 1970. In 1964, an act of civil disobedience performed by twenty-eight years old Californian Lowell Eggmeier has inaugurated pro-marijuana activism and planted the seeds for pro-legalization civil organizations.

Eggmeier lit up a joint (a cannabis cigarette) at San Francisco's Hall of Justice in August 16th and puffed it in front of astonished police officers. Far from trying to escape them, Eggmeier actually asked them to arrest him. "I am starting a campaign to legalize marijuana smoking", he had told the policeman who arrested him (Duffton, 2017, p. 26).

The young men would spend a year in prison for that act while his volunteer attorney, conservative civil libertarian James R. White III worked and campaigned for his release (Lee, 2012, p. 97-98). After issuing petition to the California Supreme Court for a writ of habeas corpus, which was later declined, he had framed Eggmeier's case as a violation of individual rights and right to due process. White would argue that marijuana status as an illegal narcotic was unconstitutional on the basis that lengthy penalties would violate the Eighth Amendment's ban on cruel and unusual punishment while repression on cannabis smokers would violate the Fourteenth Amendment's due process clause (Duffton, 2017, p. 31-32).

In the defense, White would cite previous official reports on cannabis —namely 1984's Indian Hemp Drugs Commission, 1925's Panama Canal Zone Commission and 1944's La Guardia Committee— to legitimize the claim that marijuana was not an habit-forming substance thus its use should not be treated and punished as if it was a narcotic but more likely to be treated as alcohol and tobacco.

White has campaigned to raise money for Eggmeier's defense by printing and selling copies of his petition decorated with a cannabis leaf draw and titled "Marijuana Puff-in", which attracted the attention of young San Francisco proto-hippies. Aware of his publicity relative success, White has decided to create an organization to gather those young fellows interested in his legal claims against marijuana prohibition and founded LeMar (a short word for Legalize Marijuana), which enacted the first collective pro-pot demonstration in December 1964 at San Francisco Union Square. White and his fellow libertarians claimed LeMar was not advocating for people to smoke pot, but for the right to do it if one wants it.

Even though White's efforts were unsuccessful, they have engaged local youth in the art of interpreting drug policy in the light of state and federal legislations, have informed them about previous official scientific studies that didn't conform with the current cannabis criminalization views and have created a socially articulated way to oppose such policies based on the civil rights movements repertoire of courts battles.

LeMar was publicly backed by Beatnik poet Allen Ginsberg (1926-1997), who attended the San Francisco rally just before moving to New York, where he was joined by beat-hippie poet Ed Sanders in founding a LeMar chapter in NYC.

The East Coast LeMar have soon organized a local pro-marijuana legalization demonstration at Lower East Side. According to news published by The New York Times, the demonstration "against legal ban on the use of marijuana" had, at one point, "23 marchers". Activists were holding placates written "Smoke pot, it's cheaper and healthier than liquor" and were distributing leaflets with the message: "Given the facts, who except the powerful liquor, pep pill, nicotine and medical lobbies would dare raise a voice against marijuana?", while Ginsberg himself was chanting Hindu words as a "magical invocation to Shiva" (NYT, December 28, 1964, p. 23).

The next NYC LeMar protest was held in front of Women's House of Detention to call attention to the fact that cannabis users were being incarcerated. Ginsberg was pictured by a Village Voice photographer holding a big board around his neck with large lettering written "Pot is fun". The image has circulated throughout the country and abroad, and its popularity raised awareness on the newly born and innovative pro-marijuana legalization US movement. In the meantime, LeMar had new chapters inaugurated in Buffalo (New York), Ann Arbor/Detroit (Michigan) and Cleveland (Ohio).

This progressive new perspectives towards cannabis prohibition was granted a greater audience when Ginsberg has published an article in The Atlantic Monthly in November 1966 entitled "The Great Marijuana Hoax". In the text, he accused the FBN of having "business interest in perpetuating the idea of a marijuana 'menace'" therefore enacting a anti-cannabis propaganda that would raise fear and hysteria, fostering prohibition, which created vast "black markets, crime syndicates, crime waves in the cities, and a breakdown of law and order in the State itself" apart from being a method of "assault on negro person" as well as on artists and Counterculture activists (Ginsburg, 1966).

The pro-legalization East Coast movement was soon strengthened by the foundation, in 1967, of the half New Left half anarchist NYC group Youth International Party or simply Yippies, whose black flag featured a red star under a cannabis green leaf. Yippies would consolidate the intertwine among pro-pot and anti-Vietnam war causes and got famous for organizing "smoke-in" protests, the first of which united thousands of people smoking marijuana in front of the White House in Washington DC.

The organization was later directed by Tom Facade, who would eventually create the High Times magazine, a publication dedicated to cannabis culture in 1974.

On the West Coast, pro-marijuana movement was strengthened by the emergence of Amorphia, founded in 1969 in San Francisco by Blair Newman, Michael Aldrich and Frank Richards as a for-profit organization raising funds from the sales of hemp rolling papers called Acapulco Gold to finance their legalization efforts (Deitch, 2003; Dufton, 2017; Pierre, 2019).

LeMar eventually merged into Amorphia, which eventually merged into another new cannabis advocacy organization established in 1970 by public-interest Washington DC attorney Keith Stroup. It was named NORML (The National Organization for the Reform of Marijuana Laws).

NORML was initially funded by the Playboy Foundation, which drove a lot of media attention to it (Deitch, 2003, p. 179) and its eloquent rhetoric of inhumane persecution of cannabis users was compelling. The organization is active in 2019 as I write this thesis and was active in lobbying for medical marijuana market regulation ballot initiatives and legislative initiatives, as well as for adult-use cannabis market legalization, which will be analyzed in the case study Chapter.

NORML was the first professionalized social movement organization on cannabis legalization, evidencing the process of resource mobilization described by Tarrow (2011). Part of the organization split off in 1985 to found Drug Policy Foundation, which merged to the Lindesmith Center to become the Drug Policy Alliance in 2000. Members of NORML further split off to found the Marijuana Policy Project in 1995, which was responsible for several successful cannabis legalization ballots and lobbying for legislative initiatives (Dufton, 2017).

The advent of NORML have inspired other drug policy and cannabis policy professionalized SMOs in the US and abroad such as International Drug Policy Consortium, Transform Drug Policy Foundation, Release, Students for Sensible Drug Policy, Law Enforcement Against Prohibition (Leap), among others.

In Uruguay, on the other hand, social mobilization around issues of cannabis legalization were articulated only much later. The increase in cannabis consumption after the end of dictatorship, in 1985, have united parts of the politicized youth, specially members of Jóvenes Vertiente Artiguista and Juventud Socialista del Uruguay, on debates about the plant's properties and cannabis self-growing.

They tried and failed in placing self-supply on the political agenda. At that time, cannabis consumption and drug policy externalities were not seen as political problems (Sanjurjo, 2013a, p. 301). Nevertheless, drug consumption and possession were never criminalized under Uruguayan law and such decriminalization has been regulated since 1974 by law 14.294, according to which the personal possession of "a reasonable quantity, intended solely for personal use" was not subjected to criminal sanctions. In the absence of a definition of a "reasonable quantity", it is up to the judge of the case to define if the drug apprehended was destined to consumption or sale.

However, Uruguay has had a long history of liberal state. Presidente José Batlle Y Ordóñez (1856-1926), who has governed the country in two periods (from 1903 to 1907 and from 1913 to 1917), has started a series of progressive reforms, instituting the divorce, working hours, maternity leave and the secular state, establishing the roots of Uruguayan modern and welfare state. He had dealt with a social problem with alcohol consumption and decided that the state should monopolize its production in order to avoid poisoning by drinkers and to obtain tax revenues from its consumption.

Many years later, in 2000, his grandnephew, Jorge Batlle, became the first President to publicly speak about the possibility of legalizing marijuana as a form of curtailing organized crime profits, and the Supreme Court Minister, Gervasio Guillot, has publicly supported the President's idea (Garat, 2012). Jorge Batlle's ideas didn't evolved from speech level, but have incited civil society to mobilize around this issue (Hetzer & Walsh, 2014, p. 34).

According to Sebastián Aguiar (2012), a sequence of contentions by organized groups have started in 2005, when activists have smoked cannabis together in a first public demonstration. In 2006, the event was named "fumata" and got more visible by choosing a central square as a venue, clearly drawing on the US SMO repertoire of civil disobedience and "smoke-in" protests.

From 2007 on, "fumatas" became annual protests, and legalization militants have created a local chapter of the Global Marijuana March. In order to organize it, they have instituted a Cannabis Legalization Movement, entrenching three SMOs: Laplacita, an association of young people sharing the same square to use cannabis; PlantaTuPlanta, a cannabis self-supply group; and Prolegal, with former activists from youth policy and student policy movements (Aguiar, 2012; Sanjurjo, 2013b).

Among their vindications was the cannabis self-supply or self-grow legalization and changes in the national drug legislation with an eye in the further objective of legalizing cannabis. Their expectations were to foster cultural changes towards this psychotropic substance as well as measures that would assure users rights (Aguar 2012, p. 47).

In 2011, Alicia Castilla, a 66-year-old woman, was imprisoned in the department of Canelones for cultivating 29 cannabis plants in her house, gathering media attention and activists campaigns for her release, denouncing Uruguayan legal contradiction: possession was allowed but not production (Garat, 2016, p. 218).

Castro (2014) describes that according to pro-cannabis activists, Alicia 'perfect martyr' for the cause, presenting an opportunity to show some state's contradictions, such as claiming to be focused in fighting a war against pasta base (paco) and organized crime while spending resources to imprison a 66 years old woman "that smoked cannabis as a way to get better sleep".

The public pressure emanating from this episode made Congress to create a commission on drug-related issues and led a group of "young congressmen from every political party" to propose new legislation which allowed planting cannabis at home and having a certain amount of marijuana (25 g) in the street. Deputies have received technical support from activists and growers on the issue (Garat, 2016, p. 218) and have presented in July 2011 a law proposal that would allow for cannabis cultivation for personal use (Castro, 2014).

Medical marijuana use was not on the table in Uruguay before adult-use cannabis market was legalized in 2012.

### **3.2.2.1 US medical marijuana regulation**

Medical marijuana regulation in the US was a result of individual agency as well as collective action among activists.

Besides have been used as a medicine for thousands of years, it was the isolation and identification of cannabis active principles, cannabinoids, that have resurrected interest by scientists and the industry. Tetrahydrocannabinol (THC), one of the at least 113 cannabinoids present in the cannabis plants, was first isolated by chemical Raphael Mechoulam in Israel in 1964, who has later isolated Cannabidiol (CBD), developing the forefront clinical tests on its potential as an anticonvulsant to

treat epilepsy and related disorders. His studies on cannabinoids medical properties were published from 1980 on.

Since then, cannabis has been regarded as a potential medicine for nausea, inflammation and pain relief, which makes it useful for arthritis, cancer and HIV-Aids patients. It has shown also potential for alleviating symptoms of epilepsy, multiple sclerosis, neurological disorders, depression and glaucoma, among other conditions (Mechoulam, 1986; Robson, 2001). Recent studies have shown evidence that purified extracts of THC and CBD may help killing cancer cells<sup>18</sup>. Although patients report improvement in their conditions under the use of cannabis, few of these properties have been proven by a complete scientific evaluation and review.

The very first case of cannabis being legally granted for a citizen as medicine after the advent of the IDCR was Robert Randall's. He was diagnosed with glaucoma at the age of 25, in the beginning of the 1970s, and was going blind because of increasing eye pressure typical of this disease.

One night, he smoked cannabis with friends and felt his vision got better. By 1975 he was smoking 30 grams of cannabis per week while working successfully as a college teacher. He decided to grow his own plants in the bathroom of his Washington D.C. apartment, which got raided by the police. Randall asked NORML to help on his defense and the organization referred him to scientists who had evidence suggesting cannabis could relieve intraocular pressure.

Randall claimed medical necessity at trial on the basis that breaking the law to smoke cannabis was less harmful and costly to society than going blind. He applied the same argument to a petition to the Department of Health, Education and Welfare for him to receive marijuana from the government's experimental pot farm in Mississippi. In November 1976, he was granted "300 rolled cannabis cigarettes from the government and the courts acquitted him for growing marijuana" (Bock, 2000, p. 154). It was the first time that health arguments have beaten a drug charge in the US (Barcott, 2015).

As a consequence, the Food and Drug Administration (FDA) has issued a program called Compassionate Investigative New Drug, which was difficult for patients

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<sup>18</sup> See Baram, L., Peled, E., Berman, P., Yellin, B., Besser, E., Benami, M., ... & Meiri, D. (2019). The heterogeneity and complexity of Cannabis extracts as antitumor agents. *Oncotarget*, 10(41), 4091; and Scott KA, Dalglish AG, Liu WM. (2014) The combination of cannabidiol and  $\Delta^9$ -tetrahydrocannabinol enhances the anticancer effects of radiation in an orthotopic murine glioma model. *Mol Cancer Ther*, 13(12):2955-2967.;

to get in. Randall decided to form the Alliance for Cannabis Therapeutics in 1981 to help patients to get into the Compassionate program. And he has found himself demanded by HIV-Aids patients claiming cannabis was the most effective way to counteract the extreme loss of appetite associated with Aids and with anti-Aids drug therapies, known as Aids wasting syndrome (Bock, 2000; Barcott, 2015; Hudak, 2016). In the face of such new and big demand, instead of promoting such patients wellbeing, the Public Health Service simply ended the program in 1991.

In San Francisco, California, businessman, gay rights activist and organizer Dennis Peron (1945-2018) was facing HIV-Aids epidemic in his community and engaged with volunteers, investors and friends to submit a ballot initiative to the city elections in order to grant access to cannabis for patients. Ballot initiatives are direct democracy exercises through which voters approve or reject a proposed new law.

Proposition P was a general, loose text that allowed patients to have access to cannabis and doctors to prescribe it, although it didn't regulate how people were supposed to get their cannabis from. It was approved in 1991 by almost 80% of voters. Since then, Peron and his colleagues have created the Cannabis Buyers Club, which operated as an illegal cannabis dispensary for sick patients during the 1990s. Illegal because Proposition P haven't regulated cannabis medical dispensaries and because cannabis was prohibited under state and federal legislation.

Peron faced continuous harassment and multiple arrests while two different legislative initiatives failed to pass in California legislature. Peron eventually developed Proposition 215 to legalize access to medical marijuana through a ballot initiative for California's 1996 election. He named it Compassionate Use Act.

He tried to gather the amount of signatures required for such an enterprise and was close to fail with 80,000 ones when a group of East coasters professional advocates, such as Ethan Nadelmann, who would later found an organization called Drug Policy Alliance, joined his team to help funding a professional campaign on medical marijuana legalization for the whole state.

They were able to obtain substantial donations by a group of businessmen and billionaires interested in progressive causes and in drug policy: George Zimmer, president of the discount clothing company Men's Warehouse, Peter Lewis (1933-2013), head of Progressive Insurance Co., and George Soros, the Hungarian billionaire investor who had formed the Open Society Foundation, within which he created the

Lindesmith Center in order to pursue drug reform under the auspices of harm reduction and alternatives to prohibition (Hudak, 2016).

With such funds, they have hired signature-gathering people in order to reach more than 500,000 ones, and the political consultant Bill Zimmerman, longtime working for Democrats, was hired for polling and campaigning strategies.

According to the libertarian author Alan Bock (2000), "some of the original activists were a bit chagrined to see the 'suits from back East' taking over their baby" (p.19). Nevertheless, the campaign was named Californians for Medical Rights and turned into a case of success: 800,000 signatures, an unsuspected veteran nurse as a spokesperson and support from the California Medical Association (CMA) and the American Medical Association (AMA).

The proposition text stated that its aim was "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".

Strategy was pragmatic. "Polls done along 25/30 minutes of interviews on the phone to get what kind of arguments would persuade voters have shown that the weakest aspect of the initiative was the authorization of cultivation by patients and caregivers" and this aspect was withdrawn from Proposition 215 (Bock, 2000, p. 21), which was approved by 55,6% of voters.

As the results came out, Dennis Peron lit up a joint in front of TV cameras, and opponents called the ballot a disaster. In November 1996, Californians for Medical Rights renamed itself Americans for Medical Rights (AMR) and announced a plan to put medical marijuana initiatives on the ballot in five more states. And just two years after Proposition 215 passed, Alaska, Oregon, and Washington followed suit.

Dave Fratello, a spokesman for Americans for Medical Rights (AMR), once said that the organization has chosen which states to tackle based on: the provision of initiatives processes (only 31 of the 50 US states do have it); if the voters of that state were receptive, based on polling and other measures; and if the campaign could be run at a reasonable cost, which ruled out several larger states.

Grassroots activists were critical of the AMR approach, controlling proposition texts and campaigns to alleviate law enforcement concerns about new medical marijuana programs. Such critics were fans of the so called "therapeutic" approach, in which local patients organized in groups would elaborate the propositions prioritizing

their needs, including patients cannabis cultivation allowance and a system of legal medical cannabis dispensaries (Bock, 2000).

Washington medical marijuana initiative kept the AMR out of the proposition design and only in financing and supporting it. Initiative 59 stated that primary caregivers could grow "a sufficient quantity of marijuana" to assure the patient's medical supply and opened the possibility of non-profit corporations to be settled to cultivate, purchase and distribute medical marijuana to patients and caregivers.

It was the first initiative to deal with supply issues, generating an economic incentive for new and legal entrepreneurship to invest in a potentially billion-dollar industry when non-profit business could become for-profit ones. In his book "Weed the People", Bruce Barcott (2015) cites an interview in which Ethan Nadelmann, already acting as the director of Drug Policy Alliance, said: "We know that the people who may come to dominate this industry are not the people who are part of this movement" (p. 126). He was right. The new producing and dispensing business opportunities were first taken by former illegal growers but few of them were prepared to professionalize their services in order to meet increasing demand. So investors have taken up medical marijuana supply provision foreseeing a for-profit cannabis future (Barcott, 2015).

Soon numerous states joined the original medical marijuana pathbreakers: Maine (1999); Colorado, Hawaii, and Nevada (2000); Montana and Vermont (2004); Rhode Island (2006); New Mexico (2007); Michigan (2008); Arizona, the District of Columbia, and New Jersey (2010); Delaware (2011); Connecticut and Massachusetts (2012); New Hampshire and Illinois (2013); Maryland, Minnesota, and New York (2014); Arkansas, Florida, Louisiana, North Dakota, Pennsylvania and Ohio (2016); West Virginia (2017); Oklahoma and Utah (2018).

By the end of 2019, thirty-two states and the District of Columbia had established medical marijuana programs. Half of them have implemented it through ballot initiatives, half of them through legislature initiatives. Each has developed its own regulatory framework and few allowed large scale production. Therefore, patients had to buy their cannabis on the streets, in the illegal markets.

In Colorado, lawyer Brian Vicente, founder of Sensible Colorado, an organization aiming to secure safe access to marijuana for patients, has sued the state in 2007 on behalf of an Aids and hepatitis C patient who was buying his cannabis in the streets and got beaten by drug dealers. At that time, Colorado prohibited any caregiver from selling

marijuana to more than five patients. Vicente won the case, creating economic incentives that have inaugurated Colorado's green rush —a sudden influx of wannabe cannabis entrepreneurs looking for legal business opportunities.

According to Bruce Barcott (2015), new caregivers have opened hundreds of storefront dispensaries while Colorado legislators ran to draft a crackdown bill. "Brian Vicente managed to convince them that medical pot industry needed harnessing, not banning. All it needed was state regulation" (p. 59). Dispensaries had to create a bar-code system to track every plant, stem, bud and leaf, paying taxes for each sale. The medical market would be monitored by state agencies: producers and stores would be regularly inspected, and use prevalence, arrests and car accidents would be measured continuously.

Rosanna Smart and Rosalie Pacula (2017) have classified medical marijuana legislation (MML) in three waves. On the first wave, from 1996 to 2000, legislation was proposed by grassroots activists backed by transnational advocacy networks, such as George Soros' Open Society Foundation, and were approved through ballot initiatives. The resulting laws were vague and ambiguous on self-growing, dispensaries and caregivers rights and obligations, aiming to protect patients and physicians. Federal opposition was explicit.

On the second wave was inaugurated by the passage of an MML through the legislature in 2000 in Hawaii. From then and until 2009, states approved laws which were more explicit in allowances on supply chain, home cultivation, patients registry and quantity limits for possession.

On the third wave, from 2009 onwards, states have elaborated systems of production and distribution of medical marijuana, with official authorities to oversee the whole production and trading chain. They generally established state-licensed dispensary systems and did not allow home cultivation by patients or caregivers. Although stricter control suggests fewer spillover effects of the medical marijuana market, such as products diverted to the illegal market or caregivers dealing for recreational users, such measures may also be interpreted as favoring capital enterprises, suggesting that regulatory capture might have been already operating between the cannabis industry and the state's legislature.

In Colorado, for instance, when recreational cannabis market was legalized and regulated, the first retail marijuana licenses were conceded to those already operating under the medical marijuana legislation.

Some US studies found that MMLs can be associated with an increase in youth cannabis use (Wen et al., 2015) although most of the studies have not confirmed that correlation (Harper et al., 2012; Anderson et al. 2013, 2015). Some of them even point that MML could reduce the risk of alcohol usage and abuse (Anderson et al., 2013).

It would not be accurate to evaluate social and political mechanisms advancing cannabis legalization without a deep understanding about the changes brought about by previous medical marijuana regulation.

All federal units in the United States that have created a legal adult-use cannabis markets have first legalized medical marijuana. Kilmer and MacCoun (2017) analyze how cannabis use was influenced by medical marijuana laws. Firstly, the scholars approach the theme through a theoretical perspective, in which medical marijuana laws modify factors such as legal risks, stigma, availability, promotion and price. Secondly, they present an empirical perspective.

The authors point out to parcels of physicians and their patients using medical marijuana system in a deceptive way and to parcels of pro-cannabis activists acting deceptively when campaigning for medical marijuana laws with an eye on legalizing recreational cannabis. However, they also highlights surveys evidencing that good part of public opinion believed that medical marijuana was used for serious illness (34%) but also for other reasons (56%), making it hard to argue that people have been fooled by MML developments on the ground (Kilmer and MacCoun, 2017).

Illegality increases the cost of purchasing and using cannabis because it poses a risk of being arrested. Therefore, if medical marijuana laws reduce this cost, it tends to make cannabis' purchase and consumption more attractive. Nevertheless, obtaining a medical recommendation when it is not necessary involves risk and, therefore, higher costs.

In terms of stigma, changing the previous criminal aspect of cannabis consumption, even if only for its medical use, challenges preconceived social

approaches towards its users. Medicalization of cannabis might also reduce the perception that its consumption is harmful.

Regarding availability and promotion, which goes hand in hand, most medical marijuana laws allow for dispensaries to provide the product to medical recommendation holders through physical and online stores. The presence of such shops in either urban or virtual environments magnifies availability by increasing the number of places in which cannabis can be purchased. It also promotes medical marijuana's market by expanding the visibility of this type of commerce.

Researches and the new and fast growing cannabis dedicated pharmaceutical industries have quickly made it possible to deliver such cannabinoids through formats as various as edibles (from brownies to jelly beans and candy), tinctures, oils vaporized marijuana, capsules, skin patches, sublingual strips and creams.

Finally, cannabis price has been related to its legal status (illegality makes it more expensive because of the risks involved) and to its restrict availability (being, at least in theory, more difficult to obtain an illegal product than a legal one). Therefore, medical marijuana legalization would remove these features (Kilmer & MacCoun, 2017).

Researchers have suggested that decrease in cannabis price increases the probability of use (Gallet, 2014; Pacula & Lundberg 2014, as cited in Kilmer & MacCoun, 2017).

In a counterintuitive manner, Kilmer and MacCoun (2017) present that medical marijuana laws can also have a negative impact on general cannabis consumption because some individuals might use it for "it is illegal and perceived as dangerous", in a "forbidden fruit" allegory that tends to disappear through the medicalization process, making its consumption less attractive (p. 189).

Also counterintuitively, when recreational cannabis legalization was placed on the ballot in California in 2016, Dennis Peron and other medical marijuana activists were against it. They argued that it would hurt local farmers in favor of big businesses and make it easier to arrest and prosecute people (Chasteen, 2016).

### 3.2.3 Transnational advocacy networks (TANs) and the legitimacy of the drug policy debate

Besides the involvement of epistemic communities and social movement organizations, another crucial non-state actor to influence the process of cannabis legalization was a set of transnational advocacy networks (TANs).

Margareth Keck and Kathryn Sikkink explore, in their 1998 book "Activists Beyond Borders" how international politics are influenced by transnational advocacy networks (TANs). They define them as networks of activists "distinguishable largely by centrality of principled ideas or values in motivating their formation" (p. 10). These principled ideas and values are guidelines to determining whether actions are right or wrong and whether outcomes and cause-effect relationships are just or unjust (Golstein & Keohane, 1993, p. 8-10). Keck and Sikkink evaluates that:

"Advocacy networks are significant transnationally and domestically. By building links among actors in civil society, states and international organizations, they multiply the channels of access to the international system. In such issue areas as the environment and human rights, they also make international resources available to new actors in domestic political and social struggles" (1998, p. 10).

Because they are motivated by values and not by material concerns, these networks usually fall outside the regular categories of international and comparative politics. The authors highlight that the core of the advocacy network relationship is *information exchange* that is strategically mobilized to persuade, pressure and gain leverage over powerful organizations and governments, changing their interests and preferences, which ultimately changes behavior, perception and, therefore, policy (Keck & Sikkink, 1998).

The scholars have developed a typology of four tactics in which TANs get involved in efforts to persuade pressure and socialize. First is what they call information politics: the ability to "credibly generate politically useful information and move it to where it will have the most impact". Second is symbolic politics, which is the use of symbols and stories that makes sense for an audience not involved in the issue. Third is leverage politics as the ability to "call upon powerful actors to affect a situation where

weaker members" were likely to fail. Forth is accountability politics, holding powerful actors to their previous commitments (Keck & Sikkink, 1998).

In his work on the implications of the US drug policy reform for Latin America, Steve Rolles (2016) acknowledges that "domestic activist-driven reform movement in the US has undoubtedly been an enormously significant factor" in the developments of activist movements and advocacy networks in Latin America (p. 254).

The most salient of these advocacy networks in Latin America was the foundation of the Latin American Commission on Drugs and Democracy in 2009 by former Presidents Fernando Henrique Cardoso (Brazil), Cesar Gaviria (Colombia) and Ernesto Zedillo (Mexico). It was the first time that a team of democratically legitimate and powerful actors have raised their voices against drug policy.

Until then, common sense have regarded drug policy reform interest groups as composed by former drug offenders and by drug users apart from members of the medical class, engaged in the issue only for harm reduction purposes. How could drug policy reform be considered a serious public debate with such public imagery?

The advent of a TAN created by former Presidents has shifted public perception on the issue of drug policy reform. On its first report, the Commission has called for a "paradigm shift" in drug policy (Latin American Commission on Drugs and Democracy, 2009).

This novelty was heeded by sitting Presidents from Latin America and they began to question the drug war paradigm, voicing their critiques even though they have been US allies in their ongoing War on Drugs (von Hoffman, 2016, p. 29).

Two years later, the organization has broadened its scope, becoming the Global Commission on Drug Policy, whose 2011 report called for "fundamental reforms in national and global drug control policies [that] are urgently needed". By then, Global Commission had gathered new members such as former UN general secretary Kofi Annan and European former presidents, such as Ruth Dreyfus (Switzerland), and was explicitly endorsing legally regulating cannabis (The Global Commission on Drug Policy, 2011).

The advent of a new and legitimized voice defending cannabis legalization, such as the Global Commission members' ones, has placed this debate on a new baseline, turning cannabis market regulation to a reasonable alternative policy that worth attention and investigation. The next year, Colorado and Washington have successfully placed an adult-use cannabis market regulation in the ballot while Uruguay has approved an executive proposition to a state-regulated recreational cannabis market.

The Uruguayan cannabis project elaborated by President José Mujica's cabinet explicitly cites the Global Commission on Drug Policy 2011 report to structure their justifications for cannabis regulation. "One year ago [2011] the Global Commission on Drug Policy has delivered a very important report"<sup>19</sup>, it highlights, citing the failure of the War on Drugs, launched 40 years ago, when politicians still believed that more severe actions would be able to diminish drug production, trade and consumption until they vanish (Uruguayan Government 2012).

Global Commission on Drug Policy 2012 report advanced its critique by openly condemning the drug war as a failure and a war towards people, calling for the decriminalization of non-violent drug users. In the same year, at the Summit of the Americas, Colombian President Juan Manuel Santos stood out of a group of Latin American Presidents calling for a region-wide debate on alternative policies to the War on Drugs (von Hoffman, 2016). "We must initiate a discussion and analysis on this topic, without prejudice or dogma" (Santos, 2012, p. 6).

Named as "legitimate" by the US President Barack Obama, this conversation was quickly delimited by the US position also expressed by him: "legalization is not the answer" (Castillo, 2012). Nevertheless, it was agreed that drug policy should be analyzed and that new approaches could be explored, a task delivered to the Organization of the American States (OAS).

In May 2013, "two path-breaking reports on the America's drug problem" were published by the OAS: one analytical report assessing evidence on the hemisphere drug issues and an exploratory report on four possible future scenarios for drug policy, in which full legalization was an option (von Hoffman, 2016).

<sup>19</sup>See original document retrieved in December 2019:

[https://medios.presidencia.gub.uy/jm\\_portal/2012/noticias/NO\\_F156/proyecto.pdf](https://medios.presidencia.gub.uy/jm_portal/2012/noticias/NO_F156/proyecto.pdf)

The first report noted that public opinion in "developed and high-consuming countries shifts to view occasional cannabis use as no more harmful —and maybe less— than the occasional use of alcohol or tobacco" (OAS, 2013a, p. 42) and that current drug policies "trigger more harm than they prevent" (OAS, 2013a, p. 25), arguing that decisions about "the decriminalization or legalization of the production, sale, and use of marijuana" will have to be taken sooner or later (OAS, 2013a, p. 104).

The second report presented four scenarios for drug policy, starting with cannabis policy experiments, in which "benefits from the legal regulation of some drugs are understood and acknowledged" (OAS, 2013b, p. 52). "Uruguayan cannabis activists considered the report a great boost for the cannabis reform project" (RNU, 2013, as cited in von Hoffman, 2016, p. 30).

Examples of TANs agency involves the establishment of the Global Commission on Drug Policy and the production of reports promoting a view of failure of drug prohibition and criminalization and claiming for a change in paradigm for drug policy (Walsh & Ramsey, 2015), sponsored by another TAN, George Soro's Open Society Foundation (OSF). The OSF have also sponsored the Americans for Medical Rights (AMR), the organization behind medical marijuana ballot initiatives in different US states (Bock, 2000) and have created Drug Policy Alliance, which financed and organized Uruguayan domestic activists in their campaign, *Regulación Responsable*. TANs like the Washington-Amsterdam based Transnational Institute and Drug Policy Alliance were also invited by the Uruguayan government for a consultation on drug policy for developing the national cannabis market model (von Hoffmann, 2016).

TANs were key to building a public debate around cannabis legalization, at financing campaigns for medical marijuana legalization and adult-use cannabis legalization as well as on providing consultancy for the draft of cannabis regulations.

Scholars have argued that when "community linkages are the most robust, transnational communities are most effective at drawing attention to particular issues (agenda-setting), and subsequently influencing actual policy decisions" (Djelic & Quack, 2010, p. 277). And TANs were effective in influencing policy-making in the US and in Uruguay when finding pre-existing local SMOs and groups of activists already working locally on the issue of cannabis legalization.

### 3.2 Collective action, media pressure and public opinion

Social movements organizations may draw attention to a particular issue "by demonstrating a claim either to objects of the claim, to power holders or to significant third parties", which makes "contentious politics it a form of representative politics" (Tarrow, 2011, p. 98) besides being a form of collective action (Olson, 1965).

Repertoire of contention has been divided by Sidney Tarrow (2011) in three broad types of collective action that combine "different degrees of properties of challenge, uncertainty and solidarity": disruption, violence and contained behaviour.

Some SMOs use demonstrations in public spaces as mean to evidence movement's determination, broadening the circle of conflict by calling the attention of bystanders and authorities to their grievances. Protest demonstrations began as a disruptive direct action and some of them eventually were institutionalized (Tarrow, 2011). Still, transnational organizations such as the Global Marijuana March coordinate parades on hundreds of cities worldwide every year in May.

Although cannabis legalization demonstrations have a role in promoting such public debate, challenging users' stigmas and altering perceptions towards the substance and the type of policy regulating it, the third type of contentious tactic have prevailed both in the US and in Uruguay when it comes to effectively bringing the cannabis legalization issue to the public agenda.

According to Tarrow (2011), contained behavior strategies "offer the advantage of building on routines that people understand and that elites will accept or even facilitate" (p. 99). SMOs in the US have lobbied the legislature, have engaged in court battles to challenge drug laws and, ultimately, have articulated propositions that gathered enough support to be placed on the ballot. In Uruguay, SMOs have informed and pressured the legislature to propose home cultivation initiatives that, although defeated in Congress, have progressively informed political elites on cannabis and drug policy alternatives to prohibition.

Studies on legalization processes emphasize the role of lobbyists and pro-legalization activist groups, considered the propellers of legalization laws either because

of their influence on governments through the Executive and the Legislative, or because of their mobilization of the citizenry (Queirolo et al., 2018).

In his study of collective action and its mechanisms, Marc Olson (1965) uses a mathematical model to assess the efficiency of smaller or larger groups agency, which he regards as being driven by narrow economic self-interest. He evidences that smaller groups are presumed to provide collective goods in a more productive way compared to large groups competence to deliver the same result.

Small organizations tend to do so through voluntary, self-interested action of its members because individual's benefit from obtaining the collective good exceeds their costs of action. On the other hand, larger groups would be less likely to further their common interests because their individual members are less likely to obtain an optimal amount of such a good, creating incentives for people to "free ride" on the efforts of individuals.

This function of political action based on interest groups' size is one possible account why claims for medical marijuana legalization, articulated by likely smaller groups, were more efficient in providing the collective good for its members (and, therefore, to non-members as well) than claims for recreational adult-use cannabis legalization, undertaken by potentially larger organizations.

While families and patients in need of cannabinoids therapy are numerically fewer than recreational cannabis users, their medical conditions pose an extra burden to them compared to those of recreational users. For those in seek for an illegal substance in order to treat a medical condition or its symptoms, criminalizing drug policy poses not only a moral charge, a social stigma and a criminal threat but also health debilitation and relief obliteration.

This seems, therefore, to be a case in which the benefit of obtaining medical marijuana legalization for people under serious medical conditions would exceed the costs of action to obtain the collective good.

One example is the one of lawyer John Morgan, who spent millions of dollars on the successful campaign to legalize medical marijuana in 2016 in the state of Florida (US). In 2014, he single-handedly settled a medical cannabis initiative on the ballot,

providing millions of dollars of his personal wealth to collect signatures and campaign for legalization in order to change Florida law, allowing medical patients like his brother to lawfully access cannabis for serious medical conditions.

Another example is the one of Dennis Peron's Proposition P ballot initiative in San Francisco, successfully promoted by a small group of gay rights activists in order to legally obtain medical marijuana for HIV-Aids patients.

Olson's theory was developed under economic incentives for collective action, when material and personal motivations stand out, and participation is promoted through the provision of "selective incentives" (Olson, 1965, p. 51). SMOs for cannabis legalization, however, seem to be a different case because their aim is more related to issues of life threat than to material benefits.

This life threat motivation creates incentives in two direct dimensions. First, related to cannabis use, refer to the constraints imposed by governments over sentenced drug offenders. The social and economic lifelong restrictions they face after prison compromise their individual well-being and progress, as well as their families'. Second, related to access to cannabis as medicine, refer to those who have serious medical conditions and might benefit from medical marijuana use. They tend to face depreciation of their health and well-being without access to cannabis.

In the absence of a strict economic interest, John McCarthy and Mayer Zald (1973) have argued that the increasing availability of resources to groups and people have expanded groups organization and professionalization. Their resource mobilization theory applies to the case of cannabis legalization in the sense that state level propositions and their campaigns in the US required millions of dollars.

As described in subchapter 3.2.2.1, American businessmen and financist have founded medical marijuana legalization ballot initiatives through Americans for Medical Rights (AMR) and through The Marijuana Project, two professionalized SMOs created particularly to these enterprises.

Medical marijuana movements and cannabis legalization movements have also mobilized what Thompson (1966) have called "the moral economy", indicating that people undertake collective action when "grievances are empowered by a sense of

injustice" (Tarrow, 2011, p. 25). Doug McAdam (1999 [1982]) have explained that "before collective action can get underway, people must collectively define their situation as unjust and subject to change through group action" (p. 51), naming this process as "cognitive deliberation".

But even with cognitive deliberation of grievances, SMOs have engaged in successful collective action according to political opportunities. This could have been provided by certain political and institutional conditions —such as the ballot initiative possibility in certain US states— or to certain political arrangements and contexts, such as the Frente Amplio government coalition in Uruguay. These contexts and conditions would partially explain why cannabis legalization collective actions were intensified and were successful in a certain period of time and not in others. Scholars such as Rhys H. Williams (2004) have emphasized that collective action has also a cultural context that influences it, stressing that changes in the perception of an issue provide new political opportunities for action too.

In this sense, cannabis legalization social movements reconcile different approaches to collective action, for it mobilizes rational choice theory (Olson, 1965) and resource mobilization account (McCarthy & Mayer, 1973), defined by movements professionalization through financial availability, as well as the political process model (Tilly, 1978; McAdam, 1999), which emphasizes the role of mobilization, political opportunity, framing processes and contentious repertoire in movements success.

### 3.2.1 Framing information to win acceptance and the role of public opinion

Part of this context offering political opportunities to SMOs, TANs and governments relates to how such actors, as well as the media, frame information. While SMOs and TANs might use the framing strategy to deliberately manipulate meaning and marshal data and rhetoric to support their position through public discourses, the media is supposed to treat such issues on an objective, uninterested and dispassionate way, focusing on the public good —although that is not always the case.

Marc Olson (1965) recognizes the role of mass media in pressuring for change, influencing in the decision-makers agenda. He argues that members of a latent interest

group that are "continuously bombarded with propaganda about the worthiness of the attempt to satisfy the common interest in question, they may perhaps in time develop social pressures" that may help them obtaining the collective good (p. 63).

This is because, information framing and exchange, either through campaigns or through the media, will promote the process of cognitive deliberation on three spheres: among latent activists, the public opinion and decision-makers.

First, influence on latent activists will dignify claims, creating meaning and producing a collective identity. Sidney Tarrow (2011) cites William Gamson's argument that grievances and its constituencies are insufficient for normally passive people to challenge power structures unless "if individuals privately adopt a different interpretation of what is happening. For a collective adoption of an injustice frame it must be shared by the potential challengers in a public way" (Gamson, 1992, p. 73, as cited in Tarrow, 2011, p. 145).

Tarrow (2011) describes that the media might act as a co-producer of collective action when giving attention and visibility to it, which was the case of the Civil Rights Movement in the US. It can also "provide a diffuse source for consensus formation that movements on their own cannot easily achieve" (Ferree et al., 2002, as cited in Tarrow, 2011, p. 149). Moreover, by focusing on what "makes" news, the media can reinforce certain disruptive repertoire of social movements.

Second, influence on the public opinion will generate learning processes furthering new perceptions on cause-effect relationships, on previous prejudices and stigmas and on perceived solutions. Different interpretations cultivate a collective awareness on certain issues, which would lay the ground for successful collective agency. Moreover, social movements' framing activity competes "with the framing that goes on through the media, which transmit messages that movements must attempt to shape and influence" (Gamson, 2004, as cited in Tarrow, 2011, p. 32).

According to Steve Rolles (2016), a critical factor for change in the perspective regarding drug prohibition was the evolution of public understanding about what were the vectors of problems certain societies were so dramatically facing: corruption and skyrocket increase in violence and death emanating from illicit drug markets in the context of the War on Drugs. "Credit for this growing understanding falls to a broad

array of domestic and international media opinion formers, public figures and civil society groups" (p. 252).

Finally, information influence on decision-makers will foster the recognition of political problems and coupled alternative policies to deal with them. John Kingdon (2011) acknowledges that the media has an indirect impact on agenda setting and policy change because it magnifies attention to an issue, affecting public opinion, which affects politicians. Its influence affects "legislator's attention partly because members follow mass media like other people, and partly because media affect their constituents" (p. 68).

Kingdon's classical study "Agendas, Alternatives and Public Policies" distinguishes three ways and circumstances in which the media affects policy processes. First, operating as a communicator within the policy community. Second, by magnifying movements that has already started. Third, in an indirect way, to the extent that it affects public opinion, which affects some decision-makers (Kingdon, 2011, p. 59-60).

Information disseminated by SMOs and the media could be based on people's stories and testimonials, provoking emotions and new perspectives on a broader audience, or could be based on findings produced by epistemic communities and by a newcomer in the information production arena: the new cannabis industry.

In this scenario of multiple actors with particular interests that do not necessarily match the public good interest, the media plays a central role in investigating and disseminating accurate information on the issue of cannabis and cannabis legalization. However, part of the media would uncritically accept and disseminate biased information and "truth claims", which are "anchored in discourse and discursive formations that produce particular ways of organizing thinking, talking and doing in regard to selected topics" (MacMullan, 2005, p.18).

All this framing and circulation of information promote socially constructed perceptions on an issue through strategies of visual and textual representations, shaping the public understanding of a social problem and the solutions on the table (Best, 1989).

The case of cannabis legalization in Uruguay is a striking example. Drug policy became a prominent issue in Uruguayan public debate after three subsequent murderers were associated with drug consumption and drug trafficking, especially related to *paco*, a type of pasta base or crack that was just emerging in the country. Such episodes happened in La Pasiva, Suarez and Las Piedras and have generated a crime and violence national crisis, from which cannabis legalization and regulation has emerged as an alternative policy for withdrawing resources from organized crime and for separating drug markets —cannabis from that of harder drugs.

This crime and drugs association was strengthened mainly by the media (Queirolo et al., 2018), and was later considered a fallacy. Julio Calzada, the head of the National Drug Board, stated in 2012's interview about the new Uruguayan package of security measures, including the law regulating adult-use cannabis market:

"This law, and this package of measures, is being argued after three fallacies (...): the crime of La Pasiva, the case in Suarez and the teenage girl murdered in Las Piedras. After forty-eight transmissions of the killing on television, thirty-six hours after the murder in La Pasiva, it was almost an advertisement. That builds reality in society. The Friday after the murder, the vision about what happened had nothing to do with Saturday and Sunday's headlines. The murder didn't happen to buy crack, they were not stoned, they spent the money in a shopping center (...) In that context, that blender, made us discuss the crack issue like a key point in the violence and coexistence problem of our society. And what politics needs to do with this perception is weave and look for alternatives"<sup>20</sup>.

Americas Barometer 2012 have shown that "lack of security" was the country's main problem according to 30 percent of Uruguayans. Latinobarómetro 2013 found that 36% of Uruguayans mentioned "delinquency and public safety" as the nation's main problem (Queirolo et al., 2018).

"The emergence of a narco/pasta base/insecurity dilemma placed drugs at the center of the problem of crime", which gave "drugs an unusual prominence in public and governmental agendas", transforming the field of drug regulation in the country (Castro, 2014).

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<sup>20</sup> Centochenta, July 1st 2012. Retrieved in December 2019.  
[https://www.180.com.uy/articulo/27193\\_Loscambios-en-las-politicas-de-drogas](https://www.180.com.uy/articulo/27193_Loscambios-en-las-politicas-de-drogas)

Interviews with senior civil servants involved in drug policy-making confirm that public and media perceptions of possible reforms are a constant, overriding concern (UKDPC, 2012, as cited in Murkin, 2014, p. 14). And public opinion changed dramatically in the last decades.

In 1969, the Gallup Poll asked American respondents whether they supported or opposed the legalization of marijuana. Only 12 percent of Americans supported legalization; 84 percent opposed it, reflecting the US fear of cannabis as a social treat.

After California legalization of medical marijuana in 1996, and following states, Americans were exposed to functioning medical marijuana systems and eventually recreational marijuana systems (Hudak, 2016). Public opinion has changed.

John Hudak (2016) asks: "Did legal marijuana cause a shift in public opinion, or vice versa?". He answers that "existing medical marijuana systems helped shift an already moving public opinion", because the acceptance trend has started years before the Californian 1996 ballot. "That shifting public opinion, in turn, generated the support necessary to pass ballot initiatives in other states" (Hudak 2016).

A 1999 Gallup poll showed more robust support for medical marijuana: 73 percent for and only 25 percent opposed. And, between 1999 and 2010, Gallup polls have shown support fluctuating between 70 and 78 percent, with opposition never rising above 27 percent.

The year of 2011 was also the one in which public opinion shifted from a majority opposing the legalization of recreational cannabis to a majority supporting such change in current drug policy. In 1969, a Gallup poll asked Americans if marijuana use should be legal or not: 84 percent said no and 12 percent said yes. In 2011, when adult-use cannabis was not legal in any part of the US, 50 percent said yes and 46 percent said no. In October 2018, 66 percent said yes, marijuana should be legal, and 34 percent said no, it should not.

Some analysts credit part of opinion changes to a demographic phenomenon called generation replacement, which had a profound impact on the marijuana issue. Social scientists have documented that the baby boomers (those born between 1946 and 1958) had "higher rates of criminal behavior (Cohen & Land, 1987) and drug use

(Inciardi, McBride & Surratt 1998)" than earlier and subsequent generations (as cited in McBride, Terry & Inciardi 1999).

Part of such a dramatic shift in public opinion was regarded to cultural and behavioral developments in the American society related to cannabis use patterns and not completely detached to demographic change. In 2017, nearly half (48%) of American adults said they have ever used marijuana<sup>21</sup>.

Concerns about the criminal justice system and mass incarceration might have generated incentives in favor of a pro-legalization position and the peak of prison population in 2010 immediately precedes the shift in public opinion when a majority of Americans started supporting it. Social Science Research 2019 showed that raising support for cannabis legalization correlates to a rise in the perception that the US criminal justice system is "too harsh". And data on the New York Times media coverage evidence that while 1983-84 cannabis stories have focused on the relationship between drugs and crime, from 2009 to 2016, they have focused on medical issues.

Also, the rise of the War on Terrorism from 2001 onwards may have contributed to the replacement of concerns with drugs to concerns with terror.

Campaigns for medical marijuana and recreational marijuana ballot initiatives were also highly based on polls, manipulating persuasive information to target specific demographic groups in order to gather their support. Crafting effective information and delivering the right message to the right group was understood by campaigners to be crucial to success. It was a branding communication strategy (Hudak, 2016).

In their 2016 national survey on the arguments that sustained Americans support or opposition to recreational cannabis legalization, Emma E. McGinty et al. (2017) had found that respondents rated persuasive pro-legalization arguments highlighting beneficial economic —through increase tax revenue (63,9%) and creation of a profitable new industry (63,4%)— and criminal justice consequences through the potential reduction of prison overcrowding (62,8%). Persuasive anti-legalization arguments

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<sup>21</sup> National Survey on Drug Use and Health 2017. Retrieved in December 2019.  
<https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2017/NSDUHDetailedTabs2017.pdf>

highlighted were the conflict between federal and state legislation (63%), the difficulty of legalization to eliminate the illegal market (57,2%) and the potential increase in motor vehicle crashes (51,8%). Concerns with youth health (49,6%) followed (McGinty et al., 2017).

An analysis of US media coverage of recreational marijuana policy from 2010 to 2014 have showed that anti-legalization arguments have focused on adverse public health consequences in the majority of occurrences, followed by increase in impaired-marijuana driving and by the creation of a pro-profit industry like the tobacco one. On the pro-legalization side, media coverage have highlighted arguments on criminal justice and economic issues, emphasizing the new policy potential to reduce prison overcrowding, decrease in racial disparities in marijuana arrests, increase in tax revenue and the creation of new jobs (McGinty et al., 2017).

Comparing the arguments highlighted by pro and anti-legalization to the ones disseminated by media coverage suggests that either "advocates have identified and deployed a set of arguments that already resonated with the public or convinced the public that these are strong arguments in support of pro-legalization efforts" (McGinty et al., 2017).

It is also interesting to look at the very large differences in perception among respondents that were residents of states with cannabis legalization versus non-legalization states. Residents of legalization states were more likely to agree that legalization would increase tourism revenue (52.7% versus 26.4%) and job production (57.2% and 39.8%) and less likely to endorse anti-legalization public health arguments related to legalization's potential to increase motor vehicle crashes (45.5% versus 55.0%) and harm youth health by increasing marijuana access (41.9% versus 53.6%). This suggests that direct experience with the policy consequences influenced attitudes (McGinty et al., 2017).

William Galston and E.J. Dionne (2013) have analyzed public opinion data on cannabis legalization and noted that attitudes towards it are "marked by ambivalence, especially on the conservative side" because many of those favoring legalization do so despite believing that marijuana is harmful or saying they feel uncomfortable with its use (p. 3). They suggest that conservative disenchantment with marijuana prohibition may reflect views on states' rights and on the ineffectiveness of government regulation.

In 2014, even President Barack Obama stated in an interview that he didn't think that cannabis was more dangerous than alcohol<sup>22</sup> (Remnick, 2014).

Through the experience of problems emanating from drug prohibition, through the access to information about cannabis harms to health and medical properties and through cultural changes that progressively altered public perception towards cannabis, countries have started distrusting their national cannabis policy.

Helen Milner (1997) have argued that "with a larger role for public opinion and interest groups to play in the crafting of foreign policies, fewer states would be prepared to incur significant domestic costs for the sake of international cooperation" (as cited in Drezner, 2003, p.1). This new context would impact on the IDCR.

### 3.3 Flexibility, defection and breach of the IDCR

Andreas Hasenclever, Peter Mayer and Volker Rittberger (1997) point out that the true robustness, or resilience, of any regime can only be determined after it experiences what they define as an exogenous 'shock' or challenge.

Such challenges were originated by incentives emanating both from regime's ineffectiveness and externalities. The repressive policies privileged by the IDCR were unable to reduce the scale of the illicit global drug market and the problems deriving from it: the increase in drug use along with health and social related problems, the expansion and empowerment of organized crime along with related violence and corruption, the aggravation of drug law enforcement along with related human rights violations and striking growth of the incarcerated population, and the economic and human costs entailed on each of these items.

Facing use and crime problems emanating from the drug prohibition norm, countries have "reassessed the focus of their domestic drug control policies; policies that were for the most part formulated to be in accordance with the UN drug control conventions" (Bewley-Taylor, 2012, p. 16). This implies a learning process about IDCR's domestic impacts, altering state's perception about national self-interest.

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<sup>22</sup> Remnick, David (2014), Going the Distance. Retrieved in December 2019. <https://www.newyorker.com/magazine/2014/01/27/going-the-distance-david-remnick>

Ernst Haas, Mary Williams and Don Babai (1977) have underlined that learning involves a progressive appreciation and acknowledgement of more complex cause-and-effect linkages among events that must be taken into consideration by policy makers (p. 324). When analyzing nations self-interest as a subjective development, Haas argues that "changing perceptions of values and interests among actors are associated with changed behavior, though not in obedience to any pattern of rationality imputed or imposed" (1983, p. 57, as cited in Keohane 1984, p. 132). To Haas, there is no fixed "national interest" and no "optimal regime".

Robert Keohane and Joseph Nye (1987) argue that changes in self-interest should be examined as a result of "evolving international institutions, individual or group learning, or domestic political change", in a process that requires "blurring of boundaries between the fields of international relations and comparative politics" (p. 753).

There has been a change in state-party's expectations with the IDCR due to local developments deriving from its norms (drug prohibition) and rules (the criminalization of production, trade and consumption) which lead to the very question of regime's principles (drugs are a threat to the health and welfare of mankind).

While questioning the regime's normative, state-parties were confronted by local and transnational grievances about IDCR's externalities and were also informed by epistemic communities about drug related and drug policy related harms, drug control cost-effectiveness, causal relationship of such problems and alternative drug policies. All of these factors have worked out as incentives for drug policy change as a rational and legitimate choice regardless of what was praised by the regime's institutions.

Challenges and deviances can be traced back to an international shift in power balance, in which the United States of America have withdrawn from its hegemonic position while world power was fragmenting towards different nations and regions, such as Europe, Japan and China. Any shift in power distribution among states affects parties' behavior internationally. In a new international order, reconsideration of national interests entailed evaluation of costs and benefits entrenched in certain regimes, including the drugs control one (Bewley-Taylor, 2009, p. 50).

Since national states changed through 'learning' (Keohane & Nye, 1987) and are informed and influenced by organized domestic groups (Milner, 1997), states started

experimenting decriminalization of cannabis consumption (US and the Netherlands) and harm reduction programs involving syringe distribution, drug substitution therapy and injection facilities for drug users (Switzerland, Canada, Czech Republic).

It started in the 1970s, in the US, in Uruguay and in the Netherlands. The former case is of a formal decriminalization of cannabis possession, inaugurated in 1973 by Oregon and followed by another ten US states. In Uruguay, law 14.294 has exempted "from punishment any person having a minimum amount [of drugs] intended solely for personal use", in a process started in 1972 by law professor Adela Reta, member of a Parliamentary Commission created to debate drug abuse and the ratification of the international drug treaties. Professor Reta has defended recreational drug use and cannabis home growth, stressing that drug abusers were sick people who needed rehabilitation —a position already held by the World Health Organization by then (Garat, 2016, p. 213).

In the Netherlands, Public Prosecutor's Office published in 1969 a law enforcement guide prioritizing the combat of drug trafficking rather than drug use. In the same year, a mental health authority's consultative body, dubbed the Hulsman Committee, released a report suggesting that drug use should be addressed as a public health issue and substances should be separated by degree of harm, highlighting that the marginalization promoted by the criminal justice system tended to push cannabis users to heavier and more dangerous drugs (Breeksema & Grund, 2013).

In 1976, the Dutch government has classified substances prohibited under the IDCR conventions into two categories: those of "acceptable risk" and those of "unacceptable risk" (Rosmarin & Eastwood, 2012). By placing cannabis as an "acceptable risk" substance, the new policy paved the way for *de facto* decriminalization of cannabis use by adopting a system of tolerance over private clubs selling cannabis. These clubs would develop into the notorious Dutch coffee-shops.

In such an arrangement, the Dutch government was able to separate the cannabis market from the one for heavier drugs without experiencing an exponential increase in cannabis use. Marijuana consumption in the Netherlands remained lower than in places where the substance trade was totally banned at that time, such as in San Francisco, California (Reinaman, Cohen & Kaal, 2004).

Although not directly related to cannabis, the harm reduction strategies raised by health policy-makers were crucial for the advent of stronger and more powerful questions and critiques towards the IDCR regime as a whole, therefore affecting national and international normative frameworks also regulating cannabis. They have evidenced the unwillingness of the IDCR institutions to be flexible and rational in the face of a new domestic problem and alternative policies to ease them.

In the 1980s and 1990s, some countries experiencing a HIV-Aids epidemic among intravenous drug users sharing contaminated syringes have decided to distribute them for free as a harm reduction initiative to reduce virus spread. It is generally acknowledged that the first needle exchange experiment was undertaken in the Netherlands in the early 1980s because of a hepatitis B epidemic. In the mid-1980s, Australia, Canada, Switzerland and the United Kingdom were also promoting such program for HIV-Aids prevention. According to Bewley-Taylor (2012), by 2008 almost all Western European countries had such programs, except Iceland and Turkey (p. 69).

Also in the mid-1980s, as a result of the advent of open drug scenes and the increase in deaths by overdose, Switzerland has started an experiment with drug consumption rooms, in which heroin users could exchange used needles for new ones and inject themselves in a supervised environment. In the early 1990s, Germany and the Netherlands have also created their supervised injecting sites (Bewley-Taylor, 2012). By the 2000s, Canada has followed the same steps with the opening of an injection site in Vancouver.

Also in the 1990s, Switzerland has started a heroin-assisted therapy, in which small daily doses of heroin were prescribed and injected in a closely supervised manner to people living with opiate dependency who did not have satisfactory results from other forms of treatment (Csete, 2013 [2010]). The new drug policy was publicly criticized by the International Narcotic Control Board, which send a delegation for two consecutive visits, in 1994 and 1995. Although never declaring the Swiss drug policy to be a violation of IDCR, the INCB urged the Swiss "not to overemphasize harm reduction" in their drug policy (INCB 2000, para 501, as cited in Csete, 2013).

"Harm reduction strategies aimed at promoting the health of injecting drug users by reducing harms from unsafe drug use and/or facilitating access to care and support"

and they have generated significant "levels of tensions within the current regime", besides evidence-based efficacy in terms of decrease in HIV infections, savings in healthcare expenditures and lives, by reduction overdoses episodes (Bewley-Taylor, 2012, p. 40-43). The INCB have reiterated that such programs were "contrary to the international drug control treaties" (E/INCB/2001/1).

In 2000, Portugal has decriminalized possession of all drugs, including cannabis, moving the issue of personal use from law enforcement into the public health domain. There, individuals can carry up to ten doses of drugs, thereafter treated as an administrative offense, not a criminal one. Such doses were previously defined by government health authorities. Citing the Portuguese initiative, the INCB stated in its 2001 report:

"The Board would like to remind States that article 3, paragraph 2, of the 1988 Convention requires each party to establish as a criminal offense under its domestic law, when committed intentionally, the possession, purchase and cultivation of narcotic drugs and psychotropic substances for personal consumption" (E/INCB/2001/1).

Thomas Babor et al. (2010) ironically highlight that "the importance of the INCB is therefore somewhat less than its own estimation of it". The statement is based on the idea that "the threat of a scolding from it does affect nations planning to make policy changes, but its specific reports appear not to have affected developed countries such as Australia, Switzerland, and the UK", which have been criticized by the INCB and kept their new drug policies (Babor et al., 2010, p. 213).

These new drug policies, based on the concept of harm reduction and on a health-oriented approach, are considered 'soft defections' from the regime (Bewley-Taylor, 2005), which means that they are policy choices that deviate from the regime's authoritative norms although the states implementing them have made efforts to justify such policies according to the regime's principles.

The fact that such countries have created alternative drug policies that conflict with drug control treaties without withdrawing from the conventions allows for two interpretations. The first is that the regime is so resilient that even with *de facto*

derogations, member-states have chosen not to leave it, reassuring the importance of international institutions, cooperation frameworks and the reputational labelling the regime provides. The second is that the regime lacks an efficient system of enforcement, which does not allow it to hold state-parties accountable. At the same time, since the treaties does not provide mechanisms for expelling member-states from the regime, it can be argued that the IDCR deemed easier to control state-parties behavior within its structures.

Parties to the conventions remain within what they regard to be the letter of the law, exploring flexibilities and ambiguities within the convention texts, although defecting from the spirit of the regime. In this regard, Bewley-Taylor (2012) evokes Stephen Krasner (1982) idea that such behavior, instead of suggesting alterations of rules and procedures, contribute "to what are changes *within* rather than changes *of* the regime" (cited in p. 20). Bewley-Taylor argues that this process has more resonance with Krasner's early discussions of regime dynamics, "particularly his belief that if the norms of a regime become less coherent, or if actual practice is increasingly inconsistent with such norms, then a regime has weakened" (Krasner, 1982, p. 5, as cited in Bewley-Taylor, 2012, p. 21).

Although questioned domestically by civil society and policy-makers, IDCR principles, norms and rules retained its spirit globally immaculate until 2009, when a group of 26 European countries have formally disagreed with the regime's resistance in embracing harm reduction strategies to alleviate drug consumption related harms.

Part of the European Union positioned an Interpretative Statement to the Commission on Narcotic Drugs (CND) noting the importance of mentioning harm reduction in their final Political Declaration. The words "harm reduction", however, were not included in the final UN statement. And the issue of harm reduction became crucial in promoting a fracture of the regime consensus (Bewley-Taylor, 2012).

The contention between the 26 European state-parties and the IDCR was followed by a formal breach by a Latin American party. In 2012, Bolivia have withdrawn from the conventions because of the regime's criminalization of coca leaf indigenous use and have re-acceded to the conventions in 2013 after a change of the norm.

When Bolivia announced its intended path, the INCB reacted immediately, publicly expressing its dissatisfaction with such action. The Board has acknowledged that the Bolivian strategy was in line with the letter of the Convention, but it has stated that it 'is of the opinion [that] such action is contrary to the Convention's spirit' (INCB, 2011, cited in Room, 2012, p. 404).

The US was also contrary to the Bolivian re-accession to the conventions, although Americans were already in a delicate situation vis-a-vis the IDCR because, in that same year, Colorado and Washington have legalized and regulated an adult-use cannabis market. Uruguay did the same.

Such groundbreaking shift in local drug policies for cannabis was protested by Raymond Yans, the President of the INCB, who claimed that 'allowing for the recreational use of cannabis would be a violation of international law, namely the United Nations Single Convention on Narcotic Drugs of 1961'<sup>23</sup>.

The Board has also indicated that 'non-compliance by any party with the provisions of the international drug control treaties could have far-reaching negative consequences for the functioning of the entire international drug control system' (International Narcotics Control Board, 2013, p. 36). It urged the Uruguayan authorities 'to ensure that the country remains fully compliant with international law which limits the use of narcotic drugs, including cannabis, exclusively to medical and scientific purposes'<sup>24</sup>.

Studies have indicated that regimes are relatively weak in situations involving high incentives to break the rules (Keohane & Nye, 1987, p. 744), and US states and Uruguay changes in drug policy would allow countries to consider costs of defection possibly outweighing those of compliance.

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<sup>23</sup> UNIS/NAR/1164 14 March 2013. Retrieved in December 2019. <http://www.unis.unvienna.org/unis/en/pressrels/2013/unisnar1164.html>

<sup>24</sup> Retrieved in December 2009 <https://www.unodc.org/unodc/en/press/releases/2013/incb-president-urges-uruguay-to-remain-within-the-international-drug-control-treaties-noting-draft-cannabis-legislation.html>

### 3.3.1 Golden straightjacket or normative flexibility: the issue of conventions' interpretation

Besides the International Narcotics Control Board claim that legalizing adult-use cannabis markets implied violating international law, the US and Uruguay have articulated different narratives to accommodate their new drug policies to the IDCR normative framework.

In September 2013, a Uruguayan diplomat has indicated that his country was "opting for an alternative path in the framework of a comprehensive and balanced strategy aimed at regulating the cannabis market with a proposal in accordance with national conditions to address the drug problem". In this regard, he noted that such drug policy seeks the same objectives as those established in ratified international treaties but offers an opportunity to update them, "based on the faithful compliance with human rights" (OAS, 2013a).

In February 2014, the Uruguayan Foreign Affairs Secretary, Luis Porto, gave a speech to the INCB in which stated that the obligations of Uruguay under drug Conventions must take into account the protection of human rights, since "they constitute *jus cogens* and cannot be ignored". *Jus cogens*, in latin 'compelling law', refers to certain fundamental and overriding principles of international law (Collins, 2016).

Porto stressed that Uruguay was "an absolute defender of international law" and has a comprehensive view of its obligations under it, "not only in the sphere of the Drug Conventions of 1961, 1971 and 1988, but also in the field of the protection of human rights". He argued that the purpose of the conventions "should be combating illicit trafficking and, in particular, combating the harmful effects of drug trafficking". And concluded that his country "believe that production and sale in the manner prescribed in the new law may be the best way, on the one hand, to combat drug trafficking, and on the other, to defend the constitutionally protected right to freedom of our fellow citizens" (Collins, 2016).

According to Megan Fultz et al. (2017), Uruguay "has championed the human rights perspective on drug reform for many years". As an example, scholars report that Uruguay has campaigned vigorously for a close connection between drug control and human rights along with the participation of civil society. In 2008, Uruguay has already

called the IDCR for consistency between its conventions and international human rights instruments by presenting Resolution L.16 with support of Argentina, Bolivia, Switzerland and the European Union at the 51st session of the Commission on Narcotic Drugs, in 2008 (p. 14).

Indeed, the argument pushed forward in Uruguay to legitimize the call for cannabis legalization and regulation was that it would remove resources from criminal organizations and protect the safety and human rights of Uruguayans (Fultz et al., 2017, p. 11-12).

Hannah Hetzer & John Walsh (2014) describe Uruguayan response "to outrageous assertions by INCB President Raymond Yans, in December 2013, that Uruguay was behaving like a 'pirate' nation", in which Mujica's government argued that the new law was consistent with the original spirit of the UN drug treaties to promote the "health and welfare of mankind" and was aligned with Uruguay's fundamental human rights obligations.

On the United States side, William Brownfield, then US Secretary of State for International Narcotics and Law Enforcement Affairs, have presented in 2014 the American states regulated cannabis markets as consistent with a flexible interpretation of the regime's treaties. He has developed what was named the "Brownfield Doctrine", underpinned by four principles: respect the integrity of the existing UN Drug Control Conventions; accept flexible interpretations of those conventions; tolerate different national drug policies, accepting the fact that some countries will have very strict drug approaches and other countries will legalize entire categories of drugs; and combat and resist criminal organizations.

Such new official US narrative was praised by activists as a change in the regime's former Hegemon prohibitive perspective. However, it was also criticized by scholars and specialists as an attempt to protect a system from the US breach by simply not admitting it as a violation. The supposed US interest in doing so was to maintain the strength of an international legal framework that allows the American presence "in places it has no business being other than to fight the drug trade" and permits the continuity of using treaty breach or violation as a disciplinary tool through its

unilateral certification system (Bewley-Taylor, Jelsma & Barrett, 2014). The US certification system was discussed in Chapter 2 (2.3.1).

The fact that the US position vocalized by Brownfield is at odds with the Secretary comment on Jamaica cannabis experiment has reinforced its critics arguments. 'Jamaica like all...countries of the world does have to address [their concerns] within their own realities, but at the same time accept that they have ratified and, therefore, have a legal obligation to abide by the terms of the three international drug conventions' (cited in Fox, 2015, p.1).

Brownfield's argument on treaties flexibility was echoed by John Collins (2017), who contend that "orthodox interpretations hold that the current system (...) was constructed in an extremely repressive and restrictive manner with almost no flexibility" for national experiments while, in fact, domestic obligations of the treaties had been overstated. He argues that wide national regulatory variations represent "ingrained interpretative room within the conventions, reinforced with an absence of any tangible treaty enforcement mechanism (Collins, 2016, p. 11).

Other authors have previously emphasized that, as a multilateral instrument seeking universal acceptance, the drug conventions are "saturated with ambiguity" (Boister, 2001, p. 22, as cited in Bewley-Taylor, 2012, p. 7) and that their interpretation is an art, not a science.

In fact, drug treaties stress in many occasions that implementing their clauses is subjected to "constitutional limitations", in which they provide room for the consideration of domestic particularities. Nevertheless INCB has usually protested any sort of alternative policy experiment, sending a different message to state-parties regarding such interpretative flexibility. In their 2018 report, INCB have stated that "the legalization of non-medical use of cannabis contravenes the international drug control treaties. Universal and full implementation of the treaties is put at serious risk", citing that such an action would "reduce perceived risks of cannabis use" —as experience with alcohol and tobacco suggests—, is likely to "increase cannabis use" among adults and

youngsters, increasing adverse effects on public health<sup>25</sup> (E/INCB/2018/1, paragraphs 61-66).

Krzysztof Krajewski (1999) highlights one must keep in mind that "international conventions constitute not only purely legal but also political documents", especially in the case of drug policy, "which involve serious disputes between consumer countries (industrialized countries of North America and Europe) and producing countries (the developing countries of South America and Asia)" (p. 334).

In his view, while the treaties have room for interpretation on depenalization of drug possession, "implementation of more rational drug policies, including not only legalization but also decriminalization, would probably require amending the 1988 Convention" (Krajweski, 1999, p. 337).

According to Robin Room (2013), even medical use in the US, which started in 1996, would be "clearly in contravention of the 1961 Convention, for instance concerning the treaty's requirement (under Articles 23 and 28) that the cannabis supply for such purposes be through a government agency at the wholesale level" (p. 345-6).

Nevertheless, IDCR's normative framework have been in constant development. Signalling the change in the tone of the INBC statements, the same regime institution that has once denounced harm reduction strategies as in conflict with the IDCE have discussed in the 2015 report the advent of drug consumption rooms in France as a harm reduction measure and the decriminalization of possession of up to 2 ounces of cannabis in Jamaica without any outright condemnation (INBC, 2016, para 136-143, cited in Babor et al., 2010 p. 230).

Keohane and Nye (1987) point that "the nature of international regimes can be expected to affect domestic structures as well as vice versa" (p. 742) and that states "interests may be redefined through normative change. Practices and interests which are accepted in one period become downgraded or even illegitimate in a later period because of normative evolution" (p. 749). It was true with drugs from commodities to evildoers, and it seems like it will be true, reversely, from evildoers back to commodities.

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<sup>25</sup> E/INCB/2018/1 - Retrieved in December 2019\_ [https://www.incb.org/documents/Publications/AnnualReports/AR2018/Annual\\_Report/Annual\\_Report\\_2018\\_E\\_.pdf](https://www.incb.org/documents/Publications/AnnualReports/AR2018/Annual_Report/Annual_Report_2018_E_.pdf)

## 4. CANNABIS LEGALIZATION EXPERIMENTS: HOW POLICY WAS CHANGED?

Cannabis control policies have been in motion for almost 50 years, undergoing several phases of reform since the first wave of decriminalization of possession in the 1970s, to the early medical marijuana laws in the 1990s and more recent non-commercial arrangements such as those of Spanish cannabis clubs.

Legalizing and regulating adult-use cannabis market, inaugurated in 2012 by Uruguay and the US states of Colorado and Washington, implies in a more profound drug policy change. In these three groundbreaking cases studied in this thesis, policy change was undertaken either through SMOs' successful ballot initiatives, as in the cases of Colorado and Washington, or through Executive's law proposition and subsequent Legislative approval to allow the production, trade and consumption of cannabis, as in the case of Uruguay.

Because of such differences in the decision-making processes, Colorado and Washington cannabis legalization have been regarded as bottom-up processes while Uruguay has been regarded as a top-down process.

Decision-making, however, was the closure of a policy change movement that has started long before, in pre-decisional stages that will be unraveled.

### 4.1 Policy cycle and shifts in local cannabis laws

Since the 1960s, policy cycles have been explained by different models and theories focusing on pre-decisional social and political processes. First, Peter Bachrach and Morton Baratz (1962, 1970) have developed their NonDecision-Making Theory, which involves how challenges to the status quo are commonly suppressed, as well as the addition of new issues to an agenda.

They were followed by Michael Cohen, James March and Johan Olsen's (1972) Garbage Can Model (GCM), in which authors argue that decision makers have inconsistent preferences that are developed through action more than they act on the basis of their preferences. For the scholars, decision structures have four streams:

problems, solutions, participants and choice opportunities —the latter being "a garbage can into which various kinds of problems and solutions are dumped by participants as they are generated" (p. 2).

Later on, in 1984, John Kingdon has developed his Multiple Streams Model in which he explores processes of agenda setting and decision making as depending on the coupling of three streams —problem, policy and politics—, opening a window of opportunity for policy change.

In 1993, Frank Baumgartner and Bryan Jones (1993) have created the Punctuated-Equilibrium Theory, which argues that 'political processes are generally characterized by stability and incrementalism, but occasionally they produce large-scale departures from the past' (True et al., 2007, p. 155).

Although all these theoretical models can be applied to different processes leading to cannabis legalization in Colorado, Washington and Uruguay, I will focus on Kingdon's Multiple Streams Model, here regarded as the most comprehensive, rational and complete analytical tool to approach policy change, therefore, to the discussion of adult-use cannabis legalization.

According to Kingdon (2011), processes of agenda setting might happen through three different factors. First, through the "inexorable march of problems pressing in on the system". Second, through a gradual accumulation of knowledge and new perspectives fostered by specialists in a given area, involving the agency of epistemic communities (Haas, P., 1992). Finally, it might be set by political processes as "swings in national moods, vagaries of public opinion, election results" etc. (Kingdon, 2011, p. 16-17).

The scholar highlights that the processes involving the three streams —problem recognition, alternative policy proposals and political events— "can serve as an impetus or as a constraint". An impetus being items promoted to "higher agenda prominence". A constraint being items "prevented from rising on the agenda" (Kingdon, 2011, p. 18). Each of the streams is independent from one another and has their own rules and paths of development. Nevertheless, at critical times the three streams are joined: solutions become joined to problems and both are joined to favorable political forces. This

coupling opens policy windows, which are "opportunities for pushing pet proposals or conceptions of problems" (Kingdon, 2011, p. 20).

The first stream, problem recognition, might happen through a crisis or a prominent event signaling the emergence of a problem. It also occurs by changes in systematic indicators or by changes in the interpretation of systematic indicators, something that is present in the elaboration of the drug policy problem. Common events and long-time facts are also recognized as political problems through changes in the way they are perceived, which might be the result of grievances by those less politically powerful, campaigns by SMOs or the diffusion of powerful symbols<sup>26</sup>. Therefore, a political problem can be socially and politically constructed, and their recognition among policy-makers depends on the way they are framed and presented.

According to Kingdon's research, interest groups are more important in areas with less public salience or resonance. The less visibility of an issue area, the more important the interest group action. This seems to be the case of cannabis, either through medical marijuana activists' claim that patients were prevented from accessing their medicine by drug policy and the IDCR or through the general pro-legalization claims that drug law enforcement was harming vulnerable communities and susceptible democracies, generating violence, mass incarceration, and the erosion of democratic institutions while consuming valuable public resources and human capital.

The process of labelling and categorizing new political problems is, therefore, critical. It influences the way people will look at subjects and how they will prioritize them. Issues got to be first recognized in their mere existence (in opposition to what the sociologist Stan Cohen has described in his book *States of Denial*), then they need to be qualified by actors so that they can be prioritized and maintained.

Two examples of how framing and labelling can shape perceptions towards potential political problems: to frame drug law enforcement externalities as a criminal issue is different from naming such drug-related harms as a human rights violation; describing mass incarceration as an inescapable social problem is different from framing it as an economic problem burdening scarce public resources and undermining

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<sup>26</sup> An important discussion on the importance of symbols for politics is Charles D. Elder and Roger W. Cobb (1983) *The Political Uses of Symbols* (New York: Longman)

human capital. Also, to consider prisoners, generically, as dangerous, life-threatening criminals is different from acknowledging, through the evidence of accurate investigation methods, that a parcel of such population is composed by non-violent drug law offenders or even drug users.

Kingdon's second stream, the generation of alternative policies derives from the work of what he calls policy communities, which includes epistemic communities but also entails government bureaucracies. The process is also influenced by advocates policy entrepreneurs, which may include interest groups, lobbyists and Transnational Advocacy Networks (TANs), such as the Global Commission on Drug Policy and the Open Society Foundation. Policy entrepreneurs are defined, as in the case of business entrepreneurs, by their willingness "to invest their resources —time, energy, reputation and sometimes money— in the hope of a future return", which might come in the form of their preferable policies, satisfaction from participation or personal laud (Kingdon, 2011, p. 122-123).

Specialists produce alternative policies that float in a "policy primeval soup", from which advocates will try to highlight their pet proposals, building up public acceptance and softening up the policy community. By doing so, policy entrepreneurs can take advantage when a policy window opens, for the way for their proposals to be considered have already been paved.

Besides that, policy entrepreneurs would attach their pet proposals to a recognized political problem in order to increase its value. When a recognized political problem is attached to a solution, the chances of it being considered on the decision agenda increases "dramatically" (Kingdon, 2011, p. 143).

In the case of an alternative policy proposed by the government, like in the Uruguayan cannabis legalization process, it must survive a policy community selection system that involves the verification of technical feasibility, costs and value acceptability, the anticipation of future constraints, etc. In the case of an alternative policy proposed by civil society and placed on the ballot through its mobilization, like in the case of Colorado and Washington, public opinion would scrutinize it and voters will determine its approval or failure.

This leads to the third stream of politics. It encompasses three different types of change. The transformations of the national mood, affected by social movements pressures and by public opinion. Changes in the balance of organized political forces (interest groups, non-governmental structures or political elites) support for or opposition to certain agenda items. And modifications in governmental structures or in their occupants, such as turnover of key bureaucracy personnel, shifts in the partisan or ideological distribution of seats in Congress, changes in the administration of a regulatory body etc.

Kingdon (2011) argues that while consensus is built up by persuasion in the policy stream, in the politics stream consensus building is governed by bargaining, meaning the granting of concessions in return for support of the coalition. "Joining the coalition occurs not because one has simply been persuaded of the virtue of that course of action, but because one fears that failure to join would result in exclusion from the benefits of participation" (p. 160). This feature is evident in all three cases. Uruguayan Executive and Legislative came to a consensus over cannabis legalization through ideological resemblance in this particular issue and through bargaining in the absence of such kinship. Colorado and Washington cannabis legalization campaigners have literally bargained with public opinion, polling on concerns of particular demographic groups and reacting to them with suitable targeted messages in order to soften them up.

#### 4.2 Driving forces of cannabis legalization agenda setting

Drug policy scholars have been exploring the causes for adult-use cannabis legalization experiments to be concentrated in the Americas, all of which can be separated and classified according to the Multiple Streams Model of policy change.

Thomas Babor et al. (2010) argues that, in the US, cannabis legalization became a political possibility of three threads of political activism, all related to policy and politics streams: pushing medical marijuana legalization first because it was more palatable to public opinion (policy stream); work through the direct democracy tool of ballot initiatives in the face of state legislatures failure to pass such laws (politics stream); and leverage and political influence of the new cannabis industry (policy stream) (p. 246-247).

Beatriz Labate, Clancy Cavnar and Thiago Rodrigues (2016) have listed six causes for the cannabis policy shift to have happened in the Americas. Four of them are related to problem recognition stream: the high costs that the US dictated drug policy has placed over Latin American countries; the regional diffusion of crime, corruption and democratic institutions' erosion; the high levels of violence in some countries; regional prison crisis generated, among other factors, by punitive drug policies leading to prisons overcrowding and their domination by ruthless crime organizations. Two other causes can be placed in the politics stream, nationally and internationally: the emergence of left-wing governments in the 2000s, challenging the US influence and, in the international regime sphere, the Bolivian challenge of the 1961 Single Convention on Narcotic Drugs regarding coca leaf traditional use.

Steve Rolles (2016) argues that while the key factor for drug policy reform in Latin America has been security issues, affecting the stream of problem recognition, in the US the picture is mixed, including the advent of an effective civil society movement and the perception of the economic costs of drug enforcement, particularly those of mass incarceration, in the light of the 2008 banking crisis. All of these factors are related both to problem and policy streams.

According to Charles Hogan and Scott Jacques (2015), the "major factor in the re-examination of the international status of marijuana conflicting with local demands" was the changes in the methods of marijuana production, especially indoors techniques, which have turned such cultivation to domestic territories —which related to a problem stream (domestic cultivation) attached to a policy stream (legalize it and tax it). "Domestic production reduces, if not eliminates, the specter of supporting some foreign warlord or terrorist organization, and replaces it with a source of tax revenue for the government" (p. 57).

The authors argue that this feature have turned international drug treaties obsolete in cannabis matters because if it has been "cultivated, sold, and used within the borders of a single nation, what kind of authority does an international organization, with little to no local enforcement power, have to condemn and criminalize this behavior?" (Hogan & Jacques, 2015, p. 77).

Rosanna Smart and Rosalie Pacula (2017) have numbered driven factors for drug policy change in the United States: rising state budgetary costs related to arresting and incarcerating nonviolent drug offenders (Raphael & Stoll, 2013; Reuter et al., 2001), growing body of scientific evidence on therapeutic benefits of cannabinoids (Hill, 2015, Koppel et al., 2014), and tighten state budgets leading legislatures to look for new sources of revenue (Caulkins et al. 2015, Kilmer et al., 2010, as cited in p. 398).

These three driven factors are political problems indicated by SMOs and interest groups and demonstrated by epistemic communities before being presented already coupled with cannabis legalization, taxation and regulation as an alternative policy advocated by policy entrepreneurs and backed by TANs.

Chapter 3 has already detailed how the mechanism of IDCR's norms and rules domestic implementation, which is a state-party obligation under international drug conventions, have generated harmful consequences in social, economic and political terms. Most of such spillover effects emanate from illegal markets dynamics and its entrepreneurs' business strategies and turf disputes. The restriction of cannabis circulation to the illegal market, preventing patients that could benefit from the use of cannabinoids to get access to it without committing a crime (purchasing a forbidden psychotropic) is another aspect of it with health implications.

Researchers have pointed out that much of the success of SMOs initiatives could be granted to two repertoire innovations that would help settling problem recognition. They have firstly focused their discourses and campaigns on the harms of criminalizing cannabis rather than on the benefits of its legalization (Wallach & Rauch, 2016). They have also understood the need to gather a larger variety of voices and grievances against cannabis prohibition by recruiting other grassroots organizations representing the interests of minority communities, like the NAACP and the League of United Latin American Citizens (Wallach & Rauch, 2016).

Those groups' main innovation has been to focus on the harms of criminalizing marijuana rather than on any purported benefits from its recreational use.

The recognition of such drug policy externalities threatening security and human rights is a crucial part of the problem stream, especially in the case of Uruguay, as will be analyzed in Chapter 5. In the US, as already analyzed in this Chapter, such

externalities have gained leverage and political problem status when coupled with their economic aspect: state expenditure with drug law enforcement, criminal justice system for drug offences and sentenced offenders incarceration.

A good part of epistemic communities that have investigated drugs-related harms and drug policy cost-effectiveness and externalities, evidencing correlations and causal relationships, have also developed alternative policies as remedies for acknowledged drug and drug policy problems. It was not rare that such alternative policies were related to the flexibility of drug strict prohibition, either in terms of use depenalization, use decriminalization and use *de facto* legalization, usually restricted to cannabis use only.

The fact that the pioneer alternative policies were demand-driven relaxations of IDCR norms and rules can be interpreted through three treads. First, it is an expression of the conventions "concessions" to drug abusers as entitled to treatment instead of punishment (Single Convention, 1961, article 36, para B). Second, it is an evidence of the health-related epistemic communities prominence in drug and drug policy research and the physicians historical leverage in the drug use and abuse debate. And, third, it is a consequence of developed countries dominance in the knowledge producing field and its scientific communities preferences for local phenomena and potential political problems. Countries in Europe and North America are located in the demand-side of the illegal drug market chain, and their epistemic communities would privilege the investigation of demand-related harms, thus elaborating alternative policies for drug use and use disorder.

More severe spillover effects were supply-related, such as widespread violence, corruption and democracy erosion. Concentrated in developing countries in Latin America and Asia, these life-threatening and developing-threatening harms were considered by epistemic communities much later in time. And alternative policies to enforcement and its militarization would necessarily imply in shifting drug policy approach to supply. Use and possession decriminalization or *de facto* legalization were attempts to resolve only part of the problem. Even the Netherlands coffee-shops cannabis trade tolerance and the Portuguese all drugs decriminalization implicate in a hypocritical paradox: it is ok to use and to bear internationally forbidden psychotropic, but it is a crime to supply them. So where do they come from?

As cannabis production turned domestic in the US, legalization claims from SMOs were progressively reinforced by economic studies and claims from Nobel laureate economists, such as Milton Friedman (1912-2006). The academic development of econometric models started indicating how cannabis legalization and taxation could restrain its consumption while undermining organized crime, how much tax revenue could be obtained from the taxation of cannabis production and trade, how much public resources would be saved by freeing up law enforcement, criminal justice and prisons systems from cannabis related offences, and how these structures could then focus on the investigation and punishment of more serious crimes.

Drug demand elasticity have been demonstrated by economists (Becker, Murphy & Grossman, 2006), and studies have found different elasticity index for cannabis depending on the country investigated and on the database used. While an earlier American study found that a 10% increase in cannabis price would lower the number of youth reporting past 30 days use in about 3% (Pacula et al., 2001), a more recent one found the same increase would lower it in almost 8% (Davis, Geisler & Nichols, 2015). In studies comparing many different drugs, cannabis elasticity was lower than the one for drugs like cocaine and heroin (Pacula & Lundberg, 2014; Gallet, 2014).

Experts have also debated whether legalizing marijuana would decrease cartel-related violence by lowering their cash flow or, contrary to that, it would push crime organizations to engage in more illegal activities to maintain revenue. Kilmer et al. (2010) have estimated that between 40% and 67% of cannabis consumed in the US comes from Mexico. The US Office of National Drug Control Policy (ONDCP) estimated that 61% of Mexican drug cartel revenue comes from marijuana, but independent research organization RAND Corporation estimated it in only about 16%. The Organization of American States (OAS) hypothesized that "[a]t the extreme, Mexican drug trafficking organizations could lose some 20 to 25 percent of their drug export income, and a smaller, though difficult to estimate, the percentage of their total revenues" (OAS, 2013b, p. 41).

Tax revenue projections have ranged from hundreds of million dollars to 45 billion dollars per year, or 0.28% of the American GDP if cannabis was legalized and taxed in the whole of the United States (Ekins & Henchman, 2016; Kleiman, 2014). About 2 million dollars in cannabis tax revenue was generated in the first month of retail

cannabis sales alone in Colorado (Blake & Finlaw, 2014). In Washington 2016-2017 fiscal year, cannabis taxes yielded 472 million dollars, and projections forecast California should harvest 1 billion dollars per year in cannabis taxes (Summers, 2018).

In terms of government costs, a 2010 study by economist Jeffrey Miron has calculated that federal and local drug law enforcement, judicial and corrections costs would amount for around 14 billion dollars annually. Other scholars have focused on prison population decrease by moving "millions of Americans whose crime begins and ends with using illegal cannabis from the wrong side of the law to the right one" (Kleiman, 2014).

Such flood of academic studies evidencing drug policy harm and potential consequences of legalization led TANs to support and publicize cannabis regulation as a legitimate and rational policy choice for local political problems, regardless of state-parties obligations under the IDCR.

However, since cannabis legalization effects might take some years to be fully established, part of these first years data, predictions and potential consequences might not be confirmed in the long term. Nevertheless, they have influenced public opinion as well as politicians and policy-makers.

#### 4.3 A causal model for adult-use cannabis legalization

Although there are key differences in the processes undertaken in each of the cases here studied, drug policy reform in Uruguay, Colorado and Washington do share actors, incentives and mechanisms.

The investigation of the similarities and differences in their pre-decisional phases allows for the development of a common causal model for the establishment of adult-use cannabis legalization. Applied to each of the three cases here studied, distinct actors and incentives may perform either as an impetus or as a constraint to cannabis policy change.

Inevitably, it all starts with the nationalization of International Drug Control Regime's norms and rules: a "one-size-fits-all" framework applied to asymmetrical

states-parties grounds. The shift of elected psychotropic substances from commodities to evildoers have generated economic incentives for entrepreneurs willing to engage in illegal businesses in order to meet an already existing demand for such drugs. Profit was already granted along with higher risks created by the new illegal status of those activities. The higher the risks involved in a certain good's production and trade, the higher its cost. This has enhanced economic incentives for drug law violation, demanding constant innovation in techniques and strategies for production and trade.

Because illegal drug businesses cannot rely on institutional arbitrators or on justice systems to deal with market disputes, competition among entrepreneurs relies on coercion and violence in order to sort out conflicts. The ruthless the response to adversaries, the greater the chances of winning illegal drug business turf wars —and the greater the threat to public safety or, at least, to the perception that public safety has been undermined by illegal drugs and their market dynamics.

Increasing social demand for more stringent law enforcement against a perceived security threat has also furthered violence, expanding government's fiscal and organizational costs, deepening racial disparities in law enforcement procedures, burdening vulnerable communities and increasing marginalization of cannabis users and of those with use disorder, which have been interpreted as human rights violations (Keefer, Loayza & Soares, 2010; Mena & Hobbs, 2010; Beckett & Herbert, 2009).

Such consequences of the illegal status of cannabis production and trade were named as domestic unintended outcomes, externalities or spillover effects from national drug policies based in IDCR's guidelines. Such outcomes have provided security and human rights incentives as inputs for epistemic communities' investigations, for social movement organizations' (SMOs) grievances and political contentions and for transnational advocacy networks (TANs) lobbying and campaign financing for cannabis law reforms.

Among these three actors —epistemic communities, SMOs and TANs— runs a circuit of information and legitimacy incentives, all involved in the process of problem recognition, thus, in Kingdon's problem stream. Grassroots direct experience with cannabis law enforcement's consequences provide them with special moral authority to explain the costs of prohibition to their communities. Therefore, such groups' activism

have functioned as input for TANs to publicly criticize drugs criminalization and for epistemic communities to scrutinize such phenomena, measuring and qualifying it before developing alternatives to it.

Scientific evidence on cannabis properties (either in terms of its therapeutic potentials or in terms of harms to users health), on cannabis market and on law enforcement externalities resulting from epistemic communities work have operates as information and legitimacy incentives both for TANs and SMOs to engage in collective action and advocacy against cannabis prohibition or, more directly, in favor of cannabis legalization. Therefore, SMOs and TANs have some directive force when acting as bridges between knowledge produced by epistemic communities and policy communities which can put such evidence into practice (Nutley et al., 2007).

Besides lending its leverage and good reputation to SMOs causes, TANs have also financed cannabis legalization campaigns. In the US cases of Colorado and Washington, TANs and policy entrepreneurs have funded professional signature collection for placing cannabis legalization propositions in the ballot and, thereafter, professional campaigning personnel for polling, strategy development, communication etc. In the Uruguayan case, TANs have provided consultancy for the government and its policy-makers during the new law formulation and have funded a SMO campaign aiming to increase public opinion support for cannabis legalization, by then already proposed by the government and approved by Congress.

Generally, SMOs' campaigns would try to influence public opinion and the government in order to foster problem recognition of cannabis policy harms, either directly or through the media. However, successful campaigns for cannabis legalization ballot initiatives would poll audiences in order to guide the selection, organization, labelling and framing of information to tackle targeted audiences, shaping their perception through selective incentives and, thus, gaining their votes.

TANs advocacy, lobbying and soft-power reached governments directly or through the media, through which public opinion would also be reached. The same is true with epistemic communities, whose production —data, academic papers and reports— was accessible to governments and policy-makers and to the media, that then informed public opinion.

Campaigning and knowledge incentives, therefore, can perform two functions: problem recognition and alternative policy generation, thus Kingdon's problem and policy streams.

Cannabis policy harms (problem stream) and its correlated alternative policy (policy stream) were coupled along part of the process illustrated in Figure 1. However, they still needed to be conjoined to the stream of politics for policy change to effectively happen. According to Kingdon (2011), when problem, policy and politics streams couple, they open a policy window, creating opportunity for chance.

In both Colorado and Washington, decision came out of ballot box processes, through the vote of local population after campaigns in favor and against cannabis policy reform. So the politics stream in both these US cases is related to an institutional framework and to a circumstantial condition: states allowance for processes of direct democracy through ballot initiatives (26 of all 50 US federal units have such political device for voter) and the swing in these states populations' mood regarding the balance between advantages and drawbacks of regulation for cannabis legalization (Hudak, 2016; Bewley-Taylor & Jelsma, 2014). So in the cases of Colorado and Washington, public opinion have provided democratic incentive for cannabis legalization's legitimacy.

In Uruguay, cannabis reform was a result of Executive and Legislative adherence to an agenda pushed forward by local activists and influenced by TANs (Murkin, 2014; Garat, 2015; von Hoffman, 2016). There, the politics stream is related to the election of President José Mujica, who furthered a series of progressive reforms, and to the circumstance that his political supporters from Frente Amplio had the majority of seats in Congress. When the decision was made by Congress, in July 2013, the majority of Uruguayan public opinion (more than 60%) was against the adoption of such measure, performing as a constraint. Nevertheless, in a representative democracy, elected representatives in Congress have democratic legitimacy to make such a decision.

Either way, the establishment of legal adult-use cannabis markets required regulation: a legal and fiscal framework enabling cultivation and commerce to be legally developed and to which its actors must be accountable for. By formulating new legal frameworks, new institutions, taxes and procedures enabling a new market to exist and functions, governments have created a legal incentive for business entrepreneurs to

invest their resources, as safely as possible, and for the collection of tax revenues from the new industry's profits.

Legal cannabis business would enter the new market for any other reason than economic incentive for profit, which is one of the main causes of concern either in the US or in Uruguay, although for opposite reasons.

In the US, the apprehension is that new cannabis industry will turn into a Big Cannabis, emulating developments of so called Big Tobacco and Big Alcohol: profit over public goods generating economic and health harms to individuals, their communities and their governments. In Uruguay, however, legal cannabis production, although done by private entrepreneurs, is strictly controlled by the state, which have been establishing prices at the lowest possible level in order to gain clients from the illegal market. This strategy aims at undermining crime organizations' resources and, therefore, their power. Nevertheless, such strategy also limits legal business profits, generating an economic constraint for private entrepreneurs to engage with the Uruguayan cannabis market.

## 5. CASE STUDIES

### 5.1 United States

Cannabis is the most widely used type of psychotropic in the United States. According to the National Survey on Drug Use and Health (NSDUH), 43,5 million North-Americans (15.9%) have used cannabis in 2018 —an increase from the 15% in 2017. The number of past-year users of cannabis rose by some 60% between 2007 and 2017, from 9.9% to 15.3%, according to UNODC's World Drug Report 2019. The number of daily or nearly daily users of cannabis more than doubled over the same period (World Drug Report, 2019, p. 14).

Throughout the United States' history, cannabis had conflicting and opposed functions. From medicine to poison then back to medicine. From commodity to evildoer then object of disputes between the two.

The majority of the US states have moved away from cannabis strict prohibition long before legalization was seriously considered (Smart & Pacula, 2017). The first wave of cannabis policy reform started in the 1970s, with the decriminalization of possession for personal use.

Dave Bewley-Taylor & Martin Jelsma (2014) describe earlier failed attempts to legalize cannabis through ballot initiatives from as early as 1972 in California to 2010 also in California, with fruitless trials also in 1986 in Oregon, in 2004 in Alaska and in 2006 in Nevada. Some medical marijuana legislature initiatives have also failed on the way to the first successful ballot box proposition: in California, in 1996, as explained in subchapter 3.2.2.1.

By 2019, eight of the states that have currently legalized an adult-use cannabis market (Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon and Washington) through the ballot, plus the District of Columbia, have previously legalized and regulated a market for medical marijuana also through ballot initiatives. Another three states that have legalized adult-use cannabis through the legislature (Illinois, Michigan and Vermont) have also previously legalized medical marijuana also through the legislature. This evidence the overlap of cannabis policy reforms as well as the

prominence of different agenda-setting and decision making actors in different territories.

Part of this trend is actually a consequence of states' institutional frameworks warranting voters to be vectors of policy change. Only 26 of the US states' constitutions allow for ballot initiatives (Kilmer et al., 2013). John Matsusaka has argued that there have been more high profile policy developments brought about through ballot initiatives (e.g. affirmative action, immigration, lotteries and casinos, and medical cannabis) than through state legislatures (as cited in Crick, Cooke & Bewley-Taylor, 2014, p. 2). Also, by indicating the public mood towards certain controversial topics, ballot initiatives can influence the legislature on the same state as well as in others.

The main debate regarding cannabis policy reform in the US was in relation to the legal conflict between state legalization laws and federal law align with the IDCR, still prohibiting and criminalizing cannabis production, trade and consumption. Some United Nations officials believe that the spirit of the international treaties requires the US federal government to override state-level legalization.

Keith Humphreys, a psychiatrist, Stanford Professor and former Office of National Drug Control Policy (ONDCP) advisor in the Obama Administration, presents a different perspective: 'Constitutionally, US states are simply not required to make marijuana illegal as it is in federal law. Hence, the US made no such commitment on behalf of 50 states in signing the UN drug control treaties'<sup>27</sup>.

Nevertheless, US Constitution determines that federal laws supersede state laws and, when local legislation is in conflict with a federal one, it can be preempted in a federal court by the Department of Justice. Therefore, there was a lot of anxiety on how the Department of Justice would deal with cannabis policy changing paradigm, first, with medical marijuana, then with adult-use legalization.

It took years for the US Department of Justice (DOJ) to make official comments on such legal conflict regarding cannabis-related activities. In October 2009, Deputy Attorney General David Ogden issued a memorandum with guidelines on this issue.

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<sup>27</sup> Keith Humphreys, "Can the United Nations block US marijuana legalization?", The Huffington Post, 25.Nov.2013, retrieved in December 2019: [https://www.huffpost.com/entry/can-the-united-nations-bl\\_b\\_3977683](https://www.huffpost.com/entry/can-the-united-nations-bl_b_3977683)

The Ogden Memo has distinguished individuals and commercial enterprises and advised that federal authorities within states "should not focus federal resources (...) on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana".

By then, 14 US states have already approved medical marijuana laws. And the official DOJ pronouncement has profoundly shifted the risk assessment of those producing and dealing medical cannabis. It is probably not a coincidence that, in the same year of the Ogden Memo, the American Medical Association (AMA) adopted a resolution urging the federal government to review cannabis schedule, noting that doing so would facilitate research and cannabinoid-based medicines, also avoiding the inadequacy of certain state laws that do not focus on establishing clinical guidelines and standards for medically prescribing marijuana (Pacula & Sevigny, 2014).

Also in 2009, conversation about non-medical cannabis legalization became more serious when legislation was introduced in the California State Assembly. Although it did not advance through the Legislative process, another proposition gathered enough support to make to the ballot: Proposition 19. In November 2010, it failed after receiving 46.5% of voters support. Nevertheless, this narrow margin has invigorated drug reform activists there and in other states (Kilmer et al., 2013, p. 26).

In August 2013, US Attorney James Michael Cole released a memorandum (Cole Memo) indicating that the Obama Administration would not block state efforts to tax and regulate marijuana as long as they had 'strong and effective enforcement and regulatory systems' (Cole, 2013).

With the issue of Ogden and Cole Memos, the US Federal Government had to engage in the debate on how legal regulation of cannabis should function as opposed to the well-known debate on whether to legalize it or not (Rolles, 2016, p. 256).

Steve Rolles (2016) points that the US was caught between two options: using federal forces to defeat state level cannabis policy reform or negotiate both federal and UN treaty-level reforms meaning it is no longer in breach of the IDCR. "The first option was politically untenable, as it would alienate the majority of voters who backed the initiatives in key swing states" while the second option presented "enormous political

and diplomatic hurdles" (p. 258). It is when "Brownfield Doctrine" arises, as discussed in subchapter 3.3.1.

According to John Hudak (2016) three elements were responsible for statewide ballot initiatives success, apart from funding: issue expertise, general political skills and a deep knowledge of the places and people campaigned. "Much of that support came from a cadre of lawyers, fundraisers, communications specialists, pollsters, strategists and others who brought to the table a unique blend of skills that gave legalization a chance" (p. 58).

The brain of the pro-cannabis legalization movement and civil society task-forces was composed by people like Denver attorneys Brian Vicente and Christian Sederberg, Seattle attorney Pete Holmes, Steve Fox (who later created the National Cannabis Industry Association and, in 2019, left it to found the Cannabis Trade Federation), Ethan Nadelmann (former political science Professor at Princeton University and former director of Drug Policy Alliance), Rob Kampia (co-founder of the Marijuana Policy Project), Alison Holcomb (from the ACLU) and Mason Tvert, a grassroots organizer and communications professional.

Strategy was centered on information testing and targeting to craft an effective message in terms of expectations, demography and ideology. Message was delivered to the right swinging group of citizens at the right time in order to build up a coalition (Hudak, 2016). The scholar highlights that such language crafting is neither a simple nor an easy task:

"These initiatives succeed or fail depending on how they handle issues like homegrow rights, local autonomy and opt-out provisions, market structure, jurisdiction of regulations, the scope of regulatory power, tax policy, protections for existing medical marijuana systems, combating addiction, protecting children and lowering crime." (Hudak, 2016, p. 59)

So different regulatory landscapes were polled and adapted accordingly. However, since public opinion is not composed by drug policy experts, the strategy of crafting a good parcel of the propositions to make them suitable for certain constituencies have not necessarily generated the most appropriate cannabis

regulation. Opposition was so humble it didn't seem to threaten pro-legalization campaigns either in Colorado or in Washington.

It is still contentious whether increase in cannabis use in the US can be attributed to adult-use cannabis legalization. There are concerns over the new market impact on youth use, which is known for being more harmful than adult-use. Evidence, so far, is inconclusive, with studies indicating an increase in cannabis use in Washington (Cérda et al., 2017) while others have indicated a decrease in such use among the same demographic group in the same region, although based on a different database (Dilley et al., 2019).

Besides concern with use increase, there is the issue of impaired driving under the influence (DUI) of cannabis. Studies have shown that cannabis can significantly impair a driver's reaction time, which would favor accidents. According to the Highway Loss Data Institute, funded by insurance companies, crashes were up by 6% in four states that have legalized pot (Colorado, Nevada, Oregon and Washington) compared with nearby states that have not<sup>28</sup>.

#### 5.1.1.1. Colorado: Amendment 64

The state of Colorado has decriminalized marijuana possession in 1975 and has established a regulated medical marijuana market through ballot initiative in the year 2000. Amendment 20 allows individual patients to self-cultivate up to six plants and caregivers to grow plants for up to five cannabis patients, identified by a red card issued by the state public health department.

This self-cultivation measure ended up planting the seeds for the medical marijuana industry when the limit of five patients per caregiver was judged unconstitutional in 2007, after Brian Vicente, lawyer and founder of Sensible Colorado, sued the state because his client, a medical marijuana patient, was beaten when he appealed to the illegal market to get his cannabis. The change had fomented the

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<sup>28</sup> Chicago Tribune, 26.Dec.2019: <https://www.chicagotribune.com/marijuana/illinois/ct-illinois-marijuana-economic-social-effects-20191226-dandhav6uzfllaeroph7bqowe4-story.html>

emergence of cannabis cultivation enterprises and street dispensaries to provide cannabis for those in the possession of the red cards.

David Blake and Jack Finlaw (2014), respectively, Deputy Attorney General for Colorado and Chief Legal Counsel for Colorado Governor John W. Hickenlooper, explain that the issue of Ogden Memo, in 2009, has generated a legal incentive for business entrepreneurs to lower their risk assessment, inaugurating Colorado's green rush. According to the authors, such change has turned "drug dealers" to "small business owners" from night to morning. Besides them, "some who never used marijuana saw the opportunity to start a business with seemingly unlimited growth potential. Soon, there were more marijuana shops in Denver than there were Starbucks coffee shops" (Blake & Finlaw, 2014, p. 364).

The unregulated growth of the new Colorado medical marijuana industry led the state General Assembly to formulate and pass legislation to regulate licensed cultivation, distribution and sale of cannabis as well as the role of doctors and caregivers. The authors argue that two features emanating from this episode have influenced the success of Amendment 64, which proposed adult-use cannabis legalization: the emergence of a cannabis industry, with lobbying and financial leverage to influence policy making, and voters' perception that the state was capable of successfully regulating such industry (Blake & Finlaw, 2014).

Well before Amendment 64 went to the ballot, in 2012, a 22 years old Virginia student, named Mason Tvert, moved to Denver in 2004 to create an activist group and promote that marijuana is safer than alcohol. Polls have indicated that state's voters were ahead of politicians in their support for legalization, and Tvert, who is talented in gathering media attention, have mobilized and organized pro-legalization street demonstrations. He challenged governor Hickenlooper to a pot versus alcohol debate, which the governor declined. Tvert hired an actor wearing a chicken suit to publicly follow Hickenlooper. All the media has covered such extravagant event, while explaining the reason why a chicken was following the democrat governor (Barcott, 2015, p. 56).

In 2005, Tvert pushed a successful ballot initiative to decriminalize small amounts of cannabis within Denver city limits and, in 2006, he was defeated on a state ballot to allow the possession of one ounce of cannabis. "He had learned that every

single time they put a cannabis issue at the ballot box, it raised discussion and educated the public about marijuana facts" (Barcott, 2015, p. 56).

Tvert has framed the political problem emanating from cannabis prohibition as a matter of unfairness, arguing that it 'cannabis was safer than alcohol" and that while alcohol producers were profiting and paying taxes, cannabis producers and traders going to jail, draining public resources when they could contribute to state revenue through cannabis regulation and taxation.

Eventually, Brian Vicente and Mason Tvert joined forces to place an adult-use cannabis legalization proposition at the ballot. By then, problems related to the illegal cannabis market were widely acknowledged by public opinion (problem stream), although not all demographic groups would support legalization as the best alternative policy to it (policy stream).

Tvert was hired by the Marijuana Policy Project, the largest organization working solely on marijuana policy reform in the country, which was investing in promising medical and adult-use cannabis legalization initiatives. The organization's larger individual donors are business people, some with a history of progressive political advocacy, such as George Soros and Peter Lewis, and some with cannabis industry connections.

Together, they have built up the Campaign to Regulate Marijuana Like Alcohol by collecting around 3 million dollars for it. The campaign has placed Amendment 64 at the ballot and advanced in the conversion of constituencies by polling key demographic groups' main anxieties and concerns towards full cannabis legalization and defining which type of message could convince them (Crick, Cooke & Bewley-Taylor, 2014).

In an era of austerity, all the financial arguments went well with voters: saving money from law enforcement and criminal justice system, collecting tax revenue to allow for public investments, including prevention and treatment strategies. A key group for the campaign was 30 to 50 years old women, towards which the message of using cannabis tax money to schools construction was tested.

The message did well on polling and was incorporated into the Amendment's text: the first 40 million dollars collected in excise taxes from cannabis sales would be

directed to schools construction. This sort of selective incentive for specific demographic groups has built up voters support, coupling the political stream to the already coupled problem and policy streams.

Emily Crick, Mark Cooke and Dave Bewley-Taylor (2014) describe one TV piece of campaign advertising in which the main argument is to prevent money from Colorado to go to Mexican cartels when it could finance the reconstruction of local public schools. "Let's vote for the good guys and against the bad guys. Let's have marijuana money go to our schools rather than criminals in Mexico", concluded the 30 seconds ad<sup>29</sup>.

These scholars have argued that Colorado Amendment 64 was a bottom-up proposition because it involved SMOs, activists such as Tvert and advocates such as Vicente in their formulation. Moreover, besides not doing well on polling, the campaign kept their "safer than alcohol" message, which have been the vector of cannabis legalization SMO's contention.

Also, by opting for an amendment to the state Constitution, the proposition would make it more difficult for legalization to be overruled, requiring another constitutional amendment for it, which is a far more complex process than changing a law.

The proposition involved a 15% excise tax on wholesale marijuana sales and a 10% sales tax on retail sales and prices are dictated by the market, which companies are allowed to advertise their products within certain limits. Individuals with 21 years old can purchase up to 28.5 grams (one ounce) with no necessity of registry. There is permission for individuals to cultivate up to six plants but not for the creation of cannabis clubs.

Amendment 64 was approved by 55.3% of voters. And governor Hickenlooper created a task force compounded by a wide variety of stakeholders to develop a legal framework to enable the implementation of the new market. Regulation was ready in three months and involved processes of licensing, monitoring and preventing programs (Pardo, 2014). Market supervision and licenses issuing was delivered to the Colorado Department of Revenue.

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<sup>29</sup> Vote for Colorado. Retrieved in December 2019:  
<https://www.youtube.com/watch?v=1KAOq7XX2OY>

The bottom-up grassroots approach of the Colorado campaign and the individual rights nature of its main argument ("cannabis is safer than alcohol") have generated a consumer friendly cannabis regulation, expressed in the home grow allowance, in the absence of registry requirements and in the lack of a stricter or zero tolerance measure for DUI. The cannabis industry, therefore, was also benefited by suitable taxes and with no restrictions for number of licenses or production limitations.

#### 5.1.2. Washington: Initiative 502

In 1998, Washington state has placed Initiative 59 at the ballot and approved it by 59% of voters, implementing and regulating a local medical marijuana market. The proposition was financed by the American for Medical Rights but kept the professional team out of the proposition design. According to it, primary caregivers could grow "a sufficient quantity of marijuana" to assure the patient's medical supply. The initiative also opened the possibility of non-profit corporations to be settled to cultivate, purchase and distribute medical marijuana to patients and caregivers. It was the first initiative to deal with supply issues (Bock, 2000).

The state legislature has debated a series of cannabis related bills from 2007 to 2012, including decriminalization and legalization, some of it pushed by local SMOs, like Sensible Washington, and by local advocacy groups, such as the American Civil Liberties Union (ACLU) Washington state chapter, which launched a public education campaign in 2008 named "Marijuana: It's Time for a Conversation".

In 2010 and in 2011, Sensible Washington initiatives to remove all criminal and civil penalties records related to cannabis failed to be put on the ballot. In 2011, polling was already done to find out public feelings about cannabis reform: 52% were supportive of legalization, although 48% had negative feelings towards cannabis.

State prosecutor Tonia Winchester had spent a good part of her career bringing cannabis law offenders to trial and punishing them. In a series of interviews conceded to writer Jonathan Hari, she told him how she never appreciated cannabis and, when in college, she led the local campaign for drug abstinence based on the First Lady, Nancy

Reagan, call: Just Say No (Hari, 2015). Winchester believed that cannabis use entailed an inescapable route to heavier drugs and crime.

That image started changing along the years of work prosecuting drug law offenders. First, she started questioning why the majority of them were blacks and latinos, something that suggests law enforcement racial bias since data didn't support the idea that blacks and latinos would use or deal more drugs than whites. Moreover, Winchester has also realized that almost all of the drug defendants were very young men, whose future would be jeopardized after a drug conviction. Drug law offenses were subjected to mandatory jail sentences so she knew that such convictions, even if it was for cannabis use (the majority of cases) or for minor non-violent drug trafficking, would sentence those people for a life of prejudice and lack of opportunities (Hari, 2015, p. 526-530).

Although Winchester kept disapproving cannabis use, she felt her role as a prosecutor had turned senseless one day she realized she kept herself busy with the never-ending pile of drug offence cases while another one rested untouched on her table: the domestic violence one. She just didn't have time for the cases of women being beaten up at their homes (Hari, 2015).

Winchester made up her mind that drug laws were not working and something needed to be done to change the laws she had been applying for years. She joined a young lawyer, Alison Holcomb, who was working for the ACLU, and started a campaign to place a cannabis legalization proposition at the ballot in Washington (Hari, 2015).

The Washington campaign have assembled "high profile professionals" apart from Holcomb and Winchester: politicians like State Representative Mary Lou Dickerson, Seattle's City Attorney, Peter Holmes and former United States Attorney for the Western District of Washington John McKay, along with medical and public health experts (Crick, Cooke & Bewley-Taylor, 2014, p. 5-6).

Although I argue that the Washington initiative was a bottom-up process because it was formulated and placed at the ballot by civil society mobilization before being approved by direct vote from the state's population, the leverage of these "high profile" sponsors led Emily Crick, Mark Cooke and Dave Bewley-Taylor (2014) to classify it as a "top-down" initiative if compared to the Colorado grassroots sponsors (p. 5).

Washington campaign raised more than 6 million dollars and invested a good part of it in TV advertising starred by doctors, law enforcement officers and religious leaders. The narrative focus was that people don't need to like cannabis in order to acknowledge that its current prohibition policy is creating more harm than good (problem stream) and that changing such policy would free law enforcement resources for fighting more serious crimes while bringing tight regulation to a loose illegal market.

Polling has shown that the law enforcement argument was the most appealing one, so the campaign has highlighted such aspect of the proposition. Debates around impaired driving under the influence (DUI) of cannabis was a big concern leading to the imposition of a zero tolerance on people under 21 caught with THC in their blood, which reduced support from a demographic groups that was taken for granted.

The DUI issue highlights "how difficult it can be to please all the main demographics where one constituency can be alienated by a core message that is important to another group" (Crick, Cooke & Bewley-Taylor, 2014, p. 6).

Women from 30 to 50 years old were a key targeted group also in Washington because they tended to be reticent about cannabis legalization. Policy and message were crafted to meet their demands, emphasizing the prevention of youth access and the DUI zero tolerance measure.

One of the campaign's experiments illustrates how sophisticated polling and information framing got during these cannabis legalization efforts. A TV advertising featured a middle-age mother talking to the camera on how she didn't like cannabis personally but, since it was a multi-million dollar market from which society got no benefit, why don't regulate it? She argues that regulation (she does not talk about legalization) would create severe penalties for selling to minors while collecting tax revenues for public health and schools. Besides, she says, it would free up police forces to tackle violent crime. The ad was aired in Seattle, as a test market, while not in Spokane (the control market) and polling both cities have shown that the message increased 30 to 50 years old women likelihood of supporting Initiative 502 in about 8 points (Crick, Cooke & Bewley-Taylor, 2014, p. 8).

Minimum age was settled at 21, purchase was limited to 28.5 grams (one ounce), stores could not be located close to schools and playgrounds and homegrown was banned

Taxing scheme was designed for a 25% excise tax on each stage of the chain producers to processors to retailers to customers (Pardo, 2014). However, for many different reasons, the Washington legislature has later amended the marijuana taxation provisions with a flat 37% state excise tax (Hudak, 2016). Tax revenue would be invested in health care, prevention and treatment programs, evaluation and research on the market development and its consequences.

Initiative 502 was approved in November 2012 by 55.7% of voters. The cannabis market rule-making process was run by the state Liquor Control Board (LCB), which used to run the state's alcohol retail stores monopoly before such exclusive spirits sales was abolished by an initiative proposition sponsored by giant US retailer Costco (Room, 2013, p. 346). In this process, the LCB hired consultancies by Botec, a crime and drug policy think-tank run by former scholars Mark Kleiman and Jonathan Caulkins (Room, 2013) and by Rand Corporation, a 70 years old policy research and analysis think-tank (Pardo, 2014).

The bottom-up high profile professionals approach of the Washington campaign and the collective and public good nature of its main argument (cannabis isn't good but cannabis policy is harmful for vulnerable individuals, for society and for the state) as well as the epistemic communities consultancy process have generated a mixed model of cannabis regulation that is industry friendly (banning home-grow, for instance) under certain limits, like the establishment of production and licensing limitations.

## 5.2 Uruguay: Law 19.172

After alcohol and tobacco, cannabis is the most widely used psychoactive substance in Uruguay. Approximately 161,000 of Uruguayans (9%) between 15 and 65 years old reported using cannabis in the last 12 months, in 2014, according to the most recent study of the Uruguayan Drug Observatory. The result represents a minor increase from the 2011 figure of 8.3% of Uruguayans reporting such cannabis use.

Possession of drugs for personal use was never a crime under national law, regardless of IDCRC's norms and rules, to which Uruguay is a state-party. And, historically, Uruguayan governments, progressive and marked by social welfare, have controlled intoxicating substances through state monopoly with one eye on preventing public health and another eye in collecting taxes from their production and commerce. In 1906, President José Batlle y Ordóñez announced his intention to control alcohol production. In 1931, (ANCAP) was established as a state company, operating oil refinery and running "a state alcohol monopoly to eliminate illegal production of very toxic hard liquors" (Bewley-Taylor & Jelsma, 2014, p. 56). The state lost its monopoly on spirits in 1996, although it kept control of the alcohol market.

In 1972, just before the coup d'état, a parliamentary commission was established to study the drug phenomena. It has endured the whole period of the dictatorship (1973-1985) and developed a very liberal view on drug consumption and cannabis self-cultivation as individual rights.

In 1974, law 14.294 was passed, consolidating the decriminalization of drug possession for personal use. In practice, however, law enforcement forces did not respect the law and users were being arrested or led to compulsory treatment (Garat, 2012; Sanjurjo, 2013a).

After the end of dictatorship in 1985, drug consumption has increased in the country in a context of prejudice and disinformation (Garat, 2012). Although Uruguay has always been a small drug consumption market, there were other factors contributing to the flow of drugs into the country. The Uruguayan offshore banks have attracted drug market entrepreneurs to their system of financial transactions secrecy (Garat, 2013).

Soon, the harms associated with drug use and users marginalization were acknowledged by social workers and public health practitioners, changing their perceptions on the cost-effectiveness of prohibition and abstinence treatment schemes, forging harm reduction practices (Sanjurjo, 2013b).

In the 1990s, groups of young cannabis users coupled with youth wings of political organizations have tried, and failed, to place marijuana self-cultivation in the

political agenda. Anyhow, in 1998, law 17.016 was approved, regulating drug decriminalization by classifying users as those in the possession of a "reasonable quantity" of illicit substance, which inconsistency appealed for police forces and judges to determine what was considered as a "reasonable quantity" case by case. The "flexible" approach still led cannabis users to prison (Garat, 2013).

By the 2000s, President Jorge Batlle (1927-2016) has publicly expressed his support for legalizing marijuana as a form of curtailing organized crime profits. His rhetoric was not followed by any government act in the same direction, but it has placed the issue of cannabis and drug legalization in the public debate. During his mandate, 2002 bank crisis led to a wave of unemployment and the rise of the consumption of a new heavy drug called *paco*, also known as PBC (*pasta base de cocaína* or cocaine paste) and as "the drug of the poor" (Sanjurjo, 2013b).

In the light of this new drug threat, public perception of marijuana harms as well as user's perception of the risks involved on its consumption were rescheduled to a lighter, almost innocent, degree (Garat, 2012). This change in public opinion viewpoint has naturalized cannabis usage, particularly among the youth. At the same time, such novelty on Uruguay's drug market have generalized the fear that cannabis consumers could turn to *paco* users because dealers would be interested in offering them more addictive substances, which would potentially generate more revenue (Sanjurjo, 2013b).

Such debate, separating considered low risk drugs from high risk ones, was seen as an opportunity window for SMOs to incorporate cannabis legalization on the political agenda. Pro-cannabis organized groups have foreseen an opportunity window for advocating that self-cultivation, besides being an individual right, could also prevent cannabis users from getting in touch with harder drugs like *paco*. They have lobbied members of Congress and mobilized public demonstrations around this demand, presenting a problem stream already coupled with a policy stream.

They have founded the Cannabis Liberalization Movement (*Movimiento por la Liberalización del Cannabis*) to protest against the contradiction of having a system that allowed the possession for personal use of a substance which production was forbidden and criminalized, and managed to influence the progressive Executive Branch and the Legislative Branch (Garat, 2013; Queirolo et al., 2018).

As a result, in 2008, the final declaration of Frente Amplio Congress, President Tabare Vazquez's party, stated the resolution of reviewing the current drug regulation normative in the light of new evidence. In 2009's national voting, Frente Amplio have consolidated its victory through the election of President José Mujica and of the majority of Congress seats, some of which were conquered by young and new legislature members with strict relations to pro-cannabis SMOs. This new political scenario favorable to the cannabis legalization agenda comprises what John Kingdon (2011) has classified as the political stream of his policy change model.

Between the end of 2010 and mid-2011, young Congressmen from Frente Amplio and from the opposition National Party (Partido Nacional) presented legislature initiatives to regulate the cultivation of cannabis for personal consumption. Such law propositions proceedings, however, have been lethargic in Congress, which could be related to the absence of a strong political problem recognized as relevant and legitimate enough for opening an opportunity window for policy change.

The national political scenario was complemented by an agitated Latin American context in which new legitimate voices were entering the drug policy debate, acknowledging the harmful externalities of the IDCR framework, especially for the region. Crucial was the creation of the Latin American Commission on Drugs and Democracy by former Presidents Fernando Henrique Cardoso (Brazil), César Gaviria (Colombia) and Ernesto Zedillo (Mexico). The new panel of authorities and experts issued a report in February 2009 in which such voices claimed they were "breaking the silence" to denounce the failure of current drug repressive policies and to debate "a new paradigm leading to safer, more efficient and humane drug policies" (Latin American Commission on Drugs and Democracy, 2009).

Two years later, the commission was expanded in scope and membership to become the Global Commission on Drug Policy, including European members and the former UN secretary general Kofi Annan. In the TAN's 2011 report, legally regulating cannabis was explicitly endorsed by such high-profile international persona. The report urged: "The time for action is now" (Global Commission on Drug Policy, 2011).

Jonas von Hoffmann (2016) describes a thrilling international sequence of the TAN reports followed by Mexican president Felipe Calderon speech, in September

2011, on how decision-makers should seek market alternatives to reduce organized crime earnings once demand for drugs could not be limited. The role of fighting drug trafficking organizations even by means of drug legalization was also expressed by Colombian president Juan Manuel Santos (Santos, 2012) and by newly elected Guatemalan President Otto Perez Molina, who declared to be looking for alternatives on the escalating Central America War on Drugs<sup>30</sup>.

Thus, besides a national political coalition favoring cannabis liberalization as an alternative policy, international and regional forces were operating in the same direction to build up a political stream for the cannabis legalization agenda.

Since issues of individual's rights and cannabis users health were not recognized by state and non-state actors as a political problems, Kingdon's problem stream was still missing in this scenario.

The advent of the problem stream took place only in May 2012, when a series of crimes have disconcerted Uruguayans as they were bombarded by their media covering, which presented the shot of a worker in a restaurant in Montevideo, the stabbing of an 18-years-old girl in Las Piedras and the beheading of another girl in Suárez as drug-related events (Queirolo et al., 2018).

"Although it was not long until it became clear that none of the crimes had a motive related to drug consumption or drug trafficking, the connection between drugs and crime was embedded in the public mood" by the flood of inaccurate media accounts (Queirolo et al., 2018). These events have taken people to organize public demonstrations demanding "mano dura" (hard) measures against criminals.

The fear spread by these episodes is mirrored in public opinion surveys. Latinobarómetro 2013 have pointed out that "public safety and delinquency" were

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<sup>30</sup> Espach, R. (2012). Should Central America Legalize Drugs? The Atlantic. <https://www.theatlantic.com/international/archive/2012/02/should-central-america-legalize-drugs/253707/> (Retrieved by January 2020)

considered the main national problems by 36% of Uruguayans. It was followed by "unemployment" as the main problem for 12% of Uruguayans<sup>31</sup>.

To put numbers in perspective and to evidence the role of public perception in agenda-setting, I will briefly compare homicide data and safety perceptions in Uruguay and in Brazil. In 2012, Uruguayan homicide rate reached 9.19 deaths per 100,000 inhabitants (an almost 3 points increase from previous year 6.27 per 100,000). In the same year, homicide rate in Brazil reached 29 cases per 100,000 inhabitants, more than three-fold the Uruguayan one. However, the same *Latinobarómetro* 2013 have evidenced that "public safety and delinquency" were considered the main national problems only by 10% of Brazilians, far behind the 35% that pointed out "health issues" as the main problem.

Uruguayans were concerned with violence and, since May 2012, the issue became intimately entrenched with the debate on heavy drugs use and their illegal criminal market, as described by Gúzman Castro:

"The hegemonic position gained by this dilemma (at the expense of other possible frames) gave drugs an unusual prominence in public and governmental agendas. Since crime and violence were, to a large extent, explained as the result of pasta base consumption and narco activity, any solution to criminality had to address the issue of drugs" (Castro, 2014)

The urgency that the drug debate have gained along with claims for public safety have reformulated a rights and health problem to a security one, making the same sort of arguments used to support drug prohibition reframed to now further cannabis legalization (Repetto, 2014).

While the domestic arena was pressing the government with a new imperative political problem, the international arena was suggesting alternative drug policies. Just one month before the criminal events of May, President Mujica have attended the Summit of the Americas, in which the Colombian President Santos urged leaders to

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<sup>31</sup> Corporación Latinobarómetro. Informe 2013. [http://www.latinobarometro.org/documentos/LATBD\\_INFORME\\_LB\\_2013.pdf](http://www.latinobarometro.org/documentos/LATBD_INFORME_LB_2013.pdf) (Retrieved in January 2020)

debate changes in drug policy "without prejudice or dogma" (Santos, 2012), a claim classified as "legitimate" by US President Barack Obama.

Back in Uruguay, public confrontation for crime prevention measures have taken Mujica to the office of his Minister of Defense, Eleuterio Fernández Huidobro (1942-2016), who had a close and personal relationship with the President and was a historic promotor of legalization, "basing his argument on the contribution that it would make to fighting narcotraffic" (Queirolo et al., 2018). His influence was acknowledged by Mujica in an interview years later<sup>32</sup>. Milton Romani, former head of *Junta Nacional de Drogas* (JND), and Julio Calzada, then the JND director, were also sympathetic to the idea, respectively from a human rights perspective and from a harm reduction one (Queirolo et al. 2018).

In June 2012, the Executive Branch presented to Congress a 15 points measures package called "Strategy for Life and Coexistence", in which several harder repressive and punitive propositions (for example: longer sentences for dealing paco and for police forces corruption) were overshadowed by the surprising proposition of the legalization of a national adult-use cannabis market.

Problem, policy and politics streams were coupled and opened an opportunity window through which cannabis legalization was proposed and approved by political elites, in a top-down approach, even though SMOs and TANs have collaborated for placing a public debate around cannabis and keeping such alternative policy alive, softening the way for such change.

Besides the acknowledged influence of local political elites, as in the case of Huidobro, Romani and Calzada, international influence was expressed in the citation of the Global Commission's 2011 report among the government's justifications for cannabis regulation (Uruguayan Government 2012).

By then, the project was still a prototype waiting for development. And the *Junta Nacional de Drogas* (JND) has invited international drug policy experts to deliver public conferences on cannabis policy reform (Murkin, 2014; von Hoffmann, 2016, p. 29).

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<sup>32</sup> La República. La idea de regulación del cannabis partió de Huidobro. July, 2017. <https://www.republica.com.uy/la-idea-de-regulacion-del-cannabis-partio-de-huidobro/> (Retrieved in January 2020).

Five conferences were organized with international invitees from TANs and SMOs such as the US-based Drug Policy Alliance and Washington Office for Latin America (WOLA), the Netherlands-based TNI and the UK-based Transform, which have advised and informed the legislature and the local policy-makers about the human costs of repressive drug policies, the existing knowledge about cannabis regulation and its effects, the international legal framework for drug control and human rights protection etc.

Among them there were people previously involved in campaigning for Colorado and Washington cannabis ballot initiatives. Such campaigners became actively involved with local SMOs, supporting them in financial and organizational terms, helping them designing a communication strategy to achieving greater public support. The result was the creation of the campaign *Regulación Responsable*, or Responsible Regulation (Hetzer & Walsh, 2014). By then, the majority of public opinion (66%) was against the government proposition of legalizing cannabis.

Responsible Regulation campaign was financed by Peter Lewis and George Soros' Open Society Foundations (von Hoffmann, 2016), has invested in TV advertising and focused on three main arguments. First, that new law would "address insecurity and reduce users' exposure to more harmful drugs" by separating a low risk drug from the illegal market; second, that it would "fix hypocrisy in the existing legal framework to enable users to grow" their cannabis plants; and, finally, that it would "improve public health by increasing access to medicinal cannabis" (Walsh & Ramsey, 2015).

The campaign, however, has dislocated less than six points from the disapproving parcel to the supportive one. In 2014, 60,7% of Uruguayans were still against such a policy change and, by 2017, they were 54,1% (Cruz et al., 2018). Nevertheless, the numbers show that public opinion is changing.

Although SMOs were mere bystanders of the decision-making process, their previous political contentions and demands for cannabis self-cultivation have influenced the resulting regulation: the legalization proposition that came out of the Executive Branch didn't contemplate such demand while the one approved by the legislature have already incorporated such provision.

In December 2013, law 19.172 was signed by the Mujica after being approved by Congress and Senate with a narrow positive margin, and became the first country on the planet to establish and regulate an adult-use legal cannabis market.

The law has created the Instituto de Regulación y Control del Cannabis (IRCCA), the central institution to the Uruguayan cannabis market model. The IRCCA regulates the market, from seed to sell, by licensing producing companies, establishing prices per gram, creating the distribution logistical and security and licensing retail pharmacies across the country.

Cannabis can be sold to plus 18-years-old registered residents. The model allows for registered users to grow up to six plants or to set up registered cannabis clubs with no more than 45 registered members. Users have to choose one of the methods for obtaining cannabis: purchasing, self-growing or cannabis clubs membership. Either way, possession limit is of 40 grams per month.

According to the IRCCA, by the end of 2019 there were 39.009 Uruguayans registered for legally purchasing cannabis in pharmacies. In May 2017, such registered users were less than 5,000. It makes sense: it took a long time for cannabis to be available in such stores, which have happened only in July 2017.

Because one of the two main vectors of the Uruguayan legalization was undermining organized crime (the other being separating cannabis users form high risk drugs markets), prices are intended to be kept at the lowest possible level in order to rivals the illicit market ones, so cannabis production will not be taxed, at least initially. Such product will be subjected only to value-added tax (VAT).

Uruguayan officials have declared that first stage retail price per gram would be 1 dollar to effectively compete with prices on the streets. However, because users registration is key to this Uruguayan model, some critics argue that such obligation could keep users willing to remain anonymous away from the legal market, thus restricting one of the new cannabis policy's goals: undermining the organized crime.

By 2019, 7.817 residents had registered to cultivate their own plants and 4.281 have registered to be one of the 145 local cannabis clubs members.

Advertising is forbidden and product packs should be generic and non-appealing, such as tobacco ones, which some studies suggest might deter consumption (Pardo, 2014). Health and education systems would be responsible for promoting and avail treatment for those with use disorder and for developing preventive informative campaigns.

According to some authors, the Uruguayan system of strict state control resemble those of post-alcohol Prohibition that have emerged almost 100 years ago and were progressively weakened by commercial market influences (Room, 2013).

Such cannabis regulation model has been praised as protective in terms of public health, by registering users and limiting market entrepreneurs tools to promote cannabis use, it has also been criticized for being less market-effective, with shortages of domestic cannabis supply and restrictions that might prevent users from adhering to the legal market.

## 6. CONCLUSION: DOMESTIC CHOICES OVER INTERNATIONAL RULLING

This thesis has undertaken an interdisciplinary approach to illuminate actors and incentives involved in the advent of groundbreaking legal adult-use cannabis markets in Uruguay and in the US states of Colorado and Washington, regardless of such production, trade and consumption prohibition by an International Drug Control Regime (IDCR) compounded by three quasi-universally ratified drug control conventions.

The history of this unprecedented momentum for cannabis legalization have started more than 100 years ago with the foundations of the IDCR and subsequent top-down implementation of its principles, norms and rules in the form of domestic drug policies.

Drug control principles were internationally forged through the convergence of economic and diplomatic interests of certain powerful countries along with the advocacy of religious and temperance movement transnational networks. The international dissemination of these groups ideas and values helped shaping perceptions toward certain psychotropic substances, consolidating a persistent imaginary of crime, deviance and debauchery associated with them. This would justify and legitimize the adoption of stringent and intrusive norms drawn on the belief that drug flows could be restraint through criminalization and international cooperation.

Such strict international normative framework have neglected at least one fundamental economic principle and one basic global feature that have hindered its effectiveness from scratch. IDCR has ignored the fact that drugs are commodities operating under supply and demand principles and would continue to respond to such dynamics, which operation would be then relegated to illegal and unaccountable entrepreneurs, moved by economic incentives for higher profits. It has also renounced the consequences of implementing an 'one-size-fits-all" intrusive and inflexible set of obligations into a profoundly asymmetrical global landscape, generating different impacts and externalities according to each state-party's social economic development, institutional capacity and rule of law.

In order to analyze how adherence and compliance to the IDCR was undertaken in the absence of clear state-parties national self-interests regarding drugs issues, this thesis had challenges monolithic theoretical frameworks of international regimes,

intertwining and reconciling realist, liberal and cognitivist approaches by evidencing mechanisms of coercion, contracting and learning along the pre-regime international treaties and UN drug conventions.

The domestic implementation of exceptionally intrusive measures, such as the criminalization under national law of a series of acts related to drug production, distribution, trade, possession and consumption, have generated repressive drug policies with consequent externalities ranging from violence and murder to human rights violations and corruption, burdening vulnerable groups and marginalizing users while undermining institutions, political stability and governments' capacity to promote development and to provide public goods.

Moreover, even under repressive drug policies, drug-related activities have flourished: production has increased, consumption has increased and new substances have proliferated. The adoption of harder (and potentially more abusive) enforcement strategies, including a War on Drugs, seem not to alter drug market upwards trends, although it has resulted in the skyrocketing of prison population, among which racial bias is evident as well as the prominence of cannabis-related offences.

This complex scenario was dissected and exposed by three non-state actors, which have generated incentives for cannabis policy change in the three cases here studied: social movement organizations (SMOs), epistemic communities and transnational advocacy networks (TANs).

Repressive drug policy externalities have created incentives for individuals' and groups' mobilization and collective action. Confronted with the direct experience of human rights violations and public unsafety, such SMOs have forged opportunities to demonstrate their grievances through different repertoires of political contention (Tarrow, 2011), from demonstrations to court battles and direct lobby.

Besides contributing to the process of problem recognition by state-actors and by the public opinion, SMOs mobilizations have also performed as inputs for part of the epistemic communities scientific studies and investigations.

This thesis has highlighted that epistemic communities have been studying cannabis and cannabis policy since the late nineteenth century, when the Indian Hemp Drugs Commission has investigated the effects of cannabis consumption in India

releasing a seven volume report in 1894. Nevertheless, it was not until the 1970s that drug policy and cannabis have been systematically researched with advanced scientific methods and tools.

With the progressive availability of data, scientific findings about cannabis properties and use as well as evidence on repressive drug policy cost-effectiveness and causal relationships with social harms have put the IDCR at odds with current knowledge. Draw on such findings, epistemic communities would also develop alternative policies propositions.

By doing so, epistemic communities would inform state and non-state actors about drug policies contradictions and their policies, legitimizing SMOs grievances and demands for policy change. Therefore, I have separated epistemic communities provisions between knowledge incentive and legitimacy incentive for cannabis legalization, influencing both the stream of political problems recognition and the stream of alternative policy proposals.

Finally, transnational advocacy networks (TANs) have selected, labelled and framed information attested by epistemic communities as well as stories and cases publicized by SMOs, disseminating them internationally to persuade public opinion, policy-makers and decision-makers in viewing well-established facts from a new perspective. In the case of cannabis policy, TANs have illustrated harmful consequences of repressive drug policies and their cost-effectiveness, legitimating such policies political problem status and advocating for cannabis legalization as a rational alternative policy experiment.

Framing issues helps states identifying new national interests besides creating a favorable climate for the diffusion and acceptance of new evidence and belief systems (Adler & Haas, 1992). However, more than merely reinforcing the couple of problem and policy streams, TANs have also interfered in the stream of politics in both the US cases and in the Uruguayan through legitimate incentives and financial incentives that furthered, respectively, the consolidation of drug policy change as a rational choice regardless of international drug law and the required resources for gathering most of public support for it.

In the case of Colorado and Washington, a TAN has partially financed local SMOs during signature collection for placing initiatives at the ballot and during pro-initiatives campaigns, collaborating for their success in coupling problem, policy and politics streams through a bottom-up decision-making process.

In the case of Uruguay, the Global Commission on Drugs Policy seems to have influenced President José Mujica's decision to present cannabis legalization as part of a strategy for promoting public safety by withdrawing resources from the organized crime while promoting users rights. This influence is strongly suggested by the citation of the one of the TAN reports in the law proposed by the Executive Branch, in a top-down decision-making approach.

International TANs representatives have also gathered in Uruguay for a series of public conferences on cannabis, drug policy and IDCR that have influenced the final law approved by the Senate in December 2013.

The legal adult-use cannabis markets resulting from these three processes, in which such actors and incentives have performed, have crucial differences among many similarities, as seen in Table 1.

While in the US users can now buy branded products created by Bob Marley's family or by singers like Willie Nelson and Snoop Dogg, in Uruguay users grow their own cannabis or buy it in a pharmacy, but only unbranded products and after being properly registered.

The Colorado model, designed by grassroots activists with less TAN influences, have generated a consumer friendly cannabis regulation, including self-cultivation and excluding users registration, which is also friendly with business entrepreneurs by not limiting the number of licenses and allowing for vertical market integration, in which the same company can produce and sell cannabis, increasing profit opportunities and political leverage. Prices are dictated by the market.

The Washington model, designed by high-profile professionals in consultancy with members from epistemic communities, is more mixed: self-cultivation is prohibited, users registration is not required and there is a zero tolerance policy for DUI, licenses for business entrepreneurs are limited and vertical integration is not allowed. Prices are dictated by the market.

The Uruguay model, designed by Executive and Legislative branches in consultancy with TANs, is state controlled and health oriented: self cultivation and cannabis clubs are allowed under user and growers registry, also required for cannabis purchase in government licensed pharmacies. Production and distribution is licensed and controlled by the state, which also dictates price. Uruguay has been facing cannabis shortage since the model was fully implemented in July 2017.

Scholars main concern with cannabis legalization so far have been with an apparently inescapable increase in cannabis use, promoting use disorder and public health problems and costs. The review of new epidemiological studies has concluded, however, that evidence is, 'so far, mixed and mostly inconclusive", with increase among certain groups and decrease among others along with pervasive research methodological problems (Smart & Pacula, 2017).

Another concern emanates from the growing green market potential of becoming another Big Tobacco or Big Alcohol, in which public health is subjected to commercial interests and undermined by regulatory capture. Several authors (Room, 2014; Caulkins et al., 2012; Pacula et al. 2014; Rolles & Murkin, 2013) contend that regulatory decisions 'should be informed by experiences with alcohol and tobacco regulation" (Murkin, 2014).

The fact that most cannabis market regulation models alienates previous market operators is also a point of contention. In most US states, license is conceded upon background checks, eliminating former drug offenders. However, if cannabis trade is not a criminal offense anymore, does it make sense? The high costs involved in getting a license might also work as impediments for smaller players to get involved in the new legal market. The exclusion of vulnerable groups and minorities is problematic and local regulation models in the state of Illinois and in the city of Oakland are experimenting with inclusive rules for people of color and former operators. Strategies for the reparation to former offenders might be also a promising direction for future research.

Besides the uniqueness of each case here studied, the observation of their processes and resulting models permits some considerations. First, that cannabis policy change is a multifactorial process involving a similar group of actors so far.

Second, that SMOs and TANs framing of problem and policy streams were either determinant in placing cannabis legalization on the public agenda or, at least, important in building up political coalition in favor of such public debate. In the bottom-up US

cases, campaigns professionalization by mean of resource mobilization were crucial. In the top-down Uruguayan case, regional political elites drug policy change legitimization, inaugurated by the Latin American Commission on Drugs and Democracy, was critical.

Third, that evidence provided by epistemic communities matter, although it would only become strategic when framed in compelling manners by SMOs and TANs and disseminated to targeted audiences in order to alter their perceptions and preferences, which ultimately changes behavior and, therefore, policy (Keck & Sikkink, 1998).

Fourth, that such unprecedented drug policy changes suggest that cannabis legalization and regulation has now a legitimate place on the policy agenda. A diverse group of Latin American and Caribbean countries are implementing medical cannabis systems. After Canada's cannabis legalization, the Netherlands and New Zealand are considering experiments or public consultation to do so.

And, finally, the tepid international reaction to cannabis legalization policies, officially considered as violations of IDCR, suggests that Keohane and Nye (1987) were correct when arguing that international regimes are expected to influence domestic structures as well as vice versa, meaning that the advent of legal adult-use cannabis markets will force the regime to change.

Scholars (Room, 2013; Bewley-Taylor & Jelsma, 2014; Chatwin, 2018) have been exploring treaty reform options. The modification of cannabis scheduling, treaty denunciation and reaccession with reservations (like Bolivia did in relation to coca leaf) and treaty amendment are explored along with the tool of modification "Inter se", allowing two or more parties to modify certain treaty aspects only among themselves. Article 41 of the 1969 Vienna Convention on the Law of Treaties, such agreement is possible as long as "it does not enact the enjoyment by the other parties of their rights under the treaty or the performance of their obligations".

In a new global order market by multipolarity, consensus procedures for decision-making on changing IDCR norms and rules have been *de facto* impossible. At the same time, and contrary to the international context in which pre-regime treaties paved the way for the IDCR conventions, state-parties' national interests in the drug and drug policy field are clearer, informed by local demands and by emerging political problems as well as by epistemic communities' increasing knowledge production.

In such a complex scenario, the "Inter se" procedure seems a viable way for the development that new drug policy that respects human rights and are accountable to domestic particularities by experimenting drug control models alternative to criminalization. Such fragmentation of the IDCR's legal architecture could bring drug policy to national and regional levels, creating an intricate system that still contributes "to what are changes *within* rather than changes *of* the regime" (Krasner, 1982). Its feasibility and impact on the IDCR open a promising direction for future research.

The next question to be asked is: 'Is it possible to apply the same social and political process to the legalization of other illicit drugs?'. My answer is yes, although alternative policy propositions would have to be completely different resulting not in commercial markets but rather in models of public provision based in harm reduction

principles (as in the case of high risk drugs requiring supervision, such as crack, cocaine and heroin) and models of clinical therapeutic uses, as in the case of psychedelics, such as MDMA and ibogaine. These type of proposition would require studies and cost-benefit analyses but the main issue seems to be: With less interest groups than cannabis and in the absence of potentially huge business profits and correspondent tax revenues, would anyone be interested?

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