



Uruguay's Drug Policy Reform: at the Cutting Edge of Alternative Policy

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Since the first major international agreement on drug control, the 1961 Single Convention on Narcotic Drugs, most of the world has implemented the prohibition model of drug policy. Prohibition means that the production, transport, and consumption of substances are banned under international treaties. Prohibition was designed to keep drugs out of the hands of consumers. Many critics of prohibition cite the extremely high levels of both violence and drug use as indication of prohibition's failure. Recently, states from around the world have begun to break with the past and experiment with new strategies in their drug policy. Both Portugal and The Netherlands have successfully implemented two unique policies that have deviated from Prohibition: harms reduction in Portugal and extensive decriminalization in The Netherlands. Uruguay has recently passed legislation that would regulate the production and sale of cannabis.

The positive experiences Portugal and the Netherlands have had with their alternative drug policy are ripe for analysis. Through this analysis, I

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suggest that for recent drug policy reform in Uruguay to have a positive effect on the drug problem both domestically and internationally, the state must move away from the stagnant policy of prohibition and pursue more open-minded policy, including legalization and harms reduction. In other words, policy must be focused on helping the states and individuals most affected by the drug problem rather than focusing on narrow domestic goals. Uruguay must further combine elements from the successful alternative policy of other states in order to be successful in tackling the drug problem.

Drug Policy: a Brief History

The first international agreements concerning narcotics came after industrialized nations observed “the first drug epidemics... in the late nineteenth century” (Chawla, 2004, p. 230). Starting in the early 1900’s, the U.S. was the primary voice calling for international cooperation in banning harmful substances. The U.S.’s call for cooperation on the narcotics issue resulted in a number of agreements on the prohibition of different substances, but few had extensive worldwide support. The goal of these agreements was to totally limit the availability of narcotics to the general public, where they were doing considerable damage by creating dependence. These policies failed in part because they did not gain widespread support and effective implementation.

The first international action related to narcotics control that received close to worldwide support was the 1961 Single Convention on Narcotic Drugs. The convention forced signees to create a state controlled monopoly of “the most notable plant-based drugs such as opium, cannabis, and cocaine” (Organization of American States [OAS], 2013, p. 203). Through this monopoly, the state is able to legally distribute these substances to organizations with valid medical and research proposes while keeping them out of the hands of consumers. Through the end of the century international agreements kept up with newly emerging drugs and placed controls on precursor chemicals and money laundering. The vast majority of states are signatories to these treaties, although states may sign with reservations to “allow for traditional indigenous use of a controlled substance,” as was the case when Mexico signed the treaty of Psychotropic Substances in 1971 and Bolivia’s withdrawal and re-accession to the 1961 convention on narcotics (OAS, 2013, pp. 3, 88). According to Sandeep Chawala, these drug control

agreements are “unique” because of their “mandatory nature;” signatory countries are required to enact domestic legislation that is measured against international standards (2004, p. 231). In practice, signatories are required to enact a drug policy based on prohibition or face sanctions.

All of these conventions are overseen by the International Narcotics Control Board (INCB), which is part of the larger United Nations International Drug Control Program (UNIDC). The INCB is made up of 13 nations that enforce the conventions and set legal production levels for medical and scientific use of narcotics. While the INCB has the ability to sanction a nation that breaks its convention obligations by recommending embargoes of legal medicinal drugs, the INCB has never utilized that power (OAS, 2013, p. 88).

The drug problem has clearly had a global effect, with millions of people around the world addicted to drugs. Drug related violence also affects huge numbers of people. Although the effects of the drug problem are global, ground zero for producers, consumers and law enforcement has long been the Americas. Almost all of the world’s coca is produced in the Latin American countries of Bolivia, Colombia and Peru. Historically, these countries have also been major sources of cannabis and heroin poppy for more localized markets within the hemisphere.

These production centers, along with states where drug trafficking is a problem, like Mexico and Guatemala, are the center of the most visible and violent consequences of the drug problem. Most of this violence is perpetrated by organized crime. Although most criminal organizations in the Americas “operate on several fronts simultaneously,” their involvement in the drug economy is their largest source of revenue (OAS, 2013, p.76). According to the UN office on Drugs and Crime, “more than 25 percent of homicides [in the Americas] are related to organized crime... while the same is only true of some 5 percent of homicides in the Asian and European countries for which data are available” (OAS, 2013, p. 76). In Guatemala, it is estimated that over “45 percent of intentional homicides... are drug trafficking related” (OAS, 2013, p. 76). These statistics paint a bleak picture of the state of the drug problem in the Americas.

Alternative Drug Policy

There have been two states that have broken away from the trend of prohibition in the last forty years: The Netherlands and Portugal. In

Portugal, a harms reduction approach to drug use has been part of drug policy for more than ten years. While illicit drug use “has historically been low in Portugal,” by the end of the 1990s rates of blood-borne diseases such as HIV/AIDS had increased drastically as a result of increased heroine use (Hughes & Stevens, 2010, p. 1002). The government initiated a commission on drug use that found that many drug users in Portugal, especially injecting users, were becoming marginalized and excluded by the general society. This exclusion resulted in a greatly decreased chance that the user would be able to break their habit. A harms reduction strategy was implemented by decriminalizing the possession of personal amounts of all drugs while also increasing resources going towards “prevention... treatment, [and] social reintegration” for drug users (Hughes & Stevens, 2010, p. 1002). These increased resources included needle exchanges for injecting users and the creation of the Commission for the Dissuasion of Drug Addiction (CDT). CDTs are panels made up of a lawyer, a social worker, and a medical professional who meet with drug users caught with personal quantities of drugs. The CDTs aim to “dissuade drug use and to encourage dependent drug users into treatment” without risking the social exclusion and marginalization that so often occurs when drug use is criminalized (Hughes & Stevens, 2010, p. 1002).

The Portuguese harms reduction model has been successful in its stated goals. By 2010, there was a significant reduction in infectious diseases caused by drug use (from 1413 reported cases of HIV/AIDS in 2000 to 375 in 2008) along with a reduction in overdose related deaths (Hughes & Stevens, 2010, pp.1015, 1017). The most noteworthy aspect of Portugal’s harms reduction strategy is its attempt to reverse the marginalization and social exclusion experienced by drug users. The project of reversing social exclusion is a large scale, societal change. The Portuguese case is a prime example of an attempt to use policy as a means of enacting this social change.

The Netherland’s drug policy represents an outlier because of their early attempts at policy other than prohibition. Facing the new phenomenon of illicit use of drugs like cannabis, LSD, and heroin in the late 1960’s, the Dutch government initiated the Baan Commission to study drug use. Their recommendations focused on the possible stigmatization of drug users and the risk of driving them further towards drug addiction. The commission’s findings, along with the “critical attitude toward the use of penal law as a

way to solve social problems” in the Netherlands pushed the Dutch towards alternative policy (Boekhout van Solinge, 2004, pp. 250-253) . That reform resulted in the liberalized drug policy we see today, complete with harm reduction strategies and “coffee shops” where cannabis and other soft drugs can be purchased.

Coffee shops, and the Netherlands drug policy in general, is an example of a state taking full advantage of its room to maneuver under international law. Although production and sale of cannabis is technically illegal in the Netherlands, Dutch law enforcement “tolerates” the sale of less than 30 grams of cannabis from coffee shops and possession of personal amounts of the drug (Roman, Ahn-Redding & Simon, 2005, p. 116). Another reason the Netherlands has been able to continue its policy without outside interference is its ability to regulate the cannabis market, as evidenced by the decrease in number of coffee shops from 1,200 in 1995 to 846 in 1999 (Roman et al., 2005, p. 118). In order for drug policy reform to succeed in other nations around the world, states must emulate the proactive approach exhibited by Netherlands.

Uruguay: Regulation/ Legalization

Uruguay is the latest country to propose alternative policy, and it is perhaps the most radical example. The story of Uruguay’s recently proposed drug reform contains plenty of twists and turns. President José Mujica first announced the plan to legalize and regulate cannabis in June of 2012. This announcement was followed by the official submission of the bill, which called for the state to “assume control and regulation of the activities of importation, production, acquisition in whatever capacity, storage, commercialization, and distribution of marijuana” (OAS, 2013, p. 91). These lofty goals were met with months of debate and revision in parliament. Although President Mujica and his Frente Amplio party had the majority in both houses of parliament, the President tabled the bill in December 2012, citing the almost two thirds of the Uruguayan population who opposed the legislation: “I don’t vote for a law because it has a majority in the Parliament, it needs to have the majority in the streets” (Casey, 2013, p.102; “La Ley de Marihuana”, 2013). From there, the bill progressed slowly. The Uruguayan government has teamed up with both domestic and international NGOs (such as the Open Society Foundations organization) to organize a “massive media campaign,” to inform the Uruguayan public

of the merits of legalization (Uki, 2013). The bill was introduced to a vote in the lower house of parliament in July, 2013. The lower house was expected to be the more difficult of the two houses for the bill to pass; after thirteen hours of debate the bill passed (Casey, 2013). Five months later, the bill was also passed in the upper house. The government seeks to implement the new policy by the middle of 2014.

The legislation allows the sales of up to 40 grams of cannabis per month to adults from a network of government pharmacies. These pharmacies are supplied by 20 to 30 state-licensed farms, which would have strict standards of both environmental and physical security (“Habr  a lo sumo”, 2013). The law also permits the home cultivation of six plants and the creation of “cultivation clubs,” where 15 to 45 members could collectively produce their own cannabis. However the cannabis is obtained, the consumer is required to register in a national database. There are strict regulations against the drug’s advertisement or public use and stiff penalties for sales outside of the regulated market (“La Ley de Marihuana”, 2013). It is important to note that the possession of personal amounts of drugs has always been decriminalized in Uruguay, so in effect this legislation provides a legal source of cannabis for the population.

While the extensive amount of regulation would seem to exact an undue cost on the Uruguayan government, the nature of the drug economy more than pays it back. Furthermore, although the stated purpose of legalization legislation is to “combat drug trafficking,” the economics of regulation may reveal a less publicized benefit (“La Ley de Marihuana”, 2013). Not only would regulation take money out of the pockets of drug producers and traffickers, but it will also put that money directly into the coffers of the state. The production costs of cannabis are lower than most other drugs. A drug policy based on prohibition drives overall prices up by adding risk, and thus cost, to the production, transit, and sales of cannabis. A legalized market brings with it a huge decrease in the price of cannabis; studies carried out during the legalization of medicinal cannabis in California found that the price “without taxation would be no more than 20 percent of the current illegal price” (OAS, 2013, p. 93). This huge decrease in price may have the effect of more widespread use. To combat that possibility, the government would take advantage of its monopoly of the cannabis market and use taxes to increase the price to a reasonable market level. Because of its monopoly status on the *legal* production and sales of cannabis, the

government can regularly adjust the prices to be lower than illegal prices without risking increased use, while at the same time turning a profit.

The move to pass the legislation illustrates the reformist nature of Uruguay and its government. The current government is headed by President Jose Mujica, a former left-wing guerrilla who fought against military rule in the 70's and 80's. In addition to the recent cannabis legislation, Mujica and his Frente Amplio party have passed legislation legalizing abortion and gay marriage. Another factor in the passage of this policy is the unique demographics and history of Uruguay, a country that has always had a wide separation between church and state and a recently strong democratic tradition.

There is yet another major factor in the process of legalization in Uruguay: the participation of internationally funded NGOs. The highest profile NGO is Regulación Responsable, a group that has worked to inform the public about the proposed reform. Regulación Responsable is funded partly by the Open Society Foundations, an international organization founded by billionaire George Soros that “works to build vibrant and tolerant societies whose governments are accountable and open to the participation of all people” (Open Society Foundation). Some opponents of the legislation have complained that Uruguay is being used “as a testing ground by first-world NGOs” (Uki, 2013). NGOs have donated a large part of more than 100 million dollars to help with the passage of legislation (Pereyra, 2013). The presence of international groups advocating legalization in Uruguay has certainly helped, not only financially but also in terms of building the international credibility of the Uruguayan initiative by adding respected academic and political voices to the legislative process.

The stated goal of Uruguay's legalization is to “combat the violence from drug trafficking” (Pereyra, 2013). By creating an alternative market for cannabis regulated by the state, the money normally destined for criminal organizations will end up in the hands of the state. While Uruguay does not have a major problem with drug production, trafficking and violence, these issues are present in neighboring Paraguay, the supplier of “much of the cannabis for the Southern Cone.” (OAS, 2013, p. 32). By monopolizing and controlling the price of cannabis, the Uruguayan government can provide consumers with a product free from the stain of drug-violence. Uruguay will also be able to support a greater network of treatment and healthcare for drug users with the profit derived from the cannabis industry (Ford, 2013,

226). Overall, Uruguay's proposed drug policy reform focuses on the people most affected by the drug problem both domestically (by increasing opportunities for rehabilitation) and internationally (by taking revenue out of the hands of violent criminal organizations).

There are some potentially negative consequences to the enactment of legalization. The primary concern for many opponents of legalization is that there will be an increase in the use of drugs because of an increase in accessibility. While this is a valid concern, especially when drugs are being sold from governmentally sanctioned pharmacies, "the demand for drugs tends to remain stable regardless of price because many people will not use drugs regardless of cost for health and moralistic reasons, while others will always use drugs regardless of cost due to addiction" (Ford, 2013, p. 226). Another potentially undesirable consequence of legalization is the exportation of drugs into other states with prohibitionist drug policies. This could aggravate relations between states to the point where policy reform in other parts of the world could be endangered by the renewed enforcement of international narcotics treaties. To avoid this consequence, Uruguay must be sure to remain vigilant against the transit of cannabis across its borders.

Ideal Drug Policy: A Pipe Dream?

Leaders of some nations have become aware of the wrongs being committed in the name of prohibition. They have begun to discuss and experiment with alternative drug policy like harms reduction and legalization/regulation. While each of these policies has shown that it can be a viable alternative to the prohibition model, they each lack certain elements that could make them successful in helping to alleviate the drug problem both domestically and internationally. A combination of elements from both harms reduction and legalization could have the desired effect. The important elements in each alternative policy are those that are focused on the people most affected by the drug problem.. The effort to negate the marginalization of drug users by society is key to reducing the number of drug addicts. Policy based on Portugal's CDTs would be a step in that direction. Portugal's model could be improved by the addition of decriminalization of the most harmful drugs (like heroine and methamphetamine) and legalization/regulation of less harmful drugs (like cannabis and some hallucinogens). This way, CDTs could work to eliminate the use of the most harmful drugs, while also monitoring users of the less

harmful drugs for signs of dependence. At the same time, the regulation of less harmful drugs by the state could take the profits from these drugs out of the hands of violent criminal gangs around the world.

There are still many questions to be answered in the search for the solution to the drug problem. While there are alternative drug policy frameworks for nations to attempt, few are tested and none guarantee success. Even if a many states enacted similar policy reform, it would be ineffective without worldwide (or at least region wide) acceptance. An interesting parallel can be drawn between the first steps towards drug reform in Uruguay and the same steps in Colorado and Washington State. For the time being, the U.S. federal government is allowing those states to implement their plans for legalization/regulation, albeit with a close eye on any deficiencies in regulation. The situation for Uruguay is similar; there seems to be a general understanding that Uruguay will not face serious sanctions for the implementation of its policy, although if regulation is insufficient there will surely be international consequences. Whatever the outcome, recent drug policy reform will be watched closely by many countries around the world.

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