

# Uruguay piercing the veil of the prohibition paradigm in Latin America

Cannabis legalisation in Uruguay (2012-2019)



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## Introduction

Over the past couple of years, there has been a shift from cannabis prohibition towards legalisation of cannabis. We have had countries such as the Netherlands and Belgium which have decriminalised cannabis, but in 2013 Uruguay was the first country in the world to legalise marijuana. Soon a debate in the international community had risen whether cannabis should be legalised. After Uruguay, Canada followed and legalised cannabis as well. Not shortly after a few states of the United States followed, such as Alaska, Colorado, Oregon and Washington and it is only a matter of time before the federal restrictions on cannabis will be lifted in the United States. Many countries are contemplating whether their drug policy is functioning and if they should not try to approach public health and drug trafficking problems in a different way.

It has been estimated that drug use in the Western hemisphere is around 150 billion dollar. Even with the United States of America waging a war on drugs, it still has been able to amount to such a sum and a huge amount of drug consumption. Trafficker violence is plaguing several countries in Latin America, many citizens succumb to the violence that has been brought forth with trafficking of drugs and governments get caught in corruption that is caused by the drug economy. Drug consumption is becoming more and more normalised in Latin American society. International treaties and United States foreign policy have been eminently leading in forming prohibitionist measures towards drugs. Yet most Latin American countries agree that the current policy -the War on Drugs- is not working as proper as it should be. The Latin American region is finally perceiving drug addiction as a public health issue and it is for the first time in history that the political elite of Latin America has voiced their opinion regarding the War on Drugs and its prohibitionist measures (Gootenberg and Campos, 2015). It is necessary to form a new strategy that will constrain the black market and violence that is related to drugs. One of the countries that agree on this theorem is Uruguay. The government of Uruguay has openly questioned these prohibitionist measures and has thought of ways to tackle this problem that is formed by drug trade.

Uruguay has always been an important player when it regards drug policies. Since 1974, possession of all drugs has been decriminalised and in 2013 cannabis has been officially legalised. However, before cannabis was legalised it was first necessary for former president Jose Mujica to introduce a bill to congress. With this bill, Mujica intended to legalise the entire supply chain of cannabis, from seed to sale. The law was intended to improve public health and to address the increasing drug problems and violence the country faced. This policy was driven top down as roughly 66% of the population did not agree with this view and was against implementation of the law. In the following years, the law was implemented via a slow pace. Legislation has offered consumers three choices regarding registration

for use of recreational cannabis. The first is to buy from cannabis retail pharmacies, the second is to join a cannabis club and the last option is to grow your own cannabis at home. The Uruguayan government has expected obstacles and hurdles, as there is no previous cannabis model the authorities can base their own regulation model on. We remain to see if the Uruguayan regulation model will be implemented by other nations in the near future.

The main objective of this thesis is to analyse law 19.172 and how this law has effected the black market. Because if the legal market grows, this should mean that the black market diminishes. Therefore the research question is "how effective has the legalisation of cannabis been to further increase the legal market? Because the government has developed a sound legal framework to regulate the market, the thesis believes that it can pose the following hypotheses. We think it is safe to say that since the implementation of the law the legal market has grown significantly in the short period that it has existed.

The methodological research has focused on primary and secondary sources. The primary sources are the Uruguayan citizens, professionals and cannabis users I have interviewed as well as my participatory observations during my research in Montevideo in the period from the 13<sup>th</sup> of November until the 30<sup>th</sup> of December. I have interviewed eight individuals that have a profession in the cannabis sector or are connected to the cannabis sector. Furthermore, the thesis has utilised primary sources such as articles, journals and official documents from governmental institutions and organisations which have completed research on the legalisation of cannabis in Uruguay. In addition, secondary sources have been consulted to write the theoretical framework to be able to answer the main question posed by the thesis.

Chapter 1 discusses the main theoretical tenets to address the research question. This section evaluates prohibition versus legalisation, anti-drug policy and black markets and various theorems will be set out to discuss these theories. In the second chapter, the thesis will illustrate the contemporary and past situation of drug policies of several Latin American countries. Subsequently, it will be discussed how the law 19.172 is constructed and lastly it will discuss the law in practice. This section can be divided into drug policy in Latin America and its war on drugs, towards legalisation in Uruguay and the development of the law and lastly an exposition of this law. The third chapter is an analysis of law 19.172 and will address legalisation versus prohibition, harm reduction policies, its supply issues, cannabis clubs and tourism. The thesis has chosen its timeline as of 2012, as this was just before the law was implemented in Uruguay until 2019.

## Chapter 1: From prohibition towards legalisation and regulation of cannabis markets

The theoretical framework will try to define the following topics in order to be able to answer the main and sub questions posed by the thesis. The theoretical framework will discuss Prohibition versus legalisation, anti-drug policy and experiences with legalisation and the black market.

### 1.1 Prohibition vs. Legalisation

Use of drugs is broadly blamed for a wide array of social and personal ills. Many observers have reported that drug users endure moral deterioration, weakened health and diminished earnings. Equivalently, many accounts have reported that crime has been promoted by illegal drugs, has resulted in corrupted politicians and law enforcement officials, has destroyed inner cities, has aggravated and produced poverty and lastly has degraded morals and values of society (Miron and Zwiebel, 1995).

For most, the general response to these observations is a belief that authorities should prohibit the sale, use and production of illegal drugs. This notion assumes that substance use induce problems that are affiliated with illegal substances and that the only way to reduce these problems is by discouraging use via prohibition. However, a small group argues that prohibition is the cause of many of these problems that are affiliated with illegal substance use. This outnumbered group argues that prohibition is outdated and that there exist other policies that might be preferable (Miron and Zwiebel, 1995).

Duff argues the following regarding prohibition. He believes that it is important to differentiate between the use of a service or a product, and between the fabrication or operating of a business. Duff believes it is important that the criminal law should make confinements that formulates what it constitutes to break a law. Is it fabrication or use of the product? This to prevent that users will be punished although they had nothing to do with the fabrication of the product. He explains that *mala prohibita* – an occurrence that is wrong because it is prohibited- will seem plausible. As crimes that consist of conduct that is not wrong before the law formulated this as criminal. The government has a certain logic to penalise a conduct to protect its residents from danger or harm. But also to safeguard a smooth functioning of the state, to impose licenses or procedures to ensure safety and public health by constructing formal systems and to nip dangerous operations in the bud. The government is also responsible for penalising residents for breaking such regulations. Duff continues that these reasons nonetheless, implicate that those who break the law should suffer penalisations. If residents are obliged either to comply with the law in general or to break the law, they thus are wrong because they break the law. As a result, certain people would argue that a citizen should be punished for its crimes.

However, when one asks why it is justified to create such a law or offense, it cannot be plausible that we have created these laws to punish or inflict harm onto others because the law has decided that it is criminal behaviour (Duff, 2002).

Duff continues that if a polity issues a set of commands to its residents, they are obliged to obey these commands because out of respect for authority, because they are afraid of the power of the sovereign, or because they feel the need to recognise the obligation to obey the law. However, it is essential for a sovereign to ensure that citizens follow the values set by the government. The government will have to include its residents so they understand that these laws are constituted to protect the values that the government has set forward. It is important that criminal conduct is seen as public wrongdoing by defining them as crimes. By doing so, it maintains the essential values put forth by the government. Furthermore if these criminal laws are wronged the state's agents will prosecute and punish the wrong doers (Duff, 2002).

Hall explains that all signatories of the 1961 Single Convention on Narcotic Drugs are instructed to prohibit the use of cannabis, possession of cannabis, and the cultivation and sale of the substance. The prohibition is warranted due to the danger that cannabis presents to the psychological wellbeing and health of its users, and moreover to the wellbeing of the public. However, he refers to the English philosopher John Stuart Mill which once said that it is not warranted to take a good from someone as it is interfering with the liberty of action of an individual and therefore prohibition is considered as an infringement of individual liberty. Hall continues that the prohibition of cannabis is at odds with the statement of Mill. The government's role therefore should only be in the regulation of cannabis and ensuring that the quality of the substance is maintained and freely available to adults, rather than prohibiting the substance (Hall, 1997).

Nadelmann argues that dominant international regimes tend to put their economic and political interests first but that these can change due to moral and emotional factors that are not necessarily related to economic or political goals. These factors include, humanitarian, religious, compassion, fear, prejudice and other sentiments, which can play important roles in the influencing and creation of the evolution of international regimes. This is also the case for global prohibition regimes, where emotional and moral considerations take the upper hand. The evolution of these prohibition regimes are very complex as interstate relations and intra societal interactions come to play. Besides security and economic interests, moral interests also come at play, not to forget about internal and external pressures that influence a state. In turn, the actions and opinions of these states are internalised by other states. He continues that these international prohibition regimes come to be because of various reasons. The most prominent reason is to protect its own interests and that of other influential

members. Furthermore, it is supposed to suppress, deter and to punish activities that are considered to be bothersome. This in order to be able to sustain security, order and justice among members of its community. Lastly, it represents the moral beliefs, values and prejudices of the legislators by using force and symbolic representation. Nadelmann continues that he believes that the international prohibition regimes are designed to diminish or destroy the potential havens where crimes can be committed and where criminals seek refuge to avoid punishment and prosecution. These international prohibition regimes grant a crucial element to governments in standardisation to be able to cooperate with other governments. He therefore concludes that bilateral relationships, unilateral acts and international conventions are not as effective as the international prohibition regimes (Nadelmann, 1990).

Levine further builds on Nadelmann's statements and sees prohibition as a globally wide system set up by various international treaties administered by the United Nations and can therefore be seen as a global drug prohibition. Every nation either has a law in accordance with this treaty or they have signed the treaty. Correspondingly, each government has military personnel or police officials to enforce this drug prohibition. Every government in the world has some sort of criminalisation regarding the sale and production of cannabis and other drugs, with exception to research, and production for medical use. Most authorities criminalise small amounts of illegal substances as well (Levine, 2003).

Levine argues that drug prohibition can be portrayed as a long continuum. He argues that on the one end you have decriminalised drug prohibition and on the other end you can find criminalised drug prohibition, where the last is the most punitive and most criminalised. He explains that the best known example of the criminalised end of the continuum is that of the United States drug policy. Where the authorities use police enforcement, criminal laws and incarceration to penalise illegal substance users. On the other end of the continuum, he points out the Dutch cannabis policy of the Netherlands. He believes that the Dutch cannabis policy is the best known example on the other end of the continuum, decriminalised drug prohibition. The Dutch do prohibit sale and production of cannabis but they chose to limit prosecution to certain licensed establishments, known as coffee shops. These coffee shops are allowed to sell small amounts of cannabis to adults for personal use, if they stay within the limits determined by the Dutch government (Levine, 2002). Bewley-Taylor agrees on this view. He believes that it is without doubt that the signed treaty is of prohibitionist character. The treaty obliges the authorities which have signed the treaty to follow the convention and to limit it to medical production and research. The convention is moved to reinforce the prohibitionist measures by requiring each signatory nation to make possession and use of drugs a criminal offence under their laws. He notes that it is crucial to be appreciative of the non-self-executing clause in the convention. While it is obliged that signatory nations apply international law, there is not a body of the United Nations that would be

able to enforce these treaties. As a result, this gives a certain margin or room for interpretation for authorities for laws on a domestic level. This leaves room for countries to experiment with harm reduction policies (Bewley-Taylor, 2004).

A review of the literature shows that most authors do not define what is understood with the phrase legalisation. Most authors did not clarify in their articles their thoughts on how legalisation should be defined. The articles immediately discussed tax revenue, penalisation, decriminalisation, increase of demand and supply and increase of drug use. Friedman agreed on this view and had the following to add. He noted that as the social health costs and abuse of drugs continues to rise that the call for legalisation of drugs increases in order to be able to deal with this problem. At the same time, the researchers in favour of drug liberalisation fail to describe how legalisation will be translated into practice or what legalisation precisely means (Friedman, 1990). Subsequently, Friedman does not offer a definition of legalisation in his article. Hawks shares the same opinion as Friedman. He mentions that all arguments that are in favour of legalisation of drugs (in this case for heroin) are based on two assumptions. The first is that policies of prohibitionist measures have failed and takes too much out of the government's budget and secondly that health comes at risk because there cannot be made any safety regulations do to the illicit status of the drug (Hawks, 1990).

Abbott et al. however did try to define what legalisation means. In their article they explained that the phrase legalisation ascribes to the characteristics that governmental institutions do or do not possess. These set of characteristics can be ascribed into three dimensions. Precision, Obligation and delegation. They describe obligation as a set of regulations or commitments by which actors or states are bound to adhere by. With precision is meant that rules are to be defined unambiguously via the conduct that is required or authorised. Lastly delegation, which leaves room for a third party that can further make rules, abide in resolving disputes and who has been granted the authority to interpret and apply the rules. Abbott et al. distinguish legalisation in three types: hard legalisation, soft legalisation and no legalisation. Hard legalisation that applies obligation, precision and delegation. Soft legalisation, which involves different combinations of precision, delegation and obligation and absence of legalisation where a service or good is, prohibited (Abbott et al., 2000).

The theoretical framework will consider the following definitions for prohibition and legalisation with regard to cannabis. Prohibition of drugs is construed by the United Nations where the signatories are required to prohibit the use of cannabis, the possession of cannabis and the sale and cultivation of cannabis. Prohibition is a long continuum where at the one end one can find prohibitionist measures strengthened by punishment and at the other end of the continuum a decriminalised variety. Prohibition therefore can differ from punitive measures to the lack thereof. Each country can set



forward its own laws and measures to comply to the 1961 Single Convention on Narcotic Drugs. Legalisation however, has been harder to define. Most authors have not attempted to define legalisation as they have failed to put legalisation in practice or to provide a definition. Therefore, I will use a definition that I view as the definition for legalisation, which is partially based on the views of Abbott et al. A governmental institution will have to put forward a set of rules which allow for the constituents to use a certain good or service. These set of rules will not infringe on the individual right of a constituent and allows the constituent to use this service or product. However, the government can set rules that are based in order to protect the health of the buyer in order to maintain public security and public health.

## 1.2 Anti-drug policy: experiences with legalisation

The theoretical framework has already described prohibition, where a country can choose to decriminalise or to penalise a certain substance or good. This is considered a form of drug policy, and drug policy can be divided in to several types as well. For instance the penalised model, decriminalised model, and a harm reduction model. The legal framework will try to find a working definition for drug policy. The theoretical framework has already discussed prohibition and will therefore not elaborate on the penalised model.

Tammi describes drug harm reduction policy as a policy that emerged in the 1980s and has had many confrontations in national, international and municipal drug policy making. Harm reduction can be defined in different ways but it is mainly considered as a policy tool to shift from a penalised model to a decriminalised model that is openly regulated. The reason why harm reduction is such a confrontational subject is because this policy tries to reduce harm inflicted by drugs but it does not try to eliminate it (Tammi, 2014).

Hathaway describes harm reduction more as a strategy rather than a policy. Hathaway considers harm reduction as an alternative to right wing prohibitionists and anarchic libertarians as it takes the middle ground. The anarchic libertarians consider drug use as a personal right for adolescents and that an individual should have the right to use drugs if they feel the urge to do so and that there should be no restrictions to withhold users from this right. Whereas the right wing prohibitionists vow for total abstinence when it comes to illicit drugs. Hathaway argues that no one in who is not in their right mind would want to prevent the reduction of harm done by drugs. He notes that harm reduction is easily adopted by policy makers and government officials as it emphasises on public health policies and it puts less strain on criminal laws or criminal policies. He mentions that even right wing advocates do not easily disavow harm reduction (Hathaway, 2001).

Levine describes harm reduction as a policy that aims to reduce the harmful effects of drug use by providing a wide range of services, which is described later on in this paragraph. He notes that US right wing conservatives have tried to undermine advocates of harm reduction policies by accusing them of being advocates for drug legalisation. However many other governments acknowledge harm reduction as a policy and even the United Nations see positive characteristics of harm reduction. He further describes harm reduction as a policy within drug prohibition which tries to transfer to a more regulated and decriminalised model instead of a penalised drug policy. He continues that harm reduction deviates from drug policies that advocate for repression, punishment and coercion towards a policy that advocates for regulation, tolerance and improvement of public health. He does not consider harm reduction to be the opposite of prohibition but solely as a measure to improve public health. He points out a wide range of services such as methadone maintenance, needle exchange and distribution, medical use of cannabis, and drug education. He thinks these programmes are important because they do not necessarily dispute prohibitionist measures but only helps to reduce the cruelty of prohibition. He continues that he considers harm reduction as a wholly pragmatic and tolerant approach towards drug users and advocates in favour of prohibition of drugs. This policy commends that both are not going to leave anytime soon and that it therefore should be treated as a problem in a responsible manner in order to reduce harm (Levine, 2002).

A different form of drug policy is decriminalisation. Hall considers decriminalisation as a relaxation on prohibitionist measures, which allows for the personal adult use of marijuana or hard drugs without the penal sanctions for production and possession. Hall conceives decriminalisation as a solid alternative for prohibition as he believes that there is a lack of information regarding the true costs of prohibition. He is angered by the disposition of the media who have established a false antithesis where the citizen has to choose between cannabis being harmful to public health or choosing that it is the opposite, where cannabis is harmless (or as he poses it as less harmful than alcohol) (Hall, 1997).

Krajewski defines decriminalisation as a softened prohibitionist measure compared to its American counterpart, which he considers as hard prohibition. He notes that in some European countries there has been a softened approach towards prohibition where drugs have been depenalised, possession has been decriminalised and where under certain specific conditions a supply of drugs is allowed. As well as having softened prohibitionist measures, he has noted that the European countries are focused on harm reduction, treatment and prevention. Where before drugs were penalised there has been a shift from criminal policies towards social policies and public health (Krajewski, 2004).

## *Cannabis Clubs*

Barriuso Alonso describes another type of decriminalisation which emerged during the 1990s in Spain. The phenomenon became known as cannabis clubs. A political movement decided to take a stand against prohibition of cannabis in Spain by questioning whether the anti-drug prosecutor would prosecute if they would grow their own supply of cannabis for personal use. The prosecutor replied that it ought to be legal and would not be considered as non-criminal behaviour. This political movement then set up an experiment to cultivate cannabis. The government intervened and trials were held, however the political movement was not acquitted by the court and were fined. However, another political movement continued cultivating but the government decided to turn a blind eye. The cannabis clubs registered themselves as associations in order to buy equipment and to rent buildings or land. Furthermore, the cannabis clubs record how much they produce and base their consumption need on how many members are currently in the club. Barriuso Alonso concluded that a cannabis club is a registered non-profit association that cultivates cannabis for its members to meet their personal needs. Furthermore, the members pay a monthly fee, either in labour or in currency. Every penny of profit is re-invested into the club to compensate for costs made (Barriuso Alonso, 2011).

Decorte describes cannabis social clubs as legal private non-profit organisations where users cultivate cannabis to meet their personal needs without interference from the illegal market. He notes that these cannabis social clubs are appearing all over the world. They have appeared in Colombia, Chile and Argentina and originated in Spain. The clubs adapt to the set local laws or the blind eye of the law. Decorte has investigated the surge of cannabis social clubs in Belgium and has seen that these clubs show close affinity to the Spanish club model. The Belgian activists also exploited a maze in the law where it is allowed to cultivate one female cannabis plant per person (and only for personal use). Therefore, they reasoned that it should be allowed to cultivate on a collective level if there are no public nuisances or aggravating circumstances. Decorte made the following observations regarding the Belgian cannabis social club model. He had found several strengths. Belgian clubs are non-profit organisations, similar to that of the Spanish model, and only dispense cannabis to club members. The clubs have a maximum consumption limit and profit made by the club has to be reinvested into the club. In order to become a member a person has to meet the following criteria to join a club. The member must be a Belgian resident and has to be a regular user. The associations are opposed to the Dutch coffee shop model relatively successful in preventing redistribution to non-members (including to minors) and in preventing drug tourism. Moreover, cannabis clubs do not easily provide cannabis. The clubs operate in a way where it is required that members have to apply for a registration procedure where the association applies checks and balances. It is not possible for members to attend on a daily or weekly basis. For newer members it takes up weeks or months before the club dispenses cannabis

to them. Cannabis clubs are a great alternative to the Dutch coffee shop model. Many criticise the Dutch model for being too widely available to public. Cannabis clubs are less inviting and not as widely available to public as the Dutch coffee shops. Another strength of the cannabis club model is that the clubs are in control over the production process. Members are aware what happens with their product and what has been done with it. With this model, consumers are able to actively participate whereas in a commercialised model a consumer only has the possibility to buy or not to buy. The black market brings this to an even higher level where the consumer has no control over the quality, price or the production of the product. Cannabis clubs do have this control and members are able to participate in the decision-making of all factors of their club (Decorte, 2015).

We can therefore conclude that drug policies can be defined as a wide set of policies that are divided into harm reduction, decriminalisation and prohibitionist measures, which can have different outcomes. Harm reduction is a policy that focuses on public health and does not necessarily oppose prohibitionist measures, as it is not focused on enforcing punishment and coercion but rather asking drug users to abide by health codes in order to reduce diseases such as AIDS. Decriminalisation has a non-punitive characteristic as it allows for personal use and personal cultivation, where adult users can freely consume substances. This without being penalised if they stay within the confinement of regulations that have been put up by the authorities.

### 1.3 Black Markets

The phenomenon of illegality allows for demand outside of legal markets. This is known as a black market. Black markets allow vendors to perform economic activity outside the scope of government sanctioned channels. Transactions made in the black market take place outside of the government's sight to avoid taxes or price controls. At a black market consumers can buy products that are either illegal, or to avoid taxes and price controls as stated before. E.g. illegal substances, firearms, human trafficking or exotic animals. Although consumers are able to avoid taxes or price controls, there are also downsides to the black market. For instance, possibility of violence, fraud, counterfeit goods and that the consumer cannot resort to have a reimbursement (Kenton, 2018).

Caulkins and Kleiman argue that black markets are created by the government as they impose too high taxes or because they deem a product dangerous for public health. Although a government sets prohibitionist measures it does not refrain citizens to be in search for these goods. If the need or demand arises for a certain service or good, individuals will always be in search of these goods to quench the thirst for their needs. However, black markets need a certain amount of users to be able to operate. When there is a lack of users, it is not economically appealing for drug dealers to sell their

substances. The risks of getting caught and having to search for their clients does not weigh up against the revenue they create. The opposite would be the case when there are millions of users and a vast amount of dealers to supply them with the requested goods. Because there is a vast amount of dealers, the risk of getting caught is lower and because of this huge market, it is also easier for users to find a dealer and thus keeping the prices of the products low. Due to globalisation, it is possible that these prices are brought down even lower, as it is possible to order your drugs secure online via the Dark web (Caulkins & Kleiman, 2018).

Boulding describes a black market as transactions that are sold or traded at higher prices than is allowed by law, which as a result take place illegally. The same is the case when an illegal transactions is traded below the legal asking price. He continues that it is only possible for a black market to evolve when more is demanded than can be supplied and when the price is below the free market price (Boulding, 1947). Solomon agrees on this view and explains that a fabricated imbalance between demand and supply has led to a predicted economic effect that originates from the prohibition of a desired good. What as a result leads to black markets due to prohibitionist measures to ban products or services (Solomon, 2008).

Mendoza refers to several definitions of black market, such as underground economy and black economy and explains that the black market provides for illegal goods and services to gain profit. This is considered illegal due to prohibition by law, a product that has been stolen or produced in a non-legal fashion. Alternatively, it has been obtained via clandestine channels but is traded in secret due to involvement by the authorities through regulation and taxation. He insists that due to a mix of stiff government regulations and high demand levels lead to an increase of the growth of the underground economy (Mendoza, 2010).

Grzybowski describes the black market as an illegitimate system of trade that evades government regulation as it operates outside the boundaries of the law and it is driven for making profit and fulfilling the needs of its customers (Grzybowski, 2004).

Blackburn et al. believe that black markets have always existed, may it be in lesser form or greater form, it has been a pervasive feature throughout the world and will continue to exist in all societies. Black markets exist due to citizens that either want to hide their economic activities, because these payments outweigh the legal activities practiced in the legal market, because their activities are not legal (Blackburn, 2012).

Feige further continues on black markets and notes that there is no such thing as one black market. There are multiple black markets for different types of products or services. He continues that citizens who participate in black market activities try to evade institutional rights, rules, regulations and

enforcement by police officials. Feige classifies four different black market activities, unreported, illegal, informal and unrecorded economy. He describes the unreported economy as circumventing established institutional fiscal rules, which are codified into tax codes. He describes the illegal economy as the pursuance of income that is generated by economic activities that are in violation of legal statutes. He describes the unrecorded economy as evading institutionally established rules that explain the requirements for statistical agencies. This accounts for income that should be declared in national accounting systems but are not recorded. Lastly, he describes the informal black market. This term can be understood as economic activities that evade costs and these activities are omitted from the benefits and rights that are incorporated in governmental regulations and laws, which cover contracts, licensing, torts, and financial credits (Feige, 1990).

The theoretical framework will define the black market as following: The black market has in a lesser degree always existed and is created by a lack of supply and a need for demand by consumers or producers to make a profit for either goods or services or for a consumer to fulfil their needs. It is an illegitimate trade system that is fabricated to circumvent regulations construed by the authorities. Furthermore, citizens make use of the black market for various reasons, to make their purchases go unrecorded or unreported, or to trade illegally or to work informally.

#### 1.4 Conclusion

After having reviewed these concepts the following can be concluded from the theoretical framework. Prohibition and legalisation, drug policies and the black market are strongly related to each other. As one does not exist without the other. Prohibition is a long continuum where on the one end we can find prohibitionist measures strengthened by punishment and at the other end, we have a decriminalised variety where use or service of a good is permitted if certain conditions are abided. Legalisation however is harder to define, as most researchers have not attempted to do so. Therefore, I see legalisation as following. Legalisation is when a governmental institution puts forward a set of regulations to allow their constituents to use a certain service or good. These set of rules will not infringe on the right of an individual to use a good or service. However, the government can set forward rules in order to maintain public security and public health in benefit of the user. Prohibition and legalisation are strongly connected to drug policies as governments can choose to pick either end of the continuum. A government can then choose to focus on prohibitionist measures, strengthened by punitive measures. But governments can also choose to focus on harm reduction policies, here the government does not choose to focus on enforcement of the law but asks users to abide certain regulations to benefit public health. If users stay within the confinement of the regulations, they will not suffer punitive measures. Without legalisation or prohibition there would not be regulations and

that would mean that the black market would not exist, as there are no regulations to circumvent. Therefore the black market has in a lesser degree always existed because if there is demand for a good, suppliers will always find a way to profit from the rise in demand. This illegitimate system is fabricated to circumvent regulations placed by the government to the suppliers own benefit.

## Chapter 2: Piercing the veil of prohibitionist measures in Latin America

Drug use in the Western hemisphere has been estimated to be around 150 billion dollar. Although the United States has sponsored the drug war in the Andean region, it still has amounted to an incredible amount of drug consumption. This region produces and exports around 600 metric tons of cocaine yearly. Trafficker violence that once plagued Colombia has shifted to Mexico where tens of thousands of people have succumbed to the violence that drug trafficking has brought to the country. Mexico remains a gateway to the United States for heroin, cocaine, methamphetamine and cannabis. However, most of these cartels are shifting towards smaller countries such as Guatemala and Honduras. Governments get caught in the corruption induced by the drug economy. This includes the billions of drug profits that pass through Caribbean financial institutions to be laundered. Latin America is consuming these drugs too. The second biggest country that consumes cocaine from the Andean region -behind the United States- is Brazil. This consumption of cocaine is setting of drug wars between gangs in the favelas. Whereas the middle classes of Chili and Argentina smoke cannabis at a rate of European rebellious youth. Across the Latin American region drug addiction is finally seen as a public health issue and for the first time Latin American political elites have voiced different opinions regarding drug policy which go against the grain of the prohibitionist measures voiced by the United States (Gootenberg and Campos, 2015). The first country to openly act against these prohibitionist measures is Uruguay. This country legalised cannabis and the government regulates the cannabis market via different channels. The thesis will illustrate the situation regarding contemporary and drug policies of the regional context. Subsequently, it will be portrayed how the law 19.172 came to be and lastly it will discuss the law in practice. This section can be divided into drug policy in Latin America and its war on drugs, towards legalisation in Uruguay and the development of the law and lastly an exposition of this law.

### 2.1 Drug policy in Latin America: War on Drugs

In the year 1990, Washington held the first Cartagena Drug Summit to propel stronger collaboration for the drug war in the region of Latin America. The United States perceived a sense of shared responsibilities and as a result, it was important to accept the premise that this drug crusade on the trafficking of drugs must also address the demand for drugs (Jácome and Velasco, 2016). In 2012, the Cartagena summit was held once again, but in this occasion the presidents of Latin America had tasked the Organisation of American States to analyse the current drug policies and to inquire into different approaches towards these drug policies. This summit had launched a discussion within the region that was for a long time considered as a taboo. Although the region is divided on the drug policies related



to these issues, mutual consensus is developing regarding the need to regard drug use as a public health issue opposed to treat this as a criminal issue. Furthermore, there was the compelling commitment to discuss the crisis of prison overpopulation due to incarceration of low-level drug misdemeanours and to give governments the space to undertake different policies that are accustomed towards the needs of every particular government (Labate, Cavnar, and Rodrigues, 2016). Some notable occurrences have been the governments of Bolivia, Uruguay and Ecuador (more information will follow later on in this chapter). These countries have shown to be willing to take up policies that differ from that of the conventional prohibitionist policies. With these policies, they have stood up against the 1961 Single Convention on Narcotic Drugs. Bolivia was the first to stand tall and to denounce the convention allowing for coca use. Later Uruguay followed by allowing for a regulated legal cannabis market and Ecuador implemented a law reform, which was more proportional in sentencing by differentiating between drug traffickers and drug consumers (Labate, Cavnar, and Rodrigues, 2016).

For more than 30 years, the United States dictated aggressive eradication of coca crops in the Andean region to prevent cocaine production. This would then be done by sending in eradication teams to enter small coca plantations accompanied by heavy armed security forces. The philosophy is that if the source is destroyed that supply will never reach consumers (i.e. the consumers of the United States). However, this approach is highly inefficient and harms local economies and criminalises the poorest sectors in the Andean region. In 2005, Evo Morales was elected as President of Bolivia. He declared to withdraw from the War on Drugs and implemented a policy to allow coca farmers to grow small amounts of coca to ensure basic necessities. The policy was implemented to limit the harm that has been done to coca production and to vary income sources of coca farmers (Grisaffi, 2016). As a result, the Bolivian government was heavily criticized but were eager to show the international community that they had not turned their backs on dealing with the drug problem. Although the funding by the United States had stopped the Bolivian government has seen an increase in seizures and the destruction of drug laboratories. In spite of Bolivia's coca policy not being designed to restrain drug trafficking it has proven that coca farmers join up in the battle against the production of drugs as they will give up traffickers to the police. This is because if a drug production site is found on their land they will lose ownership of their plot and results in loss of income. Moreover, the profit gained from processing cocaine paste are marginal, thus coca farmers are not willing to run the risk of losing their income to gain marginal extra profit. Therefore, it was hardly surprising that the Organisation of American States has recommended to replicate the policy implemented by the Bolivian government as a proper alternative to the prohibitionist measures implemented by other governments (Grisaffi, 2016).

The government of Ecuador has implemented a drug policy similar to that of Bolivia. But has tweaked it in regards to consumption rather than production. In 2008, Ecuador approved the new Constitution by referendum that drugs could not be criminalised and that the constitutional right would not be breached. The law of Narcotic Drugs and Psychotropic Substances regulate matters regarding drug use since the 90s (Lopez Daza & Gomez Garcia, 2016). Before this took place, we have to go back to the 80s to illustrate Ecuador's situation. Ecuador was located around countries that produced the most coca in the world. Ecuador is not known for its production but rather for its characteristic as a transit country for money laundering and drug export. Halfway the 80s Ecuador joined the war on drugs with the United States where its foreign policy highly engaged against drug trafficking and by implementing the strictest and toughest legal framework in Latin America. Ecuador had a rather conservative society that viewed drugs as evil, which had to be diminished via punitive and repressive policies. During the naughty's Ecuador had a complete turn regarding foreign and penal politics. Ecuador went from a position where they wanted to benefit from the resources directed by the United States to wage the War on Drugs towards a critical stance against the War on Drugs. Ecuador then proceeded to alter their strict and tough legal framework towards a legal framework where drug use was decriminalised and where the door has been opened for home growing (Jácome & Velasco, 2016).

Over the last couple of years, all kinds of policies have been implemented in Latin America to challenge the problem of drug use. The main pillar to challenge this drug issue has been prohibition. However, this has shifted towards decriminalisation, depenalisation and harm reduction policies to consider drug use as a public health issue. The Colombian government has been hard on drug use before the 1990s and for most countries it has been congress that allowed for decriminalisation of personal drug use. Colombia has been an unique instance by allowing for decriminalisation not via congress but via the Colombian Constitutional Court (Lopez Daza and Gomez Garcia, 2016). In 1991, Colombia had created their Constitution and with this Constitution rule of law was born as a model of State and the Constitutional Court. The last was assigned to safeguard the righteousness and supremacy of the Constitution. Therefore, in 1994 the highest instance of the Colombian Court had ruled that personal use of drugs should be decriminalised. Only those who would use drugs for instances other than personal use would be tried. The court ruled that the Columbian Constitution has a democratic and libertarian philosophy and not that of a totalitarian or authoritarian ideology. In addition, it is within the function of the judge to eliminate contradictions it has ruled that personal use of drugs is a liberty and the government thus has to maintain a trend of decriminalisation (Lopez Daza and Gomez Garcia, 2016). However, since the 1990s the Colombian government has tried to alter the Colombian constitution to be able to prohibit use of drug consumption. There has been a clash between congress and the highest instance of the Colombian constitutional Court and the Supreme Court. Several

Colombian governments have tried to intervene the verdicts that have been made by the courts, without success, as personal consumption of drugs is still not punishable by law.

Mexico had to deal with an emerging problem of drug production that has shifted from Central America towards Mexico. The market of drug trafficking and drug production in Mexico that initially was intended for the United States has expanded to a domestic market for additional revenue of the drug cartels in Mexico. Before 2009, Mexico had to deal with drug related violence and overcrowded jails. As other countries in Latin America, Mexico started to emphasise on drug use as a public health problem rather than viewing it as a criminal issue. In 2009 Mexico passed the amendment of “narcomenudeo” reform. This is translated as “drug retail sale”. With this amendment, it was possible for Mexican users to possess small amounts of drugs. If caught with a small amount of drugs the police would not be able to charge the user with criminal charges. Instead, if caught a drug user would have to be directed towards a mental health institution. Nonetheless, if an individual would be caught thrice, he or she would have to enter drug treatment provided by the government. All Mexican states needed to modify their regulations and penal codes. Via the “narcomenudeo” reform the Mexican government had implemented an approach that has focused on public health rather than the incarceration of drug users. Due to depenalisation of possession of small amounts of substances, it has been possible to reduce criminalisation and to help the users in finding their way to treatment centres (Arredondo et al., 2017)

Guatemala, a country plagued by internal conflict that resulted in over 200.000 people demising between 1954 and 1996. This conflict had led to an environment where drug trade could thrive. The conflict had created differences between the elite and the rural indigenous population which as a result had weakened the authority and the legitimacy of the Guatemalan government. The war had also driven resources away from initiatives that focused on drug counter measures. At the end of the war elements of the security apparatus albeit paramilitary, police or military became the core of drug trafficking organisations. The result was a weak state where local and national authorities were not able to ensure the safety and security of their citizens, let alone basic services normally provided by the state. This favoured the drug trafficking organisations and the drug trade fed the vicious circle of corruption that further weakened the state. Furthermore, the state allocated tremendous effort in law enforcement which resulted in the incarceration of young and deprived civilians. Individuals caught trafficking would be sentenced to 12 years of jail where a simple theft would be jailed for 3 years. A disproportionate amount (Feilding and Ochoa, 2016). In 2012, Pérez Molina was elected as president of Guatemala and he promised strict policies to maintain the safety of the citizens of Guatemala. This worried many, as he was the first president with a military background after the military dictatorship had ended. Molina had surprised ally and foe by taking up a very pragmatic and reformist approach

towards drug policies. The president had asked to reconsider their drug policies and to explore new approaches to overcome their struggle on their domestic drug issues. Under his presidency, the Guatemalan government has shown to be willing to move away from prohibitionist measures. However, in 2014 the Foreign Minister of Guatemala made a statement that it would not legislate outside the United Nations Drug Convention (Feilding and Ochoa, 2016).

When the drug policy in Argentina was developed, it focused on the vendors of drugs and not on that of drug users. 1924 was the first year that a criminal law was implemented regarding narcotics. The law 11.309 established that it was prohibited to traffic illegal substances into the country and to sell these without prescriptions from pharmacies. If caught one could be sentenced to up to two years of jail. In 1926, this law was amended and became law 11.331. This amendment meant that users would also be arrested with a maximum sentence of two years in prison, making an end between the discrimination of drug users and drug dealers (Corda & Rossi, 2016). Almost 50 years later law 20.771 came to be in 1974. This law was extended to penalties and offending behaviour. If one was caught trafficking the punishment would be more severe and the criminal would be jailed for three until twelve years. Use of drugs was punished severe as well. An individual that was caught using or holding drugs would be sentenced from one until six years in prison and would have to attend treatment clinics (Corda & Rossi, 2016). After Argentina regained its democracy judges interpreted the laws differently which limited the criminal law on drug users. This was followed up by the Supreme Court of Justice in 1986 where the Supreme Court of Justice had decided that it was against the constitution to be punished for use of drugs. During the following months of 1986, a law was drafted that had very progressive elements such as lesser jail sentences and decriminalisation of personal use and possession. This ruling lasted a few years but was overruled by the Supreme Court of Justice a few years later. Here a new law named "Montalvo" was introduced and declared that drug users were atrocious and a danger for society and were considered to be as evil as drug traffickers (Corda & Rossi, 2016). Studies from data of the Public Attorney Ministry between 2000 and 2009 concluded that the majority of the arrests were because of personal consumption and was at least 65 percent of all the crimes in Argentina. NGO's, political movements, sectors of education and justice have tried to promote discussions regarding reforming the current drug policy in Argentina and even drafted amendments for the current drug law but as of yet still to no avail (Corda & Rossi, 2016).

Over the past decades there has been a tremendous increase in drug related violence and drug use in the major cities of Brazil. Homicide rates have almost tripled since the 80s and over the same period prisons had an increase of 450% inmates. The government of Brazil has withheld progress to research other options for their drug policy. In 2006, the Brazilian government implemented law 11.343/06 which prohibited the incarceration of drug users and instead prescribed official cautions, educational

measures and community service. These measures also applied to those who cultivated their own home grown drugs. However, cultivation of drugs and drug use was still considered a crime. Furthermore, the Brazilian government did increase the punishment for drug trafficking. A drug trafficking offender could now be sentenced from three to five years. The downside to this law is, that it still does not differentiate between a drug trafficker or a drug consumer. This distinction has to be made by the judge. The court has to take into account the following criteria, such as criminal record, place of arrest, quantity and quality of the drugs and the social and personal circumstances of the suspect. A law that seemed very progressive turned out to be the opposite. With the implementation of this law between 2007 and 2010 incarcerations had been increased with more than 60% as the court could not make the distinction between suspects affiliated with organised crime or first time offenders arrested for purchasing drugs for personal use (Szabó de Carvalho, 2013). In 2012, the Brazilian government had installed a Congressional Commission to revise the Criminal Code. The Congressional Commission advised that drug users that had a personal stash for consumption of less than 5 days would be withheld from prosecution. However, there has not been a voting scheduled and since 2012, no actions have been undertaken since (Szabó de Carvalho, 2013).

Lastly, we pose Uruguay as an example as pioneer in the war on drugs. Few are aware of the liberties that Uruguay had set forward for its citizens in the past. During the beginning of the 19<sup>th</sup> century Uruguay had laid its foundation for a Welfare State and the movement was called after its president "Batllismo". Uruguay was one of the first countries in the world to allow for divorce by request of the woman, it had set a maximum for an eight hour workday, quality free education, legislated social security protection for labourers and public health care for its citizens. During that time gambling houses and prostitution were legalised, the state was separated from the church and now in 2013 Uruguay was the first to legalise cannabis (Garat, 2016). The Uruguayan government had passed law 19.172 via Congress that allowed for the regulation, production, distribution and sale of cannabis for recreational use. With this regulation, Uruguay has shocked the world with its progressive drug policy. Before, the government had only allowed for decriminalisation of possession and not for cultivation of cannabis which left a hole in the legal framework (Cruz, Boidi, and Queirolo, 2017). However, this model has not deviated from prohibition, as it still punishes those who are not in compliance of the rules set forward by the government. The cannabis market is regulated with harm reduction policy alongside of punitive measures. Although it seems that the government has violated international laws by allowing for the production of cannabis but the criminal system merely does not intervene only when the regulations have been unlawful (Galain Palermo, 2018). In the next part of this chapter the development of the law 19.172 will be described.

It is clear that a few countries have realised that the War on Drugs cannot be won only by implementing prohibitionist measures. These measures have led to incarcerations and over capacitation of prisons and since the War on Drugs started it has not shown a decrease of drug use. A few Latin American countries have realised that it is necessary to implement harm reduction strategies in order to be able to get a grip on the situation at hand. In addition, there are a few Latin American countries that are considering to decriminalise drug use and to implement harm reduction strategies as well. It is important to note that implementing these strategies does not mean that the War on Drugs has ended. Uruguay for instance still punishes drug traffickers that do not follow the strict regulations that the government put forward.

## 2.2 Towards legalisation in Uruguay: the development of the Law

It is important to understand that Uruguay has always had liberal policies, in order to understand the legal framework that has been set in motion in 2012. Uruguay's drug policy origin can be traced back to the beginning of the twentieth century. Uruguay was already known for its welfare state, state separated from the church, eight hour workdays and women who were allowed to divorce their husband. Batllismo had attempted to build a monopoly of state alcohol refinery. Due to its export oriented economy that focused on the exportation of cattle, which gave way to a prosperous economy in combination with newly found liberties this period was called "los años locos". During this period, use of drugs was tolerated in the public sphere as medicine and was also used for recreational use in households. Citizens were able to purchase these with and sometimes without prescriptions (Garat, 2016).

In 1914, Uruguay had ratified the Hague Convention with law 5.168 which asked the governments to regulate the commerce of cocaine and opiates. Governments had to hand in reports once a year regarding the amounts used in hospitals, drug traffickers and the importation and exportation of these substances. During the following years, the media had represented drugs as a serious health and security issue. Not soon after in 1925 the Geneva Convention was signed, which regulated and supervised the trade of cocaine and opium as well as the trade of cannabis, but cannabis was banned as a whole. Only for medical use these substances were allowed. During the 1930s these measures were expanded as Gabriel Terra elected as president performed a coup d'état and thereafter reigned as dictator. He then implemented two laws which monopolised the fabrication and selling of controlled substances. With these laws, he gave more power to the police which were able to further dominate the repression of trafficking and made it possible to punish offenders. In 1934, the Penal Code was altered and from then on possession or trade of controlled substances were up for punishment. During

the 30s drug use had almost been eradicated due to mandates and mass media campaigns held throughout every city in Uruguay and during the 40s until the 60s police had taken control over the drug market (Garat, 2016).

Although Terra was still in power as a dictator, he still allowed for Uruguay to ratify International conventions. During the 1970s, Uruguay ratified the Convention on Psychotropic Substances (1971) and the Single Convention on Narcotic Drugs (1961) and thus law 14.294 came to be. The two conventions banned illegal substances and demanded punishment for those in charge of the production chain, trade and distribution. Use of illegal substances for medical or scientific purposes however, was allowed. The conventions also made a distinction between drug users and drug traffickers. Signatories of the conventions were allowed to choose whether they would punish an individual drug consumer or to implement rehabilitation of the individual. Other Latin American countries had also ratified these conventions but in Uruguay there was a slight difference. The dictatorship banned the trade, distribution and production of illicit drugs but it did not ban personal use of drugs. This allowed for a decriminalisation of the law as Uruguayan citizens were allowed to have a small amount of drugs without being punished for it. Although personal use was not penalised it was hard to obtain drugs, as there were hardly any drug dealers in Uruguay. This in combination with doctors seeing drugs as pure evil, had transferred a certain message to the citizens of Uruguay that drugs had a negative connotation and was not to be used lightly. However, the use of drugs underlies the liberal sense that was implemented by the Battlismo movement. The second reason was because a lawyer had argued that if one used drugs at home and no one was bothered by its use then use of drugs should be found licit (Garat, 2016).

Halfway in the eighties Terra lost control of Uruguay and democracy was recovered. The reign of Terra had its impact through his mandates and mass media campaigns where drugs were found utter evil and led to sexual deviancy and criminal activity. Drug use was considered to be for Rock 'n Roll fans and was also more reserved for students and young people. It became clear via surveys that the citizens of Uruguay viewed drug use as one of the worst societal problems. This was reinforced by the media that immediately associated consumption of drugs with addiction and abuse. The government struck down on these young groups and mostly incarcerated university and high school students. At the end of the eighties social movements were formed to nullify the actions of the government. Although this was not 100 % successful, it did decline the pressure from the police on the young drug consumers. This social movement was called "Frente Amplio". Another social movement named "the Youth of the Socialist Party" later called for legalisation of cannabis which was endorsed by professors and lawyers which encouraged the individual liberty to consume cannabis for personal use. During that time, it had been discussed by the National Court if it would be possible to plant a few cannabis seeds. However,

jurisprudence in Uruguay had been divided between the liberals and the prohibitionists. Congress had appointed a commission to research the issue and the commission represented all the political parties in Uruguay. Nevertheless, Congress remained undecided and was not able to amend the existing laws (Garat, 2016).

In 1998, law 17.016 was passed and took place for law 14.294. Law 17.016 had a significant change and is the leading law to control drugs within Uruguay. The significant change that was made within the Uruguayan legal system was that the classification of the term "drug" was modified. Before, the law only dealt with psychoactive and narcotic substances. However, with the introduction of this law it also includes "chemical precursors or other chemical substances or products". The Uruguayan legislature had simply referred to the conventions of 1961 and 1971 from the United Nations (Faubion, 2013). Furthermore, law 17.016 let it to the sole responsibility of the judge to determine whether an individual caught with drugs, had an amount qualifiable for personal use or if its purpose was for drug trade. As law 17.016 did not quantify a maximum amount for personal use. If the latter was found the suspect would then have to undergo criminal repercussions. However, this law leaves an evident gap as judges can have different views on the maximum amount of use and the most tremendous flaw of this law is that while personal consumption is protected by this law it does prohibit the cultivation of the same drug. Drug consumers are therefore forced to interact with criminal organisations. Uruguayan officials were all but fond of citizens having to interact with the organisations due to their own policy. This paved the way for alterations of extant regulations. Uruguay has always had strict drug policies if this regarded hard drugs, at least in a criminal sense. Because these hard drugs are more destructive. E.g., since the 90s cocaine use has constantly been modified and during this time a new trend made way. A cocaine "paste" ravaged its way through drug users as this paste was to be inhaled rather than snorted. It was all but surprising that the Uruguayan government had focused on these harder drugs rather than focusing on cannabis, as cannabis has lesser effects on the lives of their citizens (Faubion, 2013).

In 1999, Uruguay had reacted on the increasing health concerns and drug crimes by issuing two decrees. The first decree addressed health concerns that had infested Uruguay's society and the second decree targeted the revenue of criminal organisations. The decree did not only institute penalties regarding the trafficking and sale of drugs but it also targeted the revenue that were gained from these transactions. However, these measures deemed meek, as the issues from drug trade did not diminish (Faubion, 2013).

In 2000, during a meeting of the Inter American Society of Press, Uruguayan President Jorge Batlle had inquired all Latin American presidents present to legalise all drugs. He argued that if cocaine was only



worth a dime then criminal organisations would not be dedicated to earn billions of dollars. Although Gervasio Guillot Minister of the Supreme Court of Uruguay did not believe that this would be the panacea to the current drug problem, but he did believe that it was a valid way to cut corruption caused by drug prohibition. He thought it beneficial to have an experiment regarding the regulation of cannabis or soft drugs in order to see how other drug use would be affected (Garat, 2016).

The Uruguayan political party Frente Amplio won the elections for the first time in 2005. One of their guidelines was to create a commission to discuss the current drug policy in Uruguay and to develop a new one. The commission concluded that Uruguay, like other Latin American countries, has seen an increase in personal drug use. Opposed to alcohol and tobacco, drugs are seen as highly destructive. The commission has noted that drug use has increased among young people. The response of the Uruguayan health care system has been to demand abstinence of the youth. Yet a small percentage of these people are willing to give up the consumption of drugs. Therefore, it does not work to have an abstention approach as most users are not willing to give up drugs. As a result, of these findings the Uruguayan government had built treatment and admission centres for drug abuse. As well as improving health care centres and public hospitals to offer improved health care service for drug abuse. Subsequently, offices were constituted in order to identify money laundering and a fund was installed to seize assets of criminal organisations that trafficked drugs. Congress had voted for limitations of banking secrecy and constituted a special court for organised crime. All these measures had resulted in jailing big entrepreneurs and corrupt lawyers for the laundering of money (Garat, 2016).

In June 2012, the Uruguayan government had proposed to regulate the cannabis market. This proposal came to be known as "strategy for life and living". This proposal was actualised in August by submitting a bill to Congress (Garat, 2016). The Uruguayan government concluded that seized products have not diminished demand and that consumption has only increased. Furthermore, it is believed that mismanagement of funds directed into the war should have been invested in basic human services. The costs of prosecutions, incarcerations and drug addictions have cost the government more than it has resulted in tangible results. Subsequently, the war on drugs has not been adequate at addressing the demand of drugs because the drug supply has not been combatted sufficiently. Lastly, it has created a monopoly for drug traffickers and criminal organisations to maximise their profits and has given them substantial reasons to attract more criminal players to the drug market of trafficking (Faubion, 2013).

Finally, on the 20<sup>th</sup> of December in 2013 the bill was passed through both chambers of the Uruguayan Parliament. This made the Uruguayan government the first to commit to regulating the cannabis

market from seed to sale. The objective of the law is to diminish harmful effects and potential risks of smoking cannabis for personal consumption on a recreational base. As well as to diminish the revenue made by criminal organisations and to separate consumers from having to buy from drug dealers (Leite, 2019).

### 2.3 Law 19.172

Law 19.172 starts with article 1 of “Marijuana and its derivatives”. Its first principle is to protect public health. Under prohibition there was an increase of drug consumption. Organised criminal groups controlled the market entirely and a new reality has been set in Uruguay. Because of the law cannabis products will be less hazardous as cannabis producers have to abide the strict regulations that are set forward by the government. Purchasing cannabis is safer as it is bought via state appointed pharmacies. The government can also control the price and the potency of the products and the government can decide who produces and what information has to be put on the packaging to inform consumers regarding health information. The second article claims that the state will commandeer and regulate all export, import, harvesting, production and harvesting of marijuana. Subsequently this article declares that the previous law no. 14.294 remains unaffected (Ministerio de Salud Pública, 2013).

The Uruguayan government respects the human rights of drug consumers. Therefore, the government thinks that drug control efforts are not more important than the human rights obligations. The Uruguayan government believes that if there is respect for human rights, that security will improve of its own concord (Leite, 2019). The government believes that everyone has the right to attain the highest standard of living and to enjoy public spaces in secure conditions. This includes treatment and rehabilitation of diseases as well as prevention to ensure that all freedoms and rights that are enshrined in the Constitution of the Republic (Ministerio de Salud Pública, 2013).

Community safety and respecting human rights are the second objective of this law and is entailed in article 4. This is achieved by curbing the violence caused by organised criminal groups via illegal drug trade (Leite, 2019). The Uruguayan government wants to protect its consumers by separating the trafficker from the consumer. By setting up a cannabis sector within the country the government hopes to differentiate the cannabis consumer from hard drugs. Furthermore the government hopes to curtail the dangerous interaction between drug dealers and consumers. Subsequently, with separating the cannabis consumer from the drug dealers the Uruguayan government aspires to diminish revenue of criminal organisations and simultaneously diminish their power (Faubion, 2013).

To reiterate, Uruguay aims to diminish the risks and harmful effects of smoking cannabis through regulation, by taking revenue from criminal organisations and by separating cannabis consumers from drug dealers. Uruguay has had a long history of regulating the alcohol market and the government aims to control cannabis in the same strict manner. Back in 1931 the government's Administración Nacional de Combustibles, Alcoholes y Portland (ANCAP) was established. ANCAP had to operate the oil refinery and a state alcohol monopoly to dispose of any illegal production of hard liquors. Although the state has lost its monopoly in 1996, it still continues to regulate the alcohol market which is seen as a favourable example for cannabis regulations (Bewley-Taylor, Blickman, and Jelsma, 2014).

Article 5 of the law mentions all the revisions done to previous laws no. 14.294 and no. 17.016 and also entails detailed information regarding institutions in charge of the production and regulation chain. This part explains the task of the Institute for the Regulation and Control of Cannabis (IRCCA). Within this article it is also discussed the formalities that come with determining what derivatives of marijuana crop are under their administration. This amendment also mentions the difference between cannabis crop and hemp. If hemp exceeds more than 0.5% of THC it is considered to be cannabis and when it is regarding derivatives it cannot exceed more than 1% of THC. When THC is within this range, it is considered to be the jurisdiction of the Ministry of Agriculture. Everything that exceeds 1% is considered to fall within that of IRCCA (Pulido Moreno, 2017). The next part of article 5 entails home cultivation, cannabis cultivation for scientific purpose and cultivation by cannabis clubs. An individual is allowed to cultivate a maximum of 480 grams annually and a cannabis club needs at least 15 members with a maximum of 45. The maximum amount is proportional to the number of members the club amounts. IRCCA will provide licenses to pharmacies for the sale of cannabis, as well as licensing for cannabis clubs. If an individual wishes to acquire cannabis via a pharmacy he or she will have to register with IRCCA and purchases may not exceed more than 40 grams a month. Article 6 entails criminal punishment for those who do not comply will be sentenced to 20 months to a maximum of 10 years of incarceration (Ministerio de Salud Pública, 2013).

According to Pulido Moreno article 7 of law 19.172 construes the juridical status of the IRCCA as a non-state led body. In articles 18 and 19 is entailed what the IRCCA is in charge of and their role to the National Drug Council as counsellor. Article 20 until 26 provides the organisational structure of the IRCCA. The board consists of representatives of the Ministry of Public Health, Social Development, Livestock, Agriculture and Fishing and a representative of the National Drug Secretariat. It is followed with the duration of term for each board member and a board member can only be re-elected for one consecutive term. The next section consists of articles 27 until 31, this details the collusion of the board of directors, the director, the Honorary National Council and the executive director. Here the chain of command is explained as well as which branch is in charge of which part of regulating the cannabis

market. One can think of logistic or fiscal matters. Articles 32 through 38 detail regulations regarding fiscal and resource matters of the IRCCA. This also includes licenses, donations, permits, sanctions, fines, and annual economic aid from the state (Pulido Moreno, 2017).

Article 39 through 41 entail violations and penalties. Article 39 stipulates, that it is the Board of the IRCCA that has the responsibility for implementing sanctions and violations of existing rules on licensing. Article 40 explains which sanctions can be implemented. This varies from a warning, fine, confiscation or destruction of goods as well as suspension or disqualification of licenses or registrations. In article 42 explains that criminal activity will be denounced before a court. Article 42 is a separate article that explains that a unit will be instituted to evaluate and monitor policies by institutions and agencies. The unit will be independent and issue reports annually. The annual report will be submitted to Congress and institutions and agencies are expected to take these reports into consideration for the implementation of this law (Ministerio de Salud Pública, 2013).

Law 19.172 ends with article 43 which declares that the Executive Branch shall regulate this Law within 120 days after proclamation and article 44 concludes with a statement that all laws contrary to this law are repealed (Ministerio de Salud Pública, 2013).

During the process of reviewing law 19.172, I came to the conclusion that the law in particular is focused on public health and not so much on diminishing the black market. Of course, the law states its regulation procedures but the law is more focused on public health, to make its citizens aware of the dangers of cannabis use. The law furthermore also facilitates in giving its constituents the possibility of kicking their habit. Consequently, the government treats cannabis similar to that of alcohol and tobacco. There are commercials and advertisings that make citizens aware of the dangers of marijuana and not to smoke marijuana and then to drive. It also prohibits commercials to promote cannabis use. Therefore, I believe that the focus of this law is to protect the lives of its constituents rather than diminishing the black market. However, do not mistake this for Uruguay loosening its enforcement on drug production. Although it has legalised the production of cannabis this does not mean that the production for other illicit drugs have been legalised as well. The same punishment stands as before legalisation of cannabis.

## 2.4 Conclusion

In this chapter, we have shown the current situation of Latin America and a shift moving from prohibition alongside punitive measures towards a harm reduction policy to protect public health. Countries such as Bolivia, Ecuador, Colombia, Ecuador and Argentina have shifted away from these prohibitionist measures but it was eventually Uruguay that has pierced the veil of prohibitionist

measures, as it has become the first country to legalise cannabis and to regulate the cannabis market. Furthermore, the contextualisation has shortly illustrated the events that have led up to the legalisation of cannabis by the Uruguayan government. As the Uruguayan government had posed that the public health and security of its constituents are more important than enforcing the law. Lastly, this chapter has provided us an insight on how the law became to be, what its objectives are and which governmental bodies are responsible for the execution of law 19.172.

## Chapter 3: Expanding the legal market in Uruguay

In 2012 former president José Mujica, had made the decision with his administration to start legalising recreational cannabis. This decision came in view of public security and public health, as Uruguay experienced the increase of crime in combination with the expanse of organised crime. This decision was made by the government and was a top down process. This approach was unparalleled in the international community and its implementation is a complex procedure. This procedure has forced the government to implement micro and macro policy decisions, which carry immense ambiguity (Boidi, Queirolo, and Cruz, 2016). Law 19.172 has been implemented in the beginning of 2013 and a year ago it has been fully implemented as retail pharmacies have been opened. However, there have been hiccups on the way to full implementation and to achieve its objectives written in the law. This section is dedicated to analyse law 19.172 in its current form and to answer the central question posed by the thesis, how effective has the legalisation of cannabis been to further increase the legal market? It is important to note that the central question is regarding the legal market, as it is arduous to find information regarding the black market as this is not tangible due to secrecy that is associated with it. Therefore, the thesis has posed the question in such a manner that it focuses on the legal market rather than that of the illegal market. To continue, firstly the analysis will elaborate on prohibition versus legalisation, followed by harm reduction policies. Consequently, the analysis will address cannabis clubs, cannabis retail pharmacies and tourism. Lastly, the analysis will add participatory observations that have been made during the field research in Montevideo. This includes observations with cannabis tours, retail pharmacies, cannabis growers and cannabis clubs.

### 3.1 Prohibition versus legalisation

In the first section of the thesis, the theoretical framework has discussed legalisation versus prohibition. As Miron and Zwiebel described, drugs were broadly blamed for social and personal ills, degraded morals and values and has produced corrupt politicians and law enforcement officials. In this light, many believe that it is necessary for the government to prohibit the production, sale and use of cannabis. Hall explains that all signatories of the 1961 Single Convention on Narcotic Drugs are instructed to prohibit the use of cannabis, possession of cannabis, and the cultivation and sale of the substance. The Convention states that prohibition is warranted because cannabis represents a danger to the psychological wellbeing and health of its users, and to the wellbeing of the public. The Uruguayan government had to convince its constituents that Law 19.173 was in its best interest and that prohibition was not as fruitful as perceived by the majority. Many Uruguayan residents were all but fond of this brand new set of regulations. Throughout 2013, it was found that 66 percent of the

Uruguayan population did not accept the regulation, sale and production of cannabis, other than for medical purposes (Cruz, Boidi, and Queirolo, 2016). However, after some state led campaigns regarding public security and public health Uruguayans had shifted their opinion. Now 78 percent of Uruguayans preferred that their fellow citizens should be able to buy from the cannabis retail pharmacies or cultivate their own cannabis, rather than having to purchase their cannabis from shady drug dealers (Bewley-Taylor, Blickman, and Jelsma, 2014).

Previously in the theoretical framework, Hall referred to the philosopher Mill. Here Hall mentioned that it is not warranted to take a good from an individual, as this is an infringement of the liberty of action. As a result, prohibition is an infringement of an individual's liberty of action. The government's role therefore should only be in the regulation of cannabis and ensuring that the quality of the substance is maintained and freely available to adults, rather than prohibiting the substance (Hall, 1997). As described in chapter 2, the Uruguayan government respects the human rights of drug consumers. The government believes that everyone has the right to attain the highest standard of living and to enjoy public spaces in secure conditions. The government believes that if there is respect for human rights, that security will improve of its own concord. In addition, the government believes that its constituents' human rights are more important than drug control efforts.

Miron and Zwiebel described the notion that the use of cannabis or other illicit substances induce problems, which can only be reduced via prohibition. Yet, there is a small group that discourages prohibition regarding use of cannabis and claim that prohibition is the root of the problems described at the beginning of this paragraph. This small group argues that prohibition is outdated and that there exist other policies that might be preferable (Miron and Zwiebel, 1995). Friedman has seen a trend where the call for legalisation increases as social health costs and abuse of drugs further rise and continue (Friedman, 1990). Earlier in chapter 2, the thesis has explained why the Uruguayan government has opted for legalisation, as it believes that prohibition does more harm than legalisation. The thought behind cannabis legalisation is threefold. The first reason is based on harm reduction policies, which commits to protecting the consumer's safety and health, the second is based on the individual's freedom of liberty of action, an individual must have the ability to contemplate what is in its best interest and the government should not intervene with this right. Lastly, the Uruguayan government intended to decrease organised crime to further increase public health and public security.

With the implementation of law 19.172, the Uruguayan government has opted for three means in which cannabis consumers can provide for their legal recreational cannabis. This allows consumers to freely choose in which manner they would like to procure cannabis. The first is by growing cannabis

yourself, the second is by partaking in the production of cannabis in cannabis clubs and the third means of obtaining cannabis for recreational use is via purchasing at a retail pharmacy. Before a user can obtain or produce its cannabis, he or she has to register with the IRCCA. One can do so by registering via a state-run post office branch. However, it is not possible to obtain cannabis via a cumulative way, i.e. it is not possible to purchase cannabis from a pharmacy and to grow your own cannabis at home. To be able to register, a resident has to be at least 18 years of age and it has to show proof of a utility bill or another document that can prove that you are a permanent resident. Once registered an individual is allowed to purchase a maximum of 10 grams a week totalling to a maximum of 40 grams a month. Individuals who wish to register with a cannabis clubs will have to follow a different route to finish their application with the IRCCA. In this case the cannabis club has to register the individual. Registering via the state-run post office branch is without cost and is done confidential and it is considered to be against the law if one acquires cannabis without registering with the IRCCA (Boidi, Queirolo, and Cruz, 2016).

### 3.2 Harm reduction policies

By legalising cannabis, the Uruguayan government has enabled a safer environment for cannabis users. Cannabis users are now able to procure their cannabis via pharmacies and do not have to procure cannabis from drug dealers anymore. Before a consumer would not be able to identify the chemical contents of the procured cannabis and it would have been possible that the drug dealer has contaminated its batch of cannabis with pesticides. Contemporarily, the Uruguayan government has instructed state cannabis producers to include the THC and CBD levels as well as whether the product is Indica or Sativa. The producers also have to follow strict guidelines set and tested by IRCCA in order to sell their products to consumers. If the requirements are not met, the cannabis batch will not be sold to the consumers.

The previous section mentioned how users are able to procure cannabis. If a user considers to buy from a pharmacy, the person is much safer because the cannabis is purchased in a safe state controlled environment. In the pharmacy the consumer will have to make use of a finger scanner in order to procure cannabis. This finger scanner prevents under aged youth from purchasing cannabis as they would have to register with a post office and then scan their fingerprint with a scanner. In contrast to identification papers, fingerprints are unique. Individuals who look alike could use each other's identification papers, whereas fingerprints are not interchangeable. Furthermore, the scanner is connected to a database which tells how much the customer already bought this week and how much



the customer can still purchase. This prevents cannabis users from purchasing more than the allotted amount of 40 grams a month.

The Uruguayan government has treated cannabis similar to that of tobacco and alcohol as it tries to educate its constituents to the danger and risks of cannabis use. The government tries to assist to the distribution of truthful and fair information from a human rights and scientific perspective. The Uruguayan government is based on the conviction that information is a fundamental tool to inform its constituents of the danger and risks of cannabis use. Based on law 19.172 the Uruguayan government has assigned the IRCCA to advise on the implementation of preventative measures that will help to raise awareness among the general public and cannabis users about the possible damages and risks of cannabis use in areas such as information and awareness campaigns education, the work environment and transportation. Furthermore, set forward by law 19.173, the IRCCA has taken upon itself to develop strategies that are aimed at delaying the onset age of cannabis use, increasing the perception of consumption abuse and to reduce the amount of problematic cannabis users (IRCCA, n.d.). The Uruguayan government has made commercials for television and radio to inform its constituents of the risks of using cannabis. The government uses ads similar to that of alcohol, where civilians are informed not to drink and drive. Here the government tries to prevent its constituents from smoking cannabis, by working or driving under the influence. If a civilian is in search of information there are various websites that explain the risks that are involved with smoking cannabis. The IRCCA and Junta Nacional de Drogas can inform civilians of the risks involved with smoking cannabis. By legalising cannabis the Uruguayan government has opted to inform its constituents of the dangers and risks of smoking cannabis. It has chosen to educate its civilians rather than punishing those who chose to smoke cannabis anyway.

However, four years have passed after legalisation of recreational cannabis in Uruguay and as of yet many Uruguayans have not shown fervour for its cannabis policies. It was estimated that roughly 65 percent of all cannabis consumed was produced outside of Uruguay in 2017. The policies as of yet, have shown little effect on the transnational drug trafficking system. From the estimated 400.000 cannabis consumers approximately 47.000 have registered for any form of the user registry<sup>1</sup>, and it was found that 70 percent of the Uruguayans that consume cannabis have procured their cannabis via illegal means (Serné, 2017). With the implementation of the law 60 percent of the population was against. From the other 40 percent that was in favour of the law only 60 percent had the intention to register with the IRCCA. These individuals have different reasons on why they reject on registering. Some are afraid that the registry is not as confidential as presented and that their identity becomes

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<sup>1</sup> An overview of all types of licenses can be found on the front page of [www.ircca.gub.uy](http://www.ircca.gub.uy)

known, some see no gain in registering, the latter who do not register because they can procure cannabis from friends or acquaintances and then we have the hard core believers that are opposed to the existence of a registry on normative grounds that are based upon philosophical views concerning individual and consumption rights (Boidi, Queirolo, and Cruz, 2016). The Uruguayan government still has to improve the implementation of the law. Because if these blockades are not surpassed then it will be impossible for the IRCCA to regulate the market, to increase the legal market and indirectly decrease the black market to fulfil law 19.172's objectives of granting each Uruguayan constituent's right to a safe and secure public health environment.

### 3.3 Flaws of law 19.173

In 2016, Boidi, Queirolo, and Cruz had done research on a Respondent Driven Sample Survey amounting to 294 high-frequency cannabis users in Montevideo. When Boidi et al. asked how the respondents procured their recreational cannabis there was a variety of answers. Several answers included the following, procurement via a third party, direct purchase, self-cultivation or by receiving it as a gift. It is always considered illegal to purchase cannabis from third parties (with exception to the pharmacy retails). Consequently, the respondents were also asked what kind of product they procured. The respondents answered with pressed cannabis or flowers. This is significant to know as flowers can be acquired legally whereas pressed cannabis is considered highly illegal as the quality is low and often has low psychoactive potency. This is twofold as it tells us whether a cannabis user resorts to the legal or illegal market and whether the consumer takes into regard the quality and safety of it. Most consumers consider pressed marijuana as dirty and only buy it if they have no other choice. When asked if the respondents also bought other products they responded that they procured flowers via acquaintances or friends who had a surplus of flowers. As the psychoactive potency of flowers is higher and it is grown without chemicals, therefore it clearly also costs more. Respondents admitted to buying their products via various means, thus in a cumulative way whereas this is mostly illegal. The survey had found that individuals who consumed cannabis on a high frequency, have bought pressed cannabis more often (62 percent). From these statistics it had become clear that most of the cannabis was bought from the black market and was the main producer of cannabis in Uruguay in 2016. From this we can conclude that individuals that grow cannabis for themselves are not as successful to meet their own needs of consumption (Boidi et al. 2016). This information is valuable as it shows us three elements. Firstly, the distribution system provided by the government is lacking, consumers cannot obtain their product and have to search elsewhere. Secondly, that cannabis consumers are not yet adequate enough to provide for their own consumption. Consumers have to purchase their goods via other illegal channels. Thirdly, most consumers prefer the illegal pressed cannabis over the legal

flowers. From this we can conclude that legalisation by the Uruguayan government has not yet booked sufficient results to further increase the legal market. This shows us that the legal market is not growing to its fullest potential and that there is still a lot of growth potential viable.

Four years have passed after legalisation of recreational cannabis in Uruguay and as of yet many Uruguayans have not shown fervour for its cannabis policies. It was estimated that roughly 65 percent of all cannabis consumed was produced outside of Uruguay in 2017. The policies as of yet, have shown little effect on the transnational drug trafficking system. From the estimated 400.000 cannabis consumers approximately 47.000 have registered for any form of the user registry, and it was found that 70 percent of the Uruguayans that consume cannabis have procured their cannabis via illegal means (Serné, 2017). With the implementation of the law 60 percent of the population was against. From the other 40 percent that was in favour of the law, only 60 percent had the intention to register with the IRCCA. These individuals have different reasons on why they reject to register. Some are afraid that the registry is not as confidential as presented and that their identity becomes known. Others see no gain in registering and the latter does not register because they can procure cannabis from friends or acquaintances. Lastly, we have those who are opposed to the existence of a registry on normative grounds that are based upon philosophical views concerning individual and consumption rights (Boidi, Queirolo, and Cruz, 2016). If these blockades are not surpassed then it will be impossible for the IRCCA to regulate the market, to increase the legal market and indirectly decrease the black market to fulfil law 19.172's objectives of granting each Uruguayan constituent's right to a safe and secure public health environment.

Public opinion and the unwillingness to register with the IRCCA are only a few of the hurdles that the Uruguayan government has to tackle in order to fulfil the objectives stated in the law. There are several concerns that might trouble the implementation. One for instance, is production issues for retail pharmacies. At this moment, 36.355 individuals are registered with the IRCCA to purchase cannabis via cannabis dispensaries. Supply issues to retail pharmacies is one of the issues that the legal market has not yet grown significantly. In 2015, under president Vázquez, the implementation of the law had moved ahead gradually. Twenty companies were soliciting to be chosen as one of either two companies to produce state cannabis for cannabis dispensaries. In the end two companies were chosen, ICC and Simbiosis. Both are of mixed foreign and Uruguayan ownership (Hudak, Ramsey, and Walsh, 2018). Before ICC and Simbiosis could supply the pharmacies, it was required that their batches would be approved and tested by the IRCCA. As of yet, the IRCCA only authorises batches of cannabis that have a THC level between the two and nine percent. Additionally it tests for mould, bacteria, pesticides, genetic specificity, metals etc. The two corporations were to sell two varieties named Alpha I and Beta I. Whereas Alpha I is indica and Beta I is sativa. These were sold in five gram containers for

the price of roughly 7 US dollar for 10 grams and around 1.40 US dollar per gram. This price was considered to be competitive with the black market. However, there was concern that due to the low levels of THC that consumers would divert to the black market to procure cannabis, but ultimately this was not the case (Hudak, Ramsey, and Walsh, 2018).

After a year's delay 16 pharmacies were finally able to sell to registered users. This led to a surge of registries, almost 8000 individuals registered to be able to buy cannabis from pharmacies. This was when another issue emerged. Cultivator Simbiosis had been delayed and therefore was not fully operational yet. When they were finally operational they did not pass the tests and standards set forward by the IRCCA. Therefore only ICC supplied the pharmacies with cannabis with Alpha I and Beta I. Consumers were not given the allotted amount set forward by the government as this production error led to the shortages that withheld pharmacies from being able to meet demand of their customers. It took days before the pharmacies would receive the next supply and to be able to sell to their customers (Hudak, Ramsey, and Walsh, 2018).

It is all but remarkable that regulating a new legal cannabis market poses challenges. As any producer or cultivator, it is uncertain what the market will demand. If produced too much cost will be made and this has to be prevented, but produce too little and there will be shortages and high prices. Over a longer period of time producers will get to know the demand for supply and will be able to meet demand more efficiently. The challenges have also arisen in Uruguay due to their particular Uruguayan model and typical economic forces. Due to individuals having to register via the IRCCA to purchase via cannabis pharmacies the amount of demand can alter sudden. Whereas changes to output of cannabis supply takes up to three months to adjust (Hudak, Ramsey, and Walsh, 2018).

Before initiating cannabis pharmacy retail roughly 5000 individuals were registered with the IRCCA. However, when sales started this grew to a total of 13.000. This meant that 13.000 consumers would be able to buy a maximum of 40 grams per month, which is 5200 kilogrammes monthly. Pharmacies however, were allowed to receive a maximum of 2 kilogrammes of cannabis every 14 days. Having only a total of 16 pharmacies their monthly supply would be 64 kilogrammes. This resulted in two bottlenecks, the first with the cultivators and the second with the pharmacies selling them (Hudak, Ramsey, and Walsh, 2018).

In November 2017, Simbiosis initiated supplying pharmacies with their Alpha II and Beta II products as they passed the tests and standards set forward by the IRCCA (Hudak, Ramsey, and Walsh, 2018). This relieved some of the strain put on the market. However, from my participatory observations I can confirm that the retail pharmacies have had trouble supplying consumers with cannabis. From my experiences in Montevideo, it became clear that the needs of these consumers were rarely met. During

my field research I had made friends with the owner of the hostel and some of its guests that rented rooms for a longer period of time. When hanging out in the common rooms the owner would now and then receive calls from acquaintances that the dispensary would have received another shipment of cannabis. He and his friend would then jump on their bicycles and race to the pharmacy to try to procure some cannabis. Just on one rare occasion he was able to buy from the pharmacy during my field research of nearly three months. These occasions illustrated that implementation of the law was lacking. My participatory observations have been confirmed by various interviewees. On all accounts my interviewees have agreed that the implementation of law 19.172 has been lacking. They all agree that the law is failing in providing sufficient demand for those who have registered via cannabis retail pharmacies. Carlos García (26th of December 2018) confirms that there have been long lines and that the implementation of the law is lacking due to supply issues. Eduardo Blasina (21st of November 2018) confirms this as well and argues that this has happened because cannabis has not been produced on such a large scale before. The government and the companies producing the state cannabis, are not experienced enough to produce on such a large scale. Blasina notes that this has to do with a learning curve where the companies learn from their mistakes along the way. Blasina continues that when a cannabis retail pharmacy is restocked that long lines form again and that the consumers purchase everything and the process repeats again. He argues that this should be resolved rather sooner than later by having the government granting more licenses to companies that can produce cannabis on a large scale.

My friends had registered via the IRCCA and are willing to comply to the regulations put forward by this institution but instead are driven to illegality to fulfil their needs. One of my friends started illegally growing cannabis on the top of his roof. He started growing cannabis, a few weeks prior to when I arrived in Montevideo (an ordinary cannabis plant takes up around three months of growing before it can be harvested). It was his first try to grow cannabis. Moreover, it was very interesting to see the crop gradually grow during my field research and to see it harvested as well. I believe he had done well attending to the crop but I have no knowledge whatsoever of growing cannabis and the smell and colour deemed similar to that of cannabis in the Netherlands, therefore I presume he had done well. However, during the time of growing his crop, he did not have a stash of cannabis, as he was unable to purchase cannabis via the retail pharmacies. To provide for his needs he called a friend who was a cannabis dealer. The dealer sold to him and his guests as well. The dealer would just come to his house with a bag of weed and had a small scale to measure the portions for his clients. He was all but fond of me asking questions and was very nervous as he suspected I was some kind of informant for the IRCCA or something similar. Only until the owner told him that I was doing research and that I was from the Netherlands he loosened up and was willing to converse albeit off the record and nothing

about his work basically. During my field research in Uruguay, I have seen him several times and I believe he was able to make a stable living out of it, as he earned a fair wage from all the tourists and residents buying from him. Which further established my participatory observations that the legal market has not dissipated the black market and that the legal market can increase tremendously.

### 3.4 Cannabis clubs

Cannabis clubs are one of three ways to procure cannabis via legal means in Uruguay. In order to set up a cannabis club there are three requirements to fulfil. The members first need to have approval to run a non-profit organisation. This implicates that with the founding of the club, the club indicates that its only purpose is to grow and distribute cannabis solely among its members. In order to do so the club has to provide a foundational board of at least 15 members and have to show a seal of a certified public notary. From these 15 members a board has to be formed comprising of a President, Secretary and a Treasurer plus an auditing committee and three alternates. The second requirement is that they have to register with the Ministry of Education and Culture and the last requirement is to register with the IRCCA. The founder of the club will have to make an appointment with the support office of the Uruguayan Postal Service to begin the process of registering. The postal service will then enter information of the club to the IRCCA such as personal data of the founders, basic crop information, opening hours and personal data of the technical manager. The IRCCA furthermore demands personal data of all the members accompanied with a utility bill or proof of address and proof of the property where the crop will be cultivated. In addition, it is required that the club sends a notarised document of the bylaws to the IRCCA and the Ministry of Education and Culture and also has to send a plan for cultivation wherein it describes its security and technical protocols. The IRCCA will then conduct an inspection of the club to establish the operational processes. E.g., adjacent areas with respect to hygiene, operational hours, club activity, because working outside of operational hours is prohibited with exemption of cleaning and maintenance. However, the IRCCA also inspects delivery system reports, crop plans, whether a club has a minimum distance of 150 meter from addiction treatment centres or educational facilities for students under the age of 18 and whether the club respects regulations regarding promotion and advertising (Queirolo, Boidi, & Cruz, 2016).

The IRCCA demands the following of the club's infrastructure. It is required of the club to have a designated space entirely devoted for growing of cannabis. It is prohibited for the club to have signs to indicate that it is a cannabis club. Furthermore, the IRCCA demands high security measures to be implemented. It is prohibited to cultivate cannabis plants that are higher than the surrounding walls of the premise, and access to the premise should be secured. Consequently, the club will need to have

a constantly working security system that covers points of entry, exit and openings surrounding the premise. In addition, it is strictly forbidden for minors to enter the cannabis club. If the IRCCA finds that these regulations are not met they will see to it that corrections will be made. The whole process of registering as a cannabis club can take more than a year (Queirolo, Boidi, & Cruz, 2016).

As Queirolo et al. describe it is rather time costly and a very bureaucratic procedure to register a cannabis club. During my research in Uruguay, I had spoken with members of cannabis clubs and they all concluded that it is very time consuming process to register a cannabis club. One member of a cannabis club noted that finalising the documents cost time, and then having to file the documents cost time, it is just a time costly process as bureaucratic procedures in Uruguay move slow. A different interviewee owned a cannabis club and had to handle matters with the IRCCA a lot. Their club had a functioning toilet upstairs, but this was not officially from the club itself. The IRCCA then required of the club that they would install a private bathroom. The club was allowed to use the bathroom but had to rent a chemical portable toilet to satisfy the IRCCA. If you consider that public health is the main objective of law 19.172 it is rather peculiar that they set up such time costly procedures to start a cannabis club. Rather it appears that due to the time costly procedures the law drives cannabis users out towards the drug dealers. As it is less of a hassle to procure cannabis from a cannabis dealer than to set up a cannabis club via a legal manner and then to have to grow cannabis, which is a time costly process.

Another interviewee, Andrez Araquistain (20th of December 2018) shared valuable information with me. Andrez for instance held concerns that it is too hard for cannabis clubs to be established. He believes that more cannabis clubs can be established if there were more lenient regulations. Anonymous interviewee (19th of December 2018) agreed on this. Interviewee mentioned that the IRCCA had too much regulations and that it was a paperwork battle to get the club established. The cannabis club had a bathroom upstairs but because this was from a different owner, the club had to rent a port-a-potty in order to meet the regulations of the IRCCA. Andrez continues that most cannabis clubs also father a lot of knowledge and could be a learning project for individual home growers. If home growers are allowed to be members of a cannabis club as well as growing at home it could help weaken the black market, as home growers would gain knowledge on tending to their crops, resulting in a higher success rate of harvesting. Home growers could pitch in at cannabis clubs where needed and it could diminish costs for cannabis clubs and simultaneously home growers gain knowledge to tend to their own crops at home. Andrez his club helps other cannabis clubs in the administrative process that is required to set up a club. While setting up a cannabis club is time-consuming, it is also very costly. Having to purchase or rent a building alongside purchasing or renting equipment is too costly to be able to cultivate cannabis without having to pay expensive monthly fees. Andrez shared

with me that he had to pay 4000 Uruguayan pesos per month to be part of the club. This is roughly 100 euros (at the moment of writing). If you presume that the crop does not wither and that the club produces 100% efficient it would cost a member 2.50 euros per gram (also not including time spent or labour in the club to cultivate cannabis). Which is more expensive than the 1.70 dollar per gram from the dispensaries. Furthermore, for cannabis users it would be cheaper to buy from cannabis dealers. If a club member would take into account the amount of effort and money spent in growing cannabis, the member might consider to buy from a drug dealer rather than putting a large amount of effort into growing cannabis. The Uruguayan government should consider to enlarge the amount of members allowed to be in a club in order to create economies of scale, which could help dissipate the black market. Rosario Queirolo (27th of December 2018), also is of the opinion that cannabis clubs should be allowed to have more than 45 members. A cannabis club is bound by the 40 gram per month per user. Most cannabis users do not consume 40 grams a month and because of this "waste" arises. Waste is the amount of cannabis that is not consumed by the member. A member has to purchase 40 grams a month, as the club is not viable if not at least 40 grams are purchased. As a result, cannabis club members sell their waste to friends and in some cases to tourists. The cannabis they sell to their friends withhold them from registering via the IRCCA, further withholding the legal market from growing. If one considers that cannabis clubs can be established more effortlessly, it could mean that citizens would consider to establish a cannabis club rather than buying from the black market. Another interviewee (19th of December 2018) told me that he owned a cannabis club. Although clubs are allowed to have a maximum amount of 45 members, he preferred to have 15 so that he could sell the remaining amount of cannabis to individuals that are not associated with the club. Because of this, he was able to set his own price and to earn a lot of profit.

### 3.5 Tourism

During my research in Montevideo, I had taken a tour that was organised by the yearly cannabis exposition. The tour brought us to several places that were worth mentioning, such as growshops, the first cannabis museum, a cannabis pharmacy and the parliament where the law was passed. All of us who participated in the tour were tourists, most visiting the country for its cannabis and most were able to procure cannabis via the black market. A few had purchased or gotten it from friends which they had made via the cannabis expositions the years before. However, most had procured their cannabis from drug dealers. During our tour we visited some grow shops which offered us cannabis without pay (but I wouldn't be surprised if the organisation of the tour had included this in the price). I figured this was a workaround to offer tourists legal cannabis, but Uruguayans are very warm and



generous and would not mind offering a tourist some cannabis. However, there was no way to be sure of it.

With Uruguay's law 19.173 it is only allowed for permanent residents and Uruguayan citizens to procure cannabis in a legal way. Therefore, tourists are not able to procure cannabis in a legal manner. Uruguayan lawmakers wanted to prevent that tourists would come to Uruguay solely for the purpose of consuming marijuana, as they were afraid that this would hurt their current tourism trade or their international reputation. Another concern was the scanty public support for the law, the government was frightened that this would garner support for the opposition. Although tourists have not been included in the law, there has been an increase of tourists coming to Uruguay. There are no official statistics about tourists inquiring for the procurement of cannabis from dispensaries or paying for "cannabis tours". Official data estimated that there would be an increase of 20 percent during the tourist season (November 2017 – February 2018). With these estimates, it is only expected that these numbers will further increase in the following years. The IRCCA has reacted to this dynamic by heavily sanctioning those catering to the needs of tourists. However, this will not eliminate the black market as we have seen that the war on drugs is counterproductive (Hudak, Ramsey, and Walsh, 2018). What seems surprising is that the main objective of the law was meant to protect public health and to assure that everyone has access to a quality product without health risks. Nevertheless, tourists end up buying from drug dealers. Opposite of what the government intended for their own citizens in the first place. Yet this is happening to tourists at the moment. Gustavo Robaina (6th of December 2018) agrees that something should be done about cannabis tourism. He argues that there are not enough trained professionals with understanding of drug policies in order to tackle problems that arise during the implementation of the law. Rosario Queirolo (27th of December 2018) also agrees with Robaina that something should be done about the situation at hand. The government is choosing to ignore this situation. The fact is that cannabis tourism exists and that a policy should be constructed on how to solve the matter. One of the objectives of law 19.172 is to diminish the black market, and this goal is undermined due to cannabis tourism as tourists are buying from dealers. The cannabis users that originally procured their cannabis via the black market and now have registered via the IRCCA, have been (partially) replaced by the cannabis tourists. The progress that has been made by registering cannabis users has been partially nullified due to cannabis tourists. It is important to cut off the revenue stream to the black market. If dealers do not have a revenue stream it is not tempting for dealers to produce and sell illegal cannabis. From my participatory observations, I have noticed that dealers would visit a person at the clients' house to sell cannabis, rather than standing on a corner and asking if you would like to buy cannabis. The dealer in question had his whole roof full of cannabis flowers. He was not even concerned about getting caught or his neighbours calling the police on him.

He even mentioned to me that he had multiple houses where he grew his cannabis. He told me that he had plenty of customers and only wanted to sell more. The Uruguayan government should consider to give tourists temporary permits to be able to purchase cannabis via legal means and to avoid tourists from purchasing from the black market and thus strengthening the position of it. However, it is necessary to firstly establish a proper means of production as demand cannot be met at the moment. This might not necessarily increase the legal market but it takes revenue away from the black market, which should be considered important as well.

### 3.6 Latin American community

With law 19.172 Uruguay has presented itself as a pioneer in the cannabis sector. Uruguay is at the threshold of convincing the Latin American society to steer away from the prohibitionist measures that have been mandated by the 1961 UN Single convention. Its work with law 19.172 is unprecedented and crucial to that of the Latin American community. It shows that the repressive punitive measures should be replaced with harm reduction policies. It is important to note that with these harm reduction policies Uruguay does not give a mandate for the production of drugs. The Uruguayan government has set forward a particular set of regulations and if these regulations are not met, those who violate the law will be punished. The Uruguayan government has carefully thought through to choose the path of regulating the cannabis market. The government believes that regulating the market with harm reduction policies, alongside with punitive measures, is in the main interest of the Uruguayan community. However, it is necessary for the Uruguayan government to further perfect law 19.172 as there are still many flaws. Implementation of cannabis retail pharmacies is lacking as the state produced cannabis is not producing sufficient batches to keep up with the pace of demand of the retail pharmacies. The bureaucratic processes to establish a cannabis club is too strenuous and takes up great amounts of time. Although the legal market has grown since the implementation of law 19.172, it has not increased as efficiently as expected. Tourists have filled the vacuum in the black market and in combination with insufficient supply from the cannabis retail pharmacies -which led Uruguayans back to the black market- has not led to the intended diminution of the black market. Once these flaws are perfected by the Uruguayan government and the regulation model has matured into a regulation model without production hiccups, it is expected that there will be a surge of cannabis legalisations throughout Latin America and perhaps the rest of the world will follow as well, albeit in different forms of regulation or legalisation. For other Latin American countries, Uruguay's mistakes can be used as a case to anticipate errors and further improve the Uruguayan regulation model towards their own regulation model.

### 3.7 Conclusion

This chapter has shown you the flaws of law 19.172 and that it is mostly lacking supply issues rather than a sound policy framework. If the government is able to grant more companies licenses to produce state cannabis it is possible to alleviate the stress that has been put on the two other companies and making it possible for consumers to have a steady supply of cannabis. Furthermore, cannabis clubs should be able to be established faster and should be allowed to have more members. The amount of 40 grams monthly is too much for most consumers, which leads to them selling their waste to friends or tourists. Consequently, the government should address the issue regarding cannabis tourism as they feed the black market. One of the goals of law 19.172 was to diminish the black market, but this goal has not been met because tourists have taken the place of the previous buyers. If all these flaws will have been repaired, then then the legal market will grow tremendously. In a few years when the Uruguayan regulation model has matured and all the issues and flaws are resolved, we might see a wave of legalisation throughout the Latin American region.

## Conclusion

To conclude, how effective has the legalisation of cannabis been to further increase the legal market in Uruguay? It is a fact that the legal market has grown, but based on the insights of the analysis and the field research it can be argued that the legal market could have significantly increased more. As observed in the analysis the main issues for increasing the legal market could be found in the production channel for retail pharmacies, cannabis clubs and tourism. The government has underestimated the initial group of cannabis retail registrations, in combination with a state supplier not meeting the regulations that were set forward by the IRCCA, which has led to a major scarcity. Furthermore, cannabis clubs are too hard to set up and it is too time costly. More cannabis clubs could lead to an increase of the legal market. Lastly, tourism is a small issue as it feeds the black market. Tourists are not able to buy cannabis from retail pharmacies and therefore have to resort to the black market. Although it is a small percentage, every purchase that can be withheld from cannabis dealers can result in discouraging cannabis dealers to further grow cannabis, because it just is not as lucrative as it was before and will result in increasing the legal market.

In 2012, Uruguay has shocked the world by proposing to regulate the cannabis market. With this policy, Uruguay has retreated from their prohibitive approach and has made a tremendous impact on the academic debate legalisation versus prohibition. Uruguay believed, that prohibition has increased consumption rather than decreased it. As well as failing to address the demand of drug supply. As the drug supply has not been combatted sufficiently. In addition, Uruguay believes that their funds have been mismanaged by allocating resources into the drug war and should have been allocated towards basic human services. Furthermore, the costs of incarcerations, prosecutions and addictions have cost the Uruguayan authorities more, than it has resulted in tangible results. On the 20th of December in 2013 law 19.172 was passed in both chambers of parliament. Therefore, it has made Uruguay the first country in the world to legalise and regulate cannabis, with its central goals to diminish harmful effects and risks associated with smoking cannabis for recreational use and to decrease profit made by drug organisations. With the passing of the law, the government would now regulate cannabis from seed to sale. Although there have been implementation issues, the Uruguayan government has proven that legalisation with harm reduction policies is a proper alternative to prohibition. The Uruguayan government has implemented preventative measures that will help to raise awareness among the general public and cannabis users about the possible damages and risks of cannabis use in areas such as information and awareness campaigns education, the work environment and transportation. Furthermore, set forward by law 19.173, the IRCCA has taken upon itself to develop strategies that are aimed at delaying the onset age of cannabis use, increasing the perception of consumption abuse and to reduce the amount of problematic cannabis users. By legalising cannabis, the Uruguayan

government has opted to inform its constituents of the dangers and risks of smoking cannabis. It has chosen to educate its civilians rather than punishing those who chose to smoke cannabis anyway.

With law 19.172 Uruguay has presented itself as a pioneer in the cannabis sector. The Uruguayan government has carefully thought through to choose the path of regulating the cannabis market. The government believes that regulating the market with harm reduction policies, alongside with punitive measures, is in the main interest of the Uruguayan community. However, the law stands and falls with its constituents and it is vital that the Uruguayan government resolves the issues regarding the retail pharmacies, cannabis clubs and cannabis tourism in order to further increase the legal market and have the Uruguayan citizens to support law 19.172. If all these objectives have been met, the flaws have been resolved and the Uruguayan regulation model has matured we might be able to experience a green wave throughout Latin America where each country will legalise cannabis or implement a similar model, and perhaps countries outside the region will follow suit. However, before this can happen the Uruguayan government will have to make some alterations. In order to further alleviate the stress that has been put on the production capacity it should be considered to alter the exclusivity of distribution. As of yet it is only permitted to either register as a home grower, member of a cannabis club or to purchase via a cannabis retail pharmacy. If registrants were allowed to procure cannabis via different means, it would help alleviate stress put on each of the three production methods. Home growers and cannabis clubs would be able to purchase via retail pharmacies if their harvest fails but this also relieves pressure on state produced cannabis as there are multiple ways to procure cannabis. Furthermore, it might become more alluring to register via the IRCCA, as there are multiple ways to procure cannabis. The lack of choice can result in the consumer choosing to resort to the black market. Although it is never possible to eliminate the black market entirely, it is possible to increase the legal market significantly via these options.

Another resolve to further increase the legal market is to loosen regulations surrounding cannabis clubs. The process to start a cannabis club is a bureaucratic hassle as it takes over a year to finalise the documentations. This is a full year where registrants have to resort to the black market. It would be beneficial if the IRCCA or any other instance or cannabis clubs could aid new cannabis clubs to set up their club. Another issue is the cost to be part of a club. It would be beneficial if a club were able to have more members. It would benefit the cannabis clubs due to economies of scale, as it is more efficient because of the cost advantage that the clubs obtain due to their scale of operation. This would also be beneficial, as less clubs would be needed to register in the future, as the capacity would increase. Furthermore, a club is bound by the 40 gram per month per user, which results in wastes which the member cannot consume. As a result, it is sold to friends, acquaintances or tourists withholding them from registering with the IRCCA and not further increasing the legal market. If one

considers that cannabis clubs can be established more effortlessly, it could mean that citizens would consider to establish a cannabis club rather than buying from the black market.

In regards to tourism, the government wanted to avoid cannabis tourism but this has not been prevented. The government can turn a blind eye to tourists but this does not change the fact that they are there to procure cannabis, albeit via illegal means. The main objective of law 19.172 is to secure public health, safety and security to all. This should include tourists as well. A secondary objective of the law is to diminish the black market but the black market is maintained due to the tourists visiting the country. The government should think of a temporary permit where tourists can buy cannabis in retail pharmacies. However, this should only be done when the supply issues are resolved, it is of no worth to further strain the supply issues with tourists demanding to quench their needs.

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## Interviews

Interviewee	Professional profile	Keywords	Place and date	Duration
Eduardo Blasina	Director of the Museum of Cannabis / Engineer	Registration - IRCCA - implementation - shortage of marijuana - public opinion - medicinal cannabis- black market – Cannabis tourism – hemp – Law 19.172	Montevideo 21/11/2018	13 minutes

Gustavo Robaina	Cannabis Monitor / Professor of Political Science	Law 19.172 – Cannabis Tourism - cannabis clubs – Monitors – Implementation – Professionals – international legalisation – Hemp – conservative countries	Montevideo 06/12/2018	27 minutes
Anonymous	Cannabis Club Anonymous	Regulation - Cannabis clubs - Monthly subscription – Start-up regulations – IRCCA – Limited production – Exports	Montevideo 15/12/2018	15 minutes
Anonymous	Producer of Cannabis / Cannabis dealer / former Cannabis Club owner	Regulation - Cannabis clubs - IRCCA – Start-up regulations – Non-member sales – Limited production – Hemp – International competition	Montevideo 19/12/2018	37 minutes
Andrez Araquistain	Vice president of Cannabis Club Amando la Maria	Regulation - Cannabis clubs - Monthly subscriptions – Start-up regulations – IRCCA – Pioneer - Implementation	Montevideo 20/12/2018	34 minutes
Carlos García	Professor in Chemics	Implementation – product regulations – research – sudden legalisation – professionals - conservatives	Montevideo 26/12/2018	19 minutes

Rosario Queirolo	Department director of Political science	Implementation – regulations – cannabis clubs – Cannabis Tourism -	Montevideo 27/12/2018	17 minutes
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