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## Uruguay government will produce marijuana

Sally Ramage<sup>1</sup>

### Strengths and weaknesses- Uruguay- a thriving developing country

Uruguay is one of the most economically developed countries in South America, with a high Gross Domestic Product (GDP) per capita of over \$14,000 and it is the 48th highest in Human Development Index in the world in 2011, and the first by human development in Latin America, when inequality is factored in. This indicates that Uruguay is a growing and thriving country and although by Western standards, \$14,000 is very low, compared to countries in the region- Uruguay citizens are 'rich'.

### Factors that support Uruguay's drug production decision

The most important factor in Uruguay's favour and one which may make this a successful anti-drug-trafficking strategy is the fact that Uruguay has a very low corruption rate, as measured in 2011 by *Transparency International*. After Chilli, Uruguay has been ranked the second least corrupt country in Latin America. This means that the Uruguay government is not likely to form criminal drug-trafficking cartels. Another factor is the country's comparative prosperity.

### Uruguay is a free trade zone

It remains to be seen whether Uruguay's lofty ideals concerning anti-drug trafficking will succeed or whether, after a period of time, the plan is to denationalise this planned marijuana-producing industry. Privatisation of Uruguay's marijuana manufacturing industry can be lucrative and it can also create much needed funds from the taxation of the manufactured marijuana.

### Uruguay's planning of marijuana manufacturing industry

It is clear that the Uruguay government has made a study of the potential for marijuana manufacture in its very fertile hillsides. The Uruguay government published the fact that they had performed, and most likely, documented plans; costed them and performed the necessary 'due diligence' in order to borrow money to put the plan into action. One year ago the Uruguay government planted and were well rewarded with a bumper hemp crop, indicating a high probability of excellent future marijuana crops.

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### **Weakness: Potential Loss of control by future privatisation**

The downside is that such a move later on would mean the immediate loss of control if it decides to privatise this drug industry. The potential of future subsidiaries needs to be considered. Whether the government would sell the industry to non-Uruguay persons, legal or human, remains to be seen. It may even be that the Uruguay government has a sophisticated plan- perhaps to imitate Switzerland- where property cannot be bought by non- citizens and more importantly, where a breach of banking secrecy is a criminal offence, notwithstanding the fact that the Criminal Investigation Authority ('CIA') of the United States found Switzerland to be self-supporting of its marijuana production and consumption.

### **Weakness in Uruguay's plans – political instability**

The most worrying part of this plan is the fact that Uruguay is *not* politically stable. Other serious contra-indications are heavily supported by some scrupulous, scientific and medical research and also some not-so-scrupulous-anecdotal and repeated hearsay. These findings make fearful reading.

### **Results of drug taking: Permanent Lower IQ**

The United Kingdom's Department of Justice published in August 2012, the findings of some very long-term studies on young people who smoke marijuana, managing to follow these persons through their life's paths until they reached middle age. Young people who smoked the controlled drug, marijuana, have been found to have an irreversible lowering of their IQ and this is a *permanent loss*.

### **Result of drug taking: major depression and further drug use**

Researchers have reported that cannabis use before the age of 14 years strongly predicted schizotypal symptoms in adulthood, independent of early adolescent schizotypy, major depression, anxiety, other drug use, and cigarette use (*Medscape* reported).

### **Law report on drug taking: *Barking & Dagenham London B. C. v Bakare*<sup>2</sup>**

The *Barking* case concerned the upholding of an 'anti social behaviour order' ('ASBO') was upheld on appeal. The appellant attacked the discretion of the trial judge, the appeal system being used as a sort of '*motion to recuse*' after the trial rather than during or before the trial in the lower court. In English courts, '*motion to recuse*' has very rarely been used. In this case, the matter was treated by the defendant's legal representatives as if there was 'no case to answer' and were this the case in a Crown Court or a Magistrate's Court, the court may decide, at the close of the prosecution case, to dismiss the case of its own motion or on a submission that there

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<sup>2</sup> [2012] EWCA Civ 750.

is no evidence which the defendant need answer. The finding of a case to answer requires a determination of law separate from a finding of guilt. A decision to acquit the defendant after finding a case to answer is based on factual evidence.<sup>3</sup> The background was that a long standing secure tenant had lived in her flat with her three children and it was the anti-social behaviour of the youngest offspring that was the crux of the issue. The tenant's nineteen year old son had been involved in some ASBO behaviour including the '*use and possession of cannabis*'. The tenant's young son had committed the offence under s. 5 of the Misuse of Drugs Act 1971-possession of a controlled drug, subject to s.28. One of the key points about 'possession' is that it does not imply any kind of fault, blame or guilt.<sup>4</sup> There are two elements to 'possession' – the physical element and the mental element, as per *R v Lambert*.<sup>5</sup> He was *not supplying* the cannabis- it was for his personal use and the starting point of the sentencing range for this offence is a fine or at worse a community order for this class B drug, cannabis.<sup>6</sup> It was alleged that he also had some connection with firearms and ammunition found near the premises. Barking and Dagenham Borough Council sought possession of their property from the tenant, the man's mother, for rent arrears as well as because of her son's anti-social behaviour. On the first consideration, the court granted an ASBO against the younger son and adjourned the possession claim, but by the time of this hearing, the tenant's son had been involved in further offending and had breached the newly imposed ASBO and the Tenant had arranged for this son to reside elsewhere. At the hearing, the tenant conceded that the grounds for possession were made out, but asserted that her son would continue to live elsewhere thereby ceasing the nuisance. She therefore sought a suspended order. The trial judge was unrelenting and decided that the tenant's actions were 'too little too late' and that he had no confidence that she could do anything to control her son's escalating conduct and so he granted the possession order. The tenant appealed on the basis that the Judge had failed to properly consider either the measures she had put in place to deal with the problems and her own personal circumstances. The appeal was dismissed. The Court of Appeal decided that there had been no error of law and that the appeal was merely 'an attack on the exercise of discretion by the trial judge'. It was clear from the lower court's judgment that, overall, the judge had had a good grasp of the case and it was material that he had adjourned the first hearing having impressed upon the tenant how serious he found the antisocial behaviour to be. There were no grounds to interfere with the judgment.

### Legislation on cannabis in the United Kingdom

Evidence would be needed that cannabis was in the custody of the defendant's son, or that the cannabis was subject to the control of the defendant's son and s. 37 (3) of the Misuse of Drugs Act 1971 states that:

*'For the purposes of this Act the things which a person has in his possession shall be taken to include anything subject to his control which is in the custody of another'. However custody of a thing does not necessarily mean that it is in his 'possession'.*

It is also necessary for the tenant's son to know that the cannabis in question is under his control. If he knows the nature of the substance (the cannabis) and that it under his control, then he is said

<sup>3</sup> See *DPP v Uddin* [2006] EWHC 1523. See also *Galbraith* 73 Cr. App. R. 124, when the Appeal Court set out the Crown Court test to be applied.

<sup>4</sup> See Paul Connor, (2012) *Blackstone's Police Manual 2012, Volume 1- Crime*, Oxford Oxford University Press, as pg 50.

<sup>5</sup> [2002] 2 AC 545.

<sup>6</sup> See *Archbold Magistrates Courts Criminal Practice 2011*, Sweet & Maxwell, page 1263.

to be legally in ‘possession’ of it. If the tenant’s son was mistaken as to the quality of whatever was in his possession. In itself this fact can form part of a defence to the offence of possession of cannabis.

In the case of *R v Forsyth*<sup>7</sup> the defendant Forsyth argued that there was a distinction between a person carrying something in a container and a person carrying something inside something else in a container. In the Forsyth case the facts were that Forsyth was found in possession of a box which contained a safe and inside the safe was a large quantity of a controlled drug. Forsyth argued that this type of possession should be differentiated from the situation where someone simply had possession of a box with drugs in the box. However the Court of Appeal decided that there was no difference and that the issues of proof were the same. However, if a controlled drug were placed into someone’s pocket without his knowledge, he would be, in fact, completely unaware of its presence on his person and so cannot in law be in ‘possession’ of that drug, as was the case in *Warner v Metropolitan Police Commissioners*.<sup>8</sup>

### **Psychotropic Substances (article 22)**

The most important factor in Uruguay’s favour and one which may make this a successful anti-drug-trafficking strategy is the fact that Uruguay has a very low corruption rate, as measured in 2011 by Transparency International. Another factor is its comparative prosperity- Uruguay is one of the most economically developed countries in South America. Uruguay has a high Gross Domestic Product (GDP) per capita of over \$14,000.

### **Uruguay was the 48th highest in Human Development Index in the world in 2011<sup>9</sup>**

Uruguay is a growing and thriving country and although by Western standards, \$14,000 is very low, compares to countries in the region- that is ‘rich’. It remains to be seen whether Uruguay’s lofty ideas of anti-drug trafficking will succeed or whether, after awhile, the marijuana-producing industry will privatise the industry to the highest bidder and thus make a huge profit but lose immediate control after its acquisition by whomever and their potential future subsidiaries. However, the contra-indications by scientific research are fearful. Young people who use the controlled subjects have been found to have an irreversible lowering of their IQ and this is a permanent loss. Furthermore, researchers have reported that marijuana use before the age of 14 years strongly predicted schizotypal symptoms in adulthood, independent of early adolescent schizotypy, major depression, anxiety, other drug use, and cigarette use. The Uruguay government proposes to grow marijuana and dispense it to registered users and they say that this is a bid to ‘fight drug trafficking’.<sup>10</sup> This news raises eyebrows especially since Uruguay is not known to the world for any large-scale marijuana drug-trafficking. This anti-prohibition of drugs is gaining ground across the world in an increasing number of countries, and there have been calls for the legalisation of the possession and use of some or all drugs for non-medical purposes.

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<sup>7</sup> [2001] EWCA Crim 2926.

<sup>8</sup> [1969] 2 AC 256.

<sup>9</sup> The Human Development Index (HDI) is a composite statistic used to rank countries by level of human development – ie standard of living and quality of life (factors being measure of life expectancy, literacy, education, and standards of living of a country). The HDI formula result is a number from 0 to 1, 1 being the best outcome possible

<sup>10</sup> Simon Tegel, ‘Nationalisation: Uruguay’s solution to its drug problem’, *The Independent*, 22 June 2012.

However, since 1991, the International Narcotics Control Board<sup>11</sup> rejected such proposals and produced a report which provided an analysis of the meaning and consequences of legalisation in its 1992 report. The *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*<sup>12</sup> give the Board the authority to investigate the failure of any country or region to carry out the Convention's provisions.

### Public health: worldwide use of marijuana

Marijuana is the most widely used illicit drug worldwide. It has been claimed that it has analgesic properties and criticised for both its psychoactive and addictive nature. It is illegal in most countries but decriminalised in some. For example, in New Zealand, marijuana is the third most commonly used drug after tobacco and alcohol, and the most commonly used illegal drug. Approximately three-quarters of New Zealanders have tried marijuana by age 25 and 13.7% of New Zealanders have used marijuana in recent years. Thus, marijuana trafficking to countries where its use is a criminal offence makes any anti-trafficking drug plan, such as Uruguay's, a plan in the interest of public health for all. This brings the matter of public health governance into play. Public health governance, though, is not without its own problems and it is a topical legal subject of debate and reflection. The public health approach is to direct action at the source of the drug use and this is where the concept of risk enters: the concept of risk dominates health governance (Petersen and Lupton, 1996; Lupton, 1999) and public health is comprised of legislative change, policy work, environmental interventions, research, health education, and health promotion. Thus public health represents a form of governance which addresses social goals through emphasis on the idea of citizenship.<sup>13</sup>

### Forms of marijuana use

Marijuana is a drug produced from the *Marijuana saliva* (commonly known as hemp) or *Marijuana indicia* plant, which is related to nettles and hops. It's believed to have originated in the mountainous regions of India, and grows wild in many parts of the world. The plant contains more than 400 chemicals, including cannabidiolic acid, an antibiotic with similar properties to penicillin. The different chemical derivatives of the plant can be consumed. The recreational drug marijuana comes in many forms – herbal (dried plant material), resin, powder and oil - and is known by many colloquial terms, including 'weed', 'pot', 'grass' and 'hash'. It is most often smoked although it can also be taken orally. In the UK, marijuana is a Class B controlled drug defined as such in the Misuse of Drugs Act 1971 and Misuse of Drugs Act ((Temporary Class Drug) Order 2012.<sup>14</sup> Social concerns are real. In the UK, some people burgled a house, used a taser on the occupant and stole money for the purpose of setting up a marijuana cultivation factory in *R v JA, George Montague and Peter Poru* [2012] EWCA Crim 1156 CA (Crim Div). In the case of *Re S (Children)* [2012] CA (Civ Div), a mother was not permitted to be a carer of her children in view of the fact that she smoked marijuana. One could lose one's home if a

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<sup>11</sup> The International Narcotics Control Board (INCB) is the independent and quasi-judicial control organ for the implementation of the United Nations drug conventions. It plays an important role in monitoring enforcement of restrictions on narcotics and psychotropics and in deciding which precursors should be regulated.

<sup>12</sup> In article 22.

<sup>13</sup> Upton defines public health as 'the discursive expression of the assumptions, rationalities, conceptual framework, and imperatives that join up research accounts, institutional practices of government and non-government agencies'. Mark Davis,

<sup>14</sup> This 2012 Order came into force on 5 April 2012 and makes the drug methoxetamine, and its simple derivatives, temporary class drugs under Section 2A(1) of the Misuse of Drugs Act 1971 for up to 12 months.

member of one's family was involved in drugs. Recently, an order for possession was made against a local authority tenant whose 19-year-old son had been living with her and was causing distress and nuisance to neighbours by his ongoing antisocial behaviour, which included involvement with drugs and firearms (see *Barking & Dagenham London Borough Council v Bakare* [2012] EWCA Civ 750).

### **Medical concerns**

The widespread use of marijuana has raised many concerns over its long-term effects. Often these have been about the effects of chronic marijuana use on mental health. However, the frequent practice of smoking marijuana also raises concerns over its potential for adverse effects on the respiratory system. Unfortunately, the illegal status of marijuana makes it difficult to obtain reliable data on marijuana use and its effects. Self-reports of marijuana consumption are likely to be inaccurate owing to social desirability, bias, and the fear of legal consequences. Furthermore, as most marijuana users also smoke tobacco, the effects of marijuana on the respiratory system may be obscured by the effects of tobacco. Even if marijuana use is honestly reported by users, quantifying marijuana consumption is inherently difficult because, as an illegal substance, there is no standardisation of supply and significant variations in strengths and amounts of marijuana occur.

### **The International Narcotics Control Board**

There is at present a certain amount of flexibility for the de-penalisation of drug use in the drugs conventions, and the International Narcotics Control Board has emphasised the tremendous risks that would occur with a legalisation of drugs for non-medical use, namely, public health risks, an attack on social well-being and the loopholes this would create in the international drug control system, besides which, is the fact that international trafficking in narcotic drugs and psychotropic substances is extremely lucrative for the key players and organisers in the non-medical use of drugs.<sup>15</sup>

### **Drug abuse, crime and violence locally**

One advantage in legalising the use of marijuana is the potential to reduce the inter-relationship between drug abuse, crime and violence at community level since different drug trafficking groups, in theory, would be stopped in competing for this drugs market in Uruguay. In its meeting in May 2012, one topic on the agenda of the International Narcotics Control Board was the analysis of the drug control situation in specific countries.

### **Uruguay's policy may not affect the United Kingdom**

With regard to illegal drugs, the United Kingdom (UK) mostly consumes Latin-American cocaine, and heroin from Southwest Asia. Uruguay is not known for cocaine production either, and so the news that Uruguay's José Monica<sup>16</sup> administration is reported to be planning plans to

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<sup>15</sup> See <http://www.incb.org/>.

<sup>16</sup> It is noted that in the tone of discoverability, transparency and good governance, the 81 year-old former president of Uruguay, Juan Maria Bordaberry, was recently sentenced to 30 years in prison for his involvement in a coup in 1973. He was convicted of the murder of two

take measures to legalise marijuana sales as a crime-fighting measure, will not impact very much on the UK, although it will become a serious competitor to the likes of Uzbekistan where illicit cultivation of marijuana occurs; there are no present laws against marijuana use itself in Uruguay. This legalising of marijuana would mean that only the government could sell marijuana, in the form of cigarettes, and only to adult 'registered' users. Uruguayan marijuana smokers would have to exercise moderation under the new plan.<sup>17</sup> There would be a limited number of permitted marijuana cigarettes and anyone discovered exceeding this limit would have to undergo rehabilitation. The state would take responsibility for quality control under the plan and sales would include a tax to fund rehabilitation programs. Under the plans, the government would initially grow marijuana and sell it to registered users. But once the scheme is up and running, it hopes to cash in and allow private companies to take over the production of the drug. Possession of small amounts and consumption of marijuana is currently not illegal in Uruguay but growing and selling it is. The new bill would seek to put the drug dealers out of business by making it easier, safer and possibly cheaper for users to buy marijuana from official dispensaries.

### **Taking the United States' lead**

In the United States, drug trafficking or drug distribution laws penalise the selling, transportation, and illegal import into the United States of unlawful controlled substances such as marijuana, methamphetamine, cocaine, LSD, 'club drugs', and heroin. Federal and state drug trafficking/distribution laws and punishments vary according to drug type, amount, geographic area of distribution, and whether minors were sold to or targeted. Drug trafficking/distribution laws can implicate a single individual or a broad ring of people involved in organised illegal drug activity.<sup>18</sup> The U.S. Federal Government and thirty seven states made 'possession of marijuana' a criminal offence<sup>19</sup> punishable by imprisonment. Federal law categorizes marijuana as among the most dangerous of illicit drugs,<sup>20</sup> and the Office of National Drug Control has generally treated marijuana control at the top of its list of priorities. In recent years, federal and state laws have resulted in the arrest of more than 700,000 Americans annually for marijuana possession, a crime that almost 100 million Americans have committed.<sup>21</sup> The U.S. Justice Department does not prosecute the use of marijuana for medical purposes, which is legally prescribed in thirteen states, as follows: *Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington*. The states of Arizona and Maryland allow for a defence of the use of marijuana if this use can be proved to be for medical purposes. Uruguay, however, is going a step further according to its proposals and the proposals make no mention of drug using and driving and whether it would be an offence to drive and

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opposition supporters, whose bodies were found in recent years, and of the disappearance of nine others. See, Editor, 'Uruguay's ex-ruler Bordaberry jailed for 30 years', *BBC News*, 11 February 2010.

<sup>17</sup> Moderation is a principle of life. In ancient Greece, the temple of Apollo at Delphi bore the inscription 'Meden agan' meaning 'Nothing in excess'. Commonly, doing something 'in moderation' means 'not doing it excessively'.

<sup>18</sup> 21 U.S.C. § 812 (2007). Under federal law, marijuana possession is punishable by one year in prison and a minimum fine of \$1,000. 21 U.S.C. § 844 (2006).

<sup>19</sup> In law, the word 'offence' has no technical meaning but is commonly used to signify any public wrong, including, not only crimes or indictable offences, but also wrongs punishable on summary conviction. The word 'offence' is used as a comprehensive term to cover anything a court may deal with.

<sup>20</sup> Under the federal drug laws, marijuana is designated a Schedule I controlled substance, reserved for the drugs with the most serious potential for abuse, no medical benefit, and no safe method of use. 21 U.S.C. § 812 (2007). This status places marijuana on a par with heroin, and in a graver category than cocaine and oxycontin, which are included in Schedule II.

<sup>21</sup> In 2006, there were 742,900 arrests for possession of marijuana, constituting 39.1% of the 1.9 million drug arrests. 80% of all drug arrests are for possession, not sale or manufacture. *FBI Uniform Crime Reports* (2006), at Table 29. In 2005 there were almost 787,000 marijuana arrests, 700,000 of them for marijuana possession. (*FBI Uniform Crime Reports* (2005)).

smoke drugs. In comparison, as regards the driving of a vehicle whilst under the influence of marijuana, there is a federal directive relating to the U.S. Department of Transportation's ban on medical marijuana for drivers. The Department of Transport in the United States carries out regulated drug testing as per its anti-drug-driving regulations which make it a road traffic offence for the following classes of persons to drive whilst under the influence of the drug marijuana: school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains and emergency response personnel.

### **UK Road Traffic Act 1988, s.4**

By contrast, in the United Kingdom, police traffic officers can only test a person for alcohol or drugs if he or she has reason to suspect the driver might be under the influence of alcohol; if a moving traffic offence has been committed or if the vehicle has been involved in an accident. Random testing for drugs or alcohol is not permitted. The charge used or a drug driving offence is as per the Road Traffic Act 1988- section 4- driving or attempting to drive or being in charge of a mechanically propelled vehicle while unfit to drive through drink or drugs. For a *section 4 offence*, the prosecution must prove that the defendant's ability to drive was actually impaired. A section 4 road traffic offence must refer to a person 'being in charge of a vehicle'. The person accused must be the most recent driver; or had been driving the vehicle; was in the near vicinity of the vehicle and must have the keys to the vehicle.<sup>22</sup> There is no need for police to administer a preliminary test for breath alcohol levels or for drug consumption before arresting a driver for a section 4 offence. Rather, the suspect's level of impairment and ability to drive properly is assessed by a police medical practitioner at a police station through an evidential test. Specimens of blood, breath, or urine may also be taken for other evidential tests, to prove the presence of drugs in the body (which would imply impairment). The evidence presented to a court in support of a section 4 offence may include:

- (i) the style of driving before the defendant was stopped;
- (ii) his or her demeanour at time of stop (speech, unsteadiness);
- (iii) the report by a medical examiner whilst in custody (particularly if evidential specimens are not obtained to prove presence of drugs); and the results of evidential drug tests (using blood or urine samples).
- (iv) Note that in English law, although there is no power of arrest of a *section 4 offence under the Road Traffic Act 1988* and to make an arrest, section 24 PACE 1984 needs to be used. If the suspect has moved into a building, the police can use section 17 (1) (c) (iii) of PACE 1984 to arrest him or her but only if these are reasonable grounds for believing that the suspect is on the premises.<sup>23</sup>

### **Uruguay is 'small fry' in marijuana trafficking at present**

At present, what is known is that Uruguay is not like Mexico but rather is a 'small-scale transit country for drugs' mainly bound for Europe, often through sea-borne containers; there is law-enforcement corruption in Uruguay; and money laundering offences occur because of strict

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<sup>22</sup> See *CPS v Thompson* [2007] EWHC 1841 (Admin).

<sup>23</sup> This is simply and clearly explained in Bryant, R. and Bryant, S. (2011) *Blackstone's handbook for policing students*, Oxford: Oxford University Press at Chapters 9 and 12 (ISBN 978-0-19-95922-8).

banking secrecy laws. Uruguay suffers from weak border control along the Brazilian frontier and the population is known to have an increasing consumption of cocaine base and synthetic drugs. Arguably, because marijuana prohibition diverts resources from more pressing drug- or crime-control agendas, encourages discriminatory enforcement, stymies ameliorative regulation, and consigns users to deal with criminal drug traffickers if notwithstanding lawyers, courts and prisons.<sup>24</sup> The Uruguay Congress has already had submitted the proposal that will allow people to grow marijuana for their personal use. This newly reported proposal would need to be considered carefully but would be much lauded across the world, especially since many criminologists have already proposed such a scheme. Such measures would defeat organised crime<sup>25</sup> and could also save many lives, by diverting drug abusers from harder drugs.

### Foreseeable issues

It is not marijuana but the growing use of crack cocaine that has given public officials in Uruguay cause for concern.<sup>26</sup> Such a scheme as mass hemp cultivation would need to go before the Uruguay Congress for consultation. The foreseeable problems would be the immense cost of administering this scheme for marijuana; police corruption; and bribery of government officials as opportunistic criminals attempt to abuse the proposed system to continue their drug trafficking. However, these are not seen to be issues that this country will face because Uruguay is one of the most economically developed countries in South America, with a high Gross Domestic Product (GDP) per capita<sup>27</sup> of over \$14,000 and the 48th highest Human Development Index in the world in 2011, and the first by human development in Latin America, when inequality is factored in. Uruguay is noted for its low levels of corruption. Uruguay has been ranked by *Transparency International* as the second least corrupt country in Latin America, after Chile.

### What evidence supports the potential success of this proposal?

Nevertheless, a cursory examination of Uruguay's political history may assist in the decision as to the country's political stability, essential for the success of these proposals. A violent Marxist urban guerrilla movement named the Tupamaros, launched in the late 1960s, and led Uruguay's president to cede control of the government to the military in 1973. By year-end, the rebels had been crushed, but the military continued to expand its hold over the government. Civilian rule was not restored until 1985. In 2004, the left-of-centre Frente Amplio Coalition won national elections that effectively ended 170 years of political control previously held by the Colorado and Blanco parties, notwithstanding that Uruguay's political and labour conditions are among the most liberal on the continent.

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<sup>24</sup> MacCaun and Reuter, 'National Commission on marijuana and drug abuse', in *Marijuana- a signal of misunderstanding* (1972). This study was commissioned by President Richard M. Nixon in March, 1972.

<sup>25</sup> Justin Davenport, '24 years in jail for cocaine smuggler', *London Evening News*, 8 June 2012. (A major drug trafficking ring smuggled millions of pounds of cocaine and marijuana into Britain hidden in flat-pack furniture and secret compartments in vans). In line with this news are Uruguay's proposed new anti-money laundering rules, an indication that this is a forward-thinking and progressive country. See, Michael Kane, 'Uruguay unveils new anti-money-laundering rules', *Insight- Organised crime in the Americas*, 20 June 2012.

<sup>26</sup> Editor, 'Tough anti-crime rules for couriers loom', *Eastday Shanghai*, 8 June 2012. (A new Shanghai law will require all courier parcel offices to install 24-hour surveillance and parcel-screening systems and keep footage for at least 30 days to boost security and thwart crimes such as drug trafficking. City legislators yesterday started discussing the fledgling law, which is planned to impose fines up to 50,000 Yuan (US\$7,854) for a single instance of a courier company failing to comply with the rules. The booming parcel-delivery industry across the country is a ripe method of distribution of illegal drugs, allegedly. The Shanghai experience is but one example of problems that police face globally in anti-drug trafficking.)

## **The logistics of large scale government cultivation of hemp**

Since over 90 percent of the country is used for farming and livestock, with over one-third of the country's soil having cropping potential, it is amenable to producing large-scale government-grown hemp and such a pilot scheme in the global arena is bound to affect the illegal drug industry. Money launderers will be quick to buy up farmland and since tourism is well-established even in the rural areas, there may be a growth in forum-shopping for consumption of marijuana, as there is where paedophiles go abroad to indulge their criminal pleasures. There is not likely to be a rush of tourists to this country for this sole purpose, because the same consumption had be indulged on holiday in Amsterdam in Europe.

## **Competitors in the illegal drug markets**

Albania will be affected if this hemp production becomes a reality because Albania is an active trans-shipment point for Southwest Asian opiates, hashish, and marijuana transiting the Balkan route and - to a lesser extent, which might increase cocaine from South America destined for Western Europe. Armenia might be affected by this competition since Armenia is known for its illicit cultivation of small amount of marijuana for domestic consumption and it is at present a minor transit point for illicit drugs - mostly opium and hashish - moving from Southwest Asia to Russia and to a lesser extent the rest of Europe. Azerbaijan will certainly be affected because unlike Uruguay, Azerbaijan's has in place a small government eradication program.

The Bahamas, Barbados, and Belarus, are small trans-shipment points for cocaine and marijuana bound for US and Europe. Belize is at present, a small scale producer of marijuana. Bosnia is a small transit point for marijuana. Canada is an illicit producer of marijuana for the domestic drug market and export to US. Columbia is an illicit producer of coca, opium poppy, and marijuana. The Congo and Cote D'Avoire both are among the biggest producers of marijuana, presently mostly for domestic consumption. Egypt is a transit point for marijuana. El Salvador is a transit point for small amounts of marijuana. French Guiana and Martinique are both transit points for a small amount of marijuana. Ghana is an illegal producer of marijuana for the international drug trade. Greece is a gateway to Europe for traffickers smuggling marijuana. Grenada conducts illegal small-scale marijuana cultivation and is a lesser trans-shipment point for marijuana and cocaine to US. Guyana and Indonesia are illicit producers of marijuana. Honduras is an illicit producer of marijuana. Ireland is a trans-shipment point for and consumer of *hashish* from North Africa to the UK. Jamaica has illicit cultivation and consumption of marijuana. Kazakhstan has significant illicit cultivation of marijuana for CIS markets. Kenya has widespread harvesting of small plots of marijuana. Kyrgyzstan limited illicit cultivation of marijuana. Thailand is a minor producer of marijuana. Syria is a transit point for hashish. *Switzerland has domestic production of marijuana.* Suriname, or Dutch Guiana, is a transshipment point for arms-for-drugs dealings, as is the United Arab Emirates- both being drugs transshipment points, The execution of these offences is the penalty for convicted drug traffickers in the UK. Zimbabwe is a transit point for marijuana and the Ukraine has limited cultivation of marijuana.

## **Physical effects of marijuana smoking not conducive to unilateral approval of its use**

Although marijuana is the world's most widely-used illicit drug, there has been surprisingly little research into its effects on respiratory health. Part of the problem is the inherent difficulty of studying the long-term effects of an illegal habit. It has often been assumed that smoking marijuana will have similar long-term effects to smoking tobacco. Several observational studies had suggested that this is not so because marijuana has quite different effects on the lung function. However, in August 2012, the UK Home Office published the results of a long-term study of marijuana smokers and some astonishing facts were discovered. Those young people who smoked marijuana in their teens and before their teens, were very likely to have lost quite a bit of their *Intelligence Quotient* ('IQ'), which will never return. This means that as marijuana-smoking young people grow up, their IQ will never recover from that loss to a higher point. This is the first such long-term study lasting many decades and its results show that the unemployed, the low-paid; and many others who can afford the drugs through the proceeds of their crimes so as to gain controlled drugs

### **Smoking marijuana causes medical concerns**

There are consistent findings that smoking marijuana is associated with: large airway inflammation, symptoms of bronchitis; increased airway resistance; and lung hyper-inflation (See 'Medscape.com- medical research and university studies, See also the British Medical Journal ('BMJ').) One must not forget that behaviour, including behaviour of marijuana users is a complex mix of culture, custom, nature, nurture and environment. Social neuroscientists, cognitive neuroscientists, behavioural psychologists, and psychotherapists may, as a group, hold that behaviour, including psychopathic behaviour, falls under environmental (nurture) controls. On the other hand, molecular, genetic, pharmacological, and anatomically-minded neuroscientists may, as a group, hold that behaviour falls under genetic and epigenetic (nature) controls. After a half a century of dominance by the environmental theorists, the past two decades have witnessed a shift toward more genetically weighted theories, although it has become politically correct in the last decade to say that both genetics and the environment interact to form the basis for behaviour.

### **Expert review**

For a substance that is so widely used, the paucity of evidence on the respiratory effects of smoking marijuana is surprising. The little evidence that has been collated suggests that marijuana definitely does have respiratory effects, but that *these are different to tobacco*. The relationship between marijuana smoking and the common smoking-related problems associated with tobacco such as airway obstruction, emphysema and lung cancer is not clear. Notwithstanding the difficulties in conducting research on illegal substances and the problems of quantifying marijuana consumption, further studies with large population samples and long-term follow-up are needed.

### **'Bullous emphysema' in marijuana smokers**

'Sminju marijuana' smokers are difficult to study and record compared to reconcile to observational data. These cases may be rare, although they may also be under-recognised because of under-reporting of marijuana use. They may only represent the extreme end of the

spectrum of marijuana-related lung disease, occurring only in very heavy smokers of the controlled drug, marijuana. Silence and under-reporting has meant that the evidence is hearsay evidence or else anecdotal. The conclusion must therefore be that the development of 'bullous emphysema' as a consequence of smoking marijuana is *not* supported by any available systematic, observational studies. There is therefore a need for a more controlled study in order to confirm whether there is causation between smoking marijuana and 'lung bullae'. Thereafter, if such a causal link exists, then fresh and future research will need to find the threshold at which irreversible damage occurs. Research is also needed into the effects of the various methods of inhaling marijuana and the influence that this may have on the inhalers' respiratory system. Whether breath-holding and 'Valsalva' manoeuvres will scientifically illustrate the link between marijuana use and 'lung hyper-inflation' is awaited and present medical knowledge and research findings to date does not link anything as simple as the various ways people inhale marijuana to impaired lung function. Such urgent research is necessary in order to discover the maladies that occur because of different methods of inhaling and it seems that there has not been any serious study of how cigarette smokers inhale, much to the puzzlement some sceptics on tobacco research. Thousands of people die every day as a direct and also indirect consequence of 'smoking' cigarettes, yet no research has revealed how those who have died smoked (ie before meals/on empty stomach/ at what stage did their coughing begin/ how many years of smoking did they enjoy? Were they outdoor workers/ indoor workers/ live constantly in a smoke filled environment, etc.

### **Query marijuana's 'therapeutic' potential as an 'acute bronchodilator'**

Common knowledge and awareness of lung disease among people, especially in Western societies means that the diseases named asthma and chronic obstructive pulmonary disease are familiar. That is often the extent of common knowledge. What is less well known is that asthma and pulmonary lung disease are obstructive diseases of the lungs and the necessary treatment is to try to open up the passageways to the lungs. A relatively unexplored area is whether marijuana has therapeutic potential as an acute bronchodilator, either as an adjunct or an alternative to current drugs. Marijuana has a long history as an alleged 'treatment for asthma'. It is unlikely that anyone would advocate smoking marijuana to treat obstructive airways disease, but there may be less harmful ways to deliver the drug. Early research investigated the effects of marijuana aerosols. More recently, vaporisers have been proposed as a method of inhaling 'medical marijuana' in a smoke-free form. An internet survey suggested that users of vapourisers allegedly have fewer respiratory symptoms but there have been no published long-term studies of their effects. Despite the continuing uncertainty regarding the effects of marijuana on the lungs, we suggest that health practitioners routinely ask about marijuana use when taking a medical history. Although medical students are taught to ask about illicit drugs (particularly intravenous drugs), until recently, little attention has been given to quantifying marijuana use. Given the widespread use of this substance in many countries, this should be carried out far more often. It is particularly important for patients with unexplained respiratory symptoms, apparently 'idiopathic' lung bullae or pneumothorax, lung, and head and neck cancers. While the relationship between marijuana and these diseases are still unproven, raising awareness of marijuana use is likely to establish whether there is a causal relationship or not.

### **Drugs policy**

There is strong evidence that marijuana causes bronchial inflammation, respiratory symptoms and affects lung function. It is clear that smoking marijuana is *not harmless* to the lungs. Marijuana is a controversial cause of lung cancer and emphysematous bullae in a small but uncertain number of users. All over the world, countries' future drugs policies should encourage further research into the health effects of smoking marijuana. Marijuana has been shown to have a range of effects on lung function that are different to those found with tobacco. Acute inhalation of marijuana produces broncho-dilation, but chronic use is associated with bronchitic symptoms, central airway inflammation, and increased large airway resistance to airflow. There is also evidence for lung hyperinflation. Marijuana also contains many carcinogenic substances but it remains controversial whether it is a cause of lung malignancies.<sup>28</sup>

### **Public health warning needed**

Marijuana use may play a causal role in the development of psychotic disorders, including schizophrenia, new research suggests.<sup>29</sup> In a meta-analysis of more than 80 studies, investigators found that the mean age at illness onset was more than 2.5 years earlier for marijuana users compared with nonusers. However, age of onset did not significantly differ between alcohol users and nonusers. The investigators noted that decreasing this use could delay or even prevent some cases of psychosis.

### **Further research findings send out warning against legalising marijuana**

Recent research findings give out a warning sign to the legalisation of marijuana. Early adolescent marijuana use may contribute to the development of symptoms of schizotypal personality disorder (SPD) in adulthood, according to new data from a longitudinal cohort study. The author of the study said that the uniqueness of the study lay in the demonstration of an association between early marijuana use and subsequent schizophrenia-like symptoms that persisted into adulthood and that was not explained by early anxiety or depressive disorders, or exposure to other drug and cigarette use. In addition, this study adds to the literature by demonstrating that this association...was not only limited to those already exhibiting higher levels of these symptoms during childhood and adolescence. Mounting evidence indicates that marijuana use is temporally associated with the development of schizophrenia in some young people, but less is known about its relationship to latent SPD traits. SPD symptoms are characterized by attenuated psychotic symptoms that include unusual perceptual experiences and beliefs and odd and withdrawn behaviour. The study consisted of an analysis of data on 804 participants enrolled in the longitudinal 'Children in the Community' cohort study from upstate New York. Participants were assessed for marijuana use and Axis I and II disorders, beginning at a mean age of 13 years (range, 9 - 18 years), and again at around the ages of 16, 22, and 33 years. The researchers report that marijuana use before the age of 14 years strongly predicted schizotypal symptoms in adulthood, independent of early adolescent schizotypy, major depression, anxiety, other drug use, and cigarette use.

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<sup>28</sup> Robert J. Hancox and Marcus H.S. Lee, 'Effects of smoking marijuana on lung function', *Medscape*, 22 August 2011.

<sup>29</sup> Deborah Brauser, 'Marijuana use linked to earlier onset of psychotic disorders', *Medscape*, 14 February 2011.

Megan Brooks, 'Early marijuana use tied to Schizotypal Personality Disorder', *Medscape*, 17 May 2012.

## Jurisdiction issues

The unilateral legalising of marijuana in Uruguay needs to be more thoroughly thought through and research and reports need to be assimilated before laws to legalise the production of marijuana are made, notwithstanding many such laws already stand in the United States, a country from which many follow by example. As in 1972, today there still remains a fear that drugs destroy the moral fabric of society. Use of the drug is linked with idleness, lack of motivation, hedonism and sexual promiscuity. Many see the drug as fostering a counterculture which conflicts with basic moral precepts as well as with the operating functions of our society. The 'dropping out' or rejection of the established value system is viewed with an undercurrent of alarm. Thus, marijuana and marihuana becomes more than a recreational drug; the smoking of drugs becomes a symbol of the rejection of cherished values. It is still the case that marijuana use puts forward moral wrongs inflicted by the drug use to justify criminalizing its users and that is that it inflicts harm on others; it inflicts harm on the user himself; it makes users unproductive members of society. With regard to criminal law, Uruguay might wish to consider the foolishness of adopting another country's laws wholesale and do well to remember, as the world watches, that in most countries, marijuana is still a controlled drug<sup>30</sup> and drug legislation has been very carefully worded so that it is not only the illegal end user of controlled drugs who is subject to prosecution, but, importantly, the people involved in supplying the drug.<sup>31</sup> Such criminal offences stigmatise the perpetrator and hence intentionally stigmatises deviant behaviour in order to provide incentives for compliance with social norms.<sup>32</sup> In an increasingly globalised world, actions by one state can create transnational external effects beyond their borders and perhaps international agreements could enable states to adopt actions to bring equilibrium.<sup>33</sup> Unilaterally, the move by Uruguay, some states in the US, and Switzerland to legalise the free use controlled drugs in their many formats, gives rise to concern that perhaps international law should be called upon to deal with drug trafficking, although this will be difficult because international law derives from treaty-making and custom, the former presenting persistent issues of interpretation and scope; technical questions as to whether a treaty is in force; the means by which a treaty can be suspended; and the doctrine of *opinio juris* as regards custom, ie, the belief that the practice reflects a legal obligation rather than only a policy preference. Another issue is whether a treaty maker has in domestic law, the capacity to make an order that will bind a domestic court.<sup>34</sup>

## Conclusion

The news that Uruguay plans to nationalise the production of marijuana has brought out liberal thinkers around the world, 'baying' for the free use of drugs. This is ignoring the medical facts, notwithstanding its destruction of the fabric of our society. Further grave consequences of smoking the drug announced by the United Kingdom's Home Office in August 2012 is that studies have proved that when marijuana /marijuana is consumed by persons who are in their

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<sup>30</sup> In the UK, for example, marijuana leaves and marijuana resin are classed as a controlled 'Class B' drug according to the UK Misuse of Drugs Act 1971 and there is a structured set of rules as to its unlawful possession. Possession of a Class B drug carries a three month imprisonment potential for a summary offence and possible 5 years imprisonment for an indictable offence.

<sup>31</sup> The cultivation of marijuana is charged under s. 4(2) Misuse of Drugs Act 1971 as cultivation of a Class B controlled drug or alternatively under s. 6 (2) specifically related to marijuana. There is one statutory defence s.28 MDA. *R v McNamara* (1988) 152 JP 390.

<sup>32</sup> Drug use is often seen, (like prostitution, abortion, and sodomy, criminalised in some jurisdictions), as a victimless crime.

<sup>33</sup> Parisi, F. (Editor) (2011) *Production of legal rules*, Cheltenham: Edward Elgar Publishing Inc.

teenage years, their IQ (intelligence quotient) does drop and this lowering of IQ cannot be rectified, ie there is permanent damage to the brains of those young persons. This, together with Uruguay's political instability, makes for worry that drug trafficking will not be reduced but may well increase.

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