



Altered States: The Politics of Marijuana Legalization in Latin America

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Abstract

My thesis investigates how and why drug policy liberalization has moved from purported impossibility to political reality in Latin America. Specifically, I ask why do we see far reaching marijuana legalization in Uruguay and Mexico, and no reform at all in Chile? To answer this question, I study the role that actors, ideas and institutions play in the reform process. Based on unparalleled access to key actors, my thesis combines process tracing and counterfactual analysis to build and assess my argument.

Without disregarding the importance of state support or societal opposition, my thesis argues that civil society reform proponents are the driving force behind recent cannabis liberalization episodes in Latin America. Organizational resources and capacities, as well as coalitions with other actors, shape reform proponents' ability to influence decision making. Professionalized and institutionalized advocates are more successful than grassroots activists in strategically framing cannabis reform. Both messages and messengers condition whether would-be reformers are more or less persuasive in agenda setting, maintenance and counteracting agenda denial, which in turn determine the attention and approval reform demands achieve.

My thesis finds that differences in organizational capacities of reform proponents, their strategic framing and agenda manipulation explain the variation in marijuana legalization in Latin America. Uruguayan reform proponents capitalized on insider agenda setting by the government, whereas Mexican and Chilean reform proponents had to pro-actively engage in agenda setting. In Uruguay, a professional campaign adopted focus group-tested messages. In Mexico, elite societal actors adapted their legal challenge according to the target audience. In Chile, "grassroots" activists failed to offer a coherent framing of cannabis liberalization. Whereas Uruguayan and Mexican reform proponents were highly professional and pragmatic, Chilean reform proponents' efforts were mostly amateurish and idealistic. In combination, these differences in demand shaped the supply of drug policy reform in Latin America.

*To Muz and Vit and Oma and Opa,
with whom I unfortunately never had the chance to discuss any of this,
but who would have been persuaded by whom presented the issue and how.*

*To Lion,
who will hopefully grow up in a world of more just and rational drug policies,
in which marijuana legalization is ancient history rather than contemporary politics.*

Table of Contents

Introduction	1
Defining Marijuana Legalization.....	4
Marijuana Legalization in Latin America	8
Argument in Brief	11
Alternative Explanations of Drug Policy Change	14
Electoral Mandates and Policy Change.....	15
Learning and Policy Change	16
Crises and Policy Change.....	18
Normalization and Policy Change.....	19
Public Opinion and Policy Change.....	21
Mass Mobilization and Policy Change.....	23
International Drug Policy Regime and Policy Change.....	25
Assessing Alternative Explanations	27
Case Selection Strategy	29
Methodological Approach	32
Plan of the Thesis	36
<i>Change in Drug Policy: Altered States of Mind.....</i>	39
Analytical Framework	39
Institutions	40
Ideas.....	43
Actors	46
Integrating Actors, Ideas and Institutions.....	49
Model of Policy Change	52
Agenda Manipulation	53
Strategic Framing	58
Combining Agenda Manipulation and Strategic Framing.....	63
Existing Accounts of Drug Policy Change	65
Institutions and Drug Policy Change.....	65
Ideas and Drug Policy Change	67
Actors and Drug Policy Change	70
Agenda Manipulation and Drug Policy	73
Framing and Drug Policy Change	74
Movement Structures and Drug Policy	79
Expectations about Drug Policy Change.....	80
Explaining Drug Policy Change.....	84
<i>Cannabis Reform in Uruguay: “Someone has to be the first”.....</i>	98
Setting the Scene.....	101
Existing Literature	102
<i>Status Quo</i> Drug Laws.....	105
Social Mobilization	106
Normalization	108
Public Opinion.....	110
Coda: Progressive Uruguay	111

Cannabis Reform in Uruguay	113
Outsider Agenda Setting	115
Insider Agenda Setting	117
The Need for Agenda Maintenance	119
Outsider Agenda Maintenance	121
Agenda Denial	126
Insider Agenda Maintenance	128
Success in Parliament	130
Counterfactual Analysis of Cannabis Reform in Uruguay	133
Counterfactual: Agenda-Setting	134
Counterfactual: Agenda Denial	136
Counterfactual: Outsider Agenda Maintenance	137
Counterfactual: Strategic Framing	140
Counterfactual: Professional Campaigning	143
Conclusion.....	145
<i>Cannabis Reform in Mexico: The High Hope of Legal Mobilization.....</i>	<i>149</i>
Setting the Scene.....	152
Existing Literature	153
<i>Status Quo</i> Drug Laws.....	154
Public Opinion.....	155
Normalization	157
Social Mobilization	158
Coda: Violent Mexico	161
Cannabis Reform in Mexico.....	164
The Need for Outsider Agenda Setting	166
The Opportunity for Outsider Agenda Setting	169
Outsider Agenda Setting: Legal Mobilization.....	171
Success in Court	178
No Agenda Denial	182
The Need for Outsider Agenda Maintenance	184
Postscript: Success in Parliament?	187
Counterfactual Analysis of Cannabis Reform in Mexico	188
Counterfactual: Agenda Setting or Maintenance	189
Counterfactual: Agenda Denial	191
Counterfactual: Strategic Framing	194
Counterfactual: Professional Litigation.....	198
Conclusion.....	201
<i>Cannabis Reform in Chile: Where there is Smoke, is there Fire?</i>	<i>204</i>
Setting the Scene.....	207
<i>Status Quo</i> Drug Laws.....	208
Existing Literature	210
Normalization	213
Public Opinion.....	216
Coda: Conservative Chile.....	217
Social Mobilization	220
Cannabis Reform in Chile	222
The Need for Outsider Agenda Setting	224
Outsider Agenda Setting.....	226

Success in Parliament	230
Outsider Agenda Denial	233
Insider Agenda Denial.....	235
The Opportunity for Agenda Maintenance.....	236
No Outsider Agenda Maintenance	239
Failure in Parliament	242
Counterfactual Analysis of Cannabis Reform in Chile	244
Counterfactual: Outsider Agenda Setting.....	245
Counterfactual: Outsider Agenda Denial	247
Counterfactual: Insider Agenda Denial.....	249
Counterfactual: Outsider Agenda Maintenance	252
Counterfactual: Different Framing.....	254
Counterfactual: Professionalized Advocacy.....	257
Conclusion.....	260
<i>Conclusion</i>	<i>265</i>
Looking Back.....	266
Contributions	269
Limitations.....	270
Looking Forward	272
Framing and Cannabis Reform.....	272
Transnational Involvement and Cannabis Reform.....	274
Opposition and Cannabis Reform	276
Legal Mobilization and Cannabis Reform	277
Looking Elsewhere	279
Cannabis Reform in Costa Rica	280
Cannabis Reform in Colombia	281
Cannabis Reform in Argentina	283
Looking Beyond.....	285
<i>Appendices</i>	<i>289</i>
Appendix 1: Overview of Drug Control Policies in Latin America.....	289
Appendix 2: Changes in Drug Control Regime Types (2008-2018).....	290
Appendix 3: Electoral Platforms on Drug Policy Reform (2008-2019).....	291
Appendix 4: Turn-out at the <i>Marcha Mundial de Marihuana</i> and their Sources (2002-2018)	292
Appendix 5: Set-theoretic Logic of Case Selection	293
Appendix 6: List of Interviews.....	294
Appendix 7: Timeline of Cannabis Reform Process in Uruguay	298
Appendix 8: Timeline of Cannabis Reform Process in Mexico.....	299
Appendix 9: SCJN Justice Zaldívar's Opinion on Cannabis.....	300
Appendix 10: Legislative Cannabis Reform Initiatives in Mexican Congress (2006-2020)	301
Appendix 11: Timeline of Cannabis Reform Process in Chile	302
Appendix 12: Cannabis Votes in Chile's <i>Cámara de Diputados</i> (2015)	303
<i>Bibliography.....</i>	<i>304</i>

List of Figures

<i>Figure 1: Spectrum of Drug Control Policies</i>	6
<i>Figure 2: Spectrum of Policy Configurations of Legally Available Cannabis</i>	7
<i>Figure 3: Changes in Cannabis Control Policies (2008 – 2018)</i>	9
<i>Figure 4: Past-year Prevalence of Cannabis Use in Latin America</i>	20
<i>Figure 5: Acceptance of Cannabis Use in Latin America (2015)</i>	21
<i>Figure 6: Support for Cannabis Legalization in Latin America (2015)</i>	22
<i>Figure 7: Relative Levels of Participation in the Marcha in Latin America (2002-2018)</i>	24
<i>Figure 8: Placement of Countries for Case Selection</i>	30
<i>Figure 9: Analytical Framework of the Field of Action</i>	51
<i>Figure 10: Stylized Depiction of the Stages of Agenda Manipulation</i>	58
<i>Figure 11: Causal Pathways Combining Agenda Manipulation and Strategic Framing</i>	64
<i>Figure 12: Potential and Actual Reform Pathways in Uruguay, Mexico and Chile</i>	85
<i>Figure 13: Available and Actualized Frames in Uruguay, Mexico and Chile</i>	91
<i>Figure 14: Reform Groups' Organizational Sophistication in Uruguay, Mexico and Chile</i>	94
<i>Figure 15: Causal Graph of Uruguay's Cannabis Reform Process</i>	100
<i>Figure 16: Turn-out at the Annual Marcha de la Marihuana in Uruguay (2005-2014)</i>	108
<i>Figure 17: Prevalence of Cannabis Consumption in Uruguay (2001-2014)</i>	109
<i>Figure 18: Perceived Ease of Access to Substances in Uruguay (2014)</i>	110
<i>Figure 19: Public Opinion on Marijuana Legalization in Uruguay (2012-2013)</i>	110
<i>Figure 20: News Items on Cannabis Reform Published in Uruguay (2008-2013)</i>	113
<i>Figure 21: Causal Graph of Mexico's Cannabis Reform Process</i>	151
<i>Figure 22: Public Opinion on Marijuana Legalization in Mexico (2008-2016)</i>	156
<i>Figure 23: Prevalence of Cannabis Consumption in Mexico (2002-2016)</i>	157
<i>Figure 24: Turn-out Rates for Annual Marcha de la Marihuana in Mexico (2001-2018)</i>	159
<i>Figure 25: News Items on Cannabis Reform Published in Mexico (2012-2018)</i>	165
<i>Figure 26: Reform Initiatives Presented in the Mexican Congress (2008-2020)</i>	191
<i>Figure 27: Causal Graph of Cannabis Reform Process in Chile</i>	205
<i>Figure 28: Prevalence of Cannabis Consumption in Chile (1994-2016)</i>	213
<i>Figure 29: Perceived Ease of Access to Different Substances in Chile (2001-2017)</i>	214
<i>Figure 30: Number of Grow Shops in Latin America (2014-2018)</i>	214
<i>Figure 31: Public Opinion on Marijuana Legalization in Chile (2014-2019)</i>	216
<i>Figure 32: Public Acceptance of Moral Issues in Chile (1990-2015)</i>	218
<i>Figure 33: Attitudinal Distance Between Population and Congress in Chile</i>	219
<i>Figure 34: Turn-out at the annual Marcha de la Marihuana in Chile (2005-2018)</i>	220
<i>Figure 35: News Items on Cannabis Reform Published in Chile (2010-2018)</i>	222
<i>Figure 36: Set-theoretic Logic of Case Selection</i>	293
<i>Figure 37: Cannabis Reform Votes Distribution by Outcome and Party in Chile (2015)</i>	303

List of Acronyms

ACEID	Asociación Costarricense para el el Estudio e Intervención en Drogas (Costa Rica)
ADS	Asuntos del Sur (Chile)
AECU	Asociación del Estudio del Cannabis de Uruguay (Uruguay)
ALDF	Asamblea Legislativa del Distrito Federal (Mexico)
AMECA	Asociación Mexicana de Estudios sobre Cannabis (Mexico)
AMEM	Autocultivo Medicinal en México (Mexico)
AMLO	Andrés Manuel Lopéz Obrador (Mexico)
ATS	Acción Tecnica Social (Mexico/Colombia)
BCN	Biblioteca del Congreso Nacional de Chile (Chile)
CA	Comisión Asesora para la Política de Drogas (Colombia)
CCSA	Constitutional Court of South Africa (South Africa)
CDARI	Caribbean Drug and Alcohol Research Institute (St Lucia)
CDPC	Canadian Drug Policy Coalition (Canada)
CEDD	Colectivo de Estudios Drogas y Derecho
CEIS	Centro Estratégico de Impacto Social (Mexico)
CELS	Centro de Estudios Legales y Sociales (Argentina)
CESOP	Centro de Estudios Sociales y de Opinión Publica (Mexico)
CIDE	Centro de Investigación y Docencia Económicas (Mexico)
CIJ	Centro de Integración Juvenil (Mexico)
CNRC	Coordinadora Nacional Regulación del Cannabis
COFEPRIS	Comisión Federal para la Protección contra Riesgos Sanitarios (Mexico)
COLMED	Colegio Medico (Chile)
CONADIC	Comisión Nacional contra las Adicciones (Mexico)
CPF	Código Penal Federal
CPO	Causal Process Observation
CPyP	Centro de Análisis de Política y Prospectiva (Chile)
CUPIHD	Colectivo por una Política Integral hacia las Droga (Mexico)
DC	Democracia Cristiana (Chile)
DOJ	Department of Justice (US)
DPA	Drug Policy Alliance (USA)
EPN	Enrique Peña Nieto (Mexico)
FA	Frente Amplio (Uruguay)
FESUR	Friedrich Ebert Stiftung in Uruguay (Uruguay)
FJG	Fundación Jaime Guzmán (Chile)
FLR	Fundación Latinoamerica Reforma (Chile)
IAD	Inter-American Dialogue (US)
IAFA	Instituto sobre Alcoholismo y Farmacodependencia (Costa Rica)
IAHCR	Inter-American Court for Human Rights (Costa Rica)
IC	Izquierda Ciudadana
ICSDP	International Centre for Science in Drug Policy (Canada)
IDCP	International Drug Policy Consortium (UK)
IELSUR	Instituto de Estudios Legales y Sociales del Uruguay (Uruguay)
IGIA	Reflexión y Participación Interdisciplinar en torno a las Drogodependencias (Spain)
INJUV	Instituto Nacional de Juventud (Chile)
IPS	Institute of Policy Studies (USA)
IRCCA	Instituto de Regulación y Control del Cannabis (Uruguay)
JND	Junta Nacional de Drogas (Uruguay)
LDP	Libre Desarrollo de la Personalidad
LGS	Ley General de Salud (Mexico)
MC	Movimiento Ciudadano (Mexico)
MCM	Movimiento Canabico Mexico (Mexico)

MOVILH	Movimiento de Integración y Liberación Homosexual (Chile)
MUCD	Mexico Unido Contra la Delincuencia (Mexico)
MYSU	Mujer y Salud en Uruguay (Uruguay)
NM	Nueva Mayoria (Chile)
NMPP	No Más Presos por Plantar (Chile)
OAS	Organization of American States
OLAP	Observatorio Latinoamericano para la investigación en Política Criminal (Uruguay)
OSF	Open Society Foundation (USA)
ODU	Observatorio Uruguayo de Drogas (Uruguay)
PAC	Partido Acción Ciudadana (Costa Rica)
PAN	Partido Acción Nacional (Mexico)
PANAL	Partido Nueva Alianza (Mexico)
PASDC	Partido Socialdemócrata (Mexico)
PC	Partido Colorado (Uruguay)
PC	Partido Comunista (Chile)
PELA	Parliamentary Elites in Latin America Observatory (Spain)
PI	Partido Independiente (Uruguay)
PIT-CNT	Plenario Intersindical de Trabajadores - Convención Nacional de Trabajadores (Uruguay)
PL	Partido Liberal (Chile)
PN	Partido Nacional (Uruguay)
PPD	Partido por la Democracia (Chile)
PPD	Programa de Política de Drogas (Mexico)
PRD	Partido de la Revolución Democrática (Mexico)
PRI	Partido Revolucionario Institucional (Mexico)
PRO	Partido Progresista (Chile)
PRSD	Partido Radical Social Demócrata (Chile)
PS	Partido Socialista (Chile)
PT	Partido del Trabajo (Mexico)
PVEM	Partido Verde Ecologista de México (Mexico)
RN	Renovación Nacional (Chile)
RUDU	Red de Usuarios de Drogas de Uruguay (Uruguay)
SAG	Servicio Agrícola y Ganadero (Chile)
SAM	Smart Approaches to Marijuana (USA)
SCJN	Suprema Corte de Justicia de la Nación (Mexico)
SEGOB	Secretaría de Gobernación (Mexico)
SENDA	Servicio Nacional para la Prevención y Rehabilitación del Consumo de Drogas y Alcohol (Chile)
SERPAJ	Servicio Paz y Justicia (Uruguay)
SMART	Sociedad Mexicana de Autoconsumo Responsable y Tolerante (Mexico)
SMU	Sindicato Médico del Uruguay (Uruguay)
SOCHIPE	Sociedad Chilena de Pediatría (Chile)
SONEPSYN	Sociedad Chilena de Neurología, Psiquiatría y Neurocirugía (Chile)
SOPNIA	Sociedad de Psiquiatría y Neurología de la Infancia y Adolescencia (Chile)
SPU	Sociedad de Psiquiatría del Uruguay (Uruguay)
SUPIA	Sociedad Uruguaya de Psiquiatría de la Infancia y la Adolescencia (Uruguay)
TAN	Transnational Advocacy Network
TNI	Transnational Institute (Netherlands)
UdelaR	Universidad de la República (Uruguay)
UDI	Unión Demócrata Independiente (Chile)
UDP	Universidad Diego Portales (Chile)
UNAM	Universidad Nacional Autónoma de México (Mexico)
UNODC	United Nations Office on Drugs and Crime (Austria)
UNPF	Unión Nacional de Padres de Familia (Mexico)
WOLA	Washington Office on Latin America (USA)

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Introduction

Latin America is marred by shockingly high levels of crime, violence and homicide rates (Bergman 2018; Durán-Martínez 2017; Yashar 2018). In fact, Latin America is now considered the most violent region in the world (Cruz 2016). While not all violence is criminal or drug-related, drugs are a key contributor to violence (Bagley & Rosen 2015). If drug violence is the result of confrontations between weak states and powerful criminals fighting each other over lucrative illegal goods and trafficking routes,¹ then there are two ways to confront drug violence: either to strengthen the coercive capacities of the state or to the reduce profitability of criminal activities. Strengthening states' coercive capacities has been the predominant response to drug violence in Latin America (Cruz 2016). Yet, results have been disappointing despite decades of escalating efforts.²

By contrast, regulating drug production and use to reduce the profitability of illegal activities has been the exception, in a region long characterized by its “addiction to punishment” (Uprimny *et al.* 2013). Despite growing acknowledgement that changes in the legality of currently illicit substances might be necessary to reduce drug-related violence,³ the politics of drug policy reform has received little scholarly attention. Drug

¹ Yashar (2018) finds that homicidal violence is the result of competition between criminal groups over drug routes in contexts of weak state capacity. Similarly, Bergman (2018) contends that the combination of highly profitable criminal activities and inadequate state capacity explain “high crime equilibria.” Durán-Martínez (2017) argues that state power and competition in drug markets determine the visibility and frequency of drug violence.

² At best, waging a war on drugs is not effective because high profits make dissuading criminals from engaging in illegal activities difficult (Bergman 2018). At worst, state intervention is counterproductive because it extends the cycle of violence. Lessing (2017) shows that anti-narcotics policies can be a key driver of cartel-state conflict.

³ Barnes (2017) and Kalyvas (2015) argue that it is difficult to imagine combating drug cartels in Latin America without some drastic change to the illegal status of drugs. Bagley and Rosen (2015:18) consider that legalization “may well offer the only realistic formula for reducing the profits that drive drug related crime, violence and corruption in Latin America.” Of course, marijuana legalization alone is unlikely to be sufficient, as cannabis hardly accounts for most drug violence in Latin America (Schneider 2019).

legalization has been declared a “political non-starter” (Lessing 2017:296), with “dim prospects” (Shirk & Wallman 2015:1370) and “little support... in Latin America” (Bunck & Ross Fowler 2012:6). Yet, at the time of writing, two of the three countries in the world that have legalized cannabis are in Latin America (Corda, Cortés and Piñol 2019). Aside from Canada, only Uruguay and Mexico have thus far legalized cannabis to different degrees. This limited, yet significant, embrace of alternative drug policies in Latin America is puzzling and requires an explanation. My thesis investigates how and why drug policy liberalization has moved from purported impossibility to political reality.

Specifically, I scrutinize why Uruguay became the first country to legally regulate cannabis from seed to smoke in 2013, why Mexico’s Supreme Court issued a landmark ruling in 2015 that declared the prohibition of cannabis for personal consumption unconstitutional and became the law of the land in 2018, and why cannabis reform failed in Chile in 2017 despite initial progress and hospitable circumstances. Why do we see far reaching reforms in Uruguay, piecemeal change in Mexico, and no reform at all in Chile? What accounts for Uruguay and Mexico’s departures from the *status quo* of drug prohibition regarding cannabis in a region where prohibition has been the norm, vested interests conspire against change and legalization remains unpopular with the public?

To answer these questions, I look at cannabis policy change comparatively, within and across three Latin American countries, and scrutinize the role that actors, as well as institutional and ideational factors, play in the reform process. Specifically, I am interested in how reform processes have unfolded in different countries, who the driving forces behind marijuana legalization are, what arguments and discourses proponents use

Nevertheless, it might be a necessary first step to dealing differently and more effectively with drug violence (Duran-Martinez 2017).

to justify reforms, and why ideas about cannabis policy have changed. I “start with events that have occurred in the real world and move backwards to ask about their causes” (Goertz & Mahoney 2012:42).

Marijuana legalization in Latin America is not only important, topical and puzzling in its own right, but studying recent instances of drug policy liberalization also adds to the growing literature on the politics of “morality policies” (Engeli, Green-Pedersen & Larsen 2012; Knill, Adam & Hurka 2015; Dombrink & Hillyard 2015; Schwartz & Tatalovich 2018). Especially in Latin America the expansion of rights regarding “morality” issues such as same-sex marriage (e.g. Corrales & Pecheny 2010; Díez 2015; Encarnación 2016), and divorce or abortion (e.g. Htun 2003; Blofield 2006; Marcus-Delgado 2019) has been the subject of excellent studies. While dealing with a different substantial issue – the legal regulation of a currently illicit substance, I draw and expand on many of the insights from this literature.⁴ I similarly move beyond the classical social movement literature to focus on the interactions between outsiders and those inside the state with the authority to change the *status quo*. In particular, my thesis shines a light on the conditions under which those interactions prove more or less successful in effecting change. As such, my thesis shows how the demand for change interacts with and why it influences the supply of controversial policy change, in a novel and understudied context.

⁴ For instance, Htun (2002) emphasizes “middle-level” features of state-society relations and political institutions to explain variation in progress of gender rights. Specifically, she highlights the importance of the terms of debate and whether issues are framed as “absolutist” or “technical” issues. For her, these frames are produced and advanced by elite actors. While Blofield (2006) highlights structural factors, such as income inequality, to explain variation in abortion and divorce, she advances a robust notion of agency and contends that “actors with something to offer domestic and political elites will have more political influence” (iboid:9). Díez (2015) argues that variation in the success of gay rights activists depend on their organizational assets and links to other civil society actors, access to policy-making arenas depending on the institutional context and the framing of claims advanced by same-sex marriage reformers. Whereas Encarnación (2016) acknowledges the importance of international diffusion, he underlines the importance of domestic factors and in particular the crucial role that activists have played in the “gay rights revolution” by crafting campaigns able to mainstream the issue and dispel prejudices.

The remainder of the Introduction proceeds as follows. First, I conceptualize my outcome of interest. Second, I preview the argument I will develop throughout the thesis. Third, I assess alternative explanations to show why they are unsatisfactory and better theorizing is needed. Fourth, I introduce my case selection strategy to justify why I selected Uruguay, Mexico and Chile for close scrutiny. Fifth, I present my methodological approach for building my explanatory account of cannabis reform in Latin America, which uniquely combines process tracing and counterfactual analysis. Finally, I conclude by outlining the structure of the thesis and summarizing the contents of each chapter.

Defining Marijuana Legalization

I am interested in changes to extant drug control policies that allow some form of legal access to cannabis for recreational purposes.⁵ These instances of liberalization can be called *marijuana legalization*. Legal access to marijuana differs in kind or in degree, from limited to comprehensive depending on the modes and forms of permitted legal production and commercialization. In the following, I offer a working definition of legalization, relate it to other forms of drug policy liberalization and develop a typology of drug control “regimes.”

Defining *marijuana legalization* in such detail is necessary because too often it is confused with other forms of drug policy liberalization (Hinkley 2014), and the same terms mean something different in other contexts, such as alcohol (Okrent 2010), abortion (Berer 2017), or sex work (Weitzer 2012). Clearly conceptualizing my dependent variable is therefore necessary. I define marijuana legalization as any process of drug policy

⁵ While the distinction between medical and recreational purposes is considered arbitrary or even discriminatory by some (Bostwick 2012), it is useful for analytical purposes to delimit different processes.

liberalization that results in partial or full legal access to the substance.⁶ In the context of drugs, legalization refers to allowing supply, production or sale in one form or another, not possession and use.⁷ Legalization refers to any movement *towards* legal access and supply, irrespective of the resulting configuration of policy.

Drug control policies are not dichotomous, but rather can be situated along a spectrum. Such a “spectrum of restrictiveness” (MacCoun & Reuter 2001:311) encompasses different policy configurations, “with strictly prohibitive and highly punitive on one end, and, the unregulated free market at the other end, and a wide array of regulatory policies in the middle” (Nadelmann 1992:110). Drug control regimes vary, depending on the number and types of activities prohibited and the severity of sanctions for transgressions (MacCoun & Reuter 2001). “Drug legalization can be thought of as moving drugs along a spectrum of regulated status in the direction of increased availability” (Kleiman & Saiger 1992:225).

Several frameworks for classifying drug control policies have already been established. While useful, some classifications are limited by their selective focus on different forms of prohibition or on one activity. For instance, Hall and Pacula (2003:187-194) differentiate between complete prohibition, partial decriminalization and full decriminalization. Room *et al.* (2010:99-123) only consider “drug use control regimes.” Other frameworks include both demand and supply activities. Lenton *et al.* (2000:70-78) argue that six different “legislative options” for cannabis policy exist: total prohibition,

⁶ Although cannabis is the plant from which both hemp and marijuana are derived, I use cannabis and marijuana interchangeably. I eschew using the more colloquial ‘pot’ or ‘weed’ (Lissner 2018).

⁷ Distinctions are made between different drug-related activities (Kleiman, Caulkins, & Hawken 2011; Babor *et al.* 2018), especially between possession and use (demand side), and, production and access (supply side).

legislative prohibition with an expediency principle, prohibition with civil penalties, partial prohibition, regulation and free availability. MacCoun and Reuter (2001:311) distinguish between eight models along an axis of decreasing restrictiveness, depending on “who may legally use and administer the drug.” Rogeberg *et al.* (2018) divide “drug regulatory regimes” into absolute prohibition, decriminalization, state control and free market, based on the policy tools employed.

Based on these existing efforts, and the idea that drug control policies fall on a spectrum, I develop a typology of drug control regimes. Under *Prohibition* the possession, consumption, production and distribution of drugs are criminalized and punishable. *Absolute Prohibition* refers to policies on one end of the spectrum with transgressions being severely punished. *Partial Prohibition* is prohibition with reduced criminal sanctions. *Decriminalized Possession and Use* mean that these activities are no longer illegal or incur criminal sanctions, while cultivation, sale or supply remain illegal and sanctioned. *Legal Availability* means that drugs can be legally possessed and accessed. Under *Partial Availability* certain modes of supply are allowed whereas others are not. *Absolute Availability* refers to the end of the spectrum where no rules and regulations restrict supply. For illustration purposes these different drug control regimes are arrayed by their restrictiveness (Figure 1).

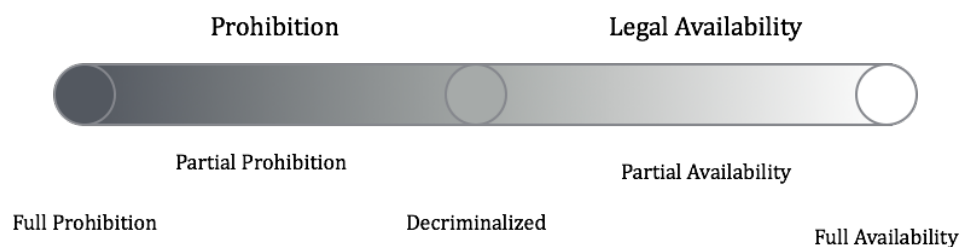


Figure 1: Spectrum of Drug Control Policies

Liberalization of drug control policies refers to any movement on this spectrum towards increased openness, an easing of repression and extension of liberties. Any decrease of sanctioning severity – movement from prohibition to decriminalized possession and consumption – is called *depenalization*. No longer applying criminal sanctions to possession and use is called *decriminalization*. Any increase in legal availability – movement towards full legal availability – is called *legalization*. Under this definition legalization is just one instance of liberalization, which can refer to both changes *within* a regime as well as a change *of* regime. Thus, legalization is the process of bringing within the confines of the law cannabis supply which was previously illegal and prohibited.

Legalization does not necessarily result in a complete *laissez faire* drug policies. Just as “democratization” denotes processes often falling short of achieving full democracy and resulting in “democracies with adjectives” (Collier & Levitsky 1997), legalization produces policy configurations of partial availability or “legality with adjectives.” Restrictions, rules and regulations condition when, where and how cannabis can be accessed. Caulkins *et al.* (2015:49-69) present twelve potential alternatives of how to set up a “supply architecture” for cannabis. Rolles’ (2009:18-27) “blueprint for regulation” presented by consists of five policy options, depending on where cannabis can be bought and by whom. I differentiate between forms of partial legal availability that correspond to existing cannabis production regimes (Caulkins *et al.* 2012; Kilmer *et al.* 2012).



Figure 2: Spectrum of Policy Configurations of Legally Available Cannabis

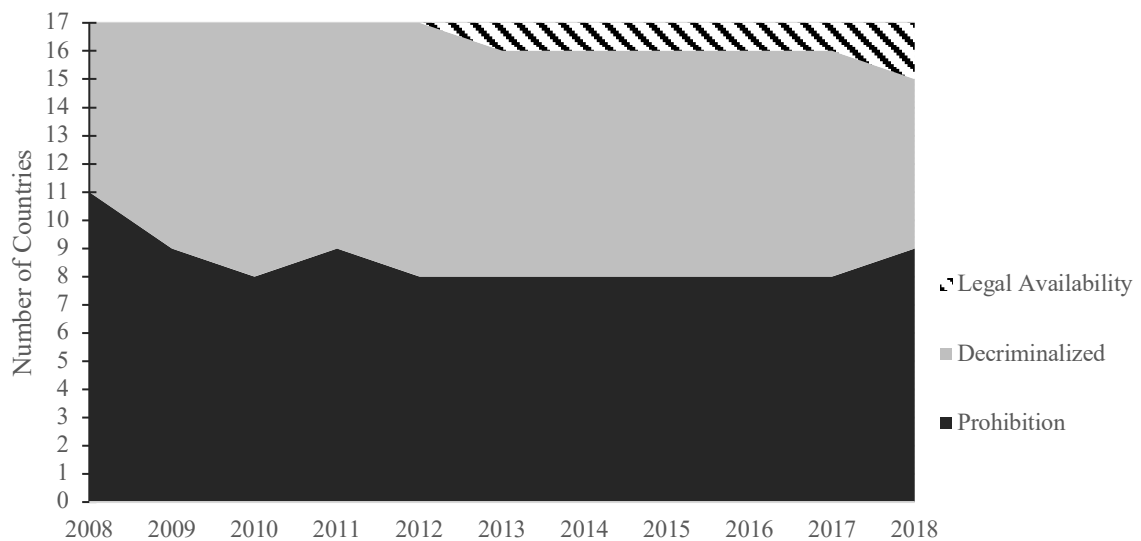
Excluding access through a *Medical Prescription* (I am only interested in the legal availability of marijuana for recreational purposes), *Home Cultivation*, *Collective Cultivation* and *Regulated Markets* can be ranked by their restrictiveness (Figure 2). *Home Cultivation* (or *autocultivo*) allows growing plants at home for personal consumption. *Collective Cultivation* allows licensed associations to grow and distribute cannabis to their members. In a *Regulated Market*, cannabis can be legally bought and sold, but there are age requirements, taxes, and, limitations on quantity, time and place of sale. Thus, cannabis control policies can vary both in kind (prohibited, decriminalized or legally available), and, in degree of legal availability (home or collective cultivation, regulated or free market). In the next step, I use this typology to map cannabis control policies in Latin America to identify instances of marijuana legalization.

Marijuana Legalization in Latin America

To identify instances of change in drug policies towards the legal availability of marijuana, I map cannabis control policies in Latin America. My own classification parallels but also differs from existing attempts to classify Latin American drug policies (OAS 2013; Mathieu & Niño 2013; Moroy 2013; Pérez-Correa, Corda & Boiteux 2015; Corda 2015; Corda & Filomena 2019). The key limitation of my legal mapping is that it is based on law as it is written (Burris *et al.* 2010; Tremper, Thomas & Wagenaar 2010; Anderson *et al.* 2013). Reality, however, often looks different. My classification reflects the *de jure* dimension of cannabis control, yet *de facto* implementation of legislation and law enforcement practices also shape drug control and “there are numerous discrepancies

between the ‘law on the books’ and ‘law in action’” (Room *et al.* 2010:97).⁸

To classify cannabis control policies, I collected pertinent legal texts for seventeen Latin American countries (Appendix 1). While I mostly draw on statutes and laws, I also include jurisprudence, as this can have the same effect (Tremper, Thomas & Wagenaar 2010). Based on a close reading of pertinent legislation, regulations and court rulings, I classify drug laws for each country and year using three “regime types”: *Prohibition*, *Decriminalized* and *Legal Availability* (Appendix 2). Countries are coded *Prohibition* when either cannabis possession or consumption, as well as production, are criminally sanctioned. Countries are classified *Decriminalized*, when there are allowances for possession for personal consumption. Finally, countries are coded *Legal Availability* if there is any way to legally access cannabis for recreational purposes (Figure 3).



Note: Author's elaboration based on classification of drug policy regimes and drug laws in seventeen Latin American countries. Source: Appendix 1 and 2.

Figure 3: Changes in Cannabis Control Policies (2008 – 2018)

⁸ This gulf between written laws and their application is especially wide in Latin America (Metaal & Youngers 2010; Youngers & Pérez-Correa 2014; Pérez-Correa, Corda & Boiteux 2015). For example, Mexican cannabis users are often harassed, extorted, or criminally sanctioned (Pérez-Correa & Silva 2014).

Across Latin America, there is wide variation in cannabis policies (Corda, Cortés & Piñol 2019). While authors have marveled about “unexpected laboratories of change” (Soberon 2013:29), and, that “remarkable drug policy developments are taking place” in Latin America (Armenta, Metaal, and Jelsma 2012:1), we cannot really speak of a “wave of drug policy reform in Latin America” (Barra 2015:91). Rather, most countries have maintained prohibitionist drug control policies (Corda 2015; Pérez-Correa, Corda & Boiteux 2015; Corda & Fusero 2016). A substantial number of countries have neither debated reforms nor changed their cannabis policies (Peru, Paraguay, Bolivia, Venezuela, Panama, El Salvador, Honduras, Nicaragua). In other countries, developments have been characterized by continuity despite some signals of change (Argentina, Brazil, Chile, Colombia, Costa Rica and Guatemala).⁹

Only two Latin American countries have legalized cannabis for recreational purposes. Not only have these changes occurred in different ways but also legal access to cannabis has been allowed to different degrees. In Mexico, as result of Supreme Court jurisprudence, anyone can obtain permission to legally grow cannabis for personal consumption. In Uruguay, as a result of a 2013 law, cannabis is available in pharmacies, through home cultivation or membership clubs. At the time of writing, Uruguay’s cannabis law is more comprehensive than Mexican jurisprudence, as it allows both collective cultivation and retail sales. However, a more sweeping legislative reform is under discussion in the Mexican Congress. While the details of legislative cannabis reform are still being hammered out, it is certain to be more comprehensive than just allowing home cultivation.

⁹ I have undertaken a more thorough review of debates and developments regarding marijuana in Latin America elsewhere (von Hoffmann 2016a, 2017b). For a more recent comparative overview of the politics of marijuana legalization in the region see Corda, Cortés and Piñol (2019).

Argument in Brief

My argument for why marijuana legalization has occurred in some but not in other Latin American countries emphasizes the importance of how reform proponents articulate the demand for drug policy reform. Whereas most existing studies of drug policy stress the importance of political supply of reform from above (Sharp 1994; Bertram *et al.* 1996; MacCoun & Reuter 2001) and a few studies look at societal demand from cannabis activists from below (Dufton 2017; Corbelle 2019), I combine these two perspectives to show why the way in which reform proponents advocate, campaign or litigate conditions whether they manage to draw attention to the issue, engender approval and alter decisionmakers' ideas about the legal regulation of a mind-altering substance. In doing so, I build on comparative studies of recent changes in Latin America of other controversial issues such as transitional justice (González-Ocantos 2016), same-sex marriage (Díez 2015) and abortion (Htun 2003; Marcus-Delgado 2019), which establish that the strategies, interventions and framings with which actors demand changes to the *status quo* crucially contribute to their supply.

My overall argument is that variation in agenda manipulation and strategic framing explain why marijuana legalization triumphed in Uruguay, made some progress in Mexico and failed in Chile. The way in which reform proponents packaged and sold their demands influenced the attention and approval, and thereby the extent of cannabis liberalization they secured. In turn, reform proponents' ability to engage in agenda manipulation and develop resonant frames depend on their organizational structures, resources and membership. In this sense, the kind of pro-reform coalitions matters: when predominantly “grassroots” activists are challenging the *status quo*, would-be reformers

are less likely to be successful than when intra-civil society coalitions are diverse and feature distinctive actors with specific sets of skills, expertise and experience that enable them to influence policymaking. Lastly, reform proponents do not operate within an institutional or ideational vacuum, and insider and outsider reform opponents can frustrate reform attempts through their own agenda manipulation and strategic framing.

Organizational structures, resources and technical skills that distinct actors bring to the table influence what tactical choices reform proponents make, how effectively they can implement them and why they succeeded in Mexico and Uruguay, but not in Chile. Both in Uruguay and Mexico, reform proponents were highly pragmatic, professional and deliberate in framing the messages and messengers they chose to represent cannabis reform. By contrast, Chilean reform proponents' efforts were more amateurish, haphazard and decentralized. Whereas Uruguayan and Mexican cannabis proponents received an injection of professionalism and know-how from overseas and more "bourgeoisie," establishment actors, Chilean cannabis grassroots activists were left to their own devices. Thanks to the broadening of the pro-reform coalition, in the first two cases activists were able to understand they had to speak and act in specific ways in order to build bridges with decision makers in key state institutions.

These differences of reform proponents' organizational characteristics and capabilities explain variations in tactical choices and how cannabis reform is strategically framed. In Uruguay, providing cover in the form of support on the streets in a context of public disapproval, attenuated fears that supporting cannabis reform was a political liability. In Mexico, framing the legal challenge to prohibition in terms of its violation of a residual area of personal liberties that the Court had shown an inclination in defending previously,

linked cannabis liberalization to certain Supreme Court justices' extant institutional priorities and existing precedents. Conversely, in Chile, reform proponents did not manage to connect their demands to any overarching or audience-specific concerns.

Specifically, I argue that the ways in which reform proponents present their demands and represent themselves are a key mechanisms through which they advance drug policy reform, recruit bystanders, silence opponents, and manufacture or maintain support for cannabis liberalization. If reform proponents develop and adapt framings to "fit" with their target audiences, they are more successful in building or maintaining support for cannabis liberalization. "Creating fit" depends on actors' resources and know-how, which in turn stem from the kinds of civil society coalitions formed in support for liberalization. Tactical choices and the implementation of strategic framing explain partially the levels of support cannabis reform receives.

The other part of the approval of cannabis reform can be accounted for by who is responsible for agenda manipulation. Differences in agenda manipulation lead to distinct reform processes and outcomes. Whether or not the government initially sets the agenda influences the subsequent reform process. If the government opposes marijuana legalization, as in Mexico and Chile, change agents must set the agenda themselves. If the government supports cannabis reform, as in Uruguay, reform proponents do not have to set but only maintain the agenda. Reform outcomes also depend on the negative reaction the proposal provokes. No change, as in Chile, was in part the consequence of a well-organized and vocal opposition denying the agenda. If agenda setting or maintenance are opposed by determined agenda denial efforts, the voices demanding change can be silenced, the impetus for reform cut short, and the reform process derailed.

In sum, I contend that through agenda manipulation reform proponents gain both attention and approval, particularly of actors hitherto uninvolved or uninterested in cannabis reform. In turn, the approval and attention cannabis reform attracts is a function of the framing advanced by reform proponents. Particularly framing that plays down controversial aspects, emphasizes the benefits of reform and makes cannabis reform “fit” with the institutional position and extant ideas of the targeted actors are more persuasive. Messages and messengers are more impactful when reform proponents manage to present themselves and their policy demand as mainstream not fringe, safe not threatening, and, helpful not harmful. Reform proponents’ ability to develop such resonant frames depends on their organizational structures, resources and membership. As such, my argument, developed in further detail below, explains recent and otherwise puzzling instances of cannabis liberalization in Latin America. By unearthing what reform proponents do to achieve the legal regulation of cannabis, my argument not only elucidates *how* marijuana legalization occurred in Uruguay and Mexico, but not in Chile, but also explains *why* the demand influenced the supply of drug policy reform.

Alternative Explanations of Drug Policy Change

The persuasiveness of any explanation increases if alternative explanations are considered and found inconsistent with the evidence (George & Bennett 2004). A theory must succeed in a “three-cornered fight” against its rivals and the evidence (Lakatos 1970:115). As Mahoney (2012:589) puts it, “a good explanation of an outcome not only builds a positive case for the main hypothesis of interest but also reveals problems with any rival hypotheses.” In the following, I identify plausible explanations for marijuana legalization in Latin America, assess why they might matter and present cross-case

evidence for their explanatory purchase. I show that alternative accounts are unsatisfactory, thereby substantiating my case for why new theorizing about drug policy change in Latin America is needed. I come back to some of these explanations in the empirical chapters to show they are also unable to explain outcomes in Uruguay, Mexico and Chile.

Electoral Mandates and Policy Change

Policies can change because someone with the stated intention to change them is given an electoral mandate to do so. We might speak of a “mandate” if an elected political actor promised a specific policy during the campaign. Mandates are the result of “expectations politicians create in campaigns about the actions they will take if they win” (Stokes 2001:4). Establishing policy goals before being elected provides a policy mandate to carry out reforms. To understand if a new government has a mandate after an election, it is important to look at the programmatic platform they ran on. The assumption of the “program-to-policy linkage” is that candidates not only make promises but try to fulfil them (Mansergh & Thomson 2007). The idea is that “manifestos are accurate guides to what a party will do in government” (Kavanagh 1981:21). Thus, “the pledges that parties offer in their election platforms do make a difference in subsequent policy making” (Petry & Collette 2009:68).

Electoral mandates can be important for explaining marijuana legalization. Queirolo *et al.* (2018) highlight that sometimes marijuana legalization is the result of “a strong marijuana legalization agenda within the ruling party.” In such instances, policy change is relatively straight-forward: someone who is already willing to legalize marijuana becomes able to do so by being elected. This is what happened in Canada, where the

Liberal Party pledged in its platform that “we will legalize, regulate, and restrict access to marijuana” (Liberal Party 2015:55). After winning a resounding victory in the 2015 elections, the Trudeau administration followed up on their electoral promise to legalize marijuana and passed the Cannabis Act in June 2018 (Potter and Weinstock 2019).

Have there been presidents with an explicit electoral mandate to legalize marijuana in Latin America? If so, does this explain variation in reform outcomes? To establish if candidates have supported cannabis reform before assuming office, I analyzed the electoral platforms of the winner and runner-up for each election since 2008 (for an overview see Appendix 3).¹⁰ I found that most candidates and eventual winners of presidential elections have been against marijuana legalization: Of 22 elections, there are only five instances in which candidates left the door open for cannabis reform. However, even these proposals have been ambiguous and non-committal. Interestingly, in Uruguay, the *Frente Amplio*’s 2009 electoral program neither mentions legalization nor cannabis.¹¹ The exception is Alejandro Guillier in Chile, who unsuccessfully ran against Sebastián Piñera in 2018. He explicitly promised cannabis reform, as his platform calls for a “new drug policy” and a “paradigm change,” specifically promising the depenalization of marijuana for therapeutic and recreational purposes (NM 2017:68-69).

Learning and Policy Change

Policies can change as a result of pro-active learning. Policy makers can independently incorporate new information into the making of policy. Despite important differences

¹⁰ I have searched for mentions of *droga, sustancia, estupefaciente, marihuana, cannabis and narco*. Where no explicit mention was made in the program, I searched for public statements made during the campaign.

¹¹ The *V Congreso Extraordinario del Frente Amplio* advocated for “revising the existing legal framework vis-à-vis the reality [of drug use]” (FA 2008:90). Being rather vague, it is difficult to argue that José Mujica was elected with a clear mandate to legalize marijuana.

(Bennett & Howlett 1992), theories of policy learning share the underlying assumption that “learning leads, at the very least, to a policy reassessment, but often to policy change” (Marier 2012:405). According to Heclo (1974), policy learning is an independent and endogenous process of “puzzling” about what to do. Rather than power, he stresses uncertainty - “men collectively wondering what to do” (ibid:305). The influence of non-state actors is of little relevance, as learning is conceived of as autonomous and endogenous activity (Skocpol 1985). New policy develops as a “corrective” to “perceived failings of previous policy” (Heclo 1974:303).

Learning as “puzzling” accounts quite well for two key instances of past drug policy reforms. The recommendations of a government-sponsored commission were crucial for the decriminalization of drug possession in Portugal in 2001 (Hughes 2006). The Netherlands’ *de facto* legalization of cannabis in 1976 followed the recommendations of the Hulsman and Baan Commissions (Cohen 1994; Uitermark 2004). But most inquiries into drug policy have not led to changes, despite almost invariably recommending substantial changes (Bewley-Taylor 2012). Have there been instances of organized and autonomous “puzzling” by Latin American governments about what to do with cannabis? To the best of my knowledge, there have only been three commissions studying drug policy, none of which had an appreciable effect on respective drug policies. In Guatemala, President Pérez Molina set up a commission to recommend drug policy reforms (Giacomello 2015). In Colombia, President Santos established a commission which published its recommendations in 2015 (CA 2015). In Chile, two efforts – one a parliamentary evaluation and the other an inter-ministerial working group – have studied drug policy. Yet, as the country chapter details, these instances of governmental learning did not result in meaningful change.

Crises and Policy Change

Crises can provide opportunities for non-incremental policy change. There are several ways in which crises “break old patterns of thought and behaviour” and open up “the possibilities for new approaches and ideas” (Luebbert 1991:312). First, perceived crises draw attention to issues (Cobb & Elder 1983; Birkland 1998; Birkland & DeYoung 2012). Second, crises discredit old ideas and legitimate new ones. The perceived failures or inadequacies of a reigning paradigm create a demand for new ideas (Blyth 2002; Culpepper 2008; Berman 2010). Third, crises empower actors with different ideas (Keeler 1993; Birkland 1998; Boin, 't Hart, & McConnell 2009). In fact, many models of policymaking consider focusing events, shocks or crises as central for change (Baumgartner & Jones 1993; Sabatier & Jenkins-Smith 1993; Kingdon 1994). If substantial change occurs, then only as the result of extraordinary often poorly explained “punctuations” (Blyth 2002; Hay 2004; Peters, Pierre & King 2005). Hence, in much of the institutionalist literature, exogenous shocks are the driving force behind change.

The Uruguayan case of marijuana legalization has been characterized as response to a perceived crisis (Arraras & Bello-Pardo 2014; Viscardi 2016; Galain 2018). For instance, Queirolo *et al.* (2018) argue that legalization was the result of a “window of opportunity” opening up in response to a perceived crisis of drug-related insecurity. As the country chapter discusses in detail, crisis is not a wholly inadequate explanation of the origins of the government’s proposal to legalize marijuana. Nevertheless, as I argue below, only focusing on the crisis-induced, top-down initiation of the reform process presents an incomplete picture of cannabis reform in Uruguay, as it does not account for the continuation and conclusion of the reform process (von Hoffmann 2019).

Normalization and Policy Change

Societal acceptance is supposed to make political acceptance of new policies more likely. In drug policy, normalization refers to the process of “growing cultural accommodation, social acceptance, or tolerance of drug use by both drug users and the wider society” (Blackman & Measham 2014:230).¹² Cannabis is the most “normalized” illegal substance (Wibberley & Price 2000; Manning 2007; Erickson & Hathaway 2010). In many countries, “marijuana has undergone a normalizing process as indicated by high use rates, social tolerance, and broader cultural acceptance of its use” (Hathaway, Comeau & Erickson 2011:451).

Normalization is supposed to be a “threat to drug prohibition” and a boon for legalization efforts (Blackman & Measham 2014:230). Normalization challenges the existence of prohibition by evidencing its bankruptcy and ineffectiveness. By becoming more visible and accepted, pro-reform actors lose their stigma and their demands gain in legitimacy. Yet, it is not all clear how normalization translates into concrete policy outcomes in the form of cannabis liberalization. Rather, the response to perceived normalization can be a “renewed commitment to the anti-drug crusade” (Erickson & Hathaway 2010:138).

What is the extent of cannabis normalization in Latin America? While each country chapter goes into greater detail on marijuana normalization, here I provide data on past-year prevalence and agreement with cannabis use across Latin America. As can be seen in Figure 4, most Latin American countries have remarkably low levels of reported cannabis use in international comparison. Chile has by far the highest levels of cannabis

¹² Normalization can be operationalized along five dimensions: availability, experimentation, usage, social accommodation, and cultural accommodation. Normalization, thus, consists of both more objective behavioral – frequency and regularity, and subjective, attitudinal factors – constructions and perceptions.

consumption in Latin America and the third highest in the world after the US and Canada (UNODC 2018), yet as Chapter 4 shows, liberalization attempts failed.

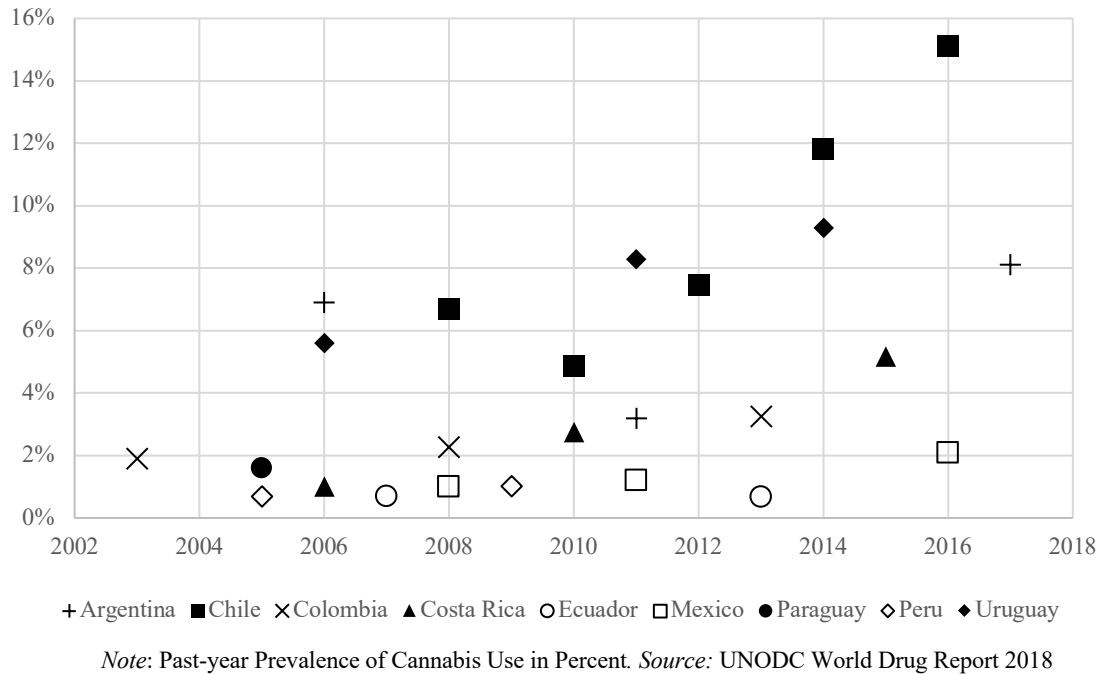
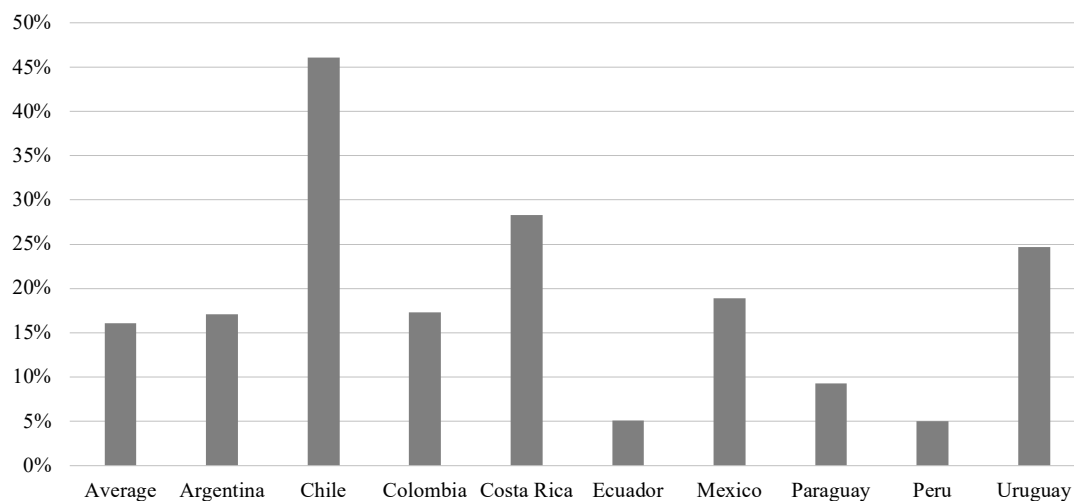


Figure 4: Past-year Prevalence of Cannabis Use in Latin America

The second way of measuring marijuana normalization comes from a question Latinobarometro included in their 2016 survey. They asked respondents if they agreed with a person using cannabis (Figure 5). Again, Chile has by far the highest levels of acceptance of cannabis use, followed by Costa Rica and Uruguay. Chile is therefore the country in which normalization seems to have gone furthest. Because societal acceptance of cannabis maps poorly onto legal acceptance of cannabis, the normalization thesis cannot account for change. *Vice versa*, limited normalization might however explain the persistence of prohibitionist drug policies.



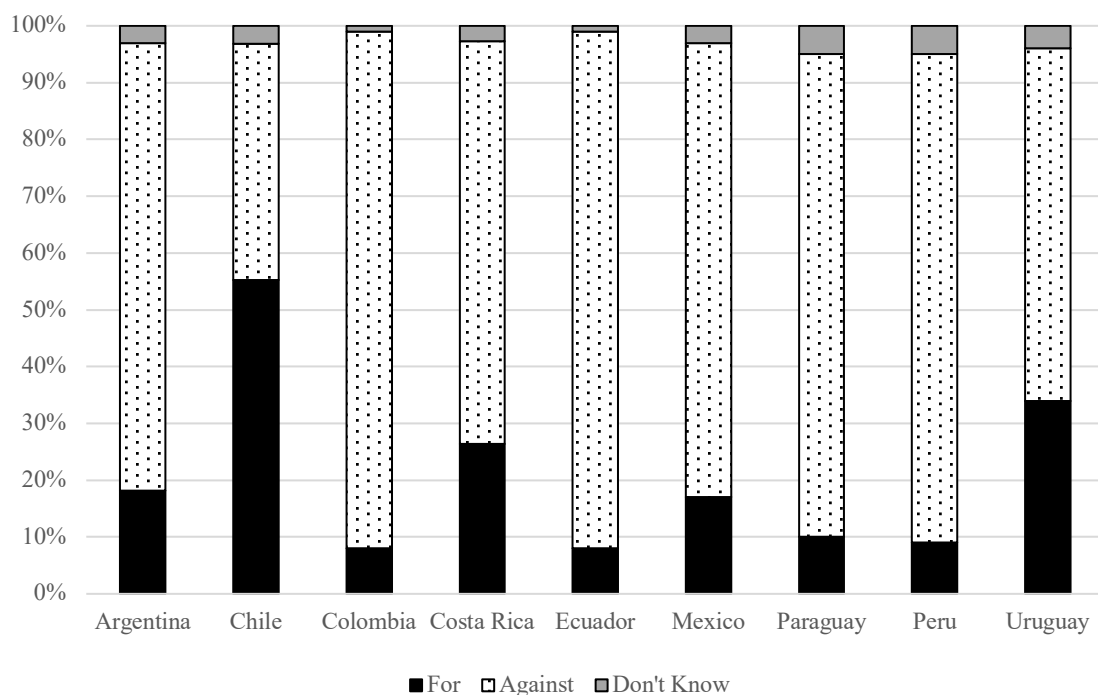
Note: Responses for cannabis to the question "with which drug do you agree that a person uses it for personal consumption" in percentages. *Source:* Latinobarometro 2016.

Figure 5: Acceptance of Cannabis Use in Latin America (2015)

Public Opinion and Policy Change

There is good reason to believe that public opinion is one important determinant of policy. After all, a key feature of democracy is that policy makers supposedly represent and respond to voters. Trying to ensure re-election, politicians are expected to approximate their constituents' positions (Downs 1957). In the strongest version of this view, changes in public opinion are seen as determining policy changes (Stimson, MacKuen & Erikson 1995). There is ample empirical support for the notion that public opinion influences policy: "Overall, the finding that opinion influences policy is amazingly robust – most studies show opinion affecting policy regardless of how opinion, policy, and the relationship between them is measured" (Burstein 2009:72). Despite this, the study of the opinion-policy link has several limitations, that should caution against accepting uncritically that public opinion always strongly influences policy (Sharp 1999; Manza & Cook 2002; Burstein 2006).

Public support has been advanced as a, if not *the*, driver of marijuana legalization in the US (Walker 2014; Bradford & Bradford 2016; Caulkins, Kilmer & Kleiman 2016). While changes in public opinion have been important for marijuana legalization elsewhere, can the same be said about cannabis reform in Latin America? Relying on the limited cross-regional data available (Figure 6), it becomes apparent that there has not been widespread support for marijuana legalization in Latin America (also Mendiburo-Seguel *et al.* 2016). Only in Chile a slim majority of respondents supports marijuana legalization (53% in favour). Uruguay comes second in terms of public support for marijuana legalization (34% in favour). In almost all other countries, support for legal marijuana in 2015 did not even surpass a fifth of respondents.



Note: Latinobarometro surveyed the levels of support for cannabis legalization across the region in 2015. I have respectively combined 'strongly agree' and 'agree' and 'strongly disagree' and 'disagree.'
Source: Latinobarometro 2016.

Figure 6: Support for Cannabis Legalization across Latin America (2015)

Mass Mobilization and Policy Change

While there is little agreement on how much social movements matter in the policy process, it is not unreasonable to think that mobilization can lead to policy change (Giugni 1998, 2004; Kolb 2007). The “direct effect model” posits that social movements do not need elite allies to be successful (Giugni 2004). While many contest this notion,¹³ I evaluate if “mobilization in itself is likely to be influential” (Amenta *et al.* 2010:297).

Have Latin Americans mobilized in favour of marijuana legalization? If so, do mobilization patterns correspond with policy change across the region? To construct a measure of the strength of mobilization for marijuana legalization,¹⁴ I take as proxy the turnout at the annual *Marcha Mundial de la Marihuana*. The fact that the *Marcha* occurs simultaneously across countries on a yearly basis in Latin America (Corda, Cortés & Piñol 2019), allows me to produce a comparable measure of mobilization levels.

While this information must be taken with a grain of salt, as it relies on estimates from news reports or the organizers themselves (a full list of sources is provided in Appendix 4), the annual turnout at the *Marcha* allows to roughly gauge the extent, trends and variation in mass mobilization for cannabis liberalization in Latin America. In Chile, Mexico, Argentina and Uruguay the *Marcha* began earlier than elsewhere, witnessed sustained growth, and, in Santiago and Buenos Aires has attracted substantial number of participants. Protests elsewhere were held more intermittingly and failed to attract more than a few dozen participants.

¹³ The dominant view of the effects and effectiveness of social movements affecting the policy process is that it is not dependent on their strength and activity alone, but is “politically mediated” (Amenta, Halfmann & Young 1999; Giugni, McAdam & Tilly 1999; Amenta 2006)

¹⁴ The strength of challengers can be measured by considering levels of protest (Kolb 2007:39-40).

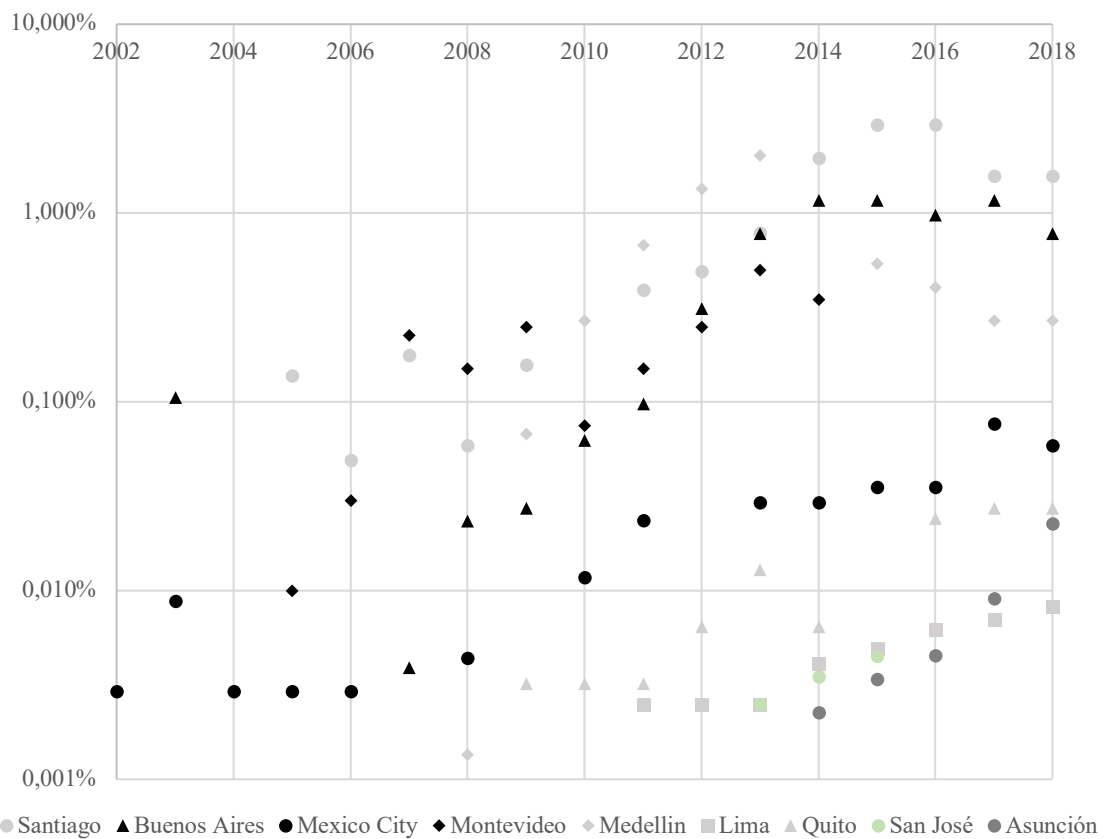


Figure 7: Relative Levels of Participation in the Marcha in Latin America (2002-2018)

Figure 7 displays the relative levels of protest. What becomes apparent is that there is wide variation in the strength of mobilization. On the top end are Chile and Argentina, where the *Marcha* attracts 10 000s. For instance, in the 2016, the equivalent of 5% of Santiago's population took to the streets to support cannabis reform in Chile. Uruguay and Colombia follow with high relative turn-out, evidencing a vibrant cannabis movement with the ability to mobilize at least once a year. Mexico comes in more towards the lower end. The absolute numbers come close to 10 000 protesters in recent years, but are low in relative terms, not even reaching 0,1% of Mexico City's population. At first glance, then, levels of mass mobilization do not seem to correspond with legal changes.

International Drug Policy Regime and Policy Change

The literature on international regimes identifies three basic ingredients that are required for high levels of compliance: a binding treaty framework, international institutions and a powerful and determined sponsor (Krasner 1982; Haggard & Simmons 1987; Hasenclever, Mayer & Rittberger 1997). Cannabis has been prohibited virtually everywhere, because of a global prohibition regime maintained by the US (Nadelmann 1990; Andreas and Nadelmann 2006; Bewley-Taylor 2012). Open defiance or defection “would place the defecting state in the category of pariah ‘narcostate’” (Andreas 1999:127). The global prohibition regime is institutionalized in three treaties which dictate the domestic drug policies of signatory states.¹⁵ According to the Conventions, states cannot allow legal cannabis sales for recreational purposes. The drug prohibition regime has rested on international organizations and, crucially, hegemonic sponsorship: “The US can be seen to act not only as cheerleader but also often global enforcer for the international drug prohibition regime” (Bewley-Taylor 2012:27).

Either treaty reform or retreat of the regime sponsor should give domestic initiatives of drug policy reform more room to breathe. While there has not been formal regime change, the international “consensus fractured” (Bewley-Taylor 2012). As never before, drug prohibition has been questioned in international forums and challenged by domestic reforms. Most importantly, the US has stepped away from enforcing international cannabis prohibition. In reaction to domestic cannabis legalization, the Obama administration took a hands-off approach both domestically and internationally.

¹⁵ The treaties are the *Single Convention on Narcotic Drugs* (1961), the *Convention on Psychotropic Substances* (1971) and the *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988).

In 2013, the DOJ issued a memorandum on cannabis prohibition's enforcement (Cole 2013). It stipulated a list of minimum standards for legalized cannabis. If these "guidelines" were adhered to, the federal government would leave legalizing states alone (Crick, Haase, and Bewley-Taylor 2013). Consequently, the US lost its credibility in criticizing other countries for reforms tolerated within its own borders. As William Brownfield, then the Assistant Secretary of State for the Bureau of International Narcotics and Law Enforcement Affairs, admitted:

How could I, a representative of the government of the United States of America, be intolerant of a government that permits any experimentation with legalization of marijuana if two of the 50 states of the United States of America have chosen to walk down that road? (Sledge 2014).

Historically, the global prohibition regime might have gone a long way in explaining the absence of policy change. Yet, the retreat of the traditional champion of international drug prohibition has accorded countries more political space to experiment. While the international environment has become more favourable for alternative cannabis policies, the task remains to explain why some countries have taken advantage of this new opening, whereas others have not. All countries should be affected similarly by changes in the international environment.¹⁶ Therefore, international change alone offers limited leverage for explaining variation in changes across cases. My contention is that international change has opened a "window of opportunity" for reforms to occur, but these become only reality if domestic actors chose to step through it.

¹⁶ I discount here the idea that international pressure does not apply equally to all countries, which might be an oversimplification. For instance, it has been argued that spatial proximity matters (Fischer 1999).

Assessing Alternative Explanations

Most of the aforementioned alternative explanations seem better at explaining policy stasis than change. They cannot account for changes in legal availability of marijuana in Latin America. Some appear to explain certain aspects of the reform process, but not its entirety – from its initiation to its conclusion. Others seem to represent, at best, “enabling” conditions (Van Evera 1997:10); necessary but not sufficient without the actions of more proximate actors. Existing evidence maps poorly onto both “top-down” explanations which stress independent processes of elite approval and “bottom-up” explanations which focus on societal factors. In contrast to the limited purchase of these alternative explanations, my explanation performs better in accounting for the differences in cannabis reform in Uruguay, Mexico and Chile.

Top-down support for cannabis reforms in Latin America has neither been the direct result of electoral mandates nor pro-active “puzzling.” There is no evidence that candidates who supported marijuana legalization were elected and pursued reforms as part of their electoral promises. In Uruguay, marijuana legalization had not originally been part of the government’s program but only later gained attention. Autonomous and pro-active learning cannot account for the variation in cannabis reforms either. Commissions or reports neither preceded marijuana legalization in Uruguay nor in Mexico. Thus, cannabis reform did not follow independent alternation of ideas of decision makers.

Most bottom-up factors seem to equally poorly correspond with policy change. If the normalization hypothesis were correct, we should see cannabis reforms in countries with higher levels of acceptance and use of cannabis. Yet, in Chile, where cannabis is arguably

the most socially accepted, legal acceptance has not followed. Public opinion does not fare any better. Rather, marijuana legalization occurred in Uruguay and Mexico despite overwhelming rejection. Finally, mass mobilization does not seem a good predictor for cannabis reforms. Argentina and Chile, with the highest levels of protest turn-out, have witnessed no change, whereas Mexico, with markedly lower levels, did. Furthermore, these explanations have a common weakness, they do not explain how societal pressures translate into policy changes.

International factors have limited purchase for explaining variation in processes and outcomes of marijuana legalization in Latin America. Changes to the international regime should affect most, if not all, states equally. But, changes have occurred only in Uruguay and Mexico – not anywhere else. While it is generally difficult to conceive of international-level factors as being sufficient for domestic policy change, international change might have opened unprecedented opportunities for experimentation with alternative cannabis control policies. However, it seems to require domestic actors take advantage of such an international opening.

Policy change as crisis response appears to be a reasonable explanation for why Uruguay's government began to support cannabis reform. The general analytical problem of crises accounts that it is *a priori* not at all clear what counts as a crisis, or what effect it will have. It is often only possible to identify that a crisis was important for policy change *post hoc* (Peters 2015). What constitutes a crisis and what is to be done are not given or apolitical, instead they are the result of a interpretation, deliberation and conflict (Blyth 2002; Widmaier, Blyth & Seabrooke 2007; Boin, 't Hart & McConnell 2009). The specific problem of the crisis initiation explanation of Uruguay's cannabis reform process

is that it cannot explain why the reform process concluded with that particular law in 2013. Once the immediate crisis context was over, the unpopular cannabis reform initiative could have easily been buried. I show that the activity of pro-reform actors was crucial to keep the process going and ensure its eventual passage into law, even in the exceptional circumstances of crisis-induced initial governmental support.

In sum, alternative explanations, whether focusing on endogenous or exogenous factors, or, governmental or societal actors, cannot account for the observed variation in cannabis reform processes in Latin America. I contend that in contrast to these alternative explanations, my argument fares better both in light of the variation across cases and the within-case evidence I will present in the proceeding country chapters. By combining process tracing with counterfactual analysis, I show that the variation of reform processes and outcomes in Uruguay, Chile and Mexico can be explained by the configurations of actors, ideas and institutions, and in particular what tactical choices in strategic framing and agenda manipulation reform proponents made to win over attention and approval.

Case Selection Strategy

My prior classification of drug policy regimes and identification of cannabis reform instances serves as the basis for my case selection. Which cases to select is the “primordial task” of case study research (Seawright & Gerring 2008:294). As my goal is to explain variation in outcomes of recent cannabis legalization in Latin America, selecting on the dependent variable is unavoidable. While selecting cases based on the dependent variable is a “taboo” for some (Geddes 1990), my research is interested in explaining specific

outcomes.¹⁷ Besides selecting positive cases for close within-case analysis, I scrutinize one negative case, because non-positive cases with purportedly necessary or sufficient causes but not the outcome can provide crucial “inferential leverage” (Collier, Brady & Seawright 2010). Following Mahoney and Goertz’s (2004) “possibility principle,” the negative case should neither be irrelevant, nor the outcome of interest impossible. These criteria are used to justify my case selection (for a more detailed discussion of the set-theoretic case selection logic see Appendix 5).

The nine Latin American countries that are within the scope condition – they have at least decriminalized cannabis possession or use – are placed in the corresponding cells of a 2x2 table (Figure 8). Based on the analysis of cannabis control policies, countries that have experienced some form of cannabis legalization are scored with Y=1. Based on the evidence discussed above and a previous review of cannabis reform efforts in Latin America (von Hoffmann 2016a, 2017b), cases are scored X=1 if there has been a minimal level of societal or political support for reforms.

	X=0	X=1
Y=1		Uruguay Mexico
Y=0	Paraguay Ecuador Peru	Chile Argentina Costa Rica Colombia

Figure 8: Placement of Countries for Case Selection

¹⁷ Selecting from the (1,1) cell means “selecting from the cell where one is most likely to see the causal mechanism in action” (Goertz 2012:13). Such a case selection might not be appropriate for investigating average effects and producing broad generalizations (Goertz & Mahoney 2012).

Following the rationale laid out above, the non-positive cases without any of the hypothesized necessary causal factors or outcome of interest (Ecuador, Paraguay and Peru) are discarded. Of the three cases I selected for intensive scrutiny, two represent instances of change. Yet, Mexico and Uruguay represent different reform processes and outcomes. Uruguay is the paradigmatic case of cannabis reform in Latin America, having been the first, and at the time only, country to comprehensively legalize marijuana. Both governmental and societal actors supported cannabis reform. Mexico is a “least-likely” case for change, with low levels of elite and public support, societal acceptance and relatively weak mobilization. Nevertheless, legal mobilization by a small group of actors achieved limited, yet important, change in the form of binding jurisprudence.

Finally, I select one negative case among those countries in which marijuana legalization did not occur despite the existence of at least one of the hypothesized necessary causal factors (Argentina, Chile, Colombia and Costa Rica). I selected Chile because arguably it is the “most-likely case” for cannabis reform in Latin America – aside from Uruguay where the government came out in support of marijuana legalization. As the country chapter shows, Chile has the highest levels of cannabis consumption, normalization, and popular support for legalization in Latin America. Marijuana legalization was demanded by a vocal cannabis movement and widely debated by politicians. Because Chile is a negative case with several explanatory factors present and unsuccessful reform initiatives, the case study provides information on absent factors and breakdowns of the causal chain.

My three cases vary both in what is to be explained and what might explain these outcomes. In Uruguay, cannabis can be legally bought, sold and grown, and is regulated through legislation. In Mexico, the Supreme Court’s jurisprudence allows anyone – once

they have secured an *amparo* – to cultivate their own cannabis. Absent new legislation, there are no legal retail sales. In Chile, cannabis cannot be grown, bought or sold legally for recreational purposes. Such difference of outcomes, especially between Chile and Mexico, is puzzling considering the differences in explanatory factors between the two. While neither is characterized by top-down support for marijuana legalization, the former has had higher levels of public support, societal acceptance, and mass mobilization than the latter. Nevertheless, reform efforts fell short to produce even limited change in Chile, whereas marijuana legalization advanced in Mexico under more unfavorable circumstances. I leverage these differences in processes and outcomes to compare and contrast cannabis reform in Uruguay, Mexico and Chile.

Methodological Approach

My methodological approach is analogous to detective work attempting to solve a crime. I look for “clues and suspects and piec[e] together a convincing explanation, based on fine-grained evidence that bears on potential suspects’ means, motives, and opportunity” (Bennett 2010:208; George & McKeown 1983:47; Gerring 2006:173). I base my detective work on a variety of causal process observations, collected during extensive and iterative fieldwork in Uruguay (August to September 2014 and January to March 2018), Mexico (September to December 2017 and October to December 2018) and Chile (May 2017 and April to May 2018). While I scrutinize a wide variety of evidence, I especially rely on 149 interviews with activists, bureaucrats, legislators, politicians, journalists and researchers that have been involved in or are knowledgeable about the issue of cannabis reforms (see Appendix 6 for a full list of interviewees). Unparalleled access to key

decision-makers and stakeholders in three countries allows me to identify actor's calculations and choices, and thereby trace marijuana legalization.

Explaining variation in processes and outcomes of marijuana legalization in Uruguay, Mexico and Chile requires “intensive testing” (Coppedge 2012:194) and “intensive examination” (Hall 2007:6). Process-tracing is the go-to qualitative method for the analysis of causal processes and adjudicating between rival accounts, to the point that “no strong causal inference without process tracing” has become a mantra for qualitative researchers (Goertz & Mahoney 2010:25). Yet, “too often this tool is neither well understood nor rigorously applied” (Collier 2011:823), and, is invoked “with little thought or explication of how it works in practice” (Bennett & Checkel 2014a:4). Awareness and recognition of process tracing's strength and weaknesses, underlying logic and requirements are key for successfully undertaking it.

Process tracing can be defined as the “systematic examination of diagnostic evidence selected and analyzed in light of research questions and hypothesis posed by the investigator” (Collier 2011:823). Instead of “black-boxing” the process by which initial conditions are translated into outcomes (George & McKeown 1983:35), process tracing seeks to identify and examine “the intermediate steps in a process to make inferences about hypotheses on how that process took place and whether and how it generated the outcome of interest” (Bennett & Checkel 2014a):6). Thus, process tracing is about linking conditions and outcomes by unearthing the mechanisms in-between (Mahoney 2007; Goertz & Mahoney 2012; Waldner 2014).

The high evidentiary requirements and concomitant presence of plausible explanatory factors led me to supplant process tracing with counterfactual analysis. Counterfactual

analysis allows me to further assess alternative explanations through hypothetical “what-if” scenarios (Goertz & Mahoney 2012). In addition, counterfactual analysis helps establish the causal weight of explanatory factors and to distinguish between activities and effects (Betsill & Corell 2001). This is particularly critical for explanations like mine, which are highly conjunctural or combinatorial. Because of missing pieces of evidence and activities occurring concomitantly, relying on process tracing alone can encounter difficulties in pinpointing causal effects. Counterfactual analysis represents a promising “indirect test” to ameliorate “missingness” (González-Ocantos & LaPorte 2019).

In counterfactual analysis, one asks what would have happened if some cause had taken a different value or a causal event never occurred (Fearon 1991; Tetlock & Belkin 1996; Lebow 2000). Counterfactuals are “what-if statements” exploring how these hypothetical changes would have affected outcomes. Counterfactuals are especially vital when analyzing single cases or when increasing the number of observations not viable (Fearon 1991, 1996); Lebow 2000; Levy 2008). Furthermore, counterfactual analysis can be useful when dealing with necessary conditions, as they inherently contain the counterfactual claim that in the absence of X, Y would not have occurred (Lebow 2000; Levy 2008; Goertz & Mahoney 2012).

This approach allows to “rerun history of a case under counterfactual assumption in order to decide if a given factor played its hypothesized causal role” (Goertz & Mahoney 2012:122). Because the counterfactual approach allows us to investigate what would happen to Y if X did not occur, we can assess the “causal efficacy” of X with respect to Y (Brady 2008:1071). Hence, validation and falsification of counterfactual statements can be an important step in hypothesis testing (Fearon 1991; Levy 2008; Goertz &

Mahoney 2012). Especially when dealing with necessary conditions, what was not but could have been can help to elucidate what was.

However, not all counterfactuals are equally plausible or helpful at elucidating “what was.” Following the “minimum rewrite rule,” what is changed (*antecedent*) should be proximate in time and separated only by few causal steps from its outcome (*consequent*). “Minimum rewrite” counterfactuals rely on small and easily imaginable changes from the real world (Tetlock & Belkin 1996). They are proximate in time and separated only by a small number of causal steps from the outcome to be observed (Fearon 1996). The best counterfactuals are not just idle speculation but grounded in available “factuals” and cotenable with existing theories (Fearon 1991; Lebow 2000; Tetlock & Parker 2006). I follow best practices to try only to construct “minimum rewrite” rather than “heroic” counterfactuals that make unrealistic or unsubstantiated changes to the antecedent (Levy 2008). The resulting counterfactuals I analyze are as plausible, precise and appropriate “what if” scenarios as possible, to scrutinize how and why the consequent would have changed in the presence or absence of different causal factors.

To conduct process tracing and counterfactual analysis, I need evidence of whether a given factor exerts a causal role. These pieces of evidence can be called causal-process observations (CPOs) (Collier, Brady & Seawright 2010). Not all CPOs are created equal or have equal probative value. Some observations are more critical, unlikely to surface or discriminating between alternative explanations than others (Bennett 2008, 2010). Thus, it is not necessarily the quantity of evidence that matters, but their quality (Gerring 2006; Bennett 2008). While CPOs can come from a variety of sources (Beach & Pedersen 2013), one key technique for collecting CPOs are interviews. Interviews can provide the

“kind of data that can be critical in uncovering the causal processes and mechanisms that are central to comprehensive causal explanations” (Tansey 2007:767).

Interviews are crucial for my research, because they allow “to interact directly with individuals... who populate our theoretical models” (Mosley 2013:2). They can unearth otherwise unavailable or unobtainable information on “the inner workings of the political process” (Lilleker 2003:208). And, they allow to better understand ideational factors, because they help “deciphering what goes on between the ears” of actors (Rathbun 2008:690). While interviews are an invaluable source for information commonly used in process tracing (George & Bennett 2004; Tansey 2007; Beach & Pedersen 2013), they have several limitations. The most important limitation is that data from interviews is not always reliable. Interviewees may misremember, embellish or strategically reconstruct the past (Tansey 2007; Rathbun 2008). My solution to this problem is corroboration through multiple sources and triangulation (Davies 2001; Lilleker 2003; Beach & Pedersen 2013). Furthermore, I do not rely only on interviews alone to generate CPOs, but also consult other sources, such as official documents, minutes of meetings, parliamentary debates, secondary literature and media reports. Additionally, I created several original datasets, for instance of changes in drug legislation in Latin America, pro-legalization protest events and media reporting on drug debates.

Plan of the Thesis

The remainder of the dissertation is structured as follows. Chapter 1 *Change in Drug Policy: Altered States of Mind* presents my analytical framework, model of change and overall argument in detail. First, I assemble the building blocks of my analytical frameworks and I construct a model of policy change. Second, I situate my analytical

framework and relate my model of policy change to the literature on drug policy change. Third, based on the more abstract and concrete prior theorizing, I present my overall argument moving backwards from the outcome I am interested in explaining. I establish policy change as result of alterations of ideas. Attention and approval are gained through agenda manipulation and strategic framing, both of which are dependent on pro-reform coalition's characteristics, resources and abilities. Only some would-be reformers are equipped to develop and implement successful strategies to achieve policy change.

Chapter 2 *Cannabis Reform in Uruguay: "Someone has to be the first"* presents original evidence and a novel analysis of the most important instance of cannabis liberalization in Latin America to date. By combining process tracing and counterfactual analysis, the chapter pinpoints *why* reform advocates were able to maintain attention and secure approval of cannabis reform. Even though the Mujica administration had set the agenda, reform proponents' agenda maintenance was vital. In doing so, the chapter shows that both high-politics and grassroots efforts were individually necessary and jointly sufficient for comprehensive marijuana legalization in Uruguay in 2013.

Chapter 3 *Cannabis Reform in Mexico: The High Hope of Legal Mobilization* shows that challengers can achieve changes, even under unfavorable circumstances. By resulting in binding jurisprudence in 2018 and opening the prospects of more comprehensive legislative reforms, legal mobilization has substantially advanced marijuana legalization in Mexico. The chapter finds that the characteristics and choices of reform proponents in carrying out strategic litigation affected the Supreme Court's decision to declare the absolute prohibition of cannabis unconstitutional. Specifically, the chapter shows that framing the legal challenge in terms of fundamental rights guarantees created a "fit" with

Justices extant preferences and priorities and choosing highly respectable litigants were crucial for achieving marijuana legalization through legal mobilization in Mexico.

Chapter 4 *Cannabis Reform in Chile: Where there is Smoke, is there Fire?* highlights why, despite rather advantageous circumstances and initially gaining attention, cannabis reform failed to gain approval in Chile in 2017. By closely tracing the initiative's trajectory and pro-cannabis actors' activities and articulations, the chapter shows *what* was missing from reform advocacy and *why* reform proponents were ultimately unsuccessful. In particular, the chapter unearths that without professional structures and resources, and confronted by organized opponents inside and outside of government, reform proponents in Chile were unwilling to make compromises and unable to develop compelling rationales for cannabis reform that expanded the coalition of decisionmakers willing to support cannabis liberalization.

The conclusion draws together the different strands of the argument in light of the evidence presented in the country chapters and looks beyond confines of the thesis. First, I summarize my argument and findings. Second, I discuss future directions of inquiry which address limitations of my study or build on unanticipated findings. Third, I assess how well my argument travels by briefly considering the shadow cases of Costa Rica, Argentina and Colombia, which I could have but did not select as negative case studies instead of Chile. Lastly, I close by pointing out the implications of my argument for the prospects of cannabis reform in Latin America specifically and for unpopular or controversial policy change in general.

Change in Drug Policy:

Altered States of Mind

What explains variation in drug policy change in Latin America? Specifically, why have some countries legalized marijuana and others have not? In order to explain change in drug policy, I borrow from a variety of literatures on social movements, public policy, institutionalism, ideations, and, comparative politics. In my view, such an “analytically eclectic” approach,¹⁸ which combines the insights of different perspectives offers the most leverage and explanatory richness (Katzenstein & Sil 2008; Sil and Katzenstein 2010a; Sil & Katzenstein 2010b).

The chapter proceeds as follows, I first build an analytical framework and present a model of policy change that is couched in terms of general assumptions about what reform proponents do to achieve change. Then, I link the framework and model to the specific literature on drug policy to derive more concrete expectations about cannabis reform. Lastly, I present my argument why cannabis reform advanced a lot in Uruguay, a little in Mexico and not at all in Chile in light of the previously identified causal steps and mechanisms.

Analytical Framework

I start assembling the building blocks of my analytical framework by considering the literature on the role of institutions, ideas and actors in policy making. I close by arguing

¹⁸ Analytic eclecticism is “an intellectual stance that supports efforts to complement, engage, and selectively utilize theoretical constructs embedded in contending research traditions to build complex arguments that bear on substantive problems of interest to both scholars and practitioners” (Sil & Katzenstein 2010a:411).

that by combining ideational and material, and, structural and agential elements a more comprehensive account of otherwise puzzling policy change can be achieved. The analytical framework establishes a “field of action” based on the actors involved, the spaces of action and the consequences of their interactions, thereby identifying “who and what matters to explain the outcome” (González-Ocantos 2020:110).

Institutions

The fact that “institutions matter” has become commonplace in political science (Pierson 2003). At the most basic level, institutions “provide the context in which most normal politics is conducted” (Hall 1986:19). Institutions have a fundamental influence on political processes and “a key to understanding the dynamics of change is a clarification of the role of institutions” (March & Olsen 2011:166). However, an exclusive focus on institutional constraints encounters difficulties explaining substantial changes without relying on exogenous shocks (Campbell 1998; Lieberman 2002; Peters, Pierre & King 2005). To account for departures from well-trodden paths, amendments to the institutionalist literature are proposed.

What exactly institutions are and what they purportedly do has been hotly debated between different types of “new institutionalism” and individual authors (Koelble 1995; Hall & Taylor 1996; Clemens & Cook 1999; Peters 2005; Scott 2004; Amenta & Ramsey 2010). Cognizant of the differences between historical, sociological and rational choice institutionalism, I focus here on their similarities rather than differences – what has been identified as their common “theoretical core” (Immergut 1998:957; Hall & Taylor 1996; Peters 2005). The underlying idea is that institutions constrain and constitute political action, actors and preferences, thereby “structuring” politics.

First, in their most basic definition “institutions are humanly devised constraints that shape human interaction” (North 1990:3). Institutions can be seen as not only directing, but also “mediating” and “filtering” political action (Thelen & Steinmo 1992:2; Immergut 1998:20; Amenta & Ramsey 2010:27). The level of access actors have to policy processes is determined by institutional configurations. Thus, institutions constrain the ability and strength with which demands can be articulated and pressured for (Hall 1986).

Second, institutions define the relative power of actors. Not only do they influence the interactions between state and society, but also between different state actors. To a certain degree, they determine the “distribution of power among political actors in a given polity” (Thelen & Steinmo 1992:6). Institutions “privilege some actors at the expense of others, and profoundly affect the balance of power at any one time” (Hall 1992:95). Historical institutionalists have been especially attentive to the ways in which institutions structure power relations (Hall & Taylor 1996).

Third, and most controversially, institutions shape the preferences of political actors. They constitute who the relevant actors are and what they want (March & Olsen 1983; Thelen & Steinmo 1992; Clemens & Cook 1999; Amenta 2005). While rational choice institutionalists assume preferences as given, historical institutionalists argue that not just the means but also actors’ ends are shaped by their institutional context.¹⁹ Sociological institutionalists go even further in their embrace of the influence of institutions on preference and identity formation (March & Olsen 1996; Clemens & Cook 1999).

¹⁹ The degree to which institutions shape preferences is a point where rational choice and other forms of “new” institutionalism diverge. “One, perhaps the core, difference between rational choice institutionalism and historical institutionalism lies in the question of preference formation, whether treated as exogenous (rational choice) or endogenous (historical institutionalism)” (Thelen & Steinmo 1992:9; Dowding & King 1995; Thelen 1999).

In sum, I posit three ways in which institutions “matter.” By structuring politics, they shape relationships among actors, their interactions and levels of access to the policy-making process. They not only mediate and channel interactions, but also determine the relative power of participants to pursue their preferred policies. Finally, the institutional position of actors shapes how they understand their goals and perceive their responsibilities. In brief, institutions structure who the actors are that matter, what they can and cannot do, and, what they want. To a large degree, institutions determine the level of power actors have and ideas they hold.

Most institutionalist accounts emphasize stability and the constraints imposed on policymaking. They stress the “path dependency,” persistence and durability of existing policies and institutions (Pierson 1993, 2000, 2011; Mahoney & Schensul 2006). Change is conceived of as rare, difficult and extraordinary (Blyth 2002; Hay 2004; Peters, Pierre and King 2005). Lacking a clear process of endogenous change, exogenous shocks are seen as the primary explanation of alterations of the *status quo* (Blyth, Helgadottir, & Kring 2016). Thus, the principal problem with historical institutionalism specifically, and institutionalism in general, is accounting for change (Peters, Pierre & King 2005).

To develop an argument that can account for both continuity and change, a purely institutionalist view has to be complemented by taking actors and their ideas into account, not just as “filler” (Blyth 1997), but giving them “co-equal billing” (Blyth, Helgadottir & Kring 2016:155). Such a role for agency and ideas echoes calls to combine ideational and institutional factors in explanations of policy change (Lieberman 2002; Beland 2005, 2009; Smith 2006), and, the recent focus on the role of “change agents” (Beland & Cox 2016; Campbell 2010; Mahoney and Thelen 2010b; Thelen & Conran 2016).

Ideas

That ideas “matter” is less of a question, than how and why they do (Hochschild 2006; Rueschemeyer 2006; Beland, Carstensen & Seabrooke 2016). After all, ideas fundamentally shape political behavior: “Ideas tell agents what to do and what future to construct” (Blyth 2002:11). Taking ideas into account allows to provide more convincing accounts of both policy continuity and change. Paying close attention to ideational processes “holds out the promise of explaining much that is puzzling and significant in politics” (Berman 2001:244). Thus, “systematically integrating ideas into policy-making analysis greatly enhances our understanding of policy outcomes” (Bleich 2002:1055).

Broadly conceived, ideas are “mental constructs” that form “sets of distinctive beliefs, principles and attitudes that provide orientations for behavior and policy” (Tannenwald 2005:15). In the context of policymaking, ideas can be understood to

provide specific solutions to policy problems, constrain the cognitive and normative range of solutions that policy makers are likely to consider, and constitute symbols and concepts that enable actors to construct frames with which to legitimize their policy proposals (Campbell 1998:398).

However, ideational research has problems identifying and specifying clear causal mechanisms (Weir 1989; Yee 1996; Campbell 2002). The ways in which ideas affect policy have to be illuminated and clear observable implications formulated (Berman 2001; Tannenwald 2005; Jacobs 2014). To show the causal effect of ideas their source of influence, the actors who advance specific ideas, and, the way in which ideas are communicated have to be investigated (McNamara 1998; Campbell 2002; Parsons 2016). Only doing so allows to identify “how ideational variables influence political behavior”

and “what specific causal pathways connect ideational variables to particular political outcomes” (Berman 2001:233).

First, it is necessary to pay close attention to who the carriers of ideas are, as “new ideas do not achieve prominence on their own but must be championed by carriers or entrepreneurs, individuals or groups capable of persuading others to reconsider the ways they think and act” (Berman 2012:228). The identity of these carriers and their access matter for the influence of ideas on policy (McNamara 1998). Who holds which ideas, their institutional position and access, and, how they articulate and advance ideas has to be specified (Sikkink 1991). “Ideas can produce political change only when particular, identifiable political institutions, groups and actors advance them” (Smith 2006:109).

Second, ideas have to gain attention and approval of powerful actors that can make them reality. Without their willingness to listen and ultimately assent, change will not occur (Checkel 1997; Hansen & King 2001; Beland & Cox 2010a). “To influence policy choices, ideas must reach and persuade decision-makers” (Walsh 2000:490). The identity, resources and skills of carriers of ideas influence the probability of getting attention from policymakers (Berman 2001; Hansen & King 2001; Campbell 2002). If ideas are “only advocated by those without access to centers of national power, there is little chance that they can emerge as the basis for redesigning policy” (Weir 1989:55).

Third, ideas and their carriers operate within a given institutional context. They neither “float freely” (Risse-Kappen 1994:187) nor “operate unfettered by material constraints” (Sikkink 1991:19). Institutions filter and mediate ideas’ effect on policy outcomes (Hall 1989a; Yee 1996; Campbell 2002). Because institutions determine which ideas gain access and attention, they advantage certain actors and ideas over others (Checkel 1997),

and influence the degree to which new policy ideas can penetrate policy-making arenas (Campbell 2002). Thus, “[t]he institutional arrangements for policy making play a critical role in impeding or facilitating the entry of innovative ideas into policy” (Weir 1989:59).

Not only institutional structures constrain the impact of new ideas but also already existing ideas. Ideas never enter into a vacuum, rather they are inserted into spaces already occupied. Extant ideas can work to the advantage or disadvantage of new ideas. Ideas that seem outlandish, unprecedented or unreasonable are less likely to succeed than those that are “institutionally anchored” (Ferree 2003): “some new proposals will be immediately plausible, and others will be barely comprehensible” (Hall 1989:383). New ideas fare better if they “fit” with existing ideas (Hall 1989a:370; Sikkink 1991:26; Checkel 1997:10; Keck & Sikkink 1998:204; Berman 2001:236; White 2002:727). As Goldstein argues: “Ideas that ‘fit’ with existing ideas gain persuasiveness, while ‘ideas’ that do not ‘fit’ ... are unlikely to find support” (1993:12).

Creating a “fit” is vital because the persuasiveness is the result of perceived common interests between a message’s sender and its receiver (Lupia 2002). *Ceteris paribus*, “creating a fit” should be more difficult when new ideas appear controversial, untested or politically costly. Who champions an idea, what level of access they have, how the idea is presented and related to existing ideas determines its “fit” with existing modes of thinking. Most new ideas do not readily or automatically “fit” with already established ideas, rather linkages have to be made: “‘fit’ does not just happen; rather, it is *made*. That is, the ‘fit’ between new and existing ideas is actively *constructed*” (Laffey & Weldes 1997:203). Therefore, it is necessary to not only pay attention to the relationship between new and old ideas, but specifically to how actors communicate and present their ideas.

Actors

Despite the importance of ideational and institutional factors, political outcomes are always the product of people doing things: “There is no politics without human agency” (Beland & Cox 2010b:13). While ideational factors are important, “[i]deas are out there and have an impact on politics only when seized upon by political actors” (Hansen & King 2001:259). Similarly, institutions do not eliminate agency: “In political life, unstructured agency is as unthinkable as are structures with no agents” (Thelen & Conran 2016:67). Policy outcomes are the result of the choices people make, the ideas they hold and communicate, and, the institutional constraints and opportunities they face. Two distinct bodies of literature focus on the role of “change agents” (Mahoney & Thelen 2010a). On the one hand, social movements are “at the center of much policy change” (Baumgartner & Mahoney 2005:81). On the other hand, policy entrepreneurs can “change the flow and direction of politics” (Schneider & Teske 1992:737).

Social movements are sustained and organized collectives of outside challengers which use a broad range of tactics in an effort to promote change (Tilly 1999; McAdam, Tarrow & Tilly 2001; Tarrow 2011). They are comprised of “people who care enough about some issue that they... act to achieve their goals” (Oliver & Marwell 1992:252). Despite a vast body of literature focusing on different aspect of social movements, such as their “resource mobilization” (McCarthy & Zald 1977, 2002; Jenkins 1983; Edwards and McCarthy 2003) or “opportunity structures” (Jenkins & Perrow 1977; Kitschelt 1986; Tarrow 1996), there is little agreement on why social movements sometimes succeed and at other times fail to affect policy (Giugni, McAdam & Tilly 1999; Giugni 2004; Kolb 2007; Amenta *et al.* 2010).

Policy entrepreneurs are individuals working towards realizing their goal of changing policy. They are advocates “who are willing to invest their resources – time, energy, reputation, money – to promote a position” (Kingdon 1994:179). Policy entrepreneurs try to generate attention and approval through problem definition, agenda-setting and coalition building (Roberts & King 1991; Kingdon 1994; Mintrom 1997). They encounter opportunities and constraints depending on configurations of ideas, institutions and other actors (Schneider & Teske 1992; Mintrom & Norman 2009; Mintrom 2019). Further, they need resources and skills “to make things happen” (Checkel 2012:2).

While the study of social movement focuses more on collective actors, the literature on policy entrepreneurs focuses more on individual actors. Social movements and policy entrepreneurs differ in the types of skills and expertise, access and influence they bring to the struggle for policy change. While the former rely more on “outsider” strategies, the latter often engage in “insider” strategies (Walker 1991; Maloney, Jordan, and McLaughlin 1994; Grant 1999). Whether collectives or individuals, these actors demand and promote change by advocating new ideas within a given institutional context.

However, those seeking changes are not alone in operating in a polity or trying to influence policy. Successful or radical seeming demands often lead to the formation of opposition (Zald & Useem 1982; Meyer & Staggenborg 1996; Rucht 2003). This opposition, in turn, influences the prospects of policy reform, as demands for change and their impact are influenced by both the “creativity of insurgents in devising new tactical forms... and the ability of opponents to neutralize these moves” (McAdam 1983:736). Both actors with or without the institutional power, veto players and countermovements, can endeavor to resist change.

Veto players can make policy change impossible, because “[i]n order to change policies... a certain number of individual or collective actors have to agree to the proposed change” (Tsebelis 2002:12). As the name implies veto players can have an important role of blocking policy change (Tsebelis 1995; 1999; 2002). Which actors occupy “veto points” (Immergut 1990) is specified by a country’s constitutional and political order. In its strictest sense “veto players” refers only to institutional actors, such as judges, parliaments or presidents (Tsebelis 2002), yet the existence of societal veto players, such as the church, has also been posited (Fink 2008).

Countermovements resist the change social movements seek to accomplish (Zald 1979; Zald & Useem 1982; Meyer & Staggenborg 1996; Rucht 2003; Dillard 2013). Countermovements are “conscious, collective, organized attempts to resist or to reverse social change” (Mottl 1980:620). Although it has long been recognized that a “countermovement frequently influences the speed, degree and nature of social change” (Vander Zanden 1959:313), they have often been neglected (Meyer & Staggenborg 1996; Dixon 2008; Dillard 2013). However, the interaction between movement and countermovements can matter a great deal for policy outcomes.²⁰

Whether social movements or countermovements, policy entrepreneurs or veto players, these actors invest time, efforts and resources into promoting or preventing change. While they care and know about the issue, most people, most of the time do not. However, such bystanders can be a crucial, if underappreciated, third party in politics (Rucht 2003; Gamson 2003; Han & Strolovitch 2015). Because bystanders are initially “uninvolved witnesses to contentious politics” (Strauss 2018:34), they represent “proto players” (Han

²⁰ I am indebted to Prof Leigh Payne for pushing me to giving opponents of change a more prominent role in my theoretical framework and explanatory account of drug policy reform in Uruguay, Mexico and Chile.

& Strolovitch 2015:278) and “the standing reserve of political action” (Couldry 2013:78). To bolster their ranks, resources and reach, proponents and opponents of change “seek to influence audiences cognitively and emotionally” (Blee & McDowell 2012:2). However, not all bystanders are equally important to win over. Change agents must try to get the attention and approval of authoritative decision-makers, because without such allies, challengers are hard-pressed to succeed.²¹ Winning over those hitherto on the sidelines is an important task of coalition building. As Schattschneider (1960:3) put it: “If a fight starts, watch the crowd, because the crowd often plays the decisive role.”

Integrating Actors, Ideas and Institutions

The discussed strengths and weaknesses of institutional, ideational or agential accounts in isolation have resulted in calls to integrate and combine them to understand policy change (Walsh 2000; Lieberman 2002; Beland 2005). As in a “criminal investigation” researchers should pay attention to suspects, motives and opportunities (Lieberman 2010:216). Analytically, this suggests a turn toward a more configurative and relational approach, which focuses less on the causal importance of certain variables and “more on how variables are joined together in specific historical circumstances” (Katznelson 1997:99). The result are contingent accounts of complex interactions of different factors.

As others before, my analytical framework considers both institutions and ideas as integral explanatory elements, without privileging one or another, to allow for a fuller understanding of policy trajectories (Lieberman 2002; Beland & Waddan 2015; Blyth,

²¹ For instance, policy entrepreneurs “work hard at developing close ties with people through whom they can realize their policy goals and they seek to develop convincing arguments for selling their policy ideas” (Mintrom 1997:765). For social movements is essential to count on “well-placed reformists who can turn the impetus for change into concrete proposals and pilot them through the political process” (Tarrow 1993:599).

Helgadottir & Kring 2016). I agree that “persuasive political analyses must encompass the interrelationships of institutions and ideas, rather than treat either in relative isolation” (Smith 2006:91).²² Besides taking ideas and institutions into account, my framework includes a robust notion of agency. Actors hold ideas and communicate their views to advance their policy goals within the constraints and opportunities afforded by their institutional position: “Institutions constrain action but do not eliminate agency” (Thelen & Conran 2016:67). Ideas require “carriers” just as actors need to have ideas: “Ideas without agency cannot be effective, but agency without ideas cannot provide any direction to change” (Peters, Pierre, and King 2005:1296). Thus, actors and activities are crucial, but they neither exist in an empty space nor an empty space exists in their heads.

Having argued that institutions, ideas and actors all have a role to play, I bring the three together in my analytical framework. This allows me to specify the boundaries and characteristics of the field in which the outcomes that I am interested in occur, which is a key task for theorizing in qualitative research (González-Ocantos 2020). My analytical framework consists of the ideas that different actors hold and communicate, and, the institutional contexts in which they exist and operate. On the most basic level, *actors* have certain *ideas* about what should be done and *power* to (en)act and realize those ideas. Both ideas and power of actors depend on their *institutional* position. The analytical framework is populated by those proposing, opposing or indifferent to changing the *status quo*, with or without the ability to render decisions.

²² Beginning with the insight that “both ideas and institutions can strongly impact politics and policy development” (Beland 2009:701), several authors place “the analysis of ‘ideas’ and ‘institutions’ within a single analytical framework” (Smith 2006:109).

Thus, actors can be conceptualized as populating a two-dimensional space of differing ideas and institutional position (Figure 9). Social movement activists want changes but are not in the position to realize their ideas. Countermovement activists similarly do not possess institutional power, but oppose reform. Veto players do not think change is a good idea and have the power to prevent it. Policy entrepreneurs are both willing and able to enact changes. Indifferent bystanders can either have the power to change the *status quo* or not, but do not care enough about the issue to pay attention and become active.

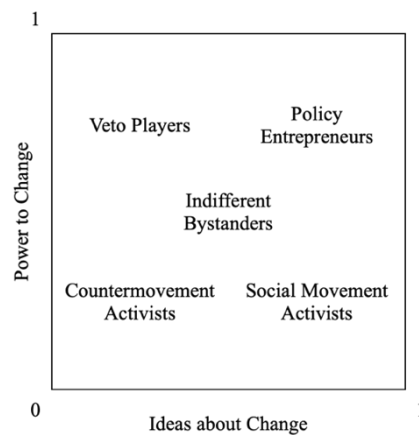


Figure 9: Analytical Framework of the Field of Action

In principle, the relative distribution of supporters, opponents and bystanders determines policy outcomes. If opponents and bystanders outnumber proponents or proponents are distant from the levers of power change is improbable. Because policy change requires actors to vote for, rule in favor of or sign reform proposals into law, those willing and able to make authoritative decisions are necessary for change. Of course, in its current form the analytical framework is overly simplistic and cannot account for change. First, it is static whereas policymaking is dynamic and shifts in the balance of power or ideas can unsettle the *status quo*. Second, the framework is agnostic to what actors do in order to make change happen, recruit allies or sideline opponents. Yet, those determined to change the *status quo* can and do actively endeavor to achieve attention and approval.

Model of Policy Change

Within the analytical framework, policy change is the result of changes in either ideas or power. Either those in power change their ideas or those already in favor gain power. I call these two alternatives *alternations of power* and *alterations of ideas*, because they differ in their dimension of change. While reform proponents can succeed with “ousting” hostile officeholders (González-Ocantos 2016), or reaching positions of power themselves through election (Heaney 2013), for most outsiders such achievements are beyond their capabilities. Although alterations of ideas can occur endogenously, for instance through independent learning, more often than not they are the result of efforts of those demanding reform. Thus, my focus is on *alteration of ideas* as result of exogenous pressures. The proceeding model of policy change emphasizes what change agents do to change the *status quo*.

Alterations of ideas can lead to policy change, because ideas inform the activities of actors within their institutional context. Alternation of ideas consists of two related but not synonymous processes: garnering *attention* and gaining *approval*.²³ Individually necessary and jointly sufficient, attention and approval explain decision-making (Jones & Baumgartner 2005). Why and how, then, do issues attract attention and approval? I distinguish between agenda manipulation and strategic framing,²⁴ which in combination “explain the flow of causal energy that brings about the outcome of interest” (González-Ocantos 2020:106).

²³ This differentiation is analogous to Gamson’s (1975) two outcomes of social protest: recognition or acceptance of claims makers and concrete new advantages.

²⁴ The distinction between agenda manipulation and strategic framing builds on Riker’s (1986) distinction between “rhetoric” and “heresthetics.” For Riker “rhetoric” refers to speech acts and discursive constructions in the broadest sense, and “heresthetics” denotes controlling the conditions under which decisions are made, the dimensions at stake and actors involved.

To achieve *attention*, issues have to be “organized into politics” (Schattschneider 1960:71). To do so, those trying to gain attention must engage in “agenda manipulation.” As I conceive it, agenda manipulation is concerned with “how [issues] came to be issues in the first place” and “why important people pay attention to one subject rather than another” (Kingdon 1994:2). However initial attention is not enough, issues must also stay on the political agenda and be defended against attempts to dislodge them. Thus, there are three components to agenda manipulation: agenda setting, maintenance and denial.

To achieve not only attention but also *approval*, those seeking change have to actively “structure the world so you can win” (Riker 1986:ix). To do so, reform proponents must discursively package and sell their demands to specific audiences to “mobilize potential adherents and constituents, garner bystander support, and demobilize antagonists” (Benford & Snow 1988:198). Specifically, I focus on efforts to create a “fit” between institutions, ideas and demands through strategic framing.

Agenda Manipulation

“In politics the most catastrophic force is the power of irrelevance” (Schattschneider 1960:74). Because “collective action cannot occur before collective attention is directed at a problem” (Jones & Baumgartner 2005:277), “attention is fundamental to understanding processes of policy change” (Workman, Jones & Jochim 2009:78). Those studying attention are generally interested in why and how issues do (or do not) make it onto the political agenda, which is called agenda setting or building (Cobb, Ross & Ross 1976; Cobb & Elder 1983; Baumgartner & Jones 1993; Kingdon 1994). While a broader notion, my definition of agenda manipulation equally conceives of attention as both “scarce and consequential” (Green-Pedersen & Walgrave 2014:6).

Attention is scarce because no political institution has the necessary “carrying capacity” to address all issues at the same time (Hilgartner & Bosk 1988). While information and issues are abundant, there are limits to how many matters can be attended to simultaneously (Jones & Baumgartner 2005). Because institutions face “limitations of knowledge and computing power” (Simon 1985:294), focussing on one issue results in being inattentive to others (Jones & Baumgartner 2005). Therefore, different issues compete for finite attention of decision-makers in zero sum games (Zhu 1992).

Attention is consequential, because “unless an issue actually makes it to an active agenda it is not capable of being addressed through the policy process” (Peters 2015:78). Controlling the allocation of attention is the “second face of power” (Bachrach & Baratz 1962). Just as awareness is a precondition for deliberate action (Kahneman 2011), and attention is tied to agency for individuals (Wu 2011), collective actors need to pay attention to an issue before taking deliberate action (Jones 1994). This means “[a]ttention is a severe constraining factor in politics – a bottleneck through which all matters must squeeze” (Jones & Baumgartner 2005:250).

However, attention is also fickle. Attention to issues comes and goes, what Downs (1972) called the “issue attention cycle.” New issues “crowd out” old ones (Jones & Baumgartner 2005). Thus, many issues exit from the agenda without being resolved: “problems suddenly leap into prominence, remain there for a short time, and then – though still largely unresolved – gradually fades from the center of public attention” (Downs 1972:38). When attention dissipates or one issue displaces another, “the impetus to action is cut short” (Eyestone 1978:149). Therefore, it is not only vital to set agenda status but

also to maintain it. While some issues generate relatively little controversy, others are hotly contested and those opposing change try to deny their agenda status.

Agenda setting describes the process of gaining attention and assigning priority to some issues, while ignoring others (Eyestone 1978; Cobb & Elder 1983; Baumgartner 2001; Birkland 2006). Agenda setting is the process whereby certain matters become defined as action items. It denotes the process of moving an issue from what the government *could* address to what it *will* address (Nelson 1986). Agenda setting is about where issues come from and why “some controversies or incipient issues come to command the attention and concern of decision-makers, while others fail” (Cobb & Elder 1971:905).

A key question has been to inquire who has or has not the power to decide about what will be decided about (Bachrach & Baratz 1962). As the agenda can be set by different actors, Cobb, Ross and Ross (1976) distinguish between “inside initiatives,” “mobilization” (inside-outside), and “outside initiatives.” Not only presidents (Rutledge and Price 2014), Congress and the Supreme Court (Edwards & Wood 1999), but also the media (McCombs 1972) and social movements (Baumgartner & Mahoney 2005) can engage in agenda setting. Depending on who sets the agenda, the subsequent policy process unfolds differently as agenda setting shapes the parameters and terms of debate, who are participants and what is at stake.

Yet, making it onto the agenda is not enough: “Formal agenda status does not necessarily imply remedial or corrective action” (Cobb & Elder 1983:161). Issues make it on to the agenda without ever being “resolved” (Cook & Skogan 1990; Birkland 2006; Cairney 2011). There might be only a brief “window of opportunity” for action (Kingdon 1994), as “[c]oncern about most issues is quickly replaced by interest in the next issues, and then

concern about that first issue becomes quiescent” (Peters 2015:73). Thus, issues must not only attain but also maintain agenda status.

While many studies focus on how issues gain attention, what happens after has received less attention (Cook & Skogan 1990; Pralle 2009; Dery 2010). Whereas Cobb and Elder (1983:161) mention in passing that agendas need to be maintained, and Walker (1977) touches on the importance of “recurrent maintenance” to keep items on the decision agenda, Nelson (1986) is more explicit in emphasizing that issues must not only be “recognized” but interest in them “maintained.” For her, “if interest in the newer issue is not maintained, the issue will never reach the point of substantive decision making” (Nelson 1978:23). Just as agenda setting, *agenda maintenance* can be carried out by actors inside or outside the government and both activities do not have to be undertaken by the same actors (Eyestone 1978). Different actors might be better or worse at either activity. While social movements are more effective of gaining public attention, they are worse at building the political support for an agenda item to become policy.²⁵

Failure to gain or maintain attention can have a variety of reasons, such as indifference of the intended audience or ineptness of the proponents, yet another reason are the efforts of opponents. While some are trying to get or keep an issue on the agenda, others are endeavoring to displace an issue from the agenda. “Agenda conflicts pit initiators seeking consideration of a new issue against opponents who want to keep the issue off the agenda” (Cobb & Ross 1997c:25). Efforts to prevent an issue from gaining attention, momentum and consideration are called *agenda denial*. Cobb and Ross (1997b:xi) define agenda

²⁵ While protest can serve as “an external ignition to agenda setting” (King, Bentele & Soule 2007:153) and is “at the core of attracting initial attention and governmental activity” (Baumgartner and Mahoney 2005:66), it is generally found to be less influential at later stages. In Tarrow’s (1993:600) words: “Although protest can put reform on the agenda, it is insufficient to guarantee success.”

denial as “the political process by which issues that one would expect to get meaningful consideration from the political institutions in a society fail to get taken seriously.”

Agenda denial can be highly important. Cobb and Ross (1997b:xi) contend that “the major reason that issues are excluded from the political agenda... is the active effort of those whose interest would be ill served by the initiator’s success.” Agenda denial activities can range from light to heavy-handed, from non-engagement to repression, be anticipatory or reactive and occur at any point in the policy process (Harding 1985; Cobb & Ross 1997a). Despite its supposed importance, agenda denial is an aspect of agenda politics that has received relatively little attention (Capella 2016). However, the opponents of policy change and their agenda denial efforts are an important part of any reform process. Political attention allocation is structurally biased against those seeking change, because no action perpetuates the *status quo*, and, whereas proponents need to successively succeed, “opponents need a victory at only one point in the process to prevail” (Cobb & Ross 1997a:19).

In sum, I contend that to have a chance to become policy an issue needs to pass through agenda setting, maintenance and survive denial. As a first step agenda manipulation requires crossing the boundary from non-issue to object of public or political attention. The second step consists of preventing attention from fading and preparing the ground for an eventual solution. The final step is about building the necessary support for a decision. At each step there is the danger (or chance) for opponents to throw policymaking off course. For analytical purposes, agenda setting, maintenance and denial can be thought of as sequential process (Figure 10).

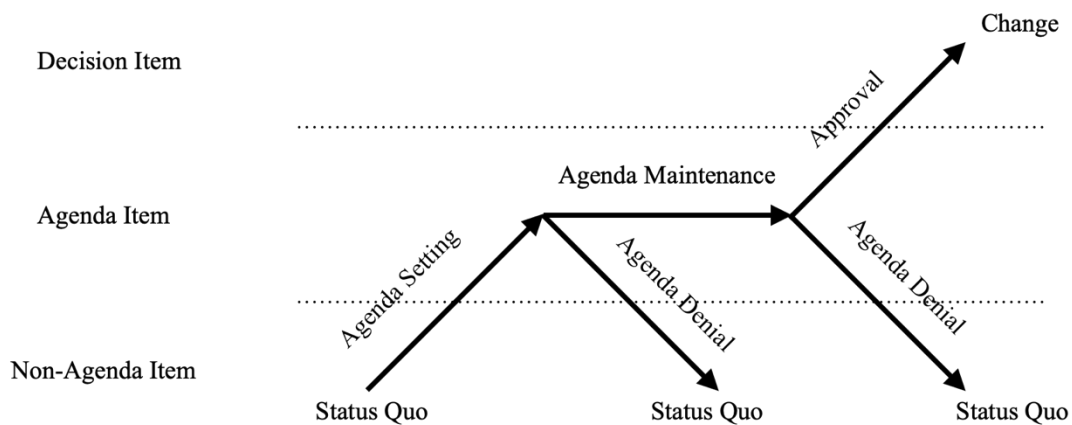


Figure 10: Stylized Depiction of the Stages of Agenda Manipulation

The combination of agenda setting, maintenance and denial capture a lot of what is going on in the politics of attention. Additionally, the different stages of agenda manipulation provide a useful heuristic to organize the policy process. Nonetheless, agenda manipulation is not the be-all and end-all of policy change. Attention is neither synonymous with action; nor does agenda status always result in decision making. Attention *per se* is indeterminate, it tells us nothing about what specific solution will be adopted (Jones & Baumgartner 2005). An issue requires more than just attention, approval is also necessary. Furthermore, the preceding discussion has been silent on the causal mechanisms behind agenda manipulation. In the following, I argue that actors set, maintain or deny the agenda through strategic framing.

Strategic Framing

How do actors manipulate the agenda and why do some achieve the approval they require? I contend that those trying to change the *status quo* draw attention to their cause, engender support or dissuade others from supporting it through strategic framing. Strategic framing is important because frames “spell out the essence of the problem,

suggest how it should be thought about, and may go so far as to recommend what should be done” (Nelson & Kinder 1996:1057). These constructions or “schemata of interpretation” allow “to locate, perceive, identify, and label” events and issues (Goffman 1974), thereby providing meaning and guiding actions. *Strategic framing* refers to communicating ideas in a particular manner and discursively constructing an issue to promote a specific problem definition, rationales and solution. Framing encourage “readers or listeners to emphasize certain considerations above others when evaluating” the issues at stake (Chong & Druckman 2007a:637). Framing presents rationales for action which “serve to legitimate [and]... justify” policy action (Schneider & Ingram 1993:339). As such, the way in which “actors deliberately package and frame policy ideas” (Campbell 1998:380) has implications for both gaining attention and approval.

Frames are weapons wielded by change agents in the battle over policy. Through emphasizing certain aspects while downplaying others different actors vie for control over how problems and solution, costs and benefits, responsibilities and interests are understood. Change agents develop, promote and employ frames strategically “in the belief that such attention will facilitate the social change they espouse” (McCarthy 1994:148). While not all attempts of strategic framing are successful all the time, strategic framing is a crucial means through which persuasion is achieved. Framing is key for “expanding the terms of conflict” (Schattschneider 1960), to mobilize or demobilize actors, activate or sidestep institutions, and highlight or ignore certain ideas.

Framing has been studied by a wide variety of disciplines, such as communication,²⁶ political psychology,²⁷ public policy²⁸ and social movement scholars.²⁹ Despite differences, there is agreement that the ways in which actors package and sell their proposals affects their ability to recruit supporters, gain attention, demobilize antagonists, and win political victories. A substantial literature has studied “framing effects” – when changes in presentation produce changes of opinion (Chong & Druckman 2007b).³⁰ The general conclusion is that “[f]rames... can have significant consequences for how viewers perceive and understand an issue, and they can direct the formation of individual opinions about the controversy” (Nelson, Clawson & Oxley 1997:568). However, all framing efforts confront the problem of falling on deaf ears, flailing without getting attention and failing to generate support (Snow & Corrigan-Brown 2005). To be successful, frames must resonate and be persuasive. While different factors that influence a frame’s resonance have been identified (Benford & Snow 2000; Druckman 2004; Noakes & Johnston 2005; Chong & Druckman 2007b), I focus on three in particular: the message, the messenger and their antagonists.

²⁶ For communication researchers, frames call attention to some aspects while obscuring others. They identify and define, diagnose and evaluate, and, prescribe. “To frame is to select some aspects of a perceived reality and make them more salient in a communicating text” (Entman 1993:52).

²⁷ In political psychology, “communication frames” organize reality, provide meaning to events and promote particular definitions (Nelson, Oxley & Clawson 1997; Nelson 2004; Chong & Druckman 2007b).

²⁸ In policy research, framing is seen as way of sense-making, naming and storytelling (van Hulst & Yanow 2015). The idea that framing constructs a situation, defines what is problematic about it and suggests what course of action to take was developed by Rein and Schön (1991, 1993, 1995). For them, framing is “a way of selecting, organizing, interpreting, and making sense of a complex reality so as to provide guideposts for knowing, analysing, persuading and acting” (Rein & Schön 1991:263).

²⁹ Sociologists studying framing are mostly concerned with how social movements inspire and legitimate their activities (Gamson 1992; McAdam, McCarthy & Zald 1996a; Cress & Snow 2000). “Collective action frames” are interpretative packages that highlight some aspects and ignore others to encourage action and participation. They are produced by social movements and identify a problem, create meaning and assign responsibility for solving it (Benford & Snow 2000; Snow 2003; Johnston and Noakes 2005).

³⁰ Famously, Tversky and Kahneman (1981) obtained reversals of preference by presenting either loss or gain frames. Public opinion on government spending, abortion or gun regulation varies depending on what aspect is emphasized (Nelson & Kinder 1996; Andsager 2000; Jacoby 2000; Haider-Markel & Joslyn 2001). For instance, labelling inheritance tax instead as death tax, leads more people to oppose it (Schaffner and Layton Atkinson 2009). In one study, casting a KKK rally either in terms of freedom of speech or hate, produced reversals in respondents’ judgements (Nelson, Clawson & Oxley 1997).

First, the message is important. Some “argumentative forms have greater persuasive power” than others (McCammon 2009:59; Benford and Snow 1988; Cress and Snow 2000). Messages are more or less successful, depending on their congruence with existing notions, opinions and “master frames” (Diani 1996). Ideas about what is "sensible," "realistic," and "legitimate" facilitate the reception of certain frames (Koopmans and Statham 1999). Frames that are not “institutionally anchored” run the risk of not resonating with the target audience (Ferree 2003). To be persuasive, challengers need to know and link their demands to decision-makers’ priorities and goals. As Alinsky (1971:97) long ago counselled: “communication for persuasion... is getting a fix on [the] main value or goal and holding your course on that target.”

Second, the messenger matters. Not all actors have the same the same ability to develop and disseminate frames (McAdam, McCarthy & Zald 1996b; Pan & Kosicki 2001). Aside from their resources and abilities, the status and credibility of those who advance the frame affect its potential success (Lupia 1994). The greater the perceived expertise of and trust in the source of framing, the better (Benford & Snow 2000; Druckman 2001; Gerrity 2009). Both the credibility and respectability (Druckman 2001; Callaghan & Schnell 2009), and the likeability and likeness can affect a source’s persuasiveness (Brady and Sniderman 1985; Harrison & Michelson 2017). As Klapper (1960:99) argues: “Sources which the audience holds in high esteem appear to facilitate persuasion, while sources which the audience holds in low esteem appear to constitute a handicap.”

Third, counter messages and messengers that contest the framing of an issue can constrain the ability of framing to be effective. By introducing uncertainty, denying issue definitions and drawing attention to less positive aspects, opposing frames can reduce

framing effects (Sniderman & Theriault 2004; Noakes and Johnston 2005; Chong & Druckman 2007b). Because negative frames can drown out positive ones, those advancing change through strategic framing must address, attenuate and silence counter messages and messengers (Benford & Snow 2000). As McCaffrey and Keys (2000:56) warn, they must “meet the challenge [of counterframing] or face extinction.”

Strategic framing works better or worse depending on the frame makers, frame receivers, the frame itself and its opposition. Messages that clearly articulate rationales for action and amplify aspects that appeal to the target audience are more likely to resonate (Noakes & Johnston 2005). “Mainstreaming” (Gamson 2003) can make the message seem respectable, reasonable, and rational, rather than radical or undeserving. Messengers that appear credible or deserving are more likely to advance “plausible or resonant framings” (Benford & Snow 2000:621). Thus “cleaning up” ones’ image can make supporting an issue appear safer. Counterframing can set back framing efforts and put those advancing specific framings on the defensive (Esacove 2004). Last but not least, messages and messengers are more effective if they “fit,” with actors’ concerns, beliefs and priorities. Demands that are packed and sold in a way that dovetails with extant preferences or ideas are more likely to be perceived as “means to an end” or “lesser evil.”

In sum, strategic framing is highly important for persuading other actors of one’s ideas. Emphasizing the benefits and downplaying the costs, can mobilize bystanders, demobilize antagonists and, thereby change the balance of power and ideas. Change agents try garner attention and cultivate support among decision-makers by strategically presenting messages and massagers. However, for framing to be persuasive not only the message and messenger, but also its audience and detractors matter.

Combining Agenda Manipulation and Strategic Framing

The preceding discussion set up “why and how we get from an antecedent causal factor to the outcome of interest” (González-Ocantos 2020:104). Within the analytical framework I developed, policy action is the result of alterations of ideas of actors with the institutional power to render authoritative decisions. Decision-makers have to both pay attention to and support policy change. Attention is “a necessary (if insufficient) condition for political change” (Boydston, Bevan & Thomas 2014). On the other hand, approval is also necessary but insufficient for decision-making because support without salience makes policy action low priority and easily displaced.

While awareness and approval can sometimes be the result of endogenous processes, more often than not it is dependent on exogenous pressures. To unsettle the *status quo*, someone has to actively challenge it, build coalitions, encourage action and discourage a continuation of business as usual. “Advocates of reform need to employ strategies to overcome the skepticism of others and persuade them of the importance of reform” (Cox 2001:475). I argue that agenda manipulation and strategic framing are key among these strategies because they allow achieving attention and approval. Agenda manipulation and strategic framing are crucial for drawing new actors, ideas or institutions into the making of policy, presenting new problems, solutions and understandings, and influencing the dimensions and scope of what is at stake. Although agenda manipulation and strategic framing are important ways of “structuring the world so you can win” (Riker 1986:xi), neither agenda manipulation nor strategic framing occur in a vacuum or by themselves. They require actors with certain resources and abilities that are facilitated or constrained by institutional and ideational opportunity structures.

Agenda manipulation is dependent on strategic framing. Agenda setting, maintenance and denial require specific frames. Strategic framing is the mechanism underlying agenda manipulation, affecting not only how attention but also approval is gained, maintained or destroyed. If agenda manipulation draws and keeps focus on an issue and strategic framing builds coalitions of support and rationales for action, then attention and approval can lead to decision making that results in change. However, if agenda setting or maintenance are opposed by determined agenda denial through powerfully resonating counterframings, then the voices demanding change can be silenced, the impetus for reform cut short and the reform process derailed. The resulting “non-decision making” (Bachrach and Baratz 1963) perpetuates the *status quo*. The different permutations of agenda manipulation and strategic framing represent distinct “causal pathways” (Waldner 2014). Agenda manipulation can be seen as steps in the causal chain, whereas strategic framing as mechanisms. In combination, they explain the flow of causal energy that brings about the outcome of interest (Figure 11).

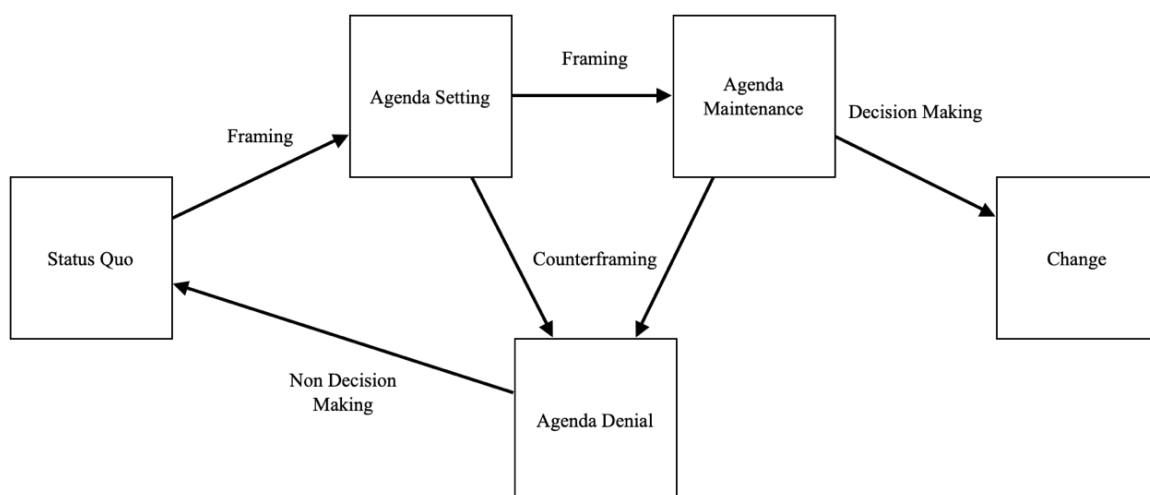


Figure 11: Causal Pathways Combining Agenda Manipulation and Strategic Framing

Existing Accounts of Drug Policy Change

In the following section, I relate the general analytical framework and model of policy change to cannabis liberalization. I review the extant literature on drug policy change to “populate” the analytical framework, further specify what drives change and derive expectations about the success and failure of cannabis reform. While informative, much of the existing literature is of limited usefulness for explaining change because it deals with drug policy in general (e.g. Bertram *et al.* 1996; Sharp 1994; MacCoun & Reuter 2001; Stevens 2011; Pryce 2012; Caulkins, Kilmer & Kleiman 2016; Babor *et al.* 2018). Studies specifically of drug policy reform are few and far between (e.g. Hughes 2006; Hardaway 2018; Mosher & Atkins 2019; Decorte, Lenton & Wilkins 2020), and many are descriptive or single case studies (e.g. Kübler 2001; Lenton 2004; Ferraiolo 2007; Dufton 2017). For drug policy change in Latin America, there is no equivalent to the comparative studies of change in gay and gender rights (Htun 2003; Blofield 2006; Díez 2015), or transitional justice (Collins 2010; Lessa 2013; González-Ocantos 2016). Nevertheless, several expectations about the role of institutions, ideas, actors, agenda manipulation and strategic framing can be extricated from the existing literature.

Institutions and Drug Policy Change

The institutional decision-making venues responsible for the making, or unmaking, of drug control policies are the executive, the legislature and the judiciary. While presidents are the most powerful and consequential political actors in Latin America, the executive is not the only institutional decision-maker that can render authoritative decisions on drug policy. Yet, different institutional actors can produce different degrees of policy change and policy processes unfold distinctly depending on which institution is responsible.

“Various powers allow presidents to affect legislation regardless of whether or not they enjoy copartisan legislative majorities” (Shugart & Haggard 2001:66). Empirical evidence shows that executive initiatives have higher chances of success, pass quicker into law and that presidents originate most major pieces of legislation (Cheibub, Przeworski & Saiegh 2004; Saiegh 2009; Alemán & Tsebelis 2016). In Latin America, “the received wisdom ...tends to see presidents as dominant and assemblies as weak” (Foweraker 1998:655). Presidents are said to be the central political actor because they have ample proactive and reactive constitutional powers (Shugart & Carey 1992; Mainwaring 1993; Mainwaring & Shugart 1997).

While presidents in Latin America have many powers (Mainwaring and Shugart 1997; Haggard & McCubbins 2001), they are not all-powerful policymakers. It would be wrong to conclude that legislatures are irrelevant for policymaking (Morgenstern & Nacif 2002a; Huneeus, Berríos & Cordero 2006; Alemán & Tsebelis 2016). Legislatures are not limited to “supine, venal or horrified-onlooker modes” (Cox & Morgenstern 2001:171). Rather, legislatures play a variety of roles in the making of policy. Even though legislators “may not take the most prominent role in the policy process” (Morgenstern & Nacif 2002b:2), they can make a difference (Arnold, Doyle & Wiesehomeier 2017). While presidents enjoy larger levels of success with their initiatives, not all executive-sponsored bills become law, and *vice versa* a non-trivial number of bills proposed by assemblies do (Alemán & Tsebelis 2016). Parliaments sometimes act independently and proactively to create new policies, as such legislators can be important allies for those seeking changes to drug policy.

Courts can be an important institutional venue for those seeking to upend the *status quo*, as “justices play multiple roles in politics and policymaking” (Kapiszewski, Silverstein & Kaplan 2013:1). The judiciary in Latin America increasingly plays an important role in constitutional controversies and policy making (Sieder, Schjolden & Angell 2005; Helmke and Ríos-Figueroa 2011a; Ingram 2015). According to Helmke and Figueroa (2011b:21), “the conventional wisdom that Latin American courts are irrelevant is outmoded. Constitutional courts have taken on a pivotal political role throughout the region.” In general, “judicialization has become a tool for making policy through other means” (Smulovitz 2012:106), and, specifically drug policies are said to have undergone judicialization (Huneeus, Couso & Sieder 2010; Madrazo & Pérez-Correa 2019).

Because of their distinct law-making powers, decision-making rules, institutional goals and priorities, executives, legislators and judiciaries can do and care about different things. First, institutions differ in the extent of changes that they can deliver. Second, institutions not only have different decision-making criteria and evidentiary standards, but also different incentives and concerns. For decision-makers, often “where you stand, is where you sit” (Allison & Zelikov 1999). For instance, legislators should be more concerned about reelection and therefore public opinion, whereas laws and precedents should matter more for justices. In other words, not every institutional decision-making is equally open, able or willing to pay attention to the idea of marijuana legalization.

Ideas and Drug Policy Change

Ideas matter for policy in general and drug policy specifically. Cannabis laws have always been based on certain ideas about the substance and how to deal with it: “Judgement and values have been paramount in the establishment of national drug policies” (Musto

1999:298). Prohibition was justified by cannabis being associated with a wide-range of social ills and “fears” about the substance (Coomber 2013). Ideas that “demonize certain drugs in order to justify their prohibition” have played an important role in the making and maintenance of drug policy (Mosher & Atkins 2007:3). If it is indeed true that “ideology plays a powerful role in drug policy choice” (Zimring & Hawkins 1992:4), what are the different ideas about drugs and how do they influence drug policy?

Several authors have tried to classify ideas on drugs and drug policy.³¹ Despite differences, all of them, see prohibitionist ideas as pre-dominant and most prevalent, whereas reformist ideas as peripheral (Bertram *et al.* 1996). Ideas can be separated into four ideal types: “hard” or “soft,” positive or negative ideas. The hard-negative view sees drugs as inherently bad and immoral. Hard-positive ideas hold that there is a natural right to drug use. Soft-negative ideas are against drug use because of its harmful practical consequences. Soft-positive ideas consider drugs not as good, but their prohibition as worse. In essence, these ideas differ in whether they start from pragmatic or principled concerns (MacCoun & Reuter 2001), whether they conceptualize all drugs as equal or differentiate between substances (Zimring & Hawkins 1992), and, whether they are optimistic or pessimistic about the effects of drug policy liberalization (Goode 1998).

The distribution of ideas about drugs should influence policy outputs. If those that see drug use as inherently bad or immoral are dominant no change of prohibition should be

³¹ Klerman (1970) observed that there are three “ideologies” prevalent in drug policy: “hawks,” “moderates” and “heads.” Reuter (1992) similarly speaks of drug “hawks,” but adds “doves” and “owls” as additional categories of ideas about drugs. Goode (1998) argues that there are cultural conservatives, free trade libertarians, radical constructionists, progressive legalizers and progressive prohibitionists ideas and positions. Zimring and Hawkins (1992) distinguish between drug “generalists” vs “specifists.” The former see all drugs as either good or bad. The latter contend that there are differences between substances, and that there is no “one-size-fits-all” response. MacCoun and Reuter (2001) differentiate between deontological and consequentialist ideas. The former start from first principles, whereas the latter care more about the effects that drug use and policies generate.

forthcoming. On the other hand, if those who see drug use as inalienable right are responsible for policy, legalization should be the result. Between conceiving of drugs as either “good” or “bad,” fall those that employ instrumental reasoning (Skolnick 1992; Goode 1998; MacCoun & Reuter 2001). From this more pragmatic point of view, drug policy is not so much about morality or rights, but the costs and benefits of policies.

Ideas about drug policy are shaped by the institutional position and priorities of actors. Personal preferences and ideas about drug policy seem to get overridden by perceived political and institutional exigencies. This is highlighted by the fact that many decision-makers have supported drug policy reform before or after they were in power, or only in private but not in public.³² While in office, most politicians treat drugs “as the third rail of politics – touch it and you die” (Drucker 2012:1626). Of course, downplaying traditionally unpopular drug liberalization is not wholly unreasonable for those seeking (re)election (Bertram *et al.* 1996). Afraid of the potential political costs, “many politicians see drugs as a toxic issue, one best avoided” (MacGregor 2013:225).

In sum, present *status quo* drug policies are a reflection of predominantly negative ideas about drugs or ideas about the prohibitive costs of pursuing alternative drug policies. Only if these ideas change, policy change is possible. Yet, value judgements and hard prohibitionist ideas are difficult to dislodge. Rather, ideational change is most likely to occur in the middle. The opinions of those who do not hold strong ideas about cannabis or have other concerns and priorities to whose attainment legalization can be instrumentally linked to, should be easier to sway.

³² Sarosi (2012) coined the term “post-retirement drug policy enlightenment syndrome” because many politicians only come out in favor of reforms after leaving office, whilst having been against it in office.

Actors and Drug Policy Change

In accordance with the analytical framework, there are five groups of actors involved in drug policy: those with the institutional power to change drug policy that are either for (policy entrepreneurs) or against change (veto players), and those without the institutional power to affect change directly, working for (social movement) or against reform (countermovement). Further, there are those who are, at least initially, uninterested and uninvolved in drug policy (bystanders). In what follows, I highlight the implications of the presence (or absence) of each of these actors for the prospects of drug policy reform.

Despite the fact that veto players have been called on to reverse decisions that allow legal access to marijuana,³³ and have even outright prevented legalization,³⁴ they have not received explicit attention in the study of cannabis policy. Nonetheless, much of the extant drug policy literature is replete with implicit references to veto players, claiming that change is improbable if not impossible because of the opposition of powerful actors (Bertram *et al.* 1996). For instance, Lenton (2004) posits that politicians' belief that supporting liberalization will not be "political suicide" was a necessary condition for reforms in Australia. Scherlen (2012) contends that ending the drug war is difficult because of the strength of those interested in its continuation and the high costs associated with its termination. And, Reuter (2013:126) argues that one of the reasons why drug policy has changed so little is the "timidity of politicians." This suggests that change is unlikely if either institutional or partisan veto players oppose drug policy reform.

³³ For example, several private and public plaintiffs sued Colorado before the Supreme Court, to have it undo the marijuana law reform that had been passed through a public referendum in 2012 (Kamin 2015).

³⁴ For instance, in 2017, Vermont Governor Scott vetoed the first ever bill passed by a legislature to legalize marijuana (Hardaway 2018). In 2018, Maine Governor LePage vetoed a bill passed by the legislature, in response to a public referendum, which would have begun commercial sales of cannabis (Pardo 2020).

In contrast to veto players, policy entrepreneurs have been explicitly studied in the context of drug policy. While the importance of enterprising actors in enshrining the prohibition of drugs has long been established,³⁵ there is no reason to believe that entrepreneurs are only active in making drug policies more punitive and not more permissive. In fact, policy entrepreneurs have been found to have shaped the liberalization of drug policy. For instance, Hughes (2006:91) argues that “a number of key individuals played entrepreneurial roles in the development of Portuguese drug policy.” Thus, the activities of individual policy entrepreneurs can make cannabis liberalization more likely.

Equally cannabis movements can play important roles in the making of national drug policies. Although “efforts to change drug policies have often taken the form of social movements...” (Room 1991:37), cannabis activists have received relatively little systematic attention as social movement. Nevertheless, “grassroots” activists are among the most vocal champions of changes of the prohibitionist *status quo*, as they mobilize and organize to reform cannabis legislation. Several studies establish that a cannabis movement exists in Spain, Argentina and the US and detail their contributions to drug policy making.³⁶ These studies show that cannabis movements engaging in collective actions to reform drug laws are often involved in and influence the making of drug

³⁵ The most famous example of an “entrepreneur” influencing drug policy is Harry Anslinger, who led the Federal Bureau of Narcotics (FBN) from 1930 to 1962 (McWilliams 1989; Musto 1999; Chasin 2016). For instance, Becker (1966) develops his famous notion of the “moral entrepreneur” based on Anslinger and the FBN’s authorship of cannabis prohibition.

³⁶ For information on the Spanish cannabis movement see (Calafat *et al.* 2000; Barriuso 2005; Montañes 2017). Marín (2002) details the dynamics and characteristics of the Spanish cannabis movement. For him, this “new social movement” is characterized by organizational structures, division of labor, and singular focus on cannabis. The Argentine cannabis movement has been the object of a growing number of studies (Sclani 2014; Palazzolo 2017; Curto 2018). Particularly, Corbelle (2019) retells the cannabis movement’s history of mobilization and struggle of achieving “change from below.” She emphasizes the importance of cannabis movement presenting themselves as “responsible consumers” to be recognized as legitimate interlocutor and bearer of rights. The modern US “marijuana movement” is often portrayed as driving force behind recent state-level legalization (Martin & Rashidian 2013; Hecht 2014; Dolce 2016). Tracing the history of drug policy activism, Dufton (2017) finds that “it has always been grassroots activists who have led the way” toward policy changes.

policies. Yet, their efforts to promote change do not necessarily have an effect. Rather than the mere presence of a cannabis movement, how they organize and mobilize, present themselves and their cause can make a difference (Wallach & Rauch 2016). However, as expanded on below, what cannabis activists can do is shaped by the resources and abilities they possess. Furthermore, while the tactics they chose and particularly which frames they advance matters, so does the opposition they face.

Organized opponents of drug policy change regularly form in order to prevent cannabis activists from achieving their goal of liberalization. Nevertheless, countermovements to cannabis liberalization have been mostly overlooked: “[t]he interplay of the forces promoting and opposing change has not been analyzed in any systemic way” (Josephson 1981:295). This is unfortunate because “movements to change government policies on the availability of drugs can be oriented in either of two directions” (Room 1991:37). Extant studies suggest that civil society opposition to drug policy reform can play an important role in derailing drug policy reform.³⁷ Proponents and opponents both try “to shape the debate and influence centers of decision-making” (Martel 2006:207). Where opponents and proponents of marijuana legalization compete, it is not unreasonable to assume that the prospects of cannabis reform depend on how evenly or unevenly they are matched. If the probability of change – in part – depends on the opposition it provokes, we can expect that the stronger the reaction against change, the less likely is a reform proposal are to succeed, and *vice versa*.

³⁷ Cunial (2016) studied the failure of a legislative reform initiative that would have decriminalized cannabis possession in Argentina. He finds that the opposition of the Catholic Church played a “determining role,” because the government did not want to antagonize a constituency that strongly opposed drug policy liberalization (ibid:228). In a historical study of cannabis question in 1960s Canada, Martel (2006:9) finds that “those in favor of liberalization saw their efforts undermined by the other [opposing] coalition and by their own difficulties in justifying their call for liberalization.”

Last but not least, there are those who are initially bystanders in drug policy. In general, there is relatively little awareness of and even less involvement in drug policy: “There is a proportion of the population who are ambivalent toward drug policy; that is, they do not know or do not care” (Matthew-Simmons, Sunderland & Ritter 2013:264). Issue salience has remained low even in contexts of widespread drug policy debates. For instance, while “Americans support cannabis reform, they really do not care about it” (Hudak & Stenglein 2020:30). Furthermore, many policymakers are inattentive or uninterested in drug policy (Scherlen 2012; Reuter 2013; MacGregor 2013). By themselves, bystanders are unlikely to get involved in drug policy reform, because there is little incentive to do so (Bertram *et al.* 1996). Yet, absent strongly held beliefs and ideas about drug policy, bystanders are a group of actors that can be persuaded to take action and recruited as allies. Appealing to those who have hitherto been on the sidelines is a key task for reform proponents to build coalitions in support of cannabis reform.

Agenda Manipulation and Drug Policy

In the preceding chapter, I argued that agenda manipulation is key for gaining and maintaining attention. In turn, attention is the result of processes of agenda setting, maintenance and denial. What does the literature tell us about the politics of attention to drugs? For the most part, the literature focuses on the origins of drugs as agenda item (e.g. Johnson *et al.* 1996; Johnson, Wanta, & Boudreau 2004; Whitford & Yates 2009; Oliver, Hill & Marion 2011). In contrast, the consequences of agenda manipulation for drug policy has received relatively little attention. Existing studies suggest that agenda politics can influence drug policy (Sharp 1994; Hughes 2006; Repetto 2014). For instance, Hughes (2006) contends that differences in agenda setting had implication for

the success and failure of drug policy proposals in Australia and Portugal. Harris and Morris (2017) detail how activists managed to put cannabis reform onto the political agenda in Texas. And, Sharp (1992:538), who compares and contrast three episodes of drug policy agenda setting in the US, found that differences in agenda setting had measurable “implications for the character of policy.” According to her, insider agenda setting produced markedly different results from outsider agenda setting.

What can be surmised from the limited existing literature on agenda manipulation and drug policy is that first, most politicians are in a “state of denial” when it comes to drug policy (Bertram *et al.* 1996). The little attention that is paid to drug policy is generally “disjointed and spasmodic in character” (Sharp 1994:4). Attention is often fleeting, and cannabis reform displaced by other concerns. Second, making it onto the political agenda is not enough for successful reform (Harris & Morris 2017). What happens once cannabis reform is on the agenda is also important. Aside from achieving agenda status, actors have to maintain cannabis reform on the agenda to ensure it results in decision making (Repetto 2014). Third, framing is important in agenda politics because it influences what considerations come to the fore and why, thereby “the type of image influenced... policy formulation” (Hughes 2006:25).

Framing and Drug Policy Change

Above, I argued that framing is a key mechanism through which attention and approval to an issue are generated. By emphasizing some while downplaying other aspects, defining problems and presenting solutions, framing is crucial for persuading decision-makers to take action. Several authors have identified framing as important for the success

of drug policy reform.³⁸ For example, Frensdreis and Tatalovich (2020:6) argue that the main lesson from recent cannabis liberalization in the US is “that framing an issue in ways that appeal to prevailing public sentiment may be all important.” However, the existing literature on framing and cannabis reform also indicates that neither all frames are equally persuasive, nor are all framers equally effective. Certain messages and messengers are more appealing than others.

On the one hand, qualitative studies have highlighted the importance of framing for the success of cannabis reform. Particularly in the context of medicinal marijuana in the US, several authors have found that framing was key for success (Ferraiolo 2007; Plume 2012; Dioun 2017). These authors contend that medical marijuana activists “developed moral legitimacy and legal support for the emerging medical cannabis market...by framing cannabis as a compassionate palliative for the seriously ill and dying” (Dioun 2018:36).

On the other hand, several studies have quantitatively tested the effect of framing in the context of drug policy. In general, positive media frames can increase support for marijuana legalization (Stringer & Maggard 2016). Specifically, framings of cannabis as medicine and palliative has been linked to attitudes becoming more supportive of legalization (Musgrave & Wilcox 2013). McGinty *et al.* (2017) compared the effect of the perceived persuasiveness of different frames on supporting or opposing marijuana legalization. In the US context, they find that criminal justice and economic arguments were more effective. Not just general arguments, but specific wording can matter (Kelly & Westerhoff 2009; Kilmer *et al.* 2019).

³⁸ For instance, Scherlen (2012:73) contends that “to move toward drug war policy termination, terms of the debate need to be reframed.” Harris and Morris (2017:119) write that it is “critical for the movement to use selective framing to appeal to the main interests of each group [in the legislature].” Dioun (2018:46) argues that “actors must...frame their message so as to gain a foothold for their institution-building project.

As both qualitative and quantitative evidence suggests that framing can make a difference for drug policy in general and cannabis reform specifically, it is unsurprising that actors involved in drug policy engage in strategic framing. Particularly, reform proponents are cognizant of the importance of framing marijuana legalization in a persuasive manner (Ferraiolo 2009; Dioun 2018; Corbelle 2019). Proponents strategically try to present messengers and messages in the most positive light possible. For instance, Dennis Peron, a pioneer of medical cannabis activism in the US, described how he consciously decided how to frame the issue: “To get the answer you want you got to frame it right. So, I framed it in such a way, marijuana is medicine that helps people [who are] sick and dying...” (Dioun 2017:170).

Advancing appealing messengers that can garner approval has been identified as crucial task by reform proponents. Cannabis activists try to present themselves as ordinary, deserving and “reasonable” (Corbelle 2019). They endeavor to move away from stereotypes that can evoke rejection or dismissal, paying close attention to imagery, language and appearances. “What is vitally important is what people think of today’s marijuana users” (Tate 2013:71). For instance, in Maine, activists chose as public face of their medical cannabis campaign someone who “did not look like a pot smoker and didn’t look anything like a hippie ... we wanted [voters] to think: wholesome, wholesome, wholesome” (Ferraiolo 2009:358).

Aside from “cleaning up” their own image, another way of increasing the respectability of cannabis regulation is by involving actors that are already well-regarded. Reform proponents perceive “networking with groups with more ‘legitimacy’” as a key task (Harris & Morris 2017:110). They actively pursue endorsements and try to recruit

spokespersons from groups perceived as “experts” (Ferraiolo 2009). Alliances can ensure that cannabis reform is a policy demand that is harder to dismiss, more sustainable and effective.³⁹ For instance, moving away from almost exclusively featuring “hippies and hemp enthusiasts” to “bringing in a much larger variety of institutional voices” has been identified as crucial for the US cannabis reform movement (Wallach & Rauch 2016:13). *Vice versa*, without diverse allies, cannabis activists are less likely to succeed in (re)framing the issue and dislodging negative perceptions.

Besides changing who advocates for cannabis reform, how cannabis reform is advocated for is important: “What matters is how the measure is generally framed” (Leon & Weitzer 2014:211). Because support for cannabis reform is “affected by frames” (Musgrave & Wilcox 2013:79), adapting the framing of cannabis reform can make a difference for the support that the issue can muster, the adherents it can recruit, and the policy battles it can win. However, not all frames resonate equally with all audiences (McGinty *et al.* 2017). Because different people care about different facets of and issues at stake in cannabis reform, they support (or oppose) changing the *status quo* for different reasons (Williams, van Ours & Grossman 2011; Caulkins *et al.* 2012; Doherty, Tyson & Weisel 2015). Different concerns and attitudes can be activated through specific framings of marijuana, and tailoring the message to the target audience, its preferences and priorities.⁴⁰ Contrariwise, if appealing framings are unavailable or reform proponents are unable to advance them, or persuadable target audiences are non-existent, changing minds about the legal regulation of a mind-altering substance is less likely to succeed.

³⁹ The prestige of former presidents helped the *Global Commission on Drug Policy* to draw attention to the issue of drug policy reform that lower-level activists making similar arguments could not (Alimi 2015).

⁴⁰ For instance, criminal justice frames work better for people upset or victimized by the unequal racial impacts of the drug war (Thornhill 2011; Tate 2013; Collingwood, González & Dreier 2018).

The different positive framings of cannabis reform can be organized by adapting Euchner *et al.*'s (2013) four-fold typology of negative framings of drug policy.⁴¹ Cunial (2015) applies a similar four-fold differentiation to map how policymakers frame the problem of drug use in Argentina. The *morality frame* presents drug use as inalienable right and expression of autonomy. Legalization eliminates prohibition's undue and disproportionate interference with personal liberties and privacy. The *health frame* stresses the health benefits from quality controls, reduced stigmatization and access for therapeutical usage. The *security frame* emphasizes the reduction of criminal proceeds, the reduced criminalization of non-violent criminal behavior and the refocusing of law enforcement on more violent crimes. The *economic frame* highlights the potential opportunities for revenue generation from a legal cannabis market through taxation, licensing and job creation. *Morality, health, security and economic frames* have different levels of persuasiveness depending on the specific country context and audience.

In sum, cannabis reform proponents engage in strategic framing to gain attention and engender support from their target audience through "mainstreaming the issue" (Ferraiolo 2007:167), presenting themselves as "reasonable and deserving" (Corbelle 2019), and the issue of legal access as "not a grievance isolated to 'hippies and potheads'" (Harris & Morris 2017:107). Reform proponents' framing centers around making themselves and their demand seem mainstream not fringe, safe not threatening, and, helpful not harmful. Successful framing makes cannabis reform seem as legitimate as possible in the eyes of the target audience, silences opponents and defines the problem in a way that presents cannabis regulation as a credible solution.

⁴¹ The morality, health, security and economic frames are ideal types which in practice often overlap. Each of them has a negative inverse that could be used to different degrees to oppose cannabis reform.

Movement Structures and Drug Policy

Although there are several studies of national pro-cannabis movements (e.g. Salgar 2015; Guerra 2018; Corbelle 2019), there is little information about cannabis activism in the region (Corda, Cortés & Piñol 2019:78). Nevertheless, it is clear that cannabis reform proponents in Latin America are not a homogenous group of actors. Rather there is heterogeneity in both “actors involved and the actions they carry out... as well as the resources and capacity for advocacy” (Corda, Cortés & Piñol 2020:23). While “the vast majority [of activists] consume cannabis themselves” (Corda, Cortés & Piñol 2020:21), as will become apparent below, not all reform proponents do. Whereas most activists are young, urban and identify with “cannabis culture” (Sandberg 2012), several venerable former presidents have advocated for drug policy reform for over a decade (Posada-Carbó 2008). Across and within Latin American countries organizational characteristics and structures of those advocating for cannabis liberalization differ: some are institutionalized and professionalized, others more improvised and informal. Such differences in organizational structures, membership and resources translate into variation in capacities to develop and carry out activities.⁴² In other words, advocates in suits and ties are able to pursue different tactics than activists in tie-dye:

There is one group of social movements that engages with and has an influence in public policy spaces, while there are many others that express themselves through grassroots actions such as marches, public demonstrations and protests (Corda, Cortés & Piñol 2020: 22).

⁴² Salgar (2015) distinguishes between “collective action from below” by cannabis consumers and “collective institutional action” by progressive professionals in Colombia. He finds that *Comunidad Cánabica Colombiana* and *Acción Técnica Social* have very different levels of organizations, backgrounds and available resources and access to policymaking

Expectations about Drug Policy Change

Which institution deals with the demand of drug policy liberalization conditions whether actors have access to decision-making, which ideas matter most, and what degree of change institutional decisionmakers can deliver. The judiciary, legislature and executive not only differ in their decision-making criteria, evidentiary standards and barriers of entry, but also in their institutional missions, priorities and “logics of appropriateness” (March & Olsen 2011). Starting from the assumption that institutions differ in the ideas they hold and value and their relative power, I expect that not every institutional decisionmaker is equally willing or able advance marijuana legalization. Aware of these differences, reform proponents should pursue change in those decision-making venues they perceive most likely to pay attention to and approve of cannabis reform.

While some people have strong positive or negative ideas about drugs and how to deal with them, for others drug policy is not a salient issue and their ideas are more pragmatic. Assuming that those without strong ideas about drugs or concerns that cannabis reform can be instrumentally linked to more easily change their minds than those with absolutist views, I expect that policy change occurs when hegemonic negative ideas are replaced by instrumental views that see marijuana legalization as means to a valued end. As I will expand on below, president Mujica did not support marijuana legalization because he thought it was something “good,” but rather because it was a *means* to combatting insecurity. The Mexican Supreme Court did not condone drug use, rather the justices argued that prohibition of cannabis *disproportionally* affected rights guarantees. In both cases, there was no ideational shift towards conceiving of marijuana legalization as an end in itself, but rather perceiving it as a means to an end.

While decision-makers sometimes independently come to support cannabis reform, I conjecture that, most of the time, they remain bystanders in drug policy without external prodding. Therefore, those wanting to change the *status quo*, whether societal or governmental, collective or individual actors have to draw attention to the issue and manufacture approval. Not only do they have to package and sell their demands, but they have to contend with those opposing drug liberalization. This implies that how equally or differently these rivals are matched influences the outcome of drug policy reforms. I presume that the better organized opponents, the more resources they have at their disposal and the closer they are connected to other societal or political actors, the less likely is the advancement of drug policy change. However, the success of cannabis reform does not just depend on the “loosely coupled tango” of mobilization and countermobilization (Zald and Useem 1982), but also the presence of allies or opponents of cannabis reform in positions of power. Hence, I expect that veto players actively opposing cannabis reform make change less likely, if not impossible, whereas the backing of powerful actors can make attention and approval more likely.

Attention to drug policy is in short supply in most countries, most of the time. Most decision-makers are in a “state of denial” (Bertram *et al.* 1996) about the costs and consequences of *status quo* drug policies and most media coverage of drugs is sensationalistic or sporadic (Dillon 1998; Hughes, Lancaster & Spicer 2011). Hence, I make the assumption that drug policy liberalization is unlikely to become an agenda item by itself. Rather, for cannabis reform to appear on the agenda someone has to place it there to begin with. Building on Cobb, Ross and Ross (1976) and Sharp’s (1992) distinction between insider and outsider agenda setting, I contend that agenda manipulation can be undertaken by either insiders or outsiders. Because who is

responsible for agenda setting determines which institutions and ideas are involved, what degree of policy change is at stake and what actors must do in subsequent agenda manipulation, I distinguish between two alternative scenarios. In the more usual scenario that the government opposes marijuana legalization, I expect that change agents themselves need to actively challenge the *status quo*. In the more unusual scenario that the government comes out in support of cannabis reform, I suppose that change agents have to provide backing for that initiative to ensure its continuation and conclusion. Thus, in either scenario reform proponents have a role to play in either originating, nurturing or defending cannabis liberalization.

Framing matters for the prospects of gaining attention and approval for cannabis reform. While certain frames can be persuasive, neither all frames nor are all framers are equally effective. Thus, my expectation is that the way in which ideas are communicated and the appearance of proponents influence the impact of the framings of cannabis reform. I presume that frame makers are more likely to be listened to if they appear as professional, pragmatic and presentable. I posit that “mainstreaming” the message and “cleaning up” the messengers can help to make supporting cannabis reform appear safer and less objectionable. Contrariwise, if appealing messages or messengers are unavailable, or reform proponents are unable to advance them, I expect that recruiting allies, persuading undecideds and counteracting opponents is more difficult. Last but not least, I anticipate that frames are more persuasive if they are “made to fit,” by linking policy demands to extant ideas and what the target audience cares about. In sum, to garner attention and, more importantly approval, framing must make cannabis reform seem as legitimate as possible, silence opponents and present the benefits of supporting it as outweighing its costs.

Organizational characteristics such as institutionalization and professionalization, membership and resources of would-be reformers influence which means are available to pursue their ends. Not all actors are equally capable to develop and deploy resonant frames. I conceptualize resources as indigenously or externally sourced and unequally distributed among outsider challengers (McCarthy & Zald 1977; Jenkins 1983; Edwards & McCarthy 2003). In turn, to a significant extent, the resources available to a movement are the result of its organizational forms (McCarthy & Zald 2002). Because both resources and institutionalization affect the strategic and tactical choices of social movements (Staggenborg 1988, 2013), I expect that some reform proponents are more likely than others to engage in effective advocacy tactics (Gamson 1975).⁴³ Thus, I agree that “formally structured movement organizations are more effective at mounting sustained challenges than decentralized, informal movement structures” (Jenkins 1983:528).

Because cannabis reform proponents within and across Uruguay, Mexico and Chile are likely to differ in terms of their formalization and bureaucratization between “grassroots” activists and “professional” advocates, I expect to find similarly to Corda, Cortés and Piñol’s (2020:22) assessment of cannabis activism in Latin America that “[t]hese movements vary in terms of their formalization and impact.” I anticipate that more professionalized and formal movement structures, access to resources and expertise result in more strategic and pragmatic advocacy than if reform coalitions are dominated by home-grown, grassroots activists.

⁴³ For instance, actors more socially, culturally and institutionally “distant” from the state have been found to adopt more radical rather than reformist collective actions (Davis 1999). By contrast, more formalized social movement organization engage in more institutionalized and less confrontational tactics (Morris 1984; Staggenborg 1988). Money, skills, information and organizational structures are important for media coverage and “producing a public voice” (Barker-Plummer 2002). Professional structures facilitate building relationship with decisionmakers and lobbying them more effectively (Cable 1984).

Explaining Drug Policy Change

Having constructed a general analytical framework and model of policy change and related the two to drug policy change specifically, I proceed by presenting my argument about why marijuana legalization triumphed in Uruguay, made some progress in Mexico and failed in Chile. To account for variation in outcomes I move backwards from the fact that specific actors with the institutional power to render authoritative decisions changed their ideas about cannabis. Specifically, I argue that variation in agenda manipulation and strategic framing explain differences in reform processes and outcomes. My argument is that the way in which reform proponents packaged and sold their demands influenced the attention and approval for cannabis liberalization they secured consists of three parts.

The first part of my argument is that differences in agenda manipulation led to distinct reform processes and outcomes. Whether or not the government initially set the agenda was highly important for the subsequent reform process. Where the government opposed marijuana legalization, as in Mexico and Chile, change agents needed to actively challenge the *status quo* and set the agenda. Where the government came out in support of cannabis reform, as in Uruguay, they had to provide backing for that initiative to flourish. The reform processes' initiation also conditioned the degree of change it resulted in. Comprehensive change, as in Uruguay, was a function of both insider and outsider support. Limited change, as in Mexico, was the result of outsider agenda setting *vis-à-vis* insider intransigence. Furthermore, reform outcomes depended on the negative reaction the proposal provoked. Where a well-organized opposition engaged in agenda denial, as in Chile, cannabis liberalization encountered difficulties. In sum, reform processes and outcomes varied depending on who was responsible for agenda manipulation.

I argue that there are different pathways to reform depending on whether (1) there has been insider agenda setting, (2) outsider agenda setting or maintenance, or, (3) insider or outsider agenda denial, which result in (4) varying levels of drug policy change. In the following, I present a stylized depiction of the combinations of top-down and bottom-up agenda setting, maintenance and denial (Figure 12). The starting point at t_0 is always the *status quo* cannabis control policy. At t_1 , either an authoritative decision-maker comes out in favor of cannabis reform, or not. Depending on whether there is insider agenda setting or not at t_1 , change agents do different things at t_2 : they set the agenda themselves or maintain it. At t_3 opponents engage in agenda denial or not. The combination of each previous step conditions the different levels of policy change achieved at t_4 .

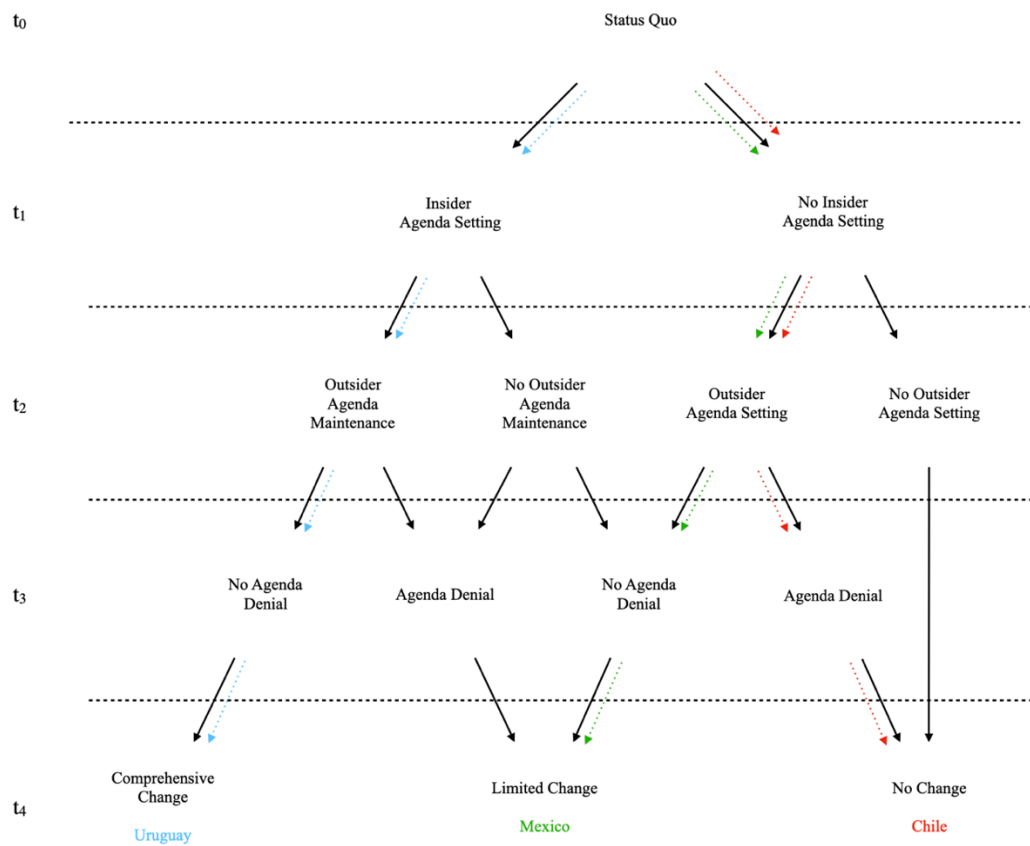


Figure 12: Potential and Actual Reform Pathways in Uruguay, Mexico and Chile

Initial insider agenda setting determines what change agents do subsequently. If there was a governmental proposal, what reform proponents must do is relatively straight-forward: they had to ensure that the proposed bill actually became law. This required encouraging the government to stay on course. Further, it might necessitate counteracting agenda denial efforts by opponents. If there was top-down agenda setting, as in the case of Uruguay, then outsider change agents need to maintain the issue on the agenda and keep the reform process going. As the country chapter shows, Uruguayan activists were relatively insignificant for setting the agenda, but vital for maintaining cannabis reform on the agenda and ensuring that it became law. Thus, their role was mostly defensive and reactive, but nevertheless crucial. Because insider agenda setting is unlikely to be completely in line with outsiders' wishes, for outsiders to engage in agenda maintenance required pragmatic compromises.

However, there are situations in which outsiders do not offer the kind of support for an insider reform initiative I posit as necessary for successful reform outcomes. Outsider agenda maintenance does not automatically follow insider agenda setting, because activists are not supportive of any and all changes. Activists have failed to offer support for a governmental reform proposal when they perceived their starting position as not prohibitively costly and the government did not make concessions resulting in the benefits of change to be few. A further condition in which reform proponents might fail to support insider agenda setting is when the cannabis movement is dominated by absolutist rather than pragmatic postures. In Mexico, reform proponents soured on a legislative reform they considered exclusively benefitting commercial interests and falling short of the results of the judicial battles they had won. In Chile, more radical elements within the cannabis movement were unwilling to make compromises and

rescinded their support for a bill they perceived as overly restrictive and worse than a legally ambiguous *status quo* they had increasingly grown accustomed to because they could relatively unperturbed grow cannabis at home.

Without top-down support, what reform proponents must do is messier and more difficult. Change agents need to experiment with different tactics and search out the point of least resistance to change. Where there was no insider agenda setting, as in Mexico and Chile, outsiders had to pro-actively draw decision-makers' attention to the issue. That they went on the offensive and created openings and opportunities for themselves was highly important, because without their agenda setting cannabis reform would not have become a political issue. As I will detail below, how reform proponents drew attention to the issue through strategic framing was important for the approval they were able to secure. In particular, I show why the way in which the legal challenge to prohibition in Mexico was constructed was key for succeeding with legal mobilization in the Supreme Court.

If either insider or outsider agenda setting succeeds in drawing attention to marijuana legalization, this is not necessarily the end of the reform process. Initial outside agenda setting might result in partial victories, as in Chile, or in limited changes, as in Mexico. For more comprehensive change, reform proponents must maintain the issue on the agenda and prevent attention from slipping away. They must engender and encourage support through campaigning and defending cannabis reform. In Uruguay, not just that but how reform proponents maintained the agenda was crucial for the successful reform outcome, as they made cannabis reform appear as legitimate and safe as possible to encourage wavering decision-makers. This stands in juxtaposition to Chile, where attention faded and approval dissolved, as reform proponents failed to provide compelling

rationales for action and refused to engage in agenda maintenance. Furthermore, because opponents can make the advancement of the reform process more cumbersome and contribute to derailing it, reform proponents must attend to and counter their agenda denial. In Chile, where reform proponents failed to counteract opposition efforts, agenda denial efforts from actors inside and outside of government curtailed cannabis reform to a degree that made it appear untenable to erstwhile reform proponents.

In Uruguay, the government's setting of the agenda coupled with change agents maintaining the agenda and detractors' lack of agenda denial resulted in comprehensive cannabis reform. The most crucial part of my argument is that without support from below, reform would not have been as successful or comprehensive. My argument contains three crucial minimum-rewrite counterfactuals, that help to clarify the causal weight of different elements I posit as important for the reform process: (1) If there had been top-down support but no effective pro-reform campaigning to quash doubts about cannabis reform, there would have been more limited change. (2) If there had not been top-down but only bottom-up agenda setting, there would have been only limited changes at best. (3) If there had been more organized agenda denial efforts the extent of cannabis reform would have been more limited.

In Chile, despite some success of outsider agenda setting, confronted by insider and outsider agenda denial and unwilling to engage in agenda maintenance, reform proponents did not manage to secure changes to extant drug laws. In particular, I argue that cannabis reform succeeded in generating attention but failed to engender approval in Chile because they were unable to maintain a united front, advance persuasive frames that connected cannabis reform to existing concerns and overcome the of opposition of

powerful actors. This argument implies three counterfactual claims: (1) If change agents had behaved more pragmatically, maintained unity of purpose, and professionalized their efforts, they could have secured limited changes. (2) If there had been less powerful opposition inside and outside of the government to reform, limited changes might have been achieved. (3) If there had been either top-down support for cannabis reform or effective agenda maintenance, changes could have occurred.

In Mexico, in the absence of insider agenda setting, outsider agenda setting put led to important, if limited, jurisprudential changes. Without legal mobilization, there would not have been any change. As I will expand on below, the tactical choices in constructing and carrying out legal mobilization was constructed and carried out were crucial for its success. On the other hand, taken by surprise by legal mobilization, opponents failed to deny its agenda status. As such, my argument contains three counterfactual claims: (1) If there had not been agenda setting through legal mobilization, there would have not been any change. (2) If agenda setting had been carried out differently, it would not have worked. (3) If there had been more timely and stronger opposition, cannabis liberalization could have been prevented. Although still playing out at the time of writing, the legislative process has evidenced already the difficulties of passing comprehensive reforms without both insider and outsider support.

In sum, who was responsible for agenda manipulation is one crucial difference between my three cases. In Uruguay the government independently proposed cannabis reform. In contrast, in Mexico and Chile, the government did not put marijuana legalization on the agenda. Thus, cannabis reform proponents faced two very distinct sets of circumstances. In the former, they did not have to put the topic on the agenda, were allied with the

government and worked to encourage them to follow through with reforms. In the latter two countries, change agents had to find ways to put the topic of cannabis reform on the agenda themselves, find allies wherever they could, try and test different strategies with different decision-makers. Whereas limited drug policy change occurred in Mexico, cannabis liberalization failed in Chile.

Put simply, my argument about agenda manipulation is that both insider agenda setting and outsider agenda maintenance are individually necessary but only jointly sufficient for comprehensive cannabis reform, as in Uruguay; that insider agenda setting is not always necessary but outsider agenda setting can be sufficient for limited change, as in Mexico; and that no outsider agenda maintenance together with insider or outsider agenda denial can be sufficient for derailing cannabis reform efforts, as in Chile. Of course, this is a simplification of more complex reform processes and dynamics, as the country chapters will detail.

To understand why setting, maintaining and defending the agenda succeeded in Uruguay and Mexico but not in Chile, I turn to the second part of my argument. I contend that how cannabis reform was strategically framed explains both the differences in agenda manipulation and the levels of support cannabis reform ultimately received. I argue that the ways in which reform proponents packaged and sold their demands and presented themselves were key mechanisms through which they advanced drug policy reform, recruited bystanders, silenced opponents, and manufactured or maintained support for cannabis liberalization. Specifically, where reform proponents developed and adapted framings to “fit” with their target audiences, they were successful in building or maintaining support for cannabis liberalization.

In Uruguay, government actors independently came to see and frame cannabis reform in terms of *security*. Reform proponents adapted their framing accordingly, playing down the *morality frame* and liberties arguments they favored to emphasize what politicians cared about most. In particular, they framed cannabis reform as counting on societal support, and not radical but rather “responsible.” In Mexico, actors originally motivated by the costs and consequences of the country’s bloody “war on drugs” did not advance a *security frame*. Instead, they framed their legal challenge in terms of prohibition’s unduly and disproportionate negative impacts on constitutionally guaranteed rights, because they perceived such a framing as more promising with their intended audience, the justices of Mexico’s Supreme Court. In Chile, reform proponents did not adapt their framings to any one audience in particular. Unable to connect their framing efforts to extant ideas, change agents did not present an overarching rationale for action. Instead, *security*, *health* and *morality* frames coexisted and competed. Figure 13 illustrates, how the choice of frames made them “fit” in Uruguay and Mexico, but not in Chile.

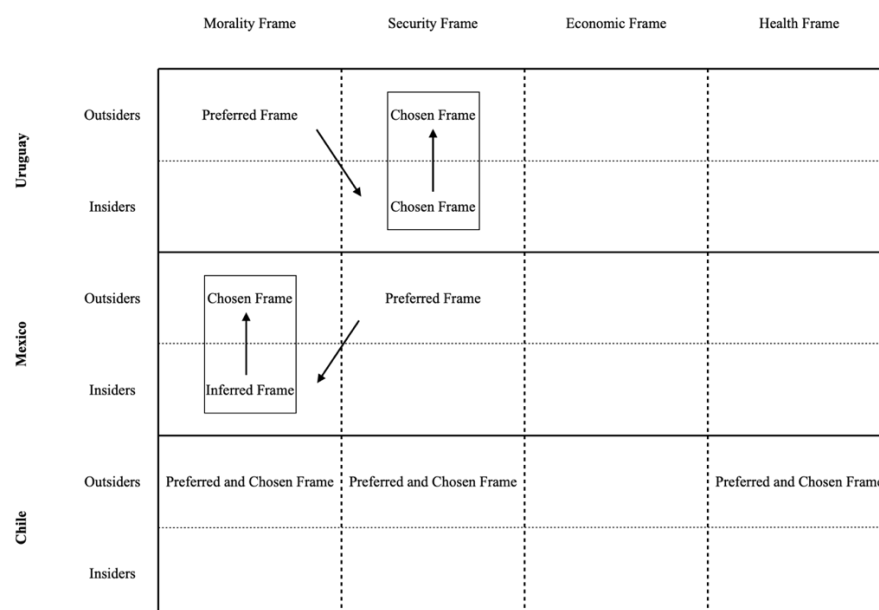


Figure 13: Available and Actualized Frames in Uruguay, Mexico and Chile

Rather, than inherent or invariable, the persuasiveness of frames is context and audience specific. In Uruguay, framing cannabis as security issue worked with parts of the government, in Mexico emphasizing the infringement of rights worked with the Supreme Court. Elsewhere, economic arguments have been front and center in pro-legalization messaging. No one frame is *per se* more persuasive than the others. What matters is the “fit” with extant ideas, concerns, and priorities, which decision-makers had signaled they cared about in Uruguay, or which could be inferred from precedents and decision-making in adjacent issue areas in Mexico. In Chile, where reform proponents were unable to identify what decision-makers might value about cannabis reform, reform proponents struggled to make their framing “fit.” Although the effect of the messages and messengers making the case for cannabis reform depend in important ways on their receivers, I zero in on the choices and conditions of making resonant demands for drug policy reform.

My argument is that success and failure of cannabis reform in Uruguay, Mexico and Chile crucially depended the tactical choices reform proponents made in strategically framing the demand for change and determined whether they managed to create a “fit” or not. In Uruguay, cannabis activists focus group tested different versions of cannabis reform and abandoned some of their preferred arguments for others that were found to be more agreeable. In Mexico, reformers constructed a legal challenge tailored to appeal to their intended target audience, the justices of the Supreme Court. In Chile, change agents failed to develop compelling framings of the rationale of cannabis reform. This argument relies on three counterfactual claims, which I will explore further in the individual country chapters: if reform proponents had made different choices and advanced different frames, they would have failed with (1) agenda setting in Mexico, (2) agenda maintenance in Uruguay, or, (3) succeeded with agenda setting in Chile.

Why did outside challengers to the *status quo* succeeded in making tactical choices in framing cannabis reform in such a way that it “fit” and persuaded insider actors to change drug policy in Uruguay and Mexico, but not in Chile? The third part of my argument is that the organizational structures, resources and technical skills that distinct actors brought to the table influenced what tactical choices reform proponents made, how effectively they could implement them and why they sometimes succeeded in framing cannabis reform. Both in Uruguay and Mexico, reform proponents were highly pragmatic, professional and deliberate in framing the messages and messengers they chose to represent cannabis reform. By contrast, Chilean reform proponents’ efforts were more amateurish, haphazard and decentralized.

As elsewhere in Latin America (Corda, Cortés & Piñol 2019), cannabis reform proponents within and across my three cases are a heterogeneous group of actors, with different backgrounds and skills, material resources and social capital, and, institutional access. If cannabis reform proponents fall on a spectrum between “tie dye” and “suits and ties,” between social movements employing contentious politics and interest groups using consensual tactics such as lobbying,⁴⁴ then Chilean cannabis proponents are on one side, and, Uruguayan and Mexican cannabis proponents on the other. Building on the varying differentiations between “formalized” and “informal” (Staggenborg 1988), “bureaucratized” and “centralized” or not (Gamson 1975) and “advocacy” and “social movement” organizations (Andrews & Edwards 2004), I array pro-cannabis groups in Uruguay, Mexico and Chile along a spectrum of organizational sophistication and institutionalization in-between these ideal typical poles (Figure 14).

⁴⁴ For a recent discussion of these different ideal types and the influence of social movement structures on their strategies in the Latin American context see Rich (2020).

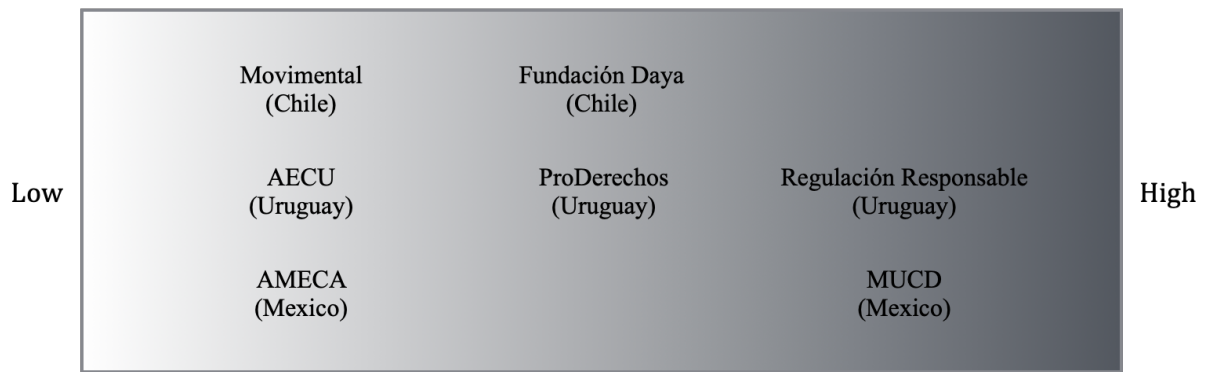


Figure 14: Reform Groups' Organizational Sophistication in Uruguay, Mexico and Chile

In Uruguay, reform proponents were well-connected, resourced and organized. They, had formed linkages to unions and other progressive movements, received the assistance of international drug policy reformers and worked closely with allied government actors. All of these factors contributed to professionalizing the efforts of Uruguayan reform proponents, resulting in *Regulación Responsable*. Devised with the input and financing of international professionals and experts, this campaign provided both legitimacy and momentum to a reform initiative that appeared to have stalled, by framing cannabis reform in terms that appealed to politicians and the public. The country chapter shows how this pro-cannabis reform campaign was instrumental for keeping the issue alive and providing it with societal backing when the Mujica administration wavered in its support.

In Mexico, a group of cause lawyers and elite civil society actors presented cannabis liberalization in a novel and compelling way to a distinct decision-making body. Legal mobilization brought the issue of cannabis liberalization to the Supreme Court. Building on their experience of litigating before the Supreme Court, awareness of extant precedents, knowledge of justices' personal preferences and ample legal skills, they constructed a legal challenge which enabled the Supreme Court justices to hand down a favorable decision. The country chapter shows that how the legal challenge was

constructed and carried out was key to why legal mobilization succeeded. Particularly, I contend that by strategically choosing highly respectable litigants, emphasizing how prohibition infringed on constitutional liberties and guarantees, and connecting the issue to extant precedents and priorities, they made it easier and safer for the justices to rule in their favor.

In Chile, for the most part the cannabis movement did not develop professional organizational structures or saw elite actors with particular skills getting involved.⁴⁵ What remained mostly a grassroots movement could neither count on international support, close ties to other activists or the government as in Uruguay, nor elite actors' particular skills and knowledge as in Mexico. Mostly dominated by young cannabis consumers and growers, Chilean cannabis activists had to rely on their own ingenuity, limited resources and fledgling organizational structures. While these limitations did not prevent the mobilization of tens of thousands of protesters on the streets of Santiago, it complicated the sustained and professional lobbying for change in the hallways of power. Left to their limited devices, Chilean cannabis reformers relied on improvisation, trial and error, and, framed cannabis reform in a myriad of ways. Additionally, with different groups, priorities and frames competing, activists did not maintain a united front and descend into recriminations and internecine strife. I show in the country chapter that several framings of cannabis reform co-existed and competed, how divisions within the reform movement emerged and undermined the reform initiative and why Chilean reform proponents were unable to counteract the counterframing efforts by determined opponents inside and outside the government.

⁴⁵ The exception was *Fundación Daya* which had professional structures, a salaried staff and a highly visible spokesperson in the well-known actress Ana María Gazmuri.

Would-be reformers' organizational sophistication, resources, membership and access to institutional decisionmakers affects their strategic and tactical choices and thereby their impact on policymaking. Looking and speaking in certain ways can increase both the access and impact actors have on policymaking. For instance, Keck and Sikkink (1998:2) relate how "giving up the poncho and sandals and to wear a suit when he went to meet with people in Congress" increased the effectiveness of a human rights activist. Not only appearance, but reputation and professionalization condition the influence of reform proponents. For example, Rich (2020:434) finds that "bureaucrats are more likely to see activist leaders as reliable sources of policymaking information when they exhibit professionalized behavior and are experts in policy." Thus, the presence of activists is not enough, but rather – to paraphrase Díez (2015:247) – it is about the type of activists and the type of activism.

In sum, I argue that framing succeeded to persuade decision-makers where reform proponents managed to create a "fit" by connecting the issue of cannabis reform to issues that that particular decision-makers valued. In Uruguay, providing cover in the form of support on the streets in a context of public disapproval, attenuated fears that supporting cannabis reform was a political liability. In Mexico, framing the legal challenge to prohibition in terms of its violation of a residual area of personal liberties that the Court had shown an inclination in defending previously, linked cannabis liberalization to certain Supreme Court justices' extant priorities and existing precedents. Conversely, in Chile, reform proponents did not manage to connect their demands to any overarching or audience-specific concerns. In turn, why cannabis reform proponents managed to strategically frame cannabis reform to "fit" with decision-makers' ideas in Uruguay and Mexico, but not in Chile was a function of their organizational configurations and

characteristics. The more professional, inclusive of external expertise and skills, and, institutionalized and unified reform advocates were, the better they were at reading the situation, adapting their tactics and adopting persuasive frames. *Vice versa*, a lack of professionalism and organizational capacities hindered reform proponents from perceiving, creating and taking advantage of opportunities for change.

To conclude, I bring together the disparate strands of my argument by starting with the outcomes I am attempting to explain and “mov[ing] backwards to ask about their causes” (Goertz and Mahoney 2012:42). I argue that changes in legal regulation of the mind-altering substance cannabis reforms are the results of alterations of ideas of actors in the institutional position to enact reforms. To understand why decisionmakers change their minds, I focus on the targeted and strategic actions by change agents. I contend that through agenda manipulation and strategic framing reform proponents gain both attention and approval, particularly of actors hitherto uninvolved or uninterested in cannabis reform. Particularly framings that play down controversial aspects and emphasize the benefits of reform and make cannabis reform “fit” with the institutional position and extant ideas of the targeted actors are persuasive. Messages and messengers are more impactful when reform proponents manage to present themselves and their policy demand as mainstream not fringe, safe not threatening, and, helpful not harmful. Reform proponents’ ability to develop such resonant frames depends on their organizational structures, resources and membership. In the proceeding country chapters, I substantiate my argument that in combination differences in agenda manipulation and strategic framing explain the variation in cannabis reform outcomes in Uruguay, Mexico and Chile. I provide ample empirical evidence for why cannabis reform gained not only attention, as it did in Chile, but also approval in Uruguay and Mexico.

Cannabis Reform in Uruguay:

“Someone has to be the first”

On December 10, 2013, “the last ever protest with illegal marijuana” ended in front of the *Palacio Legislativo*, where thousands celebrated the Senate’s vote on cannabis reform. Uruguay had just become the first country in the world to legally regulate recreational cannabis from seed to smoke.⁴⁶ Under the new cannabis legislation – *Ley 19.172* – those registered with the government are allowed to either grow six plants at home, become members of cannabis clubs or buy up to 40g per month in pharmacies.

What explains Uruguay’s departure from the *status quo* of cannabis prohibition? Much has been made of President José Mujica’s exceptional proposal to legalize marijuana in mid-2012. It is beyond question that the president played a key role. As he announced the decision to experiment with an alternative drug policy, he claimed: “someone has to be the first in Latin America” (El Observador 2012b). However, top-down initiation did not make marijuana legalization a forgone conclusion. This factor alone cannot account for the fits and starts of the reform process, or its outcome, a law which combined governmental and civil society priorities. In other words, cannabis reform in Uruguay did not simply occur because of the government’s exceptional agenda setting. Also crucial was the agenda maintenance work of civil society. While reform proponents’ contributions to both the reform process and outcome have not gone unnoticed, questions remain about how they affected both the cannabis reform process and its outcome.

⁴⁶ Despite operation of the famous Dutch coffee shops since the 1970s, the country never *de jure* legalized cannabis and production and supply remain illegal (MacCoun & Reuter 2001).

The chapter goes beyond mere description of *how* reform proponents devised and implemented a creative PR campaign, collaborated with pro-reform insiders to improve the reform bill, and reframed cannabis reform for the Uruguayan context, to pinpoint *why* they were able to maintain attention and secure approval of cannabis reform. Echoing others, I pay close attention to the different activities and articulations that characterized the reform process and the complex interactions between state and societal actors. In doing so, I establish that both high-politics and grassroots efforts were individually necessary and jointly sufficient for comprehensive marijuana legalization in Uruguay.

In particular, I show that pro-reform actors' framing of cannabis reform provided political momentum, signaled societal demand for change and presented it as a "responsible" course of action, thereby making it safer for decision-makers to support the issue in a context of public disapproval. In their agenda manipulation and strategic framing, a group of reform proponents professionalized their efforts and made pragmatic choices to package and sell cannabis reform to a skeptical audience. In contrast to the professional and coordinated *Regulación Responsable* campaign, which received the financial and logistical support from international reform advocates, opponents neither coordinated nor organized, which explains their haphazard and ineffectual agenda denial efforts.

With regard to my overarching argument, the "positive" Uruguayan case provides three insights. First, even in the exceptional context that the government set the agenda, actions by civil society actors were still important to ensure a successful reform outcome. Second, in conducting agenda maintenance, a framing strategy that "fits" the context was crucial. Third, making the right choices in carrying out advocacy was dependent on reform proponents' organizational characteristics, capabilities and coalition-building. Pragmatic

choices in agenda manipulation and strategic framing were facilitated by professional movement structures, an infusion of external resources and know-how, and a close working relationship with state actors sympathetic to cannabis reform.

Analytically, the Uruguayan reform process presents a challenge because of its complexity and the concomitance of different explanatory factors. As Mujica’s chief of staff, intimately involved with the reform process, aptly describes: “the success of Uruguay’s marijuana legalization has many fathers” (Diego Cánepa, Interview, March 15, 2018). I propose a two-pronged paternity test as analytical strategy: a unique combination of process tracing and counterfactual analysis based on a variety of original data sources, including fifty-one interviews with key actors. This allows me to explore why and how different causal steps and mechanisms influenced the process and outcome of Uruguay’s marijuana legalization. I establish the causal weight of different explanatory factors hypothesized as important, analyzing what would have happened to the causal chain in their counterfactual presence or absence (Figure 15).

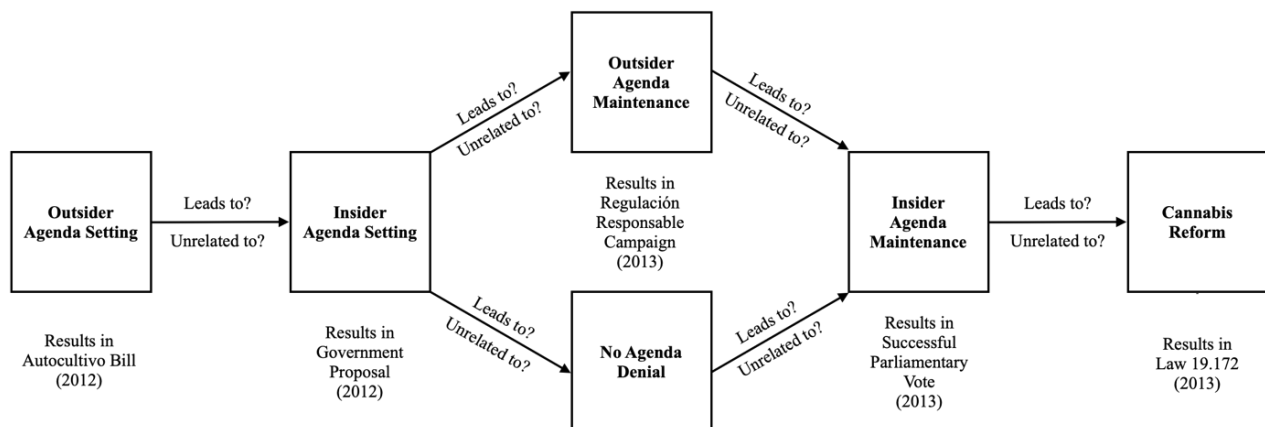


Figure 15: Causal Graph of Uruguay's Cannabis Reform Process

The remainder of the chapter proceeds as follows. Section 1 sets the scene by reviewing the extant literature, introducing Uruguay's *status quo* drug laws and discussing structural alternative explanations. Section 2 establishes a "factual" account of Uruguay's cannabis reform process by closely tracing the activities and articulations of different actors. Section 3 assesses and clarifies the relationship between different explanatory factors through counterfactual analysis. The conclusion summarizes the chapter's findings and expands on the implications of the "positive" Uruguayan case for the overall argument.

Setting the Scene

In the first section, I set the scene for the subsequent analysis of Uruguay's cannabis reform process and regulation. The four sub-sections establish that "it is puzzling why the government ... decided to embark on this drug policy change" (Queirolo 2020:93), and what questions remain open about Uruguay's cannabis reform. First, I review the literature to extract a "top-down" thesis, "bottom-up" antithesis, and, "interactionist" synthesis." Second, I introduce Uruguay's *status quo* drug laws to establish the situation under which pro-reform actors operated. Third, by considering the available evidence for some of the aforementioned alternative explanations, I show why they cannot account for drug policy reform in Uruguay. The degree of "normalization" of cannabis in Uruguay was modest, cannabis activists managed to mobilize growing if not massive numbers of protesters and a majority of the public was against cannabis reform. Specifically, I address the argument that cannabis reform in Uruguay is simply an expression of the country's supposed "exceptionalism" or "progressiveness." While resorting to the adage "*como Uruguay no hay*" is tempting, more can and must be done to causally link events, trace causal processes and unearth mechanisms to explain Uruguay's erstwhile outlier status.

Existing Literature

Authors vehemently disagree on why Uruguay legalized marijuana in 2013. Close reading of the extant literature reveals three distinct clusters of arguments. Proponents of the “top-down” thesis argue that marijuana legalization occurred because of President Mujica’s protagonist role. By contrast, adherents of the “bottom-up” antithesis contend that cannabis activism took center stage, with Mujica relegated to a supporting role. Champions of an interactionist synthesis try to show that both were important, to different degrees at different points in time.

Much of the literature characterizes Uruguay’s cannabis regulation as a “top-down” process. Authors highlight that cannabis reforms were initiated by the government and did not elicit public support (Pardo 2014; Cruz *et al.* 2016; Gandilhon *et al.* 2018; Queirolo 2020). In the most sophisticated “top-down” account of cannabis reform in Uruguay to date, Queirolo *et al.* (2018:5) argue that “the driving force behind this agenda was José Mujica.” By carefully tracing the reform process and discarding alternative explanations, Queirolo *et al.* (2018) present a convincing account of why the government proposed cannabis regulation.⁴⁷ The “top down” thesis persuasively explains important aspects of Uruguay’s cannabis reform. However, scratching the surface reveals two analytical weaknesses. First, the assessment is made *vis-a-vis* marijuana legalization through popular referenda in Colorado and Washington State, not a careful engagement with evidence from Uruguay itself.⁴⁸ Second, this account assumes that once cannabis

⁴⁷ Queirolo *et al.* (2018) identify a policy window opening up as result of the confluence of perceived insecurity (problem stream), cannabis reform becoming a policy alternative to address this problem (policy stream) and pro-cannabis reform actors being in positions of power (political stream).

⁴⁸ For example, (Obradovic 2019) argues that both reform processes and outcomes were different in comparison in the US and Uruguay, with the prior being “bottom up” and the later “top down.”

reform was proposed its success followed automatically without engaging with the subsequent twists and turns of the reform process.⁴⁹

In stark contrast, “bottom-up” accounts highlight the role of activism and mobilization in Uruguay’s cannabis reform process (Lemos 2014; Montañes 2014; Levayer 2017). The strongest proponents of the “bottom-up” are those who study marijuana legalization in the context of other progressive reforms – same-sex marriage and abortion – occurring around the same time (González-Guyer 2016; Lissidini 2016; Arocena & Aguiar 2017). For instance, Rivera-Veléz (2016:148) argues that “Mujica is not the author of these laws,” but rather social movements drove progressive change. Hernández and Sotelo (2019:5-6) characterize the cannabis movement as “preponderant protagonist” in the process for achieving recognition of their demands. In highlighting the contribution of mobilization, the “bottom up” antithesis presents an important corrective to the dominant “top down” thesis. Yet, arguing for the primacy of social movements might go too far. After all, the view that mobilization by itself is influential has been questioned by scholarship on the policy effects of social mobilization (Giugni 2004; Burstein & Linton 2002; Amenta *et al.* 2010). Because activity and effect are not the same, we must clarify how and why, if at all, mobilization mattered.

Finally, several authors embrace causal complexity to argue that bottom-up and top-down factors made crucial contributions to the reform process and interacted at different points in time. Lissidini and Pousadela (2018) contend that “designating the passing of the new legislation as an imposition from above is a simplification of a more complex reality” (ibid:384). Rather, they stress the contribution of the president, governmental actors and

⁴⁹ For instance, Queirolo (2020:92) states that because “Uruguay’s marijuana legalization law resulted from a strategy drawn up in the office of President Mujica... it was a top-down process.”

social mobilization at different points in the policy process. Castro (2014:6) argues that cannabis reform was “the result of a contingent collision between two relatively autonomous processes.” On the one hand, activists delegitimized and destabilized the *status quo*, thereby laying the groundwork for subsequent governmental action. Within this context, the government reacted to the emergence of a perceived crisis of crime and violence by proposing drug policy reform as a tool to address these issues.

Similarly, Repetto (2014) contends that different factors account for reform initiation, continuation and conclusion: “Although, the decision of the executive was what kick-started the complex process of formulating a new policy, it survives because of the confluence of other factors... and strategies employed, especially by societal actors and lawmakers” (Repetto 2014:27). Musto (2018) sheds light on actors’ underlying beliefs and opportunity structures in Uruguay. Among other things, she draws attention to the often-difficult nature of the process: “a discontinuous story, marked by breaks, principled conflicts and sudden shifts” (Musto 2018:114). Specifically, Musto argues for taking contingency seriously. Successful cannabis reform in Uruguay was not a foregone conclusion, but rather “the prevalent feeling throughout the process was that everything was always about to collapse” (ibid:125).

Instead of speaking in either-or terms, these authors highlight complexity and contingency, writing of “convergence” (Castro 2014:1), “interactions” (Lissidini & Pousadela 2018:371) or “combinations” (Levayer 2017). While this is an important step in painting a fuller and more intricate picture, there is a danger of blurring the lines. There is a danger of simply stating that everything mattered without knowing why or how much, in enumerating an ever-increasing list of causal factors, without discerning

between them and clarifying their causal relationships. If Sebastián Aguiar, a sociologist and first-hand observer of the reform process, is correct in his assessment that cannabis reform “does not have singular, clear and pristine origin...rather it is the result of a complex causal constellation in which many aspects were relevant” (Interview, September 5, 2014), then mapping and making sense of this constellation is critical for understanding why Uruguay charted into unknown waters, embarking on an unprecedented journey that led to becoming the first country to legalize marijuana.

Status Quo Drug Laws

Uruguay first prohibited cannabis in 1937 and the state assumed explicit control over “all substances that in small doses have narcotic effect” (Poder Legislativo 1937). Commerce, consumption and possession for non-medical use were “absolutely prohibited” (Garat 2012). Thereafter little changed in Uruguay’s drug policy until 1974 when the Uruguayan dictatorship enacted *Ley 14.294* (Castro 2015). In doing so, possession for personal consumption was *de jure* excluded from punishment: Article 31 stated that “anyone is exempted from punishment, who has in his possession a minimal quantity, exclusively destined for personal consumption” (Poder Legislativo 1974).

While decriminalization of possession and consumption would be important in the long term, the immediate effects of *Ley 14.294* were minimal (Bayce 1990). What represented “minimal quantities” was not specified in the law, rather determined by a judge’s “moral conviction” (Galain 2018:871). As small amounts of cannabis were routinely deemed intended for sale, this discretion amounted to “a covert form of penalizing drug possession for personal consumption” (Bardazano 2012:58). Furthermore, law-enforcement agencies did not change their behavior. Police raids of suspected drug users, so-called

“razzias,” were a common occurrence (Garat 2012:70-73). Cannabis consumption was actively repressed as expression of counterculture, subversion and moral decay by the military dictatorship (Silva 2016:239-245).

The decriminalization of *Ley 14.294* created legal “ambiguity” and a contradiction: possessing cannabis was allowed, whereas accessing or producing it was not (Galain 2017:322-323). Under Uruguayan drug laws, there was no legal way of accessing illegal substances, whose possession and consumption were not criminalized (Silva 2016). Article 30 prohibited the production and cultivation of cannabis and other substances, without authorization, and prescribed sanctions of 3 to 10 years in prison. Article 35 sanctioned the “supply” of prohibited drugs to others (Poder Legislativo 1974).

In 1998, limited drug policy reform took place. *Ley 17.016* reduced prison sentences and allowed parole for drug offenses (Camaño 2004). Specifically, the wording of Article 31 was changed from “minimal” to “reasonable” quantity (Sanguinetti et al. 1998). However, “the legal interpretation of this phrase has led to punishment of possession for personal use” (Bardazano 2014:130). No action was taken to facilitate necessary prior steps to consumption (Silva 2016:286). Thus, the 1998 reform did not address the underlying contradictions of judicial discretion, *de facto* criminalization and the inability to access drugs (Garibotto 2010; Bardazano 2012; Silva 2016).

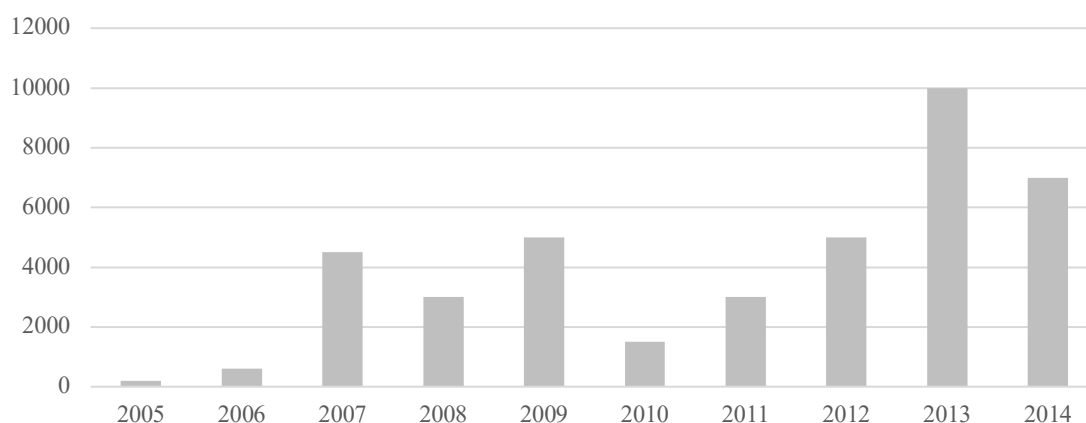
Social Mobilization

From the turn of the millennium, isolated voices criticized the prevailing approach of prohibition and called for cannabis legalization, but “this debate did not cross the dividing line between talk and action” (Garat 2012:10). However, cannabis activists began to

increasingly mobilize against *status quo* drug policies, in large part motivated by personal experiences with arrests and the criminalization of *autocultivo*, as several activists related in interviews (Juan Vaz and Sebastián Aguiar, Interviews, September 16 and September 24, 2014).

While incipient and uncoordinated activism around drug policy reform existed before (Garat 2012), in 2005 the first ever *Marcha de Marihuana* was held in Uruguay (Lemos 2014). Initial mobilization around cannabis was rather small. Around two hundred people gathered in *Parque Rodó* on May 5, 2005 (Fassanello 2005). Despite flyers promising an event “joyous, colorful and fun” (lr21com.uy 2005), the atmosphere was rather tense (Castro 2014). Because of the *Marcha*’s unprecedented nature, none of the participants knew how the police would react (Juan Vaz, Interview, September 16, 2014). Experiences with and fears of police repression were widespread and most activists wore masks.

Nevertheless, the seed of cannabis activism had been planted. The 2005 protest served as a catalyzing event for the emergence of cannabis activism in Uruguay. While nascent activist groups differed significantly in their composition, size, demands and preferred tactics, they shared a common goal (Aguiar & Muñoz 2007), they organized the pro-cannabis protest together in 2007 (Pettit-Schieber 2012). Two years after its humble beginning in *Parque Rodó*, on May 5, 2007, thousands took to the streets to demand cannabis legalization (Lemos 2014:19). Besides a “massive” turnout, this edition of the *Marcha* was full of colors, joy and people smoking cannabis without inhibitions (lr21com.uy 2007). In two years the cannabis movement had therefore grown substantially in terms exposure, articulation and turn-out.



Note: Absolute attendance at the annual Marcha in Montevideo. Source: Media reports (Appendix 4)

Figure 16: Turn-out at the Annual Marcha de la Marihuana in Uruguay (2005-2014)

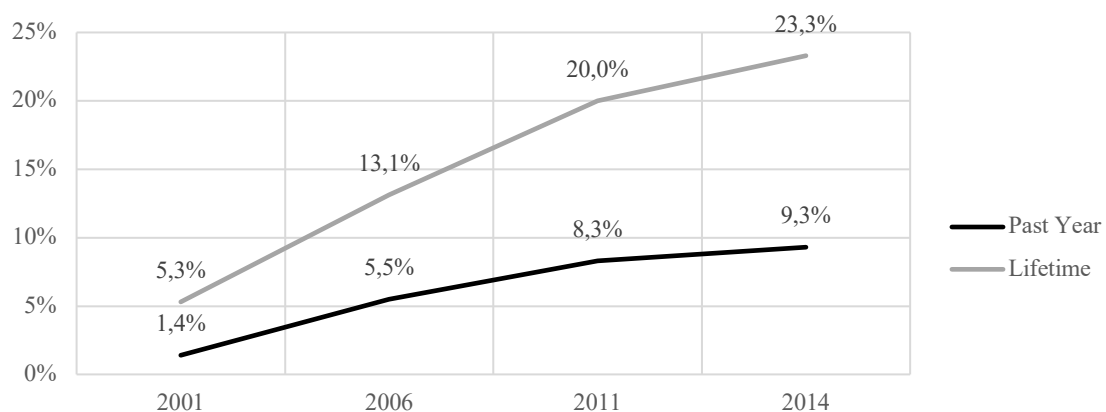
Over the coming years, Montevideo’s edition of the *Marcha Mundial de Marihuana* would continue to mobilize respectable crowds until cannabis reform in 2013 (Figure 16). Eventually, the annual cannabis protest would be among the largest protest events in Uruguay (Castro 2014). According to its organizers, the *Marcha* represented an important occasion to draw attention to their demands and gauge the extent of their appeal (Juan Vaz, Interview, September 24, 2014). Although the Uruguayan *Marcha* never reached the levels of turn-out of neighboring Argentina or Chile (Figure 7), as discussed below, the real strength of Uruguay’s cannabis movement was not primarily its presence on the streets but rather in the hallways of power.

Normalization

Normalization of cannabis in Uruguay preceded legal regulation. Several authors write about consumption as being ubiquitous, cannabis readily available and socially accepted in Uruguay (Castro 2014; Musto 2018; Rossal 2018). For instance, Garat (2015:24-25) notes that “the aroma of cannabis can be smelled everywhere in the country.” In 2007, Aguiar and Muñoz (2007:42) report that there was a “growing legitimization of cannabis

consumption.” For some, increasing normalization helped usher in the legal regulation of cannabis. According to Castro (2016), without prior normalization, the reform package that the government proposed in 2012 would not have included cannabis reform: “the 15 [proposed] measures would have been 14.”

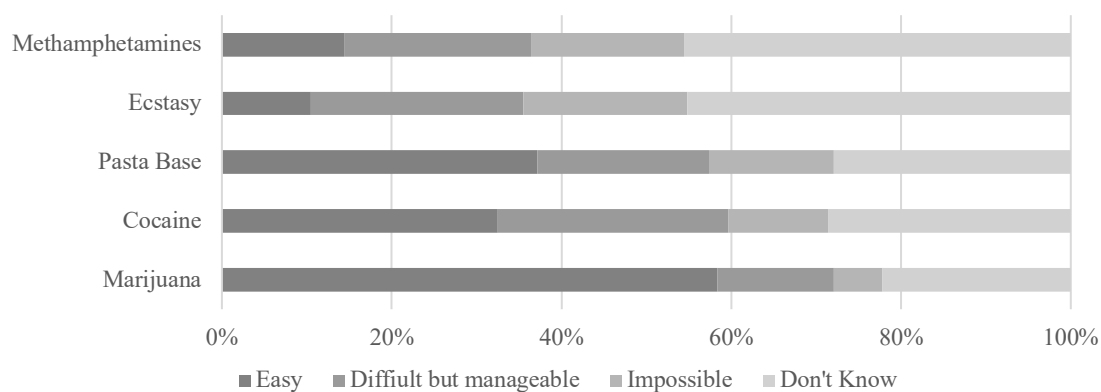
To be sure, there is evidence in support of the assertion that cannabis consumption was normalized. First, the *Observatorio Uruguayo de Drogas*’s general population survey (JND 2016) shows a steady increase of past-year and lifetime cannabis consumption (Figure 17). In the regional context, Uruguay had some of the highest prevalence rates before legalization (Figure 4).



Note: Reported prevalence in percentages. Source: *Observatorio Uruguayo de Drogas* bi-annual general population survey on drug use, *VI Encuesta Nacional en Hogares sobre Consumo de Drogas* (JND 2016).

Figure 17: Prevalence of Cannabis Consumption in Uruguay (2001-2014)

Second, cannabis was easy to get hold off. Before the reforms were implemented, a majority stated that it was easy to access cannabis (JND 2016:90). Uruguayans perceived access to cannabis to be substantially easier than to any other illegal substance (Figure 18). Julio Calzada, former Secretary of the *Junta Nacional de Drogas* (JND), noted that his children told him that “cannabis was easier to get your hands on than a bunch of parsley” (Bianchi 2013).

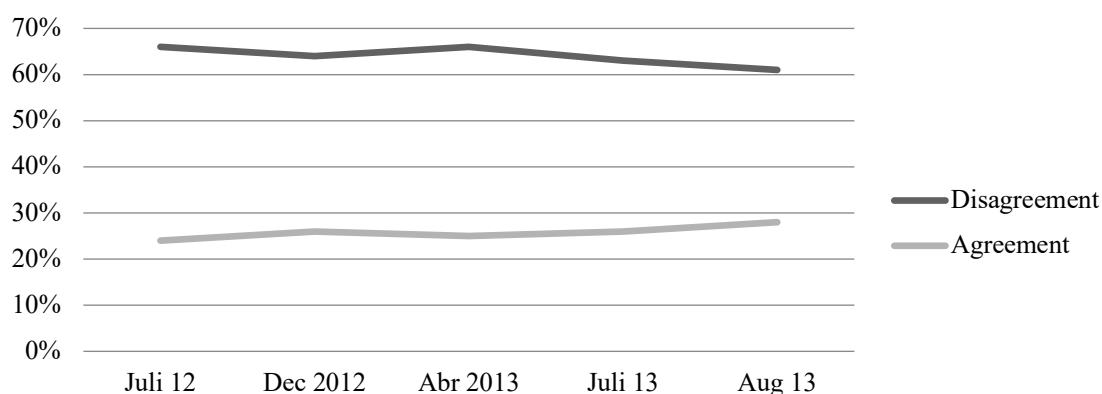


Source: *Observatorio Uruguayo de Drogas* bi-annual general population survey on drug use (JND 2016).

Figure 18: Perceived Ease of Access to Substances in Uruguay (2014)

Public Opinion

Despite evidence that cannabis had become socially accepted in Uruguay, negative opinions remained dominant. In fact, public opinion was unfavorable towards cannabis liberalization in Uruguay (Figure 19). According to several polling companies, roughly two-thirds of the population opposed marijuana legalization when it was approved in 2013 (Factum 2013; Equipos 2013; CIFRA 2013). As one group of scholars explains, “all known public opinion studies and surveys show that a majority of Uruguayans – between 60% and 65% – have consistently opposed the legalisation policy” (Cruz *et al.* 2016:67).



Note: Author's aggregation of opinion polls asking the same question. Source: Factum, Equipos, CIFRA

Figure 19: Public Opinion on Marijuana Legalization in Uruguay (2012-2013)

Cannabis reform did not elicit significant public support. Moreover, Uruguayans did not have a particularly high opinion of the substance. This contrasts with other contexts where marijuana was legalized (Queirolo 2020), and also with the Uruguayan public's stance *vis-à-vis* other "morality policies". For example, the Uruguayan public supported abortion (Bottinelli & Buquet 2010; Factum 2012; Boidi & Corral 2013) and same-sex marriage (Boidi 2013; CIFRA 2015; Rivera-Veléz 2018). In fact, compared to other Latin American countries, Uruguay has the highest levels of acceptance of abortion and same-sex marriage and disagreement with the notion that either were "morally wrong" (Pew 2014). Acceptance of cannabis consumption, by contrast, was not particularly high even after legal regulation (Figure 5). Before cannabis reform, "views about the use of marijuana [were] rather negative among Uruguayans" (Boidi, Queirolo, & Cruz 2015:2).

Coda: Progressive Uruguay

Apart from considering the *status quo* cannabis laws, and the merits and shortcomings of normalization, social mobilization and public opinion, it is necessary to address another popular explanation of cannabis reform in Uruguay, namely that cannabis liberalization is a product of Uruguay's "progressiveness" (Rivera-Veléz 2016; González-Guyer 2016; Girardi 2018). Uruguay's "exceptionalism" supposedly explains why cannabis reform occurred (Colombio 2017). Hernández and Sotelo (2019:21) contend that, among other things, cannabis regulation was "influenced by the traditional liberal sensibility of Uruguayan society and state." Not only is Uruguay "Latin America's most socially liberal and secular country" (Booth and Bayer 2015:37), but also had previous experiences with progressive reforms and state regulation of vices which explains contemporary cannabis reform (Calisto, Gómez & Rossal 2017; Arocena & Aguiar 2017).

Explanations that stress Uruguay's "progressiveness" have several weaknesses. First, cultural factors, however defined, are stable (Pye 1991; Ballinger 2006; Ross 2009), hence such explanations cannot account for the timing of change. Second, exclusively cultural explanations have been found lacking by comparative studies of "morality policies" (Knill, Adam & Hurka 2015), for instance same-sex marriage (Lupia et al. 2010; Pettinicchio 2012; Hooghe & Meeusen 2013). More "progressive" values do not automatically result in more "progressive" legislation (Díez 2015). Third, by itself, the explanatory power of Uruguay's "progressive nature" is limited because it cannot directly translate into action, without filtering through institutional structures and contingent choices of more proximate actors (Engeli, Green-Pedersen & Larsen 2013). Indeed, most accounts fail to specify how Uruguay's "progressiveness" influenced cannabis reform.⁵⁰

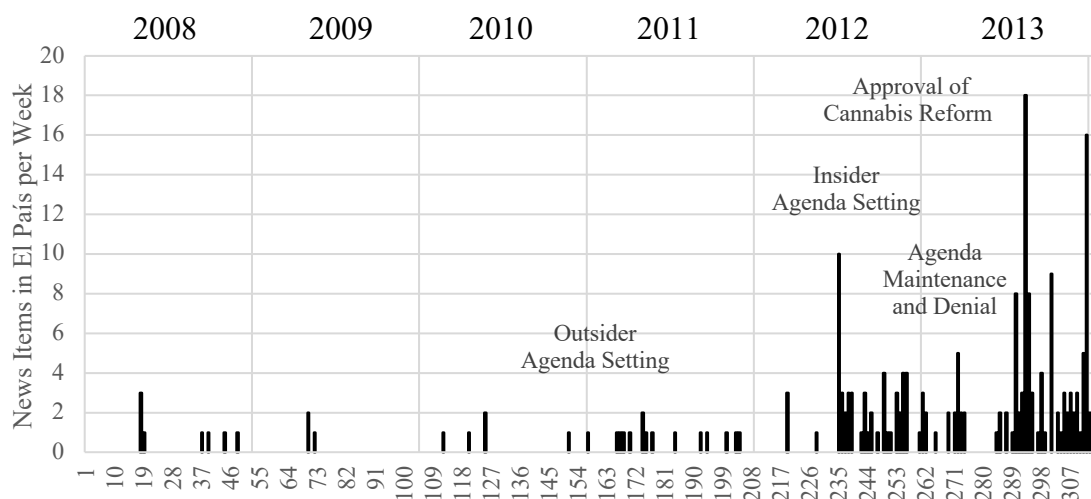
In sum, public opinion, normalization or Uruguay's "progressiveness" are better thought of as background conditions or contributing factors that structure the field of action, enabling or constraining agency, rather than explanatory factors in their own right. Uruguay's idiosyncrasies, especially its "progressiveness," are more constants than variables. In fact, prior to 2012, in terms of levels of social mobilization, public opinion or normalization little would have indicated the later observed level of cannabis liberalization. To explain the legal regulation of cannabis in Uruguay, I pay close attention to the reform process and the actors, their motivations, choices and strategies. Without disregarding structural opportunities and constraints, I emphasize reform proponents' agency, scrutinizing their activities, arguments and articulations.

⁵⁰ Two notable exceptions are Arocena and Aguiar (2017) and Musto (2018). The former introduce the notion of the "two Pepes" (Presidents Battle y Ordoñez and Mujica) to show how historical precedent of innovative reforms facilitated the acceptance of contemporary laws by providing a role model to emulate. The latter goes beyond noting Uruguay's secularity to show how the diminished role of religion in Uruguay's public and political life debilitated potential opposition to cannabis reform from religious actors.

Cannabis Reform in Uruguay

In the following section, I trace how cannabis reform gained both attention and approval in Uruguay. This “factual” account provides the basis for my later counterfactual analysis. Uruguay is unique in that the government came out in support of cannabis regulation. Despite insider agenda setting, cannabis reform was not a straightforward process or its outcome a foregone conclusion. Rather, cannabis reform was a “discontinuous story, marked by breaks, principled conflicts and sudden shifts” (Musto 2018:114).

Press coverage of cannabis reform provides a useful and concise overview of the process (Figure 20). I track attention by counting the number of news items related to cannabis reform published by Uruguay’s leading newspaper *El País* from 2008 to 2013. The initial spike in attention is caused by the government’s announcement of marijuana legalization. This is followed by lower reporting activity during agenda maintenance and closed-door negotiations. The approval by lower and upper houses of Congress is reflected by the two upticks in reporting (for a detailed timeline of the events see Appendix 7).



Note: Based on full-text search of *El País* archive on the Nexis database and manual coding of all news articles mentioning either of the search terms *cannabis*, *marihuana*, *legalización* or *autocultivo*.

Figure 20: News Items on Cannabis Reform Published in Uruguay (2008-2013)

For analytical purposes, I divide the subsequent account into insider and outsider agenda setting, maintenance and denial. First, I show that social mobilization predated any governmental interest and resulted in a limited reform initiative in 2011. Second, I explain why the government surprisingly proposed cannabis regulation in 2012 as response to a perceived crisis of drug-related violence. Third, I establish how agenda maintenance became necessary when President Mujica halted the reform process. Fourth, I discuss how cannabis activists set up a sophisticated campaign to sell cannabis to a skeptical public and wavering politicians in early 2013. Fifth, I present evidence that opposition to cannabis reform was rather weak and unorganized throughout the reform process. Sixth, I shine a light on President Mujica's decision to go ahead with reforms and his later intervention that secured the necessary votes. Lastly, I analyze how cannabis succeeded in parliament and the reform passed the lower house in August 2013, the upper house in December 2013, and, was signed into law by the president before the end of the year.

In this section, I detail the reasons why Uruguay's government proposed cannabis reform, pointing to its independent framing of marijuana legalization as a solution to the problem of drug-related violence. I show why insider agenda setting is only part of the story by establishing how the necessity for agenda maintenance arose when the Mujica government pressed the breaks on the reform process. I trace how outsider agenda maintenance kept the issue alive, by highlighting the ways in which reform proponents framed cannabis reform and launched a professional pro-reform campaign in the form of *Regulación Responsable*. In particular, I draw attention to the organizational structures and resources that enabled them to make pragmatic and strategic framing moves. Lastly, I show that in contrast proponents of cannabis reform, its detractors were poorly organized, uncoordinated and did not to mount sustained countermobilization.

Outsider Agenda Setting

“Long before Uruguayan President Mujica even started talking about it, the cannabis legalisation movement was born in Montevideo’s streets” (Musto 2018:62). Vocal cannabis activism in Uruguay existed for years before reforms occurred in 2013 (Aguiar & Muñoz 2007; Garat 2012; Lemos 2014). Several organizations engaged in mobilization and lobbying for cannabis legalization. They raised the public profile of cannabis reform, and there was even a limited cannabis reform proposal to allow *autocultivo* in response to activists’ demands.

However, for several years the political effects of cannabis activism were limited. The mainstream press did not pay attention, as the issue did not feature in more than a couple of news stories per year prior to 2012 (Figure 20). The topic was not a political priority (Garat 2012:170). As then-Secretary of the JND, Milton Romani, explained “marijuana was not on the government’s agenda.” He considered the time not ripe and “any attempt at legalization doomed to fail” (Interview, February 21, 2018). Within parliament, calls for cannabis legalization received little support, and cannabis activists only saw a handful of politicians as allies (Filardo *et al.* 2012:152). Activists were well-aware of the lack of support. As one activist remarked in 2007, “the government has 16 more urgent priorities... this is not on the agenda” (Aguiar & Muñoz 2007:19). In this context, activist Juan Vaz argues that “asking for marijuana legalization was a utopia, something that would never happen” (Castro 2014:13).

To be sure, mobilization started to yield some victories. First, “the topic gained more prominence than ever before” in the electoral campaign of 2009, because of the activities

of the cannabis movement (Garat 2012:178).⁵¹ Second, cannabis activists and their allies within the *Frente Amplio* managed that the left-wing coalition adopted an ambiguous commitment to rethinking *status quo* drug policies, which made it into an annex of the *Frente Amplio*'s electoral program.⁵² Third, in 2011, the first-ever National Debate about Drugs brought together experts, politicians and activists to discuss drug policy (Musto 2018). The event evidenced how far cannabis activism had evolved from its humble origins. Activists were literally sitting with policymakers to discuss drug policy reforms.

After the 2010 election, a group of young legislators from across the political spectrum began working on a cannabis reform bill (Garat 2012). In March 2011, Sebastián Sabini (FA), Nicolás Núñez (FA), Fernando Amado (PC) and Daniel Radío (PI) proposed a bill that would have allowed the home cultivation of 8 plants (Sabini *et al.* 2011). The bill addressed activists' specific concerns and policy asks, as it was the result of "dialogue and co-operation between cannabis activists and MPs" (Sebastián Aguiar, Interview, September 24, 2014). Sabini and Núñez were close to the cannabis movement and had personal experiences with cannabis (Interviews, September 22 and 9, 2014).

This activist-led cannabis reform bill was the most tangible political result of outsider agenda-setting. The reform bill represented the culmination of years of activism and reflected the "principal demands of the social movement" (Aguiar & Musto 2015:301).

⁵¹ On the campaign trail, Mujica had shown himself to be open towards cannabis reform, but not necessarily convinced of its importance. When a journalist asked about his position on the issue in February 2009, he expressed mixed feelings. "I don't have a 'no,' but neither do I have a resounding 'yes'...My opinion is that I still have to form one, that this is worth considering" (Redaccion180a 2009).

⁵² Neither legalization nor cannabis was explicitly mentioned, but the need for a new course of drug policy was recognized (Ruchansky 2015: loc3858). Instead, an annex stated that "the need for a new direction in drug policy is clear" (Frente Amplio 2009). The proposals were to focus more efforts on *pasta base*, to differentiate between substances according to their created harms, and, to "review the regulatory framework vis-à-vis its functioning in reality" (Frente Amplio 2008:90). Including more than a vague commitment to discussing the issue was not possible at the time, according to Nicolás Núñez who led the efforts (Interview, September 9, 2014).

Although the bill managed to attract some attention, whether it had the necessary approval to become law was never put to the test. The activist-sponsored *autocultivo* bill was soon overshadowed by another cannabis reform initiative. In an unforeseen turn of events, the administration itself, hitherto absent from the incipient debates about cannabis reform, proposed legalizing marijuana.

Insider Agenda Setting

On June 20, 2012, the Uruguayan Minister of Defence, Eleuterio Fernández Huidobro dropped a bombshell. He revealed that Uruguay planned to legally regulate the national cannabis market. The executive, hitherto absent from the cannabis reform process, proposed nothing less than to “legalize and control marijuana” (Gabinete de Seguridad 2012:11). State-controlled commercialization of cannabis was only one among fifteen measures included in the *Estrategia por la vida y convivencia* (Strategy for Life and Coexistence). The Strategy included tougher sentences for selling *pasta base*, increased policing and extended drug treatment. Overall, the strategy was not at all “soft on drugs.” In the press conference in which the Strategy was presented to the public, Huidobro framed cannabis reform as way to improve public security. The goal was to separate cannabis from other drug markets, thereby reducing the exposure of users to the black market and undercutting the profits of criminal organizations.

The stunning proposal of cannabis legalization was the result of discussions within the government’s *Gabinete de Seguridad* (Security Cabinet). Convened in March 2012, the Security Cabinet drafted the Strategy in secrecy and isolation (Garat 2015:44; Müller & Draper 2017:110). While there remain “myths” about who convinced whom (Diego Cánepa, Interview, March 15, 2018), Fernández Huidobro has been identified as the

driving force behind cannabis regulation in these closed-door meetings. Calzada called him the “brains behind the initiative” (Interview, February 19, 2018). According to Mujica, “the idea of legalizing marijuana came from Huidobro” (La República 2017). Huidobro proposed a state monopoly of legal cannabis as a solution to the perceived escalation of drug violence and insecurity. He framed marijuana legalization as means to separate drug markets and take away the economic base of drug traffickers. In Fernández Huidobro’s view, “drug trafficking has to be fought not through repressive but economic ways” (Müller & Draper 2017:109).

Framing cannabis reform in terms of security and not rights was not what outsider reform proponents had in mind. Asked about his initial reaction to the government’s plan, prominent cannabis activist Sebastián Aguiar expressed disappointment:

[Before the government’s announcement] we were working on a campaign comparing cannabis regulation with abortion and LGTBI rights. We wanted to make the analogy with the progressive laws pushed forward at the beginning of the 20th century in Uruguay, which were against the common sense back then. ...Each of these initiatives involved a breakthrough in the perceptions about other people’s possible freedom, ... the discourse about marihuana used to be about freedom and rights, now it is about public safety and health (Musto 2018:94).

The Mujica administration was not motivated by outside challengers’ concerns or priorities but rather by a perceived deterioration of public security (Queirolo *et al.* 2018). For Mujica and Huidobro cannabis reform was a “lesser evil.” They perceived cannabis reform as a means-to-an-end to resolve the problem of drug-related violence and crime. Mujica stated repeatedly that for him “this is a question of security; how to combat narco-

trafficking” (Müller & Draper 2017:113). Thus, Mujica and his government did not suddenly “become ‘pro-drug’” (Castro 2014:31). Rather, Mujica disapproved of cannabis use: for him, drug users were “nabos [idiots]” (El País 2013). Neither Mujica nor Fernández Huidobro bought into the argument that cannabis reform was a matter of personal liberties (Ruchansky 2015:loc4330). In fact, Mujica remains annoyed that people see him as the one that “legalized” marijuana in Uruguay:

Smoke as you like? Bullshit [*Fumo libre, las pelotas*]! This has nothing to do with liberties; for me it’s a security problem, against narco-trafficking. I have explained this over and over again, but people only hear what they want to hear (Müller & Draper 2017: 275).

The Need for Agenda Maintenance

Despite the fact that the Mujica administration set the agenda on cannabis reform, the need to maintain the agenda soon became apparent. Once the dust of the announcement had settled, it became clear that there was much that was unclear and uncertain about cannabis regulation. The proposal was neither well thought through, nor represented the final word on the issue. From a meeting in which the government presented its initiative most participants emerged “with more questions than answers” (Müller & Draper 2017:130). Nicolás Núñez remembers that he “left with so many doubts as to whether this would actually happen because there was so much ignorance” (Interview, September 9, 2014). Raquel Peyraube, a medical professional involved with drug policy, came out of the meeting dumbstruck by the lack of any actual plan (Interview, February 28, 2018). Sebastián Aguiar recounts “so much bullshit” being said that he had the impression this was not a serious proposal (Interview, September 5, 2014).

A seeming lack of commitment put reform in doubt. In July, the President's chief of staff, Alberto Breccia, declared that "we are working on this but don't know when or if we will definitively submit [a project to parliament]" (El Observador 2012c). In August, President Mujica seemed to walk back the initiative: "We are proposing a debate so that from this debate can come better ideas than those we have right now" (CNN 2012). Even more problematic was that the proposal did not elicit much public support (CIFRA 2012). In response, President Mujica cast further doubts on the initiative's prospects, stating: "If 60% of the country do not back us, this is toast" (El Observador 2012a).

Nevertheless, on August 8, 2012, the executive sent its cannabis reform bill to parliament (Poder Ejecutivo 2012). The bill consisted of just one article: the state would legally regulate the production, distribution and sale of cannabis. By presenting a bill with one vague article, the Mujica administration kicked the can down the road: others had to come up with a workable cannabis reform bill (Silva 2016:321). Pro-reform actors got to work and hammered out the details behind closed doors. Sebastián Aguiar recounts how "working together... we came up with a mix between the bill that included home cultivation and cannabis clubs and the idea that the state would sell [marijuana]" (Interview, September 24, 2014).

Presented on November 15, the result was a reform bill containing thirty-six articles (Sabini *et al.* 2012). Cannabis reform would be an amalgamation of state-controlled cannabis retail sales, home cultivation and cannabis social clubs. According to Diego Silva, the legal advisor who drafted much of the bill: "They told me: 'Diego, there has to be a bill.' So, what do I do? First, I take the *Artículo Unico*, then I take the *autocultivo* bill that we had written in 2010, and then I add a regulatory agency to ensure state control"

(Interview, September 26, 2014). It represented a compromise between state and societal reform proponents, developed in close consultation and negotiations. As Sebastián Sabini, the legislator in charge of the cannabis bill, recalls:

There was a lot of dialogue. We worked together on this from the first moment, maybe not always in agreement on everything, but knowing that we shared the same goal (Interview, September 22, 2014).

With the reform bill drafted and disagreements resolved, in late 2012, cannabis reform appeared on track. Sabini was optimistic that he would have the necessary votes and intended to have the project approved before the end of the year (Interview, September 22, 2014). Yet, Mujica suddenly put a stop to cannabis reform. On December 18, 2012, Mujica announced: "The decision is not ready, that's why I put a stop to it" (El País 2012). His principal reason was the continued lack of popular support. He reminded his co-partisans not to act against popular will: "Don't vote for a law just because it has a majority in parliament. The majority has to be in the streets." With this announcement, President Mujica put the successful conclusion of the reform process in doubt.

Outsider Agenda Maintenance

However, those "who supported drug policy reform... were not willing to give up without a fight" (Müller & Draper 2017:164). To rescue the reform process, "[s]omething needed to be done" (Musto 2018:105). The answer came in the form of the campaign *Regulación Responsable*. The main goal was to give the initiative a "legitimate face" and to demonstrate that there was societal support for reform, steer the public debate, and provide politicians with a stronger rationale for action (Sebastián Aguiar, interview, September 5, 2014). The campaign brought together diverse groups and secured

endorsements from notable individuals (Hernan Delgado, interview, September 1, 2014). By carefully selecting the message and the messengers “Responsible Regulation aimed at changing the image associated with cannabis reform and enhancing the legitimacy of the new law” (Musto 2018:109).

To advance the debate and achieve a greater level of public support, international and domestic activists met in February 2013 to design a communication strategy (FESUR, JND, DPA, WOLA and OSF 2013). The result of the meeting was the creation of a professional communication campaign to advance drug policy reform (Hetzer & Walsh 2014). With help from abroad, the campaign’s messaging was developed (Murkin 2015; Garat, 2015; Müller & Draper 2017). Cannabis “activists without borders” invested time, money and efforts to setting up *Regulación Responsable*. International reform advocates engaged in “knowledge transfer” to professionalize domestic cannabis activism (Musto 2018). They not only shared best practices and experiences from Washington State and Colorado, but also provided financial resources and logistical support to the campaign (von Hoffmann 2016b). Much of the funds were provided by the Open Society Foundation (Müller & Draper 2017). Hannah Hetzer, the regional manager of the US-based Drug Policy Alliance, relocated to Montevideo to support Uruguayan pro-reform actors (Interview, January 9, 2015).

As a well-resourced, professional and coordinated campaign, *Regulación Responsable* represented a qualitative shift in pro-reform advocacy. More permanent structures, institutionalized processes and salaried staff allowed setting up and carrying out an unusual pro-reform campaign. *Regulación Responsable’s* campaign materials, TV

commercials and public events had high production values, were expertly crafted and presented cannabis reform in a different light from the stereotypical images.

While *Regulación Responsable* brought together a variety of civil society organizations to broaden its appeal,⁵³ the leading group was *Proderechos*. *Proderechos* was unique among cannabis activists in Latin America because it was not “issue specific” (Musto 2018:69). Perceiving its demand for drug policy reform as one instance of a broader agenda of expanding civil rights (Rivera-Veléz 2016), *Proderechos*’ priorities transcended cannabis and included the expansion of reproductive and LGBTQ rights and transitional justice. To reflect this expansive focus, the name *ProLegal* was changed to the more inclusive *Proderechos* in 2006 (Lemos 2014:19). Another aspect that made *Proderechos* unique was its membership and their outlook. Recruited principally from young, former party activists and student activists from the *Universidad de la República* (Aguiar & Muñoz 2007), there had long been a recognition that drug policy reform could only be achieved through parliamentary processes (Garat 2015). In comparison to other cannabis activists, *Proderechos* was more “professional” in its organizational structure, activities and demands.⁵⁴ As Juan Vaz put it, “they were the most ‘political’ among the activists” (Interview, September 16, 2014).

To sell cannabis reform to a skeptical public cannabis reform was repackaged and reframed in terms that appealed to both politicians and the public. Engaging in marketing

⁵³ *Regulación Responsable* was a broad coalition whose membership included LGBTQ (Ovejas Negras), feminist (Cotidiano Mujer and MYSU), student (FEUU), human rights (IELSUR and SERPAJ), labor union (PIT-CNT) and environmentalist (REDES) groups.

⁵⁴ *PlantaTuPlanta* began in 2005 as an anonymous internet forum for those interested in *autocultivo*. Suspicious of any government regulation, they celebrated cannabis cultivation and consumption. The virtual community transformed into a formal association under the name of *Asociación de Estudios del Cannabis del Uruguay* (AECU) in 2011 (Laura Blanco, Interview, August 29, 2014). La Plazita played an important role in the early mobilization, organizing the first ever *fumata* but faded away over time when the reform process required more institutionalized efforts (Julio Rey, Interview, September 6, 2014).

and PR techniques, such as focus group testing different messages, reform proponents learned what worked and what did not (Sebastián Aguiar, Interview, September 24, 2014). These insights informed what the *Regulación Responsable* campaign looked like and which argument it emphasized. Considering the stereotypes attached to cannabis reform and limited appeal of traditional messages and messengers, activists understood that in framing their pro-reform message, “the possibility of success of this new message requires new messengers” (Lemos 2014:22). In developing their framing of cannabis reform, activists drew on their own and international experiences with advocating for progressive change and the skills useful for campaigning from its diverse membership, many professionals with close connection to the *Universidad de la República*. As Collazo describes it, “we applied marketing techniques to a just cause” (Interview, September 26, 2014). Activists were highly strategic and pragmatic about framing their campaign.

The name *Regulación Responsable* was strategically chosen, because the public was more open to “regulation” than “legalization.” (Castro 2014:36; Musto, 2018:107; Garat 2015:82). Pro-reform actors learned that while “legalization was associated with moral acceptance of [cannabis consumption], the concept of ‘regulation’ implies state control and the separation of markets” (Lemos 2014:21). Whereas marijuana legalization was perceived as too permissive and lenient, regulation was more neutral. As an internal *Regulación Responsable* report notes:

When we talked about regulation it was possible to move some positions, since it is associated with ideas of order and legislation and not with liberalization, or consumption promotion, as with marihuana legalization (Message Training Research Results, cited in Musto 2018:107).

The representation of cannabis had to change; not just the language but symbols, imagery and messengers. “We had to clean up the stereotype that people have of those smoking marijuana, someone with dreads and red eyes” (Hernan Delgado, Interview, September 1, 2014). Activists recognized that “because of the historical discrimination of drug users and groups traditionally associated with this demand [cannabis reform], the possibility of success of this new message requires new messengers” (Lemos 2014:22). Therefore, *Regulación Responsable* refrained from using any of the typical symbols of activism, such the color green or the cannabis leaf, instead using the white and blue of the Uruguayan flag (Müller & Draper 2017:175). Further, the visible faces of the campaign “could not be the ones typically associated with ‘marihuana legalization, holding over their shoulders the ‘potheads’ stigma, calling for their right to smoke” (Musto 2018:108). Instead, a mother, a doctor and a lawyer defended cannabis regulation in three sleek TV spots, produced by advertisement specialists.

Based to the results of the focus group testing, the argument in favor was simplified to focus on the three aspects that had shown to work best (Hetzer & Walsh 2014:35). A “message triangle” was devised for communicating the advantages of reform. *Regulación Responsable* tirelessly emphasized three aspects of cannabis regulation: it would strengthen public safety by separating marijuana from more dangerous drugs, improve public health, and, resolve the present-day legal contradiction (Regulación Responsable 2013). Despite little conviction in the veracity of government’s security framing, *Regulación Responsable* would not contradict but rather double down on it (Sebastián Aguiar, Interview, September 5, 2014). As Collazo explained: “we could not go with a discourse that was too progressive. The people were afraid because of insecurity and associated it with [drugs], so we had to focus on it” (Müller & Draper 2017:174). Thus,

the messages and messengers *Regulación Responsable* embraced were a matter of expediency; strategically and pragmatically chosen to attenuate fears that cannabis reform was outlandish, unproven or irresponsible.

Agenda Denial

In contrast to strong, professional and organized support for cannabis reform, there was almost no societal opposition against marijuana. “Although only a minority of Uruguayans supported the initiative, nobody came out in opposition” (Müller & Draper 2017:184). Only a disjointed group of individuals and organizations without an overarching strategy or organized structure opposed cannabis reform. As journalist and author Guillermo Garat observed: “The message against [cannabis regulation] is unarticulated” (Musto 2018:76), and for the most part “the opposition never had the political initiative in the parliamentary or social debate” (Valdomir 2015:114). Musto (2018:75) did not find “any evidence of a nontrivial degree of coordinated activity... or co-organised public activity” of opponents of cannabis reform. This led her to conclude that “[t]his lack of an organised, strategic conservative coalition made the opposition to the reform not only less visible but also less decisive” (ibid:77).

As elsewhere, the Catholic Church and certain medical professionals rejected cannabis reform. Not only did Pope Francis explicitly state his opposition to drug liberalization shortly before the Uruguayan vote on cannabis (Busqueda 2013a), but local religious leaders also came out against cannabis reform (Fuentes 2013). Yet, their intervention had relatively little lasting impact on the cannabis reform process in a highly secularized political system (Musto 2018). Furthermore, certain medical professionals did oppose cannabis regulation in the media, in congressional hearings (Garat 2015:73-76; Müller &

Draper 2017:144-155) and position papers (SPU & SUPIA 2012; SMU 2012; SPU & SUPIA 2013a). While psychiatrists were among the “most notorious voices questioning cannabis regulation” (Musto 2018:134), there were no organized or concerted efforts. Rather, there were individual medical and addiction professionals, such as Raquel Peyraube, publicly defending cannabis regulation, and thereby undermining the notion that all medics opposed reforms (Interview, February 28, 2018).

However, there was no explicit internal opposition to cannabis reform.⁵⁵ Rather, most government officials working on drug policy were supportive of reforms, with “the prohibitionist coalition... in the minority” (Sanjurjo 2013:308). Calzada, Romani or Vitale favoured a different approach to drug policy (Interviews, February 2, 21 and March 23, 2018). Thus, the “main opposition” had to come from political actors, specifically from a handful of opposition legislators with close connection to drug treatment and religious groups (Musto 2018:75). The first evangelical legislator in Uruguay, the Blanco *Diputado* Gerardo Amarilla strongly opposed any drug policy reform and tried to mobilize opposition among his religious supporters (Müller & Draper 2017:184). Distant from the levers of policymaking, opposition legislators were never able to appeal to those outside their core constituency or assert “a hegemonic posture” according to Julio Calzada (Ruchansky 2015: loc4515).

In sum, rejection remained diffuse and disjointed with no professional structures being established. As result, agenda denial efforts were neither sustained nor strategic, but rather isolated initiatives with limited appeal. In fact, the two biggest threats to the success

⁵⁵ For instance, Jorge Vázquez, a former president of Junta Nacional de Drogas and then-assistant Interior Minister, initially rejected cannabis regulation (Vilella 2012). However, he did not endeavor to prevent the reform: “I am very disciplined. I said that while I did not agree, I would never put a spoke in the wheel” of the reform process (Müller & Draper 2017:123).

of cannabis reform came from inside the governing coalition: the doubts of Mujica himself and two FA legislators who opposed cannabis reform. Two *Frente Amplio* MPs, Doreen Ibarra and Darío Pérez, vehemently opposed cannabis reform (Müller & Draper 2017). Because of the FA's razor-thin majority in the lower house, they needed all of its legislators on board. Up until the last minute, attempts were made to secure their support (Garat 2015). Sabini remembers that these negotiations were "arduous, and I often had to bite my tongue not to create more problems" (Interview, September 22, 2014).

Insider Agenda Maintenance

While reform proponents were trying to increase public support for cannabis reform and drafting a reform bill that represented a compromise that could command a majority of votes in parliament, the president for the most part took a back seat: "Mujica did not intervene, he limited himself to supervise" (Müller & Draper 2017:220). Sabini remembers that Mujica did not meet with him until the bill had been finalized (Interview, September 22, 2014). Milton Romani recalls that "Mujica never spoke much about the issue" (Interview, February 2, 2018). For most of the time, Mujica just got out of the way – and sometimes in the way – of cannabis reform, while others actively worked to keep it on the agenda and secure the necessary approval. As Sabini recalls:

He gave us a lot of space to do our parliamentary work... and that permitted that the law was approved. If the executive had simply imposed something, maybe today we would not be talking about why the law was passed (Interview, September 22, 2014).

Mujica's limited engagement was both a reflection of his general governing style (Israel 2014) and specific disinterest in cannabis reform (Müller & Draper 2017). Despite having

proposed cannabis reform, Mujica did not perceive it as the most important or salient issue: “For me the topics of same-sex marriage and marijuana are not central. What is on my agenda are the old and the poor” (Tulbovitz & Danza 2015:225). Rather than harmful, this was actually helpful, because Mujica and his advisors concluded that the public would not care much either, and rejection would not produce an electoral backlash (Diego Cánepa, Interview, March 15, 2018). As such, Mujica was willing to accept the risks that passing an unpopular reform might entail: “The people will understand or not, but we have to move forward and pay the costs that you have to pay” (Müller & Draper 2017:190).

Despite continued misgivings, with civil society support, efforts from actors inside the government to advance the reform bill, growing international attention and without any organized opposition, Mujica made no additional efforts to block the reform process. Instead, Mujica actually intervened at a crucial point to ensure that the process he had initiated the previous year, would conclude before the end of his term. Specifically, Mujica played a crucial role in securing the decisive 50th vote for cannabis reform in the lower house of parliament

Two rebel legislators, Dario Pérez and Doreen Ibarra, opposed marijuana legalization. Particularly Pérez was a staunch opponent of cannabis reform. He had publicly committed to “fight as hard as possible” to derail the bill (Busqueda 2013b). Calling himself a “conscientious objector,” this was not just a matter of policy but principles (Cadimar 2013). Despite repeated persuasion efforts, he remained opposed (Ruchansky 2015:loc4055). Hector Suárez, working for the JND’s *Observatorio de Drogas*, remembers that “Dario was impossible to convince” (Müller & Draper 2017:205).

However, Mujica intervened to persuade the last hold-out, Dario Pérez to support marijuana legalization (Jelen 2014). Diego Cánepa, Mujica's chief of staff, argues that Mujica personally persuaded Pérez to vote for the bill: "Getting Dario on board, was Pepe's doing, in a late-night meeting" (Müller & Draper 2017:208). Only the morning after his face-to-face with Mujica – the day of the vote – did Pérez reveal that he would vote for the bill. Getting Pérez's vote was crucial because it is unlikely that the *Frente Amplio* would have had the necessary votes without it. Several opposition MPs – Daniel Radio, Fernando Amado, and Anibal Gloodtofsky – supported cannabis reform in principle, but they abstained for party-political reasons (Garat 2015). The cannabis reform bill therefore needed all of the *FA*'s votes in parliament and Mujica played a crucial role in securing the decisive one. Yet, this late intervention at a critical moment in the reform process does not change Mujica's more ambiguous and sometimes counterproductive role during prior stages.

Success in Parliament

On July 31, 2013, cannabis reform was debated on the floor of the lower house of parliament. This was the crucial day for drug policy reform. Parliamentarians were aware of the significance of the occasion, with journalists from around the world and cannabis activists flocking to Congress and filling the gallery in anticipation. Thirty-eight *Diputados* took to the floor, debating for fourteen hours before voting.⁵⁶ A closer look at these interventions in the lower house on July 31, 2013 reveals more about the motivations and rationales of legislators.

⁵⁶ The following pages draw on the proceedings of the plenary debate. Cámara de Representantes. *Diario de Sesiones Numero 3874*, July 31, 2013, pp.57-209.

FA legislators defended cannabis reform with three arguments: the *status quo* was untenable, prohibition had failed and cannabis was relatively harmless. Current decriminalization was untenable because it was plagued by a fundamental contradiction. As Bango put it: “marijuana consumption is possible, however it is impossible to access it. Hence, there is a contradiction that we have to solve.” Prohibition had failed and was actually creating more incentives for violence and crime. In Núñez’s words: “In this case prohibiting not only does not work but makes things worse.” FA parliamentarians tried to establish that cannabis was relatively harmless. For instance, Julio Battistoni declared that cannabis was “soft drug,” and Sabini stated that cannabis consumption did not automatically or directly lead to harder drugs. That reform proponents framing of the issue had an effect is evidenced by pro-reform parliamentarians almost exclusively using the term “regulation” instead of “legalization.”

Opposition parliamentarians in turn advanced fundamentally one argument as to why the bill had to be rejected: Cannabis was a dangerous substance and its consumption morally wrong. For Amarilla, cannabis was one of the “poisons that enslave and destroy our society.” *Colorado* Diputado Washington Abdala said that cannabis, “is a threat to public health.” The negative consequences of cannabis consumption made enabling access dangerous and reckless. *Blanco* Gustavo Borsari compared the bill “to a terrorist attack on health and safety of the population.” Thus, opposition legislators painted cannabis regulation in apocalyptic terms. They emphasized what a moral and public health disaster legal cannabis would be, they even threatened to organize a referendum to repeal cannabis liberalization if approved.

However, the dice had been cast before the first speaker had even taken the floor: Each

political party had invoked party discipline, which meant that the two FA “rebels” had to vote in favour of the bill. Doreen Ibarra and Dario Pérez cast their vote with the rest of the *Frente Amplio* in favor of cannabis regulation. Ibarra made clear that he only voted for this “inopportune” and “wrong” project because the FA was forcing him to do so. Pérez, with tears in his eyes and a trembling voice, proclaimed that he would bow to the FA’s decision to pass the law. In his speech, he left no doubt about his views: “Marijuana is shit [*bosta*].” With these two crucial votes, the bill passed with exactly fifty votes.

Considering the FA’s secure Senate majority, the most important obstacle had been overcome. What followed were procedural formalities, because to ensure that the bill did not have to go through the similarly agonizing legislative process as in the lower house the Senate did not make any changes to the bill (Diego Silva, Interview, September 26, 2014). On December 10, 2013, the Uruguayan Senate discussed and voted on the bill. With the FA’s 16 votes against the opposition’s 13 votes, cannabis reform was passed (Cámara de Senado 2013).

On December 20, 2013, President Mujica signed the cannabis reform bill into law. *Ley 19.172* allows legal access through retail sales, cannabis social clubs or home cultivation (Poder Legislativo 2013). By exempting those registered with the government from criminal sanctions (Galain 2018), Uruguayans are able to either legally grow up to six plants at home, become members of cannabis social clubs or buy up to 40g of cannabis per month in pharmacies (Silva 2016). In doing so, the new legislation made history: Uruguay became the first country in the world to legally regulate cannabis. While the process of cannabis regulation had concluded in comprehensive change, many questions about the process remained open.

Counterfactual Analysis of Cannabis Reform in Uruguay

Despite insider initiation of the reform process, the outcome of the cannabis reform process was not a foregone conclusion, instead there was “the prevalent feeling throughout the process was that everything was always about to collapse” (Musto 2018:125). Contingency, conflict and choices influenced the twists and turns of the reform process. To understand the importance of these choices, I analyze five “minimum-rewrite” counterfactuals (Levy 2008). To discern between explanatory factors hypothesized as important, I investigate what would have occurred if they had been absent. Counterfactual analysis allows me to clarify the causal weights of and relationships between agenda setting, maintenance and denial, and, highlight what would have occurred without the mechanisms of strategic framing and professionalization.

The section is divided into five parts that explore *what was not but could have been* to better understand *what was*. First, I discuss the prospects of cannabis reform *without* insider agenda setting. Second, I substantiate the claim that *with* more determined agenda denial the cannabis reform process could have been derailed, comparing cannabis reform with a different drug policy reform proposal. Third, I show that key actors at the time perceived reform to be unviable *without* outsider agenda maintenance, which explains its effect in spite of its inability to increase public support. Fourth, I highlight how outsider reform proponents discovered that *without* downplaying their preferred framing and emphasizing other aspects they would not be as persuasive. Fifth, I show, that the actors behind *Regulación Responsable* were uniquely positioned to make these pragmatic choices, establishing that *without Proderechos* more “grassroots” activists would have been less capable to make the “right” agenda maintenance and framing choices.

Counterfactual: Agenda-Setting

What if the Mujica administration had not presented its cannabis legalization proposal? Would Uruguay have legalized cannabis as result of “bottom-up” mobilization? And, if so, what would the potential outcome of cannabis reform have been? Several authors entertain the notion that cannabis reform would have occurred without the government’s intervention, albeit in a more limited fashion. Castro (2014:19) argues that Sabini’s bill “had legislative support” and “was about to be approved.” Walsh and Ramsey (2015:5) state: “By early 2012, Uruguay looked set to pass a bill that would legalize the domestic cultivation of up to eight plants and the possession of up to 25 grams of cannabis.”

Reports at the time suggest that Sabini was optimistic about his *autocultivo* bill’s prospects (El Espectador 2011). As one of the bill’s sponsors, Nicolás Núñez, put it: “The bill was well-advanced. From a legislative perspective, it was written, signed and approved by the *Frente Amplio*’s parliamentary group...The only thing missing was voting on it” (Interview, September 9, 2014). Another legislator working on the bill, Daniel Radío from the *Partido Independiente*, remembers: “everything was ready to go” (Interview, September 8, 2014). Sabini himself confirms that the bill was about to be discussed in a parliamentary committee, after a year of preparation (Interview, September 22, 2014). Yet, Julio Calzada points out that “the topic was not on the table and the political circumstances were not in place to advance it ...It had been worked on, but much was still missing.” He considers that “if it had come just from the legislature it would have probably not been voted on” (Interview, February 19, 2018).

There is reason to believe that cannabis reform was not only not on the government’s agenda, but also did not have the president’s support. Reportedly, Mujica mocked the

importance of the *autocultivo* bill: “Look what an interesting discussion about having six or eight plants at home... I have to fight for the trains, employment, the man on the street” (Tulbovitz & Danza 2015:224). When the Secretary of the JND, Milton Romani, wrote an internal memo proposing cannabis reform at the beginning of Mujica’s presidential term, the president “never mentioned it, never asked for a meeting” (Interview, February 21, 2018). Without the executive’s support and engagement, it seems unlikely that cannabis reform would have succeeded. As Garat (2015:61) points out, “political will was lacking for something to happen...It seems clear that a fundamental decision was needed, a decision that only a president can take.”

While it is unlikely that the activist-sponsored cannabis bill would have advanced by itself, it is certain that cannabis reform would have been less ambitious. Had the executive not come out in support of reform, the best-case scenario would have been the passage of a more limited *autocultivo* bill. The executive’s involvement “completely changed the terms of what was debated in parliament” (Sebastián Sabini, Interview, September 22, 2014). Neither activists nor legislators dreamed of trying to legalize retail sales. As Juan Vaz put it, “all we wanted was home cultivation” (Interview, September 16, 2014). Thus, insider agenda setting substantially changed the dynamic, scope and prospects of drug policy reform. As Sabini contends, “a decision of this magnitude could not have come from parliament... it had to be a policy that came from the president” (Interview, September 22, 2014).

However, this does not mean that bottom-up agenda-setting was wholly inconsequential. There is reason to believe that outsider agenda setting affected the reform outcome, by providing an important base for negotiations between pro-reform actors inside and

outside the government. Indeed, the *Ley 19.172* represents a combination of the activist-sponsored *autocultivo* bill and the government's *artículo unico* (Aguiar & Musto 2015; Silva 2016; Lissidini & Pousadela 2018). Home cultivation was excluded from the original cannabis reform bill and would not have been included without the insistence of cannabis activists and their allies within the governing coalition (von Hoffmann 2020).

Counterfactual: Agenda Denial

What if there had been a better organized opposition, actively engaged in agenda denial, would cannabis reform have succeeded? This is a more speculative question, but a brief comparison with an unsuccessful drug policy reform proposal promoted by President Mujica is instructive. In 2012, the Mujica administration introduced an initiative to establish the compulsory internment and treatment of “dangerous drug addicts.” While this bill was a priority for Mujica, there was ample rejection “[i]nside the government, among the Frente Amplio and in civil society” (Erosa 2012). As result, the reform project first stalled and eventually failed. This different fate suggests what might have happened to cannabis regulation had it encountered a more powerful and determined opposition.

In contrast to cannabis reform, compulsory internment and treatment had long been championed by Mujica. In 2008, the then-Senator had stated that addicts “have to be grabbed by the collar, put in a camp and ridden of their addiction by force” (Jelen 2010). In 2009, Mujica declared that “If you do not use toughness, you don’t get anywhere” (García 2009). In 2012, on Mujica’s insistence— “this was the idea of the president” (Müller & Draper 2017: 137), his administration presented a bill that would intern and treat “drug addicts” against their will (Poder Ejecutivo 2012). However, the proposal encountered vehement opposition. Legal experts deemed the project to be

unconstitutional (Erosa 2012; La República 2013), addiction specialists opposed the “highly questionable” measure (SPU & SUPIA 2013b), and human rights defenders “emphatically rejected the irresponsible initiative” (IELSUR & SERPAJ 2013). Even inside the government, those working on drug policy opposed Mujica’s initiative. Romani remembers “disagreeing strongly with [Mujica]” on this issue (Interview, February 21, 2018). Julio Calzada worked to undermine a project he considered so bad that he was unsure whether it was “to laugh or cry about” (Müller & Draper 2017:135-140).

With the opposition of societal actors and experts, there was little appetite for compulsory internment and treatment among FA legislators (Müller & Draper 2017:138). Without legislative support from most of his own party (El Observador 2014), Mujica’s term came to a close without this bill passing both houses of parliament, as “the *oficialista* legislators buried it” (Müller & Draper 2017:138). Despite being personally championed by the president, the bill never became law because compulsory internment and treatment encountered determined opposition from civil society, legislative and government actors. President Mujica could not by himself will change into existence when confronted by concerted agenda denial efforts, strongly suggesting that a similar fate would have awaited cannabis reform.

Counterfactual: Outsider Agenda Maintenance

What if there had not been a well-orchestrated pro-reform campaign in the form of *Regulación Responsable*? Would cannabis reform have succeeded anyways? This is what Calzada seems to imply, stating that “from the moment the president told us he had taken the decision and he would make the announcement [to propose cannabis reform]... I was convinced this would happen” (Odriozola 2015). Yet such *post hoc* rationalizing betrays

the uncertainty that characterized the reform process. Musto, witnessing the reform process first-hand, describes “the prevalent feeling throughout the process was that everything was always about to collapse” (2018:125).

There were several moments in which cannabis reform seemed doomed, especially in late 2012 when Mujica put the reform process on hold, claiming that public support was still lacking. While it might be argued that Mujica’s statements should not be taken seriously,⁵⁷ many did. As Romani recalls: “Of course, there was fear that this would not get done, because we did not know that Pepe would say this and not follow through with it” (Interview, February 21, 2018). Pro-reform activists took notice of the possibility that the president meant business. As Hernan Delgado put it: “As an organization, we saw this as a clear threat; if this did not change, everything could fail” (Interview, September 1, 2014). This was a call to action. Martín Collazo remembers activists’ reasoning: “When Mujica says this, we realized that we had to do a campaign, a real effort. We knew we had to do this now, otherwise everything could go to shit [*irse al carajo*]” (Interview, September 26, 2014).

Thus, *Regulación Responsable* was set up in response to Mujica’s challenge of counting on public support as a condition for reform. Despite a sophisticated campaign, public support changed little. By July 2013, opinion polls showed that 63% of respondents still opposed cannabis regulation (CIFRA 2013). Nevertheless, pro-reform activists claim that *Regulación Responsable* was a success. According to Hannah Hetzer, they managed to increase public support by 8% in six months (Interview, January 9, 2015). This shift highlighted that people could change their minds over time: “The most important thing

⁵⁷ Reportedly, Mujica was prone to making public statement before fully thinking things through (Israel 2014:25; Tulbovitz & Danza 2015:211; Rabufetti 2014:16).

that we had to show was that support was increasing” (Martín Collazo, Interview, September 26, 2014). For Hetzer, the campaign provided the public display of support that legislators needed to support the reform:

It provided the political cover to vote for the bill... For legislators going ahead with this without having any campaign was a little off-putting. It is much easier to vote for something if you see that there is a massive well-run campaign and support behind it (Interview, January 9, 2015).

Similarly, Collazo argues that campaigning meant that “legislators did not feel alone when the time came to cast their vote” (Interview, September 26, 2014). Aguiar considers that “it was key for everything to happen as it did. If there had not been this support, the government might have not gone through with it” (Interview, September 5, 2014). Several policymakers agree with this assessment. Núñez stated that “any time the societal support for the initiative was questioned, there were people on the streets expressing their support” (Interview, September 9, 2014). Sabini echoed this, stating that activists’ campaigning demonstrated that “this was not an initiative based on nothing but rather had strong support” (Interview, September 22, 2014). Milton Romani deems activists’ interventions important because “they filled spaces, lobbied and generated debates... I believe they saved the bill” (Interview, February 21, 2018).

Even for those directly involved who believe the campaign mattered, distinguishing activity from effect can be difficult. Key actors thought that and acted as if mobilization was crucial to the success of cannabis reform at the time. In fact, they believed, rightly or wrongly, that without cannabis activists, few, if any, would support and defend the unpopular cannabis reform. Sabini remembers lobbying for the inclusion of home

cultivation to secure the support of activists. He recalls imploring the administration to reconsider its stance on *autocultivo*:

I explained to them that strategically we could not afford to be against the social movement and cannabis activism by leaving personal cultivation out, because they would be the only ones supporting a cannabis legalization proposal (Musto, 2018:100)

Thus, regardless of the actual impact that *Regulación Responsable* had on public opinion, there was agreement that it was vital for the government to count on the support of outside support to ensure the reform initiative's viability, especially in the context of public rejection. To secure reform proponents' support, decision-makers were even willing to make concessions, such as home cultivation in the eventual bill. As Julio Calzada explains

for the law to be successful, we needed a social movement on the streets. In truth, for lots of people the only thing that mattered was *autocultivo*. If we were to keep home cultivation out of the bill, we would end up without anyone [supporting this]. That is what we told Pepe (Interview, February 19, 2018).

Counterfactual: Strategic Framing

What if outsider reform proponents had framed cannabis reform differently, would they have been able to maintain cannabis reform on the agenda? Several authors have suggested that other frames would not have been effective (Repetto 2014; Musto 2018). For instance, Castro (2014:36) writes: "With more than 60 percent of the population against it, the project could not be sold as a matter of the 'right to smoke.'" Actors directly

involved seem to agree. Julio Bango stated: “What I know is that if I go out there to have a debate about whether people have the right to consume cannabis I lose by a landslide” (Repetto 2014:21). If outside reform proponents had been less strategic and pragmatic in their framing, they would have likely made less of an impact on politicians and the public alike.

Although *Regulación Responsable* campaign eventually settled on framing cannabis reform as safe, responsible and mainstream as possible, alternative frames were available and would have been their first choice. However, activists made the tactical choice to downplay normative frames because internal research found to be less persuasive. Instead, framing was pragmatically adjusted to emphasize the aspects that resonated most with the intended audiences. Activists ran focus group sessions to test out their arguments and inform their campaign (Martín Collazo, Interview, September 26, 2014). Experimenting with messaging, pro-reform actors found out what worked and what did not (Sebastián Aguiar, Interview, September 24, 2014). They figured out that, while there was still rejection and ignorance, people’s positions were not set in stone and could be changed with the appropriate framing:

Although it is very hard to deeply change people’s mind about cannabis, you can make them care less about it. Furthermore, four out of ten Uruguayans were permeable to change their opinion favourably towards cannabis regulation based on messaging (Responsible Regulation; message training research results, cited in Musto 2018:106).

Reform proponents had to come to terms with the fact that their preferred messaging, about expanding personal liberties, was not the most effective. As Sebastián Aguiar, who

was there when this message had its trial run, remembers: “It did not really work out. To us, ‘the convinced activists,’ it was amazing because it was this side aspect of the topic debate that really appealed to us. But for the people far away from cannabis legalization, [the liberal, rights-based argument] was nonsensical” (Musto 2018:106). Cannabis activists realized that to adopt persuasive frames they had to abandon some of their long-held arguments: “This was what we wanted to say but it was obvious that it was not convincing” (Sebastián Aguiar, Interview, September 5, 2014). As Collazo explained, “to achieve the historic change that we wanted... we had to downplay the rights argument” (Interview, September 26, 2014). As mentioned above, the resulting framing of cannabis reform was highly strategic and pragmatic. As one member of *Proderechos* put it:

We did something that was very tough for us: moving our campaign to the center of the political spectrum, appealing to doctors, lawyers, and mothers. We gave people a feeling of security, but at the cost of marginalizing the discourse of rights and freedoms, which, even though central to us, would not help for the main objective: accumulating supporters (Castro 2014:36)

Changing the frames associated with cannabis reform was not easy or painless. As Musto (Musto 2018:109) observed first-hand, “emphasising regulation and control instead of liberty and care...was not free of controversy.” However, because they were trying to encourage rather than antagonize the government and the public, reform proponents went along with terms of debates they neither considered “desirable” nor “coinciding with their demands” (Repetto 2014:25). What enabled these framing choices were the organizational structure, make-up and outlook that characterized some but not all cannabis reform proponents in Uruguay.

Counterfactual: Professional Campaigning

What if other reform proponents had been leading the charge in Uruguay? Would they have made equally pragmatic choices and been similarly situated to affect the reform process? It is unlikely that other cannabis activists would have been equally willing or able to develop pragmatic framing and a professional campaign. Whereas *Proderechos* was comprised of University graduates and academics, had long been closely linked to progressive elements within the *Frente Amplio* and had perceived policy reform as the only viable avenue for change, other activists were more radical, uncompromising and single-mindedly focused on cannabis (Aguiar & Muñoz 2007). Mostly recruited from cannabis growers, they were more traditional “grassroots” cannabis activists.

Proderechos was uniquely positioned to affect the reform process through agenda maintenance and strategic framing. While they already had some professional structures and skills that could be built and capitalized on (Hannah Hetzer, Interview, January 9, 2015), more than anything else their pragmatism and strategic approach influenced the international reform advocates’ decision to invest time and resources on the Uruguayan cause. As Hetzer pointed out: “What impacted us the most was how ‘results driven’ *Proderechos* was” (Musto 2018:106). The other aspect that made *Proderechos* a suitable partner was its working relationship with government officials. As veterans of policy battles for LGBTQ rights and abortion, *Proderechos* were experienced with lobbying, had developed both advocacy know-how and connection to state actors (Sebastián Aguilar, Interview, September 24, 2014). As Hetzer stated:

Another thing that made a good impression on us was that even being a pure social organisation, they had a great dialogue with the government, which was also very

important, because this needed to be run in parallel, in an articulated fashion (Musto 2018: 106)

Considering these state-movement links, it is unsurprising that *Regulación Responsable* held informal consultations and coordinated with pro-reform actors within the governing coalition and government (Müller & Draper 2017).⁵⁸ That more traditional cannabis activists would have been equally able to collaborate is implausible because they were less well-regarded by governmental operatives. As Guillermo Garat put it: “Cannabis growers were always far away from the political establishment, from the suit and tie people that speak well, ... There is a natural mistrust in this type of people” (Musto 2018:70). Even if able to “clean up” their act, it is improbable that cannabis growers would have wanted to do so. Traditional cannabis activists were less willing to compromise their ideals in support of an initiative they perceived as sub-optimal (Juan Vaz, Interview, September 16, 2014). In fact, the cannabis growers from AECU did not publicly support the cannabis reform proposal. Laura Blanco, one of the leaders of AECU at the time, explained the decision to hold out on endorsing or campaigning for cannabis reform: “we do disagree on many points with the executive branch’s position, which explains why we are not going to support the proposal openly” (Musto 2018:119).

In sum, it is unlikely that more traditional “grassroots” activists would have been equally willing or able develop similarly resonant framings. They were less pragmatic in their approach, less willing to make compromises and less able to work hand in hand with state actors. As such, international actors would have been less disposed to invest resources in supporting domestic cannabis activists. Left to their own devices, other cannabis activists

⁵⁸ For instance, designed promotional material depicting Mujica with a joint was pulled on request of the executive, according to Sofia Machado from *Regulación Responsable* (Interview, September 29, 2014).

than *Proderechos* would have run a different or no campaign at all. Considering the importance of agenda maintenance and strategic framing, this would have jeopardized its successful outcome of the reform process. As Hannah Hetzer put it “without Proderechos, I do not think this reform would have happened at all” (Interview, January 9, 2015).

Conclusion

The preceding discussion shows that Uruguay’s cannabis reform defies parsimonious “top-down” or “bottom-up” explanations. Rather, it highlights that both political will and social mobilization were necessary for the initiation, continuation and successful conclusion of cannabis reform in Uruguay, and, perhaps fittingly, jointly sufficient. This collective construction of drug policy reform is reflected nowhere more clearly than in the content of the resulting legislation: *Ley 19.172* represents a synthesis of governmental and activist proposals.

Yet, instead of simply noting the complexity of Uruguay’s cannabis reform process, the chapter engages with, and assesses the contributions of, different hypothesized causes of the outcome of interest. To establish the causal weight of and relationships between different explanatory factors, I zero in on the importance of insider and outsider agenda setting, maintenance and denial, strategic framing and organizational characteristics. Through careful process tracing and analysis of five “minimum rewrite” counterfactuals, I shed light on marijuana legalization in Uruguay both as it was and as it could have been, if one of the factors hypothesized to explain the reform process had not been present. Despite its inherent limitations, this approach provides new insights about both the process and outcome of cannabis reform in Uruguay.

While difficult to fathom in hindsight, there was little to suggest that Uruguay would become the first country in the world to legally regulate cannabis prior to 2012. Although cannabis had become increasingly normalized, mobilization was comparatively modest and public opinion overwhelmingly rejected marijuana legalization. Despite Uruguay's "progressiveness," little attention had been paid to cannabis reform. While Uruguay's *status quo* drug laws were full of contradictions that generated discontent, this is by no means unique for Latin America. What was unique in Uruguay were the agency of both state and civil society actors, the way in which they articulated and adapted their ideas and developed or wielded their institutional power.

On the one hand, political will was crucial for both the initiation and conclusion of cannabis reform in Uruguay. Without insider agenda setting, comprehensive cannabis reform would not have been a possibility. Available evidence of the decision-making process suggests that the executive independently came to support marijuana legalization by framing it as a solution to the perceived crisis of drug-related violence. Despite being mostly absent from day-to-day agenda-maintenance, without President Mujica's timely intervention the cannabis reform bill would not have counted on the required votes to pass the lower house of parliament. Nevertheless, Mujica's determination that "someone has to be the first" to legalize marijuana in Latin America, does not fully explain Uruguay's reform process and outcome.

On the other hand, mobilization was key for the continuation and content of cannabis reform in Uruguay. Not only did reform proponents and their allies manage to significantly change the substance of the reform bill, but outsider agenda maintenance was vital for the progress of reform process. Change agents rose to the challenge of

keeping the reform process alive, when Mujica put it on life support. While *Regulación Responsable* was unsuccessful in changing public opinion, key decision makers thought and acted as if outsider agenda maintenance was vital in the context of public disapproval. This afforded outside actors bargaining power and the ability to affect the reform process. In contrast to the professional and coordinated *Regulación Responsable* campaign, reform proponents' agenda denial efforts were haphazard and amateurish. As such, a “vocal minority” in favor of cannabis reform drowned out the “silent majority” against it.

With regards to framing, the chapter details how through cleaning up and “mainstreaming” both the messages and messengers associated with cannabis reform, *Regulación Responsable* made cannabis reform appear more reasonable rather than radical, commonsense rather than outlandish, but most of all helpful rather than harmful for decision-makers to support. By downplaying their preferred normative frames and emphasizing what politicians and the public cared about, outsider reform proponents, made their framing “fit” with the particularities of the Uruguayan case. They framed cannabis regulation as solution to the problem of drug-related violence and attenuated fears about a lack of societal support, thereby providing momentum for a reform process that had stalled and proving that people could change their minds if presented with clear rationales for actions.

Lastly, the chapter provides evidence how organizational features can enable outsider challengers to make the “right” choices in strategic framing and agenda manipulation, *Proderechos*, the driving force behind the *Regulación Responsable* campaign, behaved in highly strategic and pragmatic fashion, drawing on its experiences in lobbying for other progressive reforms, connections to state and political actors, and more institutionalized

organizational structures. This made them a valuable partner for international actors who provided vital resources and know-how. In contrast to other, more traditional “grassroots” cannabis activists, *Proderechos*’ organizational characteristics, their professional background and results-driven outlook allowed them to implement highly effective pro-reform campaign.

In sum, the “positive” case of comprehensive cannabis reform in Uruguay illustrates four aspects of my argument. First, even in the exceptional circumstances of insider agenda setting, outsider agenda maintenance can be important. Second, for agenda maintenance to succeed, adopting strategic framings that “fit” with the country and audience-specific context and presenting appealing messages and messengers is crucial. Third, these choices in advocacy are dependent on reform proponents’ strategic outlook and organizational characteristics. Fourth, weak and uncoordinated opponents that are unable to engage in agenda denial can facilitate controversial policy change. Overall, attention to and approval of drug policy reform depended on decision-makers and change agents’ activities, articulations and alteration of ideas.

Cannabis Reform in Mexico:

The High Hope of Legal Mobilization

On October 31, 2018, a small group of cannabis reform proponents gathered in a luxurious Mexico City restaurant near *Paseo de Reforma* to toast a landmark Supreme Court decision, which created binding jurisprudence declaring the absolute prohibition of cannabis unconstitutional. From then on, anyone could file an *amparo* in lower Mexican courts and be granted the right to legally grow marijuana. The Supreme Court decision obliged the Mexican legislature to pass legislative cannabis reform.

Cannabis reform in Mexico is surprising given that both the public and politicians opposed marijuana legalization. In contrast to Uruguay, there was no insider agenda setting; change had to be actively manufactured by outsider challengers. What, then, explains Mexico's unlikely cannabis reform? The chapter unearths legal mobilization as the principal driver behind achieving marijuana legalization. By focusing on litigants' strategic choices, the chapter shows that the way in which legal challenge was constructed and carried out is key to understanding why legal mobilization succeeded. Specifically, I show that framing the legal challenge to cannabis prohibition in terms of fundamental rights created a "fit" between a controversial reform and Justices' institutional preferences and priorities. Moreover, mainstreaming the issue by choosing highly respectable litigants was crucial to get them to listen. I reveal that such change would have been impossible without the resources and abilities of a group of elite advocates and expert lawyers, who orchestrated a legal challenge against the country's strict prohibitionist regime. Like in Uruguay, and in contrast to Chile, the reform coalition

combined actors with the professional expertise and organizational resources necessary to devise and implement targeted activities and articulate persuasive frames.

Throughout the chapter, I focus on legal mobilization, which has been critical for cannabis reform in Mexico. Legislative reform has not concluded at the time of writing. I conceive of legal mobilization – “the process by which individuals make claims about their legal rights and pursue lawsuits to defend or develop those rights” (Epp 1998:18) – as one specific instance of agenda manipulation. While some have found that legal mobilization can, at best, offer a “hollow hope” (Rosenberg 1991), others have shown that legal mobilization has led to important changes in distinct areas, such as pay equality, same-sex marriage and disability rights (McCann 1994; Andersen 2005; Vanhala 2010). The chapter describes another instance in which legal mobilization has been the source of high rather than hollow hope for those seeking to change the *status quo*. By strategically constructing a legal challenge with appealing characteristics, litigants and arguments, reform proponents enabled the Court to engage in jurisprudential innovation.

To understand the success of legal mobilization, the chapter is informed by a careful analysis of court rulings, an in-depth review of media and scholarly sources, and over fifty interviews with politicians, activists, judicial personnel, and public officials. Based on original information and unparalleled access to key actors, the chapter goes beyond describing *how* reform proponents devised and carried out strategic litigation or *how* the SCJN deliberated and decided, to explain *why* reform proponents were able to garner the Justices’ approval. By combining process tracing and counterfactual analysis, I establish the causal weight and relationships of different explanatory factors that are part of the causal chain (Figure 21).

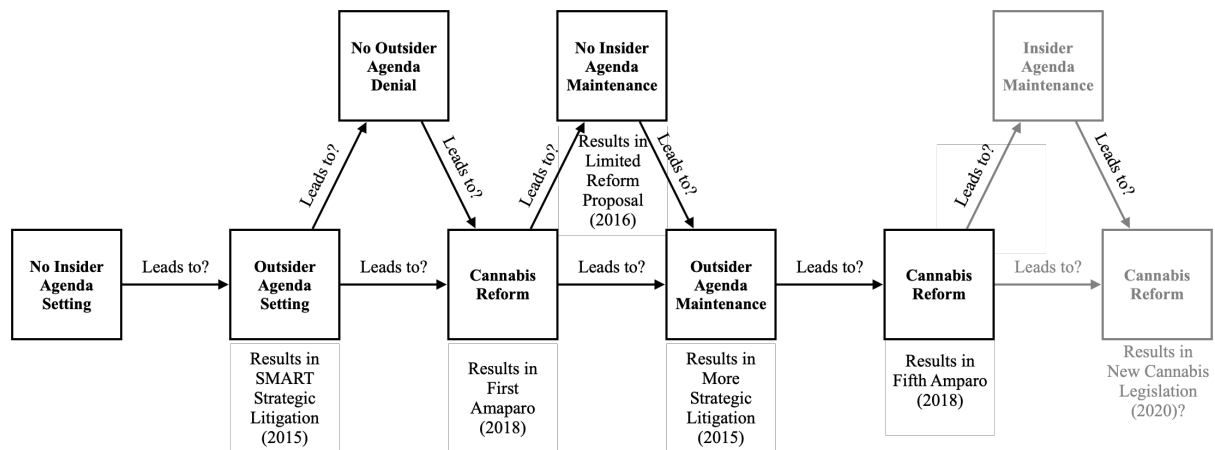


Figure 21: Causal Graph of Mexico's Cannabis Reform Process

With regard to my overall argument, the “positive” Mexican case provides three insights. First, change is possible even if the government does not set the agenda, as the Mujica government did in Uruguay. Second, for conducting outsider agenda setting and maintenance, a framing strategy that “fits” with the audience – in this case the Justices and their preferences, priorities and institutional “standards of appropriateness” – is paramount. Similar to Uruguay, Mexican reform proponents supplied decisionmakers with frames that made it safer to support cannabis liberalization. Third, coming up with persuasive frames requires resources and skills which few change agents possess. In Mexico, a small group of “unusual suspects” – elite members of civil society and expert lawyers – provided the necessary *techné* and *metis* to undertake successful legal mobilization. The actors in the reform coalition matters for the articulations it can advance. Whereas Uruguayan activists teamed up with international drug policy reformers, the Mexican pro-drug policy reform coalition was bolstered by domestic actors that perceived cannabis reform as *sine qua non* for reducing drug-related violence.

The remainder of the chapter proceeds as follows. Section 1 sets the scene by reviewing the existing literature, introducing Mexico's *status quo* drug laws and discussing

structural alternative explanations. Section 2 traces the processes of agenda setting, maintenance and denial. Section 3 provides counterfactual evidence for the causal weight of legal mobilization, the strategic framing and legal resources and abilities that enabled tactical choices that maximized the chances of success. The conclusion draws together the different strands of the argument, expands on the implications of the “positive” Mexican case for my overall argument and compares and contrasts it to the “negative” Chilean and the “positive” Uruguayan case.

Setting the Scene

In the first section, I set the scene for the subsequent analysis of cannabis reform in Mexico. First, I review the limited extant literature on contemporary drug policy and cannabis reform in Mexico. While the majority of studies focus on drug trafficking and violence, the issue of cannabis reform has only recently become the subject of study. Second, I discuss Mexico’s *status quo* prohibitionist drug laws. I establish that possession for personal consumption is decriminalized, as there are exemptions of for possession of 5g for cannabis, but production and supply were prohibited by existing drug laws. Despite *de jure* decriminalization of possession and consumption, *de facto* Mexican law enforcement often criminalizes or extorts those encountered with cannabis.

Third, I consider some of the structural factors that conspired against drug policy reform. Available quantitative and qualitative evidence shows that cannabis is not very “normalized,” that public opinion has been against cannabis reform and that cannabis activists have not managed to mobilize substantial numbers of protesters in Mexico. This discussion substantiates my claim that Mexico is a “least-likely” case for achieving legal marijuana. Lastly, I analyze how the shockingly high levels of drug-violence affect

marijuana legalization in Mexico. While Mexico's "war on drugs" provides the background for drug policy debates and has motivated certain actors to become involved with the reform movement, drug violence does not provide an uncontested or unambiguous rationale for cannabis reform.

Existing Literature

While there is a large literature addressing the horrific levels of drug-related violence and drug trafficking in Mexico, there is only a small literature on drug policy not directly related to the "war on drugs."⁵⁹ In contrast to historical studies of the origins of drug prohibition,⁶⁰ studies of contemporary drug policy reform are mostly descriptive, limited in scope and do not provide explanations for recent changes. Most accounts of contemporary drug policy reform in Mexico are of limited usefulness because they are mostly descriptive (Hernández & Lora 2015; Cuervo 2016; Feliciano 2016; Kánter 2017).⁶¹ Whereas some authors have looked at cannabis activism in Mexico,⁶² the protagonists in the struggle for cannabis reform were a small group of "unusual suspects" rather than traditional "grassroots" cannabis activists. While other authors have described

⁵⁹ The implementation and consequences of prohibitionist drug laws have received some attention (Hernández 2010; Pérez-Correa & Silva 2014; Pérez-Correa & Meneses 2014; Pérez-Correa & Ruiz 2018). Even though under the 2009 *Ley de Narcomenudeo*, consumption is *de jure* not a crime and possession of small amounts of drugs is not punishable with incarceration, *de facto* many drug users are detained, processed and criminally punished for simple use or possession (Perez-Correa & Ruiz 2018).

⁶⁰ By far the most developed literature are historical studies of the origins of prohibition in Mexico (Schievenini 2013; Pérez-Montfort 2015; Alonso 2015; Enciso 2015; Romero 2017). Principally, Isaac Campos (2014a) has made an important contribution to laying bare the early and national roots of cannabis prohibition in Mexico. He finds that cannabis was strongly associated with violence and madness and these ideas "facilitated marijuana's proscription in Mexico" (ibid:227).

⁶¹ Exceptions that go beyond simply recounting events are an edited volume that unites many pro-reform actors (Barra 2016), a journalistic account of marijuana in Mexico (Lozano 2018), and, a thesis employing the advocacy coalition framework (Basurto 2020).

⁶² While leading cannabis activists credit the Mexican cannabis movement with the growing visibility and attention to drug policy reform (García-Vallejo 2012; Hernández-Tinajero, Rivera, & Zenil 2013). Guerra's (2018) more balanced study of the Mexican cannabis movement highlights both its strength and weaknesses, such as its lack of institutional structures, resources and limited appeal.

legislative initiatives,⁶³ it was not the legislature but rather the judiciary that has been the key institutional decisionmaker thus far.

One of Mexico's Supreme Court's "most emblematic rulings" in recent years (Niembro 2019), the 2015 ruling that found the absolute prohibition of the production and consumption of cannabis unconstitutional, thereby ushering in a "new paradigm" of cannabis regulation in Mexico, has received some scholarly attention (Melgar 2018; Suárez 2019; Peñaloza & López 2020). While most authors rightfully point out *that* this ruling was highly significant and describe *how* the Supreme Court argued the case (Valdivia 2015; Tarello 2018; Niembro 2019), they fall short of explaining *why*. For the most part, they fail to take into account the role of strategic litigation (von Hoffmann 2017a; Lozano 2018; Martínez 2020). In arguing that tactical choices in constructing the legal challenge to drug prohibition were crucial, I build on accounts by those directly involved in designing and carrying out legal mobilization (Torres Landa 2016; Aguinaco & Barra 2017; Sánchez 2017; Richter 2018; Ríos-Piter 2019). I echo and expand on Martínez's (2020) recent study of legal mobilization for legal marijuana in Mexico.

Status Quo Drug Laws

Mexican cannabis control legislation typifies and prohibits almost all drug-related activities, with several exceptions and exemptions to criminal punishment (Pérez-Correa & Silva 2014; Madrazo 2014; Suárez-Ávila 2019). Both the possession and production of illicit substances are subject to criminal and administrative controls established in the

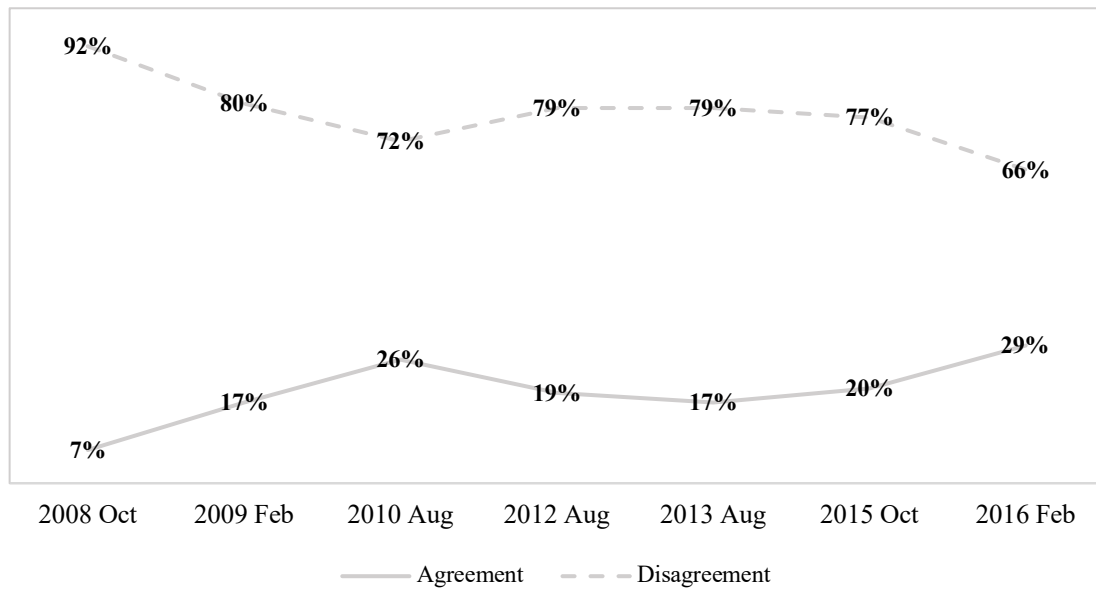
⁶³ Although "the drugs debate in Mexico is not a new topic for the political agenda" (Hernández-Tinajero & Rivera 2010:1), no legislative initiative was ever discussed (Barra 2010), because there was no "political will" (Appel 2013:224). "Until very recently speaking of the necessity to regulate cannabis in the Mexican Congress meant entering a hostile and prejudice-filled environment" (Belaunzarán & Gracie 2018:173). Yet, by 2016, "cannabis regulation had become the central concern for the legislature" (Safie 2016:161).

Código Penal Federal (hereafter CPF) and *Ley General de Salud* (hereafter LGS). Mexican law does not include criminal punishment for drug use. Possession for personal consumption is illegal, but exempted from criminal prosecution if it does not exceed the maximum thresholds established, for instance five grams for cannabis (*LGS*, Articles 478 and 479). Simple possession above the thresholds is a criminal offense (*LGS*, Article 477). Regarding production and supply of cannabis, the *Ley General de Salud* (Article 235) establishes a complete administrative prohibition. All activities related to the production, commerce or supply are prohibited “without the corresponding authorization” (*CPF*, Article 194). Thus, nearly all behaviours prior to use, such as acquisition, distribution, cultivation, production, planting or harvesting, of cannabis are crimes.

Public Opinion

There is ample evidence that prior to reform Mexicans rejected marijuana legalization. In fact, public opinion data shows overwhelming opposition. In surveys conducted by Parametria (2016), more than two-thirds of respondents disagreed with cannabis legalization (Figure 22). Different surveys conducted by CESOP (2016a) and Mitofsky (2018) found similar levels of opposition prior to 2015, when the Supreme Court challenged the prohibitionist *status quo*. As elsewhere, better educated, more well-off and younger respondents were more supportive of marijuana legalization (Palazuelos 2020). In contrast to recreational marijuana, medicinal marijuana enjoyed public support.⁶⁴

⁶⁴ According to a CESOP survey in 2016, around 80% of respondents were in favor of allowing cannabis to be used for medicinal purposes (CESOP 2016b:35). Similarly, elevated levels of support for medicinal marijuana have been obtained repeatedly by Parametria (2015, 2016) and Mitofsky (2018, 2019).



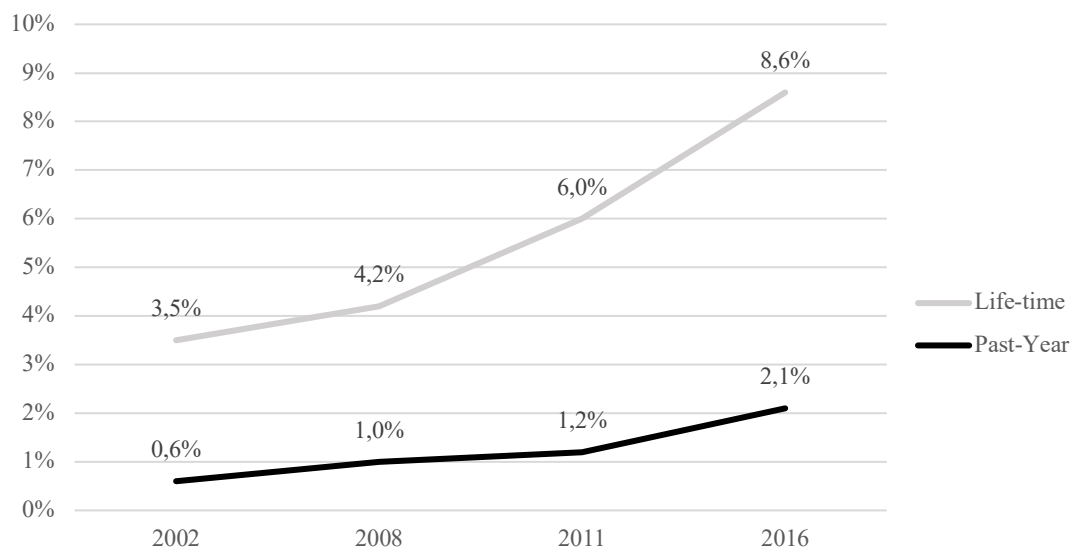
Note: Author's elaboration from several opinion polls about support for marijuana legalization. *Source:* Parametrira

Figure 22: Public Opinion on Marijuana Legalization in Mexico (2008-2016)

More recent survey data suggests that, following the Supreme Court’s landmark ruling in 2015, support for recreational marijuana legalization has increased, but the degree of change is far from clear. On the one hand, CESOP (2018) found that 46% approved and 50% disapproved of the legalization of marijuana use. These numbers stayed the same in subsequent surveys (CESOP 2020). On the other hand, Mitofsky (2018) reports that almost as many (43%) think that marijuana should be legalized as those who think it should not be (44%). A year later, Mitofsky (2019) reported that a majority of respondents (58%) supported marijuana legalization. According to Roy Campos, director of Mitofsky, a more favorable public opinion makes legislative change easier: “Of course, there will still be criticism and groups opposed, but there won’t be a political cost because the majority..., do not see [legalizing marijuana] as a bad measure” (Soto 2019).

Normalization

In line with public opinion data, available quantitative and qualitative evidence suggests that marijuana is not normalized in Mexico. Unlike in Chile (see Chapter 4), for example, marijuana is hardly socially or culturally accepted in Mexico. Although cannabis is easily accessible in Mexico, reported prevalence rates are low (Figure 23), especially in comparative perspective (Pérez-Correa & Ruiz 2018).⁶⁵ While there are few grow shops in Mexico and home cultivation is not widely practiced (Lozano 2018), cannabis is readily available. Asked in 2018 how easy it is to get hold of cannabis, 74% of respondents said that it is “very” or “somewhat” easy and only 12% say that it is not easy at all (Mitofsky 2018). One reason for the low reported consumption rates might be the social stigma attached to cannabis consumption.



Note: Reported Prevalance of cannabis use in Mexico. *Source:* Encuesta Nacional de Consumo de Drogas, Alcohol y Tabaco (CONADIC 2016).

Figure 23: Prevalence of Cannabis Consumption in Mexico (2002-2016), data from CONADIC

⁶⁵ The reliability of official data on prevalence rates has been questioned because of who, how and where respondents are asked about their drug consumption (Labate-Caiuby and Ruiz 2014).

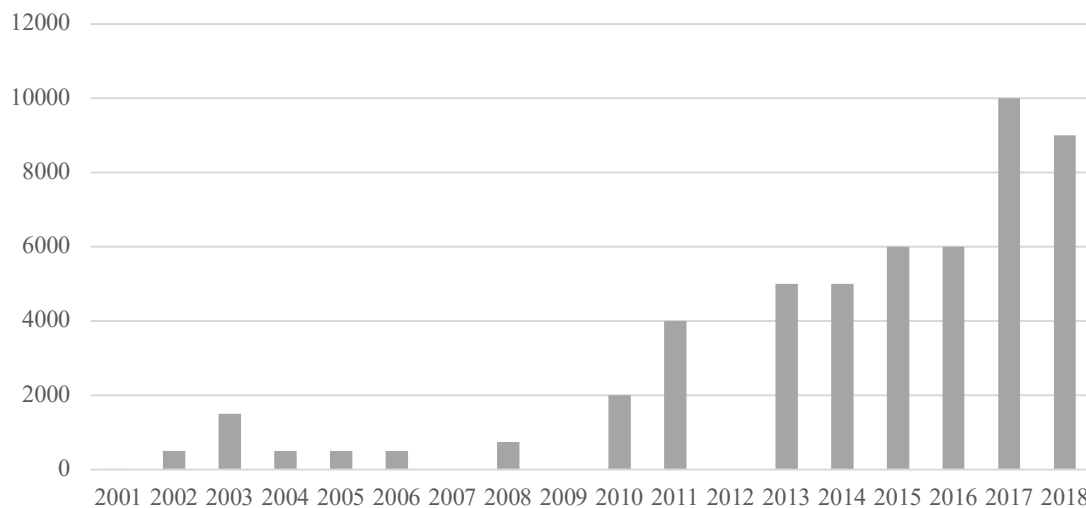
In Mexico, cannabis “has the worst possible reputation” (García-Vallejo 2014:14). Public opinion surveys show the negative image that cannabis and its users have. In 2014, 43% of respondents said that consuming cannabis is morally “bad,” 10% said it is morally acceptable and 39% said it is not an issue of morality (CESOP 2014). In another survey, 69% of respondents said that they consider that those addicted to cannabis abandon their studies, 60% that they are “problematic,” and 58% that they are “violent” (CESOP 2016a). In a 2016 survey, 73% of respondents said that they did not trust a person who consumes cannabis (CESOP 2016b).

These figures are consistent with more anecdotal evidence. Even in Mexico City’s bohemian neighborhoods, I witnessed few people smoking cannabis openly. The reason why cannabis consumption is not more visible might be a lack of societal acceptance. Long-time cannabis activist, Jorge Hernández-Tinajero, remembers: “*Mariguanos* used to be equated with criminals, so you would not get close to them because they’d harm you...You were afraid of them.” (Interview, September 21, 2017). Indeed, the term *mariguano*[pothead] has long been “associated with delinquency, evil and laziness” (Hernández-Tinajero, Rivera & Zenil 2013:25). As such, coming out as a cannabis user is not easy. As Alberto, a cannabis user, states: “To admit that you are a cannabis user [*pacheco*] is not easy. Socially it is not easy. They discriminate you” (Lozano 2018:73).

Social Mobilization

While dedicated pro-legalization groups have existed for years in Mexico (García-Vallejo 2012), bottom-up pressure in favor of marijuana liberalization has been relatively weak. Since its beginnings in 2001, when 15 people gathered in the *Parque México* to demand marijuana legalization (Hernández-Tinajero, Rivera & Zenil 2013:66), Mexico’s

cannabis movement has engaged in collective action to promote legalization (Guerra 2018). While participation in the annual *Marcha* has increased (Figure 24), it has not reached the turn-out levels witnessed in the Southern Cone (Figure 7, Introduction).



Note: Absolute attendance at the annual *Marcha* in Mexico City. *Source:* Media reports (Appendix 4)

Figure 24: Turn-out Rates for Annual Marcha de la Marihuana in Mexico (2001-2018)

According to the *Marcha*'s organizers from the *Asociación Mexicana de Estudios sobre Cannabis* (AMECA), such as Julio Zenil, the *Marcha* performs important functions: it brings those in favor of cannabis liberalization together, signals strength and gives publicity to the demand for change (Interview, September 25, 2017). However, as I observed in Chile, many of the *marcha*'s participants are more interested in getting high than in the intricacies of public policy and its message "dissolves within the mass of people" (Guerra 2018:114). According to cannabis activist Aldo Contró, the protest is more a "carnival than political event" (Interview, November 6, 2017). For most decisionmakers and "more respectable" reform proponents, the *Marcha* is not an event they would want to be seen at, according to a well-connected cannabis advocate (Zara Snapp, Interview, October 18, 2017).

Amidst a “lack of resources” and “considerable prejudices” (Guerra 2018:109), the movement’s continuing growth is already a success for leading activists (Leopoldo Rivera, Interview, September 28, 2017). But there is a difference between activity and effect. In this sense, grassroots cannabis activists have been far from successful. Activists such as Jorge Hernández-Tinajero, Leopoldo Rivera, or Aldo Contró highlight that they have struggled to gain access to and secure attention from decision-makers (Interviews, September 21, 28, and November 6, 2017). A common grievance expressed during interviews was that their demands do not resonate with those in power. Reform proponents compare themselves to “a mosquito that buzzes around political forces” (CUPIHD 2013). A public letter released in 2012 aired activists’ frustrations:

Unfortunately, the Mexican press and successive governments have decided to hide this movement, not engage with its arguments or images of massive mobilization, and, specifically deny our peaceful and respectful manner, besides excluding us from debates about cannabis liberalization (Rivera *et al.* 2012).

Despite claims that cannabis activism has grown in its capacities, diversified its membership and added new allies (García-Vallejo 2012; Hernández-Tinajero, Rivera & Zenil 2013), most cannabis activists struggle to make their voices heard in institutionalized decision-making venues. Whenever cannabis reform is discussed, “what stands out is the well-documented absence and complete exclusion of cannabis users” (García-Vallejo 2014:25). As I will substantiate below, the lack of professional structures, resources and connections has prevented these “usual suspects” from playing a prominent role, whereas a small group of “unusual suspects” – professionals, businessmen and elite lawyers– were both able and willing to influence drug policy in Mexico.

Coda: Violent Mexico

The elephant in the room when it comes to drug policy in Mexico are the country's shocking levels of drug-related violence. Since 2006, Mexico's "war on drugs" has reached levels of casualties usually witnessed in "civil wars" (Shirk & Wallman 2015; Lessing 2017; Schedler 2018). Both in terms of its "visibility" and "frequency" Mexico's "narco violence" is extreme (Durán-Martínez 2017). Violence stems not only from "inter-cartel turf wars," but also from "cartel-state conflicts" (Lessing 2017), as well as counter-narcotic operations (Madrazo, Calzada & Romero 2018).

Mexico's violence is a constellation of conflicts involving competition among heavily armed criminal organizations, state combat with these groups, and, increasingly predatory violence by these groups targeting ordinary civilians for extortion, kidnapping and robbery (Shirk & Wallman 2015:1368).

The direct and indirect negative effects of drug violence in Mexico have been nothing short of catastrophic: tens of thousands have lost their lives, been disappeared or tortured (Watt & Zepeda 2012; Hari 2015; Grillo 2017). While the drug-related violence of the past decade and a half does not affect all Mexicans equally (Osorio 2015), it has led to an overall reduction in life expectancy (Aburto *et al.* 2016). Violations of human rights have become a routine aspect of both militarized counter-narcotic and drug-trafficker operations (Anaya 2011; Carlsen 2017). For all the costs in blood, treasure and lives, the positive effects of Mexico's "war on drugs" have been disappointing: "The tragedy of militarized drug war is not just the amount of violence visited on ... Mexico, but how little seems to have been gained in return: drugs continue to flow" (Lessing 2017:33).

While there is an excellent literature on the causes of drug violence in Mexico (for instance Lessing 2017; Durán-Martínez 2017; Trejo & Ley 2020), its consequences for drug policy reform remain unclear. Little is known about how the context of extreme drug violence affects cannabis reform. As other crises, the crisis of Mexico's drug violence "does not come with an instruction sheet" (Widmaier, Blyth & Seabrooke 2007), rather what is to be done in response is open to discussion and contestation (Boin, t'Hart & McConnell 2009). In particular, because the impact marijuana legalization would have on levels and types of drug violence in Mexico is uncertain (Prieto-Curiel 2020), Mexico's crisis leads to two competing claims about the merits of cannabis reform.⁶⁶

On the one hand, several security experts have argued that legalization would not affect organized crime or reduce drug related violence.⁶⁷ Their argument that marijuana legalization is insufficient and therefore unnecessary is threefold. First, criminal actors would adapt to changing circumstances (Smith 2013). Second, they have diversified activities and the domestic cannabis market represents only a small portion of their revenues (Ríos 2013). Third, most of the violence is related to the export of other illicit substances (Elizarraras 2015). As such, they contest framing cannabis reform as solution to Mexico's drug violence. According to Alejandro Hope, "[t]his is not a security issue.... If you frame this as a magic wand to reduce violence, we are in for a major disappointment... Go for it, but it will not bring peace" (Webber 2018).

⁶⁶ Two further arguments regarding violence and marijuana legalization exist: the impossibility thesis and the worsening thesis. First, "Mexico is not Uruguay" and because of its institutional weaknesses and extreme violence Mexico is "incapable" to implement legally regulated cannabis (Isern 2014; Rocha 2014, 2018). Second, legalization makes things worse not better because it would produce a market shock that would increase violence – at least in the short term (Ríos 2012).

⁶⁷ Edgardo Buscaglia argues that there is "no reason to expect that organized crime would diminish because of regulation" (Sosa 2020). For Vanda Felbab-Brown legalization is "not a panacea" and there is "no quick fix to eradicating violence." (Felbab-Brown 2018). Alejandro Hope writes that the "impact [of legalization] will be very modest. It won't mean the cartels go broke nor will it end the killing" (Hope 2013).

In the other camp are those who see cannabis reform as insufficient but necessary for addressing Mexico's drug violence.⁶⁸ Readily conceding that legalization is not a silver bullet, they contend that cannabis reform would contribute to reducing violence, by taking away some of the criminal proceeds of that allow drug traffickers to arm themselves, to corrupt state officials and finance their activities (Barra 2016; Zedillo et al. 2018; Gutiérrez 2018). Even if not the only or most important source of revenues, marijuana legalization would be a start. As pro-reform legislator Fernando Belaunzarán argues "legalization is a necessary but not sufficient condition. It is not enough, but it would help a lot" (Interview, October 9, 2017).

These differences in "expert opinion" can also be found in the general population.⁶⁹ Regardless, the belief that marijuana legalization represents a way to improve public security has also taken hold among certain decision makers and policy entrepreneurs. As I will detail below, drug violence in Mexico motivated a new set of actors to become involved in the advocacy for cannabis reform, or support changes. For instance, Olga Sánchez Cordero, former Supreme Court Justice, Senator and presently *Secretaria de Gobernación* has argued: "How much blood has been spilled, how many crimes have there been before a joint reaches someone's hands? It's terrible." Describing the cannabis reform bill she presented in 2018, she stated: "This is an important step towards pacification" (Webber 2018).

⁶⁸ Santiago Roel (2020) contends that "Mexico cannot reduce its violence if we do not first regulate drugs". For Ioan Grillo (2012) "legal marijuana will take away dollars that pay for assassins and redirect them to small business and government coffers." For Alejandro Madrazo, "the depenalization and regulation of drug markets is a necessary condition to reduce the indices of violence" (AresteguiNoticias 2018).

⁶⁹ One opinion survey finds that almost half of the respondents believe that there would be less violence after legal regulation of marijuana, with 30% believing there would be more (Mitofsky 2019). Another survey finds the exact opposite: 52% of respondents said violence would increase and 33% it would decrease (CESOP 2020).

Cannabis Reform in Mexico

In the following section, I trace how cannabis reform gained both attention and approval in Mexico. As in the other two country chapters, this “factual” account provides the basis for my subsequent counterfactual analysis. In contrast to Uruguay and similarly to Chile, in Mexico the government did not independently propose cannabis liberalization. Rather, in a context of negative public opinion, as well as low levels of mobilization and normalization of cannabis, it took the involvement of outsider challengers, in this case a small group of “elite actors,” to advance cannabis reform (Martínez 2020). Employing strategic litigation, reform proponents secured five *amparos* from the Mexican Supreme Court, thereby upending *status quo* of drug prohibition. As result of legal mobilization, Mexico’s Supreme Court declared the prohibition of cannabis unconstitutional in 2015 and reiterated its decision in 2018, which resulted in binding jurisprudence.

Press coverage of cannabis reform provides a first glance at relevant developments (Figure 25). I illustrate attention by counting the number of news items related to cannabis reform per week published in the newspaper *Reforma* between 2012-2018. The two initial spikes in reporting reflect eventually unsuccessful subnational reform attempts in Mexico City’s assembly in 2013 and early 2014. The next peak occurs in November 2015, when the Supreme Court declared the absolute prohibition of cannabis unconstitutional. Lower but sustained reporting activity thereafter reflects public and legislative debates, especially President Peña Nieto’s limited drug policy reform proposal in April 2016 and a medicinal marijuana law passed in June 2017. The last spike in attention corresponds to the fifth ruling of the Supreme Court which created binding jurisprudence in October

2018 and the legislative proposal for comprehensive cannabis regulation that was presented thereafter (for a detailed timeline see Appendix 8).

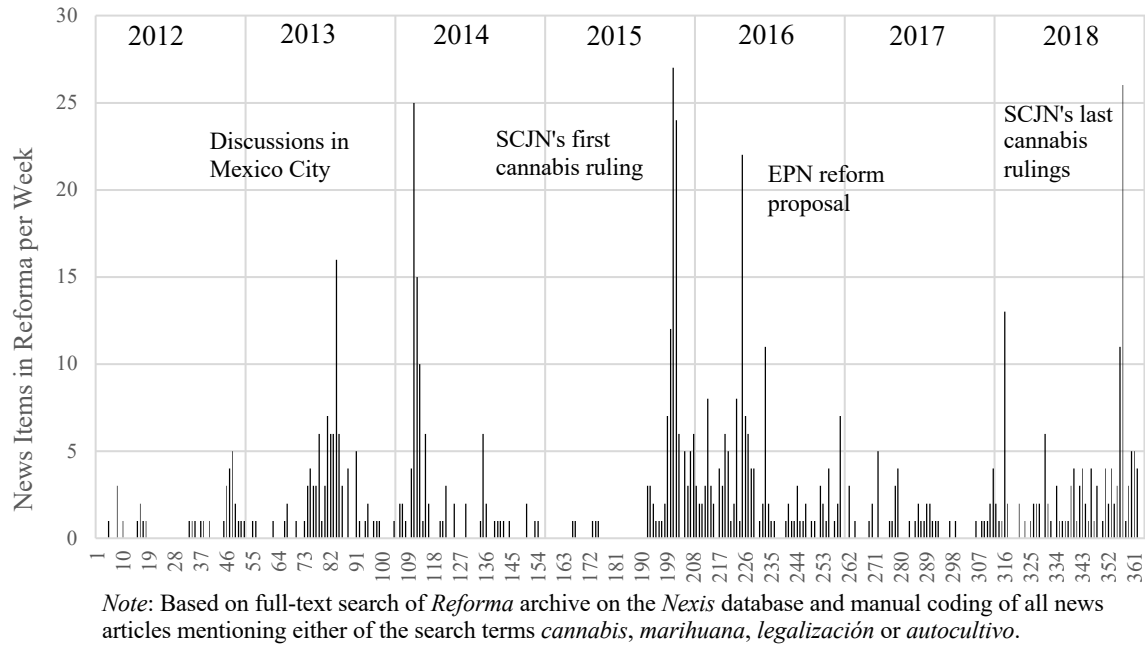


Figure 25: News Items on Cannabis Reform Published in Mexico (2012-2018)

The following section proceeds as follows. First, I establish that there was no insider agenda setting, and therefore outside challengers had to set the agenda. Furthermore, I discuss why all legislative reform initiatives – even in the most-likely context of Mexico City – failed. Second, I analyze how the Mexican Supreme Court became a promising institutional decision-making venue for outsider challengers able to perceive and take advantage of this opening. Third, I detail how a small group of “unusual suspects” strategically constructed a legal challenge to drug prohibition in Mexico. In particular, I pay close attention to their choices of messages and messengers. Fourth, I scrutinize the reasoning behind the Supreme Court ruling of November 2015 to establish the effect of strategic litigation on judicial behavior. Fifth, I assess agenda denial efforts, finding that most occurred after rather than before the Supreme Court’s decision. Sixth, I highlight

why there was a need for continued outsider agenda maintenance and how further legal mobilization resulted in a fifth successful *amparo* and therefore binding jurisprudence in November 2018. Lastly, I briefly touch on the legislative process – ongoing at the time of writing – that is likely to result in comprehensive cannabis reform in Mexico.

The Need for Outsider Agenda Setting

There was no insider agenda setting for cannabis reform. Opposition to marijuana legalization among political elites was always strong. This rejection of cannabis reform by successive presidents all but guaranteed that change would be difficult –if not impossible– to achieve. Vicente Fox (2000-2006) strongly opposed cannabis legalization and showed no willingness to meaningfully move in the direction of legal access to cannabis.⁷⁰ Felipe Calderón (2006-2012) also made his opposition to drug policy liberalization clear while in office.⁷¹ Enrique Peña Nieto (2012-2018) stuck to a rather vague script on drug policy reform: against legalization but supposedly open to discussing reforms in multilateral fora (Giacomello 2013; Lozano 2018; Corona 2019). He called marijuana legalization a “facile” and “wrongheaded” idea (Notimex 2013), and substantiated his rejection in the following terms:

I cannot be in favor because I believe that the consumption of drugs, however soft they might be, leads invariably to consumption of more harmful drugs. It is clear that any drug consumption produces negative societal effects (EFE 2013).

⁷⁰ Fox summarized his position in an interview: “We must be against the consumption of drugs in Mexico. We got to change the law to show that we are clearly against the consumption of drugs... Drugs make you lose your senses and provoke the greatest crimes we have in the country (Nexos 2000). Fox later became an outspoken and controversial proponent of cannabis liberalization (Maldonado 2019).

⁷¹ Illustrative of Calderón’s attitude are statements he made in 2010 “I do not agree with legalization...liberalizing the drug market completely... will lead millions and millions of young people to consume drugs” (EFE 2010).

Lacking political support, the various legislative initiatives aimed at liberalizing cannabis policies tabled over the years never stood a chance (Hernández-Tinajero & Rivera 2010; Hernández-Tinajero 2012; Safie 2016).⁷² As Hernández-Tinajero (2012:3) notes: “the debate on cannabis has not yet generated enough force for there to be serious discussions about a new government policy.” Indeed, a review of legislative initiatives shows that the fifteen initiatives introduced between 2005 and 2015 were never discussed (Safie 2016). Without support from above or below, most legislators were unwilling to support cannabis reform.

Legislative allies of the cannabis movement have been few and far between. Prior to 2015, only a handful of legislators engaged with and supported marijuana legalization (Sánchez, 2017). While they could give the issue episodic visibility, their reform initiatives were dismissed as “crazy attempts by isolated legislators,” as Elsa Conde, one of the early legislative champions of cannabis reform put it (Interview, November 29, 2017). Legislative allies, such as *Diputados* Fernando Belaunzarán, Vidal Llerenas or Martha Tagle, were aware of the inevitable failure of their reform initiatives and saw them merely as “testimonials” and conversation starters, rather than proposals likely to prosper (Interviews, October 9, November 22 and 21, 2017).

With cannabis reform making little progress at the national level, attention began to focus on achieving success at the subnational level. In Mexico City, challengers perceived that

⁷² Representative Elsa Conde (PSD) introduced three bills that would allow *autocultivo* (2007), using cannabis for therapeutic purposes (2008b), or, growing hemp for industrial purposes (2008a). In 2008, Senator Rene Arce (then-PRD), presented an initiative that would legally regulate the cannabis market (Arce 2008). First in 2008 in the ALDF (2008) and two years later in the national parliament (2010), Representative Víctor Hugo Círigo presented a cannabis reform bill. In 2012, Fernando Belaunzarán (PRD) introduced another cannabis liberalization bill in the national legislature (Belaunzarán 2012). However, the bill encountered staunch opposition from both PAN and PRI legislators (Pinoteau 2012). In 2014, Mario Delgado (2014) introduced a medicinal cannabis bill in the Senate, which did not progress either.

they had better chances to succeed. According to long-time cannabis reform proponent Zara Snapp, the city's left-wing administration was more open and aligned with cannabis activists' policy demands (Interview, Mexico City, October 18, 2017). Additionally, the *Partido de la Revolución Democrática* (PRD), which governed Mexico City between 1997 and 2018, had a progressive track-record on other controversial issues that had made little progress on the national level, such as abortion (Madrazo 2009) and same-sex marriage (Díez 2013). Finally, advocates thought that they could count on the support of key decision-makers. As Aram Barra, a prominent cannabis advocate, puts it: "Locally, we thought there was more political will...we knew more actors, were closer to them and new better how to exert influence" (Interview, September 22, 2017).

Mexico City's mayor, Miguel Ángel Mancera, appeared to be on board with cannabis reforms. In 2013, he set up a committee under the leadership of Alejandro Madrazo to come up with a reform proposal (Interview, Aguascalientes, November 29, 2018). According to Barra, who took part in the discussions, "[Mancera] knew the initiative very well. Privately, he had a very important role." In early 2014, some PRD legislators proposed new cannabis legislation in Mexico City's *Asamblea Legislativa* (ALDF). If passed, the law would assign cannabis-related activities a lower prosecutorial priority (Safie 2016). Despite initial optimism among activists, the initiative quickly stalled. Vidal Llerenas, one of the sponsors of the bill, recounts how other PRD and opposition legislators rejected the initiative (Interview, November 22, 2017). Even more problematic was that Mancera publicly disavowed the initiative he initially supported: "There are still many who rightfully say: 'marijuana should not be legalized;' we all agree that debates should not focus on recreational [cannabis], of course not" (Cruz & Ramírez 2014).

As result, “the initiative did not have the support of the local government and was not considered by the [Assembly]” (Safie 2016:165). Despite activists’ perception that Mexico City was a more promising venue (Zara Snapp, Interview, October 18, 2017), another attempt to reform cannabis legislation had failed. As Barra stated, activists had to learn the hard way that “there was neither political vision nor will for cannabis reform in Mexico City” (Interview, September 22, 2017). While not a completely sequential process, failure in Mexico City, arguably the most-likely reform context, led reform proponents to focus their efforts elsewhere. As Lisa Sánchez, a highly influential advocate, who has long been involved with drug policy reform processes, remembers:

The disappointment of failing in Mexico City [and] distrust in politicians taking any action [to liberalize extant drug laws] led us to place more and renewed importance in the judicial process (Interview, October 20, 2017).

The Opportunity for Outsider Agenda Setting

Changes to the legal opportunity structure made Mexican courts a more promising avenue for challengers of the *status quo*. For most of its history, Mexico’s Supreme Court (SCJN) was “passive” and “subservient” to the presidency (Domingo 2000:7). During the PRI’s one-party-rule, the Court served as “superficial counterweight” to executive authority and “carefully avoided any major involvement in politically sensitive issues” (Finkel 2003:782). But with the political opening and fragmentation of the early 2000s, a more assertive and emboldened judiciary has emerged that is increasingly willing to rule against those in power. (Ríos-Figueroa 2007).

Over the past three decades, changes have gradually increased access to the Supreme Court and empowered it (Castagnola & López-Noriega 2016a). Institutional reforms

increased both its independence and authority, constitutional change gave human rights greater judicial weight, and the *amparo* process underwent reforms, facilitating the filing of writs of unconstitutionality (Pozas-Loyo & Ríos-Figueroa 2016). Furthermore, personnel turn-over has undermined the Court's strong legalist tradition: new, more progressive justices inspired by neo-constitutionalist philosophies turned the Court in an "arena for political contestation" (Castillejos 2013:140). As a result, the SCJN has become a more important player in Mexican politics, which has pro-actively reinterpreted its role. According to Pou Gímenez (2016): "If the Court was traditionally shy, technically inclined and little prone to alter the status quo... it is now a highly visible and consequential player in Mexican political life."

Recently, the Court has used certain cases "to speak of and flesh out fundamental rights with unprecedented frequency and depth" (Madrazo & Vela 2010:1868). But, the SCJN has neither consistently been progressive in its decisions, nor steadfast in its defense of fundamental rights. While there have been several landmark decisions on controversial topics,⁷³ the Court has not been as expansive in its interpretation of constitutional guarantees as other Latin American courts (Ríos-Figueroa 2011). The SCJN "has not necessarily become a stronger guarantor of rights, even though it has reflected on them at greater length" (Ansolabehere 2010:105). Nonetheless, a more favorable legal opportunity structure in terms of access, autonomy and precedents has developed. Court officials confirm that the SCJN has become more willing and able to limit the executive and protect civil liberties (Arturo Bárcena, David Sarubbi, Raúl Mejía, Ana María Ibarra and Ignacio Valdés, Interviews, October 3, 10, 25, 30 and November 9, 2017).

⁷³ For instance, there have been important "progressive" SCJN decisions on issues of gender and reproductive rights (Madrazo & Vela 2010, freedom of expression, freedom of association, indigenous rights (Ansolabehere 2010), or circumscribing military jurisdiction Pozas-Loyo & Ríos-Figueroa 2016)

Such opportunities might have been necessary for legal mobilization to occur, but challengers also needed to have the means to take advantage of this opening. Most activists “still prefer to march down *Paseo de la Reforma* or mount a hunger strike in the *Zócalo* rather than sue the government or legally challenge violations to their rights” (Ríos-Figueroa 2012:316). Activists tend to be unaware that they could engage in legal mobilization (Rosales 2012). Further, not all activists are capable of mounting strategic litigation, as the *amparo* suit, a legal instrument designed to challenge government actions that violate individual rights, is technically complex (Elizondo & de Acha 2006). Even though the *recurso de amparo* allows citizens to file appeals on the grounds of unconstitutionality by denouncing norms and acts of authority (Zamora *et al.* 2004), the *amparo* has been an “obscure procedure” which “seldom spoke to the substance of fundamental rights” (Madrazo & Vela 2010:1868). To benefit from legal opportunities, reform proponents had to be both willing and able to understand them, overcome obstacles, and craft a legal challenge capable of advancing marijuana legalization.

Outsider Agenda Setting: Legal Mobilization

Reacting to the lack of progress elsewhere and a more promising legal opportunity structure, a group of elite actors decided to take their demands to Mexico’s Supreme Court. In doing so, advocates were enabled by certain organizational characteristics, such as their skills and resources, their position in society and proximity to decisionmakers (Martínez 2020). Legal mobilization was a way to force engagement with the issue and thereby advance drug policy reform. As one of the litigants, Juan Francisco Torres Landa, put it: “strategic litigation aimed to undermine and shake up the foundation of prohibitionist drug policies” (AFP 2015).

Legal mobilization was the result of an alliance between two very different organizations, the *Centro Estratégico de Impacto Social* (CEIS) and *Mexico Unido Contra la Delincuencia* (MUCD). Motivated by their desire to change extant drug policies in Mexico and a lack of progress elsewhere, they joined forces to undertake legal mobilization. Each of them brought something distinct to the table: CEIS the legal expertise and MUCD the social legitimacy. In combination, they were not only willing, but also able to engage in novel collective action to advance marijuana legalization. These were not only highly unusual actors to be involved in drug policy advocacy, but worlds apart from the usual “grassroots” cannabis activist in terms of their background, capabilities and approach to reform.

The *Centro Estratégico de Impacto Social* was formed by Andrés Aguinaco and his friends from law school who decided to make use of their legal skills “to bring about social change and protect civil rights” (Pérez-Stadelmann 2015a). CEIS’s lawyers possessed ample knowledge of the *amparo* process and decided that they had to get involved to address Mexico’s devastating “war on drugs” (Lozano 2018:31). While studying in law school, Aguinaco remembers that “he became obsessed about the idea to take the topic of cannabis legalization all the way to the Supreme Court” (Solera 2015).

Mexico Unido Contra la Delincuencia, on the other hand, is a long-established and deep-pocketed organization working to reduce impunity, violence and corruption in Mexico. When MUCD decided to get involved with drug policy reform in the late 2000s, an unlikely and resourceful actor entered the struggle for cannabis reforms. According to one of its board members, Javier Mancera, MUCD is a group from the “potbellied bourgeoisie,” with roots in Mexico’s conservative establishment (Interview, November

21, 2017). For its current president, Armando Santacruz, MUCD has traditionally been a “law and order” organization working to combat corruption and impunity, so the organization’s support for cannabis reform could not easily be assailed for being “soft on crime” (Interview, November 13, 2017).

MUCD’s involvement with cannabis legalization was “incidental,” as Lisa Sánchez, then-director of the organization’s drug policy program, explains (Interview, October 20, 2017). Reforms were never considered an “end” in itself. Rather, MUCD was looking for means to address the drug-violence plaguing the country, which had personally affected several of its members (Martínez 2020). According to Juan Francisco Torres Landa, MUCD’s secretary, they perceived Mexico’s extant drug policy as the “primordial cause” of violence, as prohibition inflates profits of drug traffickers. In response to the escalating violence, they decided “enough is enough,” and accordingly began to work on achieving marijuana legalization (Interview, November 6, 2017).

The two organizations began working together in 2012 after Andrés Aguinaco approached Torres Landa. While CEIS had the legal know-how to make use of the *amparo* process, they had no expertise with drug policy, few links to NGOs, resources or media presence, all of which MUCD possessed. “They had the recognition and legitimacy, and we had the knowledge of litigating human rights” (Pérez-Stadelmann 2015a). To advance their common cause, Andrés Aguinaco made the following proposal: “How about if we would offer you a way to take the discussion you are trying to instigate in society and Congress to the Supreme Court?” (Interview, September 27, 2017). The proposal was intriguing. Torres Landa “considered it a genius strategy to kick-start the discussion about the legalization of drugs that was so desperately needed” (Solera 2015).

Presenting a legal challenge itself was not that difficult; undertaking legal mobilization that would reach the Supreme Court and could convince the justices was. This required actors capable of navigating the opaque Mexican legal system and to make their case in a technically sound and skillful manner (Martínez 2020). In line with my overall argument, challengers were cognizant that it did not only matter that they activated the courts, but also, how they did so. In other words, strategic framing was key. They had to construct arguments and select litigants in a way that appealed to the justices. The goal was to present themselves and their case in the best light possible. To do so, they framed the case to fit with recent Supreme Court precedents, resonate with judges' extant institutional concerns, and to connect cannabis liberalization with certain constitutional guarantees that the Court wanted to strengthen. In addition, the litigation team made sure to select claimants with impeccable credentials and unassailable personalities to avoid being dismissed or stereotyped.

Aware of the fact that they needed “to design a litigation strategy that would enable us to win” (Torres Landa in Pérez-Stadelmann 2015a), litigants chose to trigger an administrative controversy and thus obtain legal standing to fight the case. To do so, Josefina Ricaño, Armando Santacruz, José Pablo Girault, and Juan Francisco Torres Landa formed the *Sociedad Mexicana de Autoconsumo Responsable y Tolerante* (SMART). SMART's members had no interest in consuming or growing cannabis themselves, but wanted to change Mexico's extant drug policy. SMART – a “cannabis club” – was formed in 2013 with the sole aim of litigation. Subsequently, they applied for governmental authorization to grow cannabis. As SMART's lawyer, Fabián Aguinaco, recounts, no such permit had ever been conceded to anyone, so “there was no doubt that they would deny” the request (Interview, September 27, 2017). As anticipated,

the *Comisión Federal para la Protección contra Riesgos Sanitarios* (COFEPRIS) rejected the application, allowing the appeal of the decision. SMART's lawyers filed an *amparo*. A lower circuit judge ruled against them (Tello 2013), allowing SMART to further pursue its *amparo*. Again, this decision was not unexpected. Losing this battle was part of the strategy for winning the war. In Andrés Aguinaco's retelling:

We did not intend to win; we just wanted the case not to be thrown out... because this way it could go all the way to the Supreme Court... We were happy that the *amparo* was denied (Interview, September 27, 2017).

Some aspects of the *amparo*, including the collective rights claimed by SMART as an association, were declared inadmissible. Litigants dropped references to the association in their appeal, recognizing that this narrowed their chances: "the topic of whether a juridical person, not a natural person could be subject to certain rights would probably have made it more difficult to reach a favorable decision" (Torres Landa, November 6, 2017). Supreme Court clerk, Raúl Mejía, agrees that this would have "contaminated the discussion" (Interview, October 25, 2017). Such adjustments highlight that not every tactical choice automatically worked, but that litigants were willing and able to correct course when required.

On April 9, 2014, the Supreme Court agreed to hear this case because of its "importance and transcendence" (Suárez 2019). To elicit the support of the Court, challengers needed to be smart in making their case. The optics and characteristics of the case would matter a great deal. They not only needed to develop solid legal arguments, but also according to Andrés Aguinaco, "tell a good story" (Lozano 2018:33). Those developing the strategy behind legal mobilization were aware of the challenge of transforming the controversy

into a case that appealed and made sense to both the Supreme Court justices and the public. Two elements were considered crucial: the right litigants and a resonant framing.

For strategic litigation to work, the impeccable appearance of the litigants was identified as key to generate positive press and potential support from the Court. For the smaller audience of the SCJN, Andrés Aguinaco considers it helpful that the plaintiffs came from the same “social class” as the justices: “They were people with whom the judges could identify. People they knew and had been at dinners or social events together” (Interview, September 27, 2017). Choosing the right litigants was perceived as instrumental for getting a fair hearing and mainstreaming the issue in the eyes of the public and of the Court. Andrés Aguinaco saw in Torres Landa the perfect representative for the case.⁷⁴

He was my ideal client, a person who would cause admiration: an upstanding citizen, Catholic, family man, and, successful professional... this would have enormous reach, because it would not generate any rejections in society, when this person, despite being a model citizen, says that he sometimes wants to smoke marijuana (Solera 2015).

In addition to having the right faces representing the issue, choices had to be made about how the argument would be presented and what aspects would be emphasized. The legal argument framed the issue of cannabis prohibition in terms of personal liberties and human rights. SMART (2014) requested “the respect and protection of the human rights to self-determination and freedom of choice.” According to Torres Landa, framing the judicial challenge in terms of violations of personal freedoms gave legal mobilization “a

⁷⁴ Torres Landa is managing partner at Hogan & Lovells. In 2006, he was recognised by the magazine of “*Poder y Negocios*” as one of Mexico’s most influential lawyers. He comes from a politically well-connected family.

novel and attractive spin” for certain justices, who had had made establishing and protecting fundamental rights one of the court’s main institutional priorities (Lozano 2018:42). The aim was to take advantage of the SCJN’s recent expansion of protections of personal liberties and guarantees and attention to comparative law. As Andrés Aguinaco recounts, they deliberately made connections between precedents about the boundaries of state interference in personal liberties such as divorce, abortion, and gender reassignment surgery, and made use of foreign jurisprudence.

We took rights that were already established, established by other rulings. And, we said: Look, the same should apply to cannabis... We made horizontal connections with rights established in Mexico and crossed borders using decisions about drugs from other countries (Andrés Aguinaco, Interview, September 27, 2017).

All these framing choices had one goal in mind: to maximize the chances of winning the case. Every argumentative move was made to try to tailor their case to fit with the justices’ preferences, convictions and precedents. As Andrés Aguinaco discloses, the principal audience that the litigants had in mind – and wanted to win over – was the Supreme Court. He concedes that the idea behind fundamental rights guarantees forming the basis of framing was less principled than pragmatic: “to give [the justices] reasons that they could put on paper” (Interview, September 27, 2017). In sum, with the aim of constructing a successful legal challenge to cannabis prohibition, a group of elite actors created an administrative controversy, spearheaded by highly respectable plaintiffs, and framed cannabis prohibition in terms of fundamental rights guarantees, a topic dear to the new court. As Fabián Aguinaco explains:

We did not develop an argument of sympathy or an argument of popular demand, rather an argument about the respect of individuals' human rights... We thought that that this was the most adequate way of presenting the issue... underlying the narrow question of drugs was a broader question of liberties: the auto-determination of what each and every one does with one's life (Interview, September 27, 2017).

Success in Court

In October 2015, Justice Zaldívar's draft opinion on SMART's *amparo* became public (SCJN, 2015). Zaldívar argued that prohibition was unconstitutional, because it was disproportionate *vis-à-vis* alternative measures to reduce drug use, and the right to the free development of the personality provided a residual space of liberties which includes growing and using cannabis for personal consumption. Zaldívar was influenced by the framing in terms of fundamental rights protections. Indeed, he argued from a personal liberty and human rights perspective, writing that cannabis "falls into the sphere of liberties of people to decide if they want to intoxicate themselves or not with it, because the state cannot impose a model of life" (Zaldívar, Bárcena & Ibarra 2015). According to Ana María Ibarra, one of Zaldívar's clerks working on the decision, the stream of precedents on the *libre desarrollo de personalidad* (LDP) and priority placed on strengthening rights guarantees were fundamental for the decision (Interview, October 30, 2017). Based on a detailed proportionality test, the ruling concludes:

The articles that establish a prohibition... of the acts related to the personal consumption with recreational ends (plant, grow, harvest, prepare, possess and transport) in regards to cannabis are unconstitutional (Zaldívar 2015: 79).

In short, Justice Zaldívar granted the *amparo* request, agreeing with the framing of the issue in terms of constitutional guarantees and liberties.⁷⁵ Explaining his decision, Zaldívar highlighted the importance of human rights and fundamental liberties and non-discrimination (Lozano 2018:38). Zaldívar and his collaborators embraced the “thinking about drugs in terms of personal liberties,” according to Arturo Bárcena, one of his clerks (Interview, October 3, 2017). As Zaldívar explained elsewhere:

The ruling is based on a robust conceptualization of personal liberties that rejects both unjustified paternalism and state-based perfectionism. The conclusion reached is that the prohibition of cannabis consumption violates the right to choose freely and responsibly (Zaldívar, Bárcena & Ibarra 2015).

Evidently, Zaldívar’s reasoning closely corresponds and concurs with the arguments presented by the litigants. While he might have reached the same conclusions presented with a distinct facts and arguments, the space for doing so would have been much reduced, as the Court depends to a large extent on the arguments expounded by petitioners. Presented as it was, the *amparo* gave Zaldívar an opportunity to further his institutional goal of positioning the Court as a “transformative agent” (Zaldívar 2018a). Some court insiders suspect that Zaldívar was also driven by personal ambitions to distinguish himself as a progressive justice. Yet, there were also risks in taking such a “courageous stance.” Arturo Bárcena remembers that everyone involved was acutely aware of how controversial and unpopular the decision would be. As such, the ruling had to be detailed and well-substantiated, so that it “could be understood by all Mexicans” (Interview, October 3, 2017).

⁷⁵ For a detailed discussion of Justice Zaldívar’s opinion, see Appendix 9.

Most importantly, the ruling had to attract the support of the other justices on the bench. The other four justices of the *Primera Sala* were José Ramón Cossío Díaz, Olga Sánchez Cordero, Jorge Mario Pardo Rebolledo, and Alfredo Gutiérrez Ortiz Mena. Because this was not a topic the justices had dealt with before, how cannabis would fare in the *Primera Sala* was a “coin flip.” According to Torres Landa, litigants were rather confident about the votes of two of the justices, but they had no idea about the other two.⁷⁶

On November 4, 2015, the five justices of the *Primera Sala* debated, deliberated, and decided on SMART’s *amparo*. Justice Zaldívar defended his draft opinion why “prohibition is a disproportionate measure” (SCJN 2015:33). As anticipated, Justice Sánchez voted in favor. According to her clerk, Ignacio Valdés, she championed the position that “anyone has the liberty to decide what to do with their lives, as long as they assume the responsibilities and do not affect anyone else” (Interview, November 9, 2017). She argued that personal liberties previously established by the court were at stake:

This court has recognized the just limits of personal liberties, such as sexual liberties and same sex marriage... People should have the opportunity to decide the path for their own lives, even if these are at times morally questioned by society (SCJN 2015:7).

⁷⁶ Justice Sánchez had been identified as solidly liberal and progressive on social issues, such as same-sex marriage and abortion, regularly concurring with Zaldívar (El Universal 2015). Litigants considered her a firm supporter of their *amparo*. As Torres Landa put it: “We knew that with Olga we had good chances that she would vote in our favor” (Interview, November 6, 2017). Justice Pardo was possibly the most conservative member of the *Primera Sala*, having been alone in ruling in favor of anti-abortion laws (El Universal 2015). His strict legalist decisions “follow the letter of the law, without making interpretations,” thus court observers considered him a secure vote against (Domínguez 2015). Justice Cossío, whilst a reformer (Castillejos 2013), is also a strict legalist and somewhat of a maverick thinker. This might explain why his vote was so difficult to predict for the litigants. Torres Landa recalls being unsure of his vote, even while Cossío publicly explained his reasoning. (Interview, November 6, 2017). Justice Gutiérrez, both the youngest in age and time on the bench, was something of a wildcard (Domínguez 2015). Customarily, he has followed Justice Cossío’s lead in his votes, but he was also close to the executive. Torres Landa was uncertain about his vote: “We did not know if he would care more about his affiliation with the government or his own convictions” (Interview, November 6, 2017).

Emphasizing privacy considerations, Justice Gutiérrez (2015) joined the majority. One of his clerks, directly involved in the decision, highlights that the paternalistic dimension of the case, and the infringement of fundamental rights that prohibition caused, were central to Gutiérrez's reasoning (David Sarubbi Interview, October 10, 2017). At issue for him was whether "the state has the right to decide what any of us can do in our private lives" (SCJN 2015:38). Justice Cossío reflected on the failings of drug prohibition, which had not, and will not succeed in reducing drug (ab)use, but fueled violence and corruption:

The policies limiting the access to controlled substances have contributed to increase the violence and corruption associated with organized crime, have damaged both communities and individuals and have generated a black market worth millions, and in doing so have [negatively] affected human rights and right to health. (SCJN 2015:9).

Cossío voted in favor of the *amparo*, despite ample misgivings with Zaldívar's reasoning, as emphasized by one of his clerks (Raúl Mejía, Interview, October 25, 2017). In a lengthy, concurring opinion, Cossío (2015) heavily critiqued, but nonetheless supported the decision.⁷⁷ Justice Pardo (2015) opposed the majority ostensibly not on substantial, but technical grounds, because there was no way to legally acquire cannabis seeds:

How can we guarantee the enjoyment of this right as part of right to the free development of personality, if the initial link in the chain of personal consumption, which is acquiring cannabis seeds remains a crime in the penal code? (SCJN 2015:6)

⁷⁷ Madrazo suspects that Cossío only voted in favor of Zaldívar's project, with whom he has a long-standing rivalry, because he did not want to be the only one siding with Pardo (Interview, November 27, 2018).

In sum, the Mexican Supreme Court granted the *amparo* and found the absolute prohibition of cannabis to be unconstitutional with four to one votes in favor. Strictly speaking, the ruling's effects were remarkably limited: As an *inter partes* decision, it only applied to the four litigants; for everyone else home cultivation of cannabis for personal consumption remained illegal. Only five consecutive decisions would result in the *erga omnes* abrogation of cannabis prohibition and binding jurisprudence.⁷⁸ This was just the beginning of the end of prohibition. As Andrés Aguinaco put it:

Of course, it is a great step forward in terms of constitutional rights... But if the judicial doctrine does not change it will not have made much difference ... What matters most is not winning the first case but the last case (Interview, September 27, 2017).

No Agenda Denial

The way in which cannabis reform proponents set the agenda – through legal mobilization – made it difficult for reform opponents to engage in agenda denial. Even though reform opponents met with some of the justices to influence their decision (Andrés Aguinaco, Interview, September 27, 2017), most agenda denial efforts occurred *after* the SCJN's decision. Reform opponents, such as Carmen Fernández, were not only taken aback by the ruling but “taken by surprise” that the Supreme Court would pay attention to cannabis liberalization at all (Interview, November 28, 2017).

⁷⁸ This reiterative process of affirmation to create jurisprudence is known as *reiteración de criterio*. The bar for this process to succeed is high: The same chamber must rule five times consecutively, in the same way, based on the same arguments, and, with at least 4-1 votes. (Zamora *et al.* 2004; Melgar 2018; Suárez 2019).

The most consistent opposition to cannabis liberalization came from the *Centro de Integración Juvenil* (CIJ), a drug-treatment organization.⁷⁹ Its director, Carmen Fernández, had long been an outspoken critic of cannabis reform. For her, cannabis was “highly addictive, dangerous and a gateway drug” (Interview, November 28, 2017). In contrast, most other opponents only came out in public against marijuana legalization after the SCJN’s decision. For instance, the Catholic Church issued a scathing statement, denouncing marijuana liberalization.⁸⁰ The *Unión Nacional de Padres de Familia* (UNPF), a “far-right group” that champions “traditional values” (González 2010), sprang into action when Zaldívar’s opinion became public.⁸¹ The clearest example of the reactionary nature of opposition was the campaign “*sin mota somos más*” launched in December 2015 (Páez 2015).⁸² Despite its claim that represented “more than 150 organizations” (Arellano 2016) and that the goal was to prevent marijuana legalization at all costs (Pérez 2016), there is no record of any activities after mid-2016.

Overall outsider agenda denial in Mexico was rather weak. Tellingly, an online petition against marijuana legalization on *change.org* failed to reach 100 signatures, even though its initiators claimed that “we are millions of Mexicans” who oppose cannabis liberalization and intended to secure 100 000 signatures (Clínica del Tabaco 2015). In contrast to outsider agenda setting, agenda denial was reactive and uncoordinated. One opponent summarizes their efforts at the time: “It sounds harsh, but it is true: we let them

⁷⁹ The *Centro de Integración Juvenil* vehemently opposes cannabis and has published a book with “evidence against marijuana legalization” (Fernández 2013).

⁸⁰ An editorial in the Church’s newspaper *Desde la Fe* called the ruling “another chapter in the disgraceful judicial history of Mexico” that would “generate a decadent, addicted and sick society” (DesdeLaFe 2015).

⁸¹ The UNPF launched an online petition calling on the Justices to “stop this decision that hurt Mexican society” (UNPF 2015), a small group protested in front of the SCJN (Villa y Caña 2015), and, they even published the Justices’ telephone numbers so opponents could voice their disagreement with the decision.

⁸² *Sin mota somos más* was an effort by various detractors of cannabis liberalization to influence public debates organized by the government after the Supreme Court decision (Ayala 2016).

win, we did not pressure enough, we were not enough [in numbers], we were not determined enough” (Serrano 2015). While there was a “prohibitionist coalition” of “conservative politicians, Catholic Church and conservative civil society organizations” in Mexico (Basurto 2020:15), most of their agenda denial efforts followed rather than preceded outsider agenda setting and the SCJN’s landmark decision. In contrast to Chile, medical doctors and associations did not forcefully oppose cannabis reform.⁸³

However, there was more and stronger agenda denial from actors inside the government than in Uruguay, similar to the case of Mariano Montenegro in Chile (see Chapter 4). For instance, Manuel Mondragón y Kalb, the commissioner of the *Comisión Nacional Contra las Adicciones* (CONADIC), strongly opposed cannabis liberalization: “When the talk was about allowing access to recreational marijuana, I had the opportunity and obligation to confront it [*dar la cara*] and fight against [marijuana legalization]” (García 2017).⁸⁴ However, for the most part the Peña Nieto administration did not engage in explicit agenda denial, but rather tried to contain the reform agenda by toning down its language and restricting its scope through an open-ended national debate.

The Need for Outsider Agenda Maintenance

The SCJN’s 2015 ruling “obligated” the Peña Nieto administration to take cannabis reform seriously (Valdivia 2015:152); or at least pretend to. Initially, the president downplayed the significance of the SCJN decision, highlighting that “it does not at all

⁸³ The former Health Secretary and UNAM rector Juan Ramón de la Fuente (2015) edited a book with evidence of the medical benefits of cannabis and dispelling misinformation about its harmfulness.

⁸⁴ CONADIC Commissioner Manuel Mondragón y Kalb (2015) penned an op-ed rejecting Zaldívar’s opinion. He published a book with evidence that cannabis consumption was dangerous and legalization harmful (Mondragón y Kalb 2017). In his denouncements he echoed CIJ and other outside opponents, claiming that “I don’t want a society addicted to drugs” (Igartua 2015). For reform proponents, Mondragón y Kalb “represents everything that needs to change about drug policy in Mexico” (Gomez 2018).

legalize consumption or commercialization of marijuana” (Arellano 2015). A few days later, he advanced what became the official position: personally, Peña Nieto remained opposed to cannabis liberalization but open for debate (Lozano 2018). He stated, “for me it is not desirable, nor am I in favor of eventual legalization of the consumption of cannabis.” However, the Supreme Court decision “sets a precedent [and represents an obligation] to open up a broad and inclusive debate about cannabis” (Resendiz 2015). Thus, Peña Nieto initiated the process for a national debate on drug policy (Corona 2019).

The “national debate about the use of marijuana” was held in five cities during January and April, 2016 (SEGOB 2016).⁸⁵ At the closing ceremony, President Peña Nieto presented his three-fold drug reform proposal: to allow access for medical purposes and for scientific study and increase the decriminalized threshold amounts of cannabis possession from 5g to 28g (Peña Nieto 2016). While Peña Nieto described this reform proposal as response to the Supreme Court ruling, it fell short of what the SCJN had established as a “baseline” (Javier Mancera, Interview, November 21, 2017), and did not engage with its reasoning (Arturo Bárcena, Interview, October 3, 2017). The reform proposal did not address the legal regulation of recreational cannabis (Belaunzarán & Rodríguez 2018; Sánchez & Gutiérrez 2018; Pérez-Correa & Ruiz 2018).⁸⁶

Reform proponents were not only critical of the reform proposal but the discussion’s meandering nature and limited scope. For Jorge Javier Romero, academic and long-time observer of drug policy, the debate was an “exercise of simulation and obfuscation,” that

⁸⁵ The national debate was supposed to be “broad, specialized, representative and inclusive debate... to define the policies and measures that the Mexican state should adopt” (SEGOB 2016:5).

⁸⁶ Over the coming month, the ambition of cannabis reform would reduce further, as increasing threshold amounts did not find support within his own party (Valdivia 2016). A medical marijuana bill proposed by the administration was passed in 2017 (Suárez 2019).

had long been the PRI's *modus operandi* to prevent unwelcome changes (Interview, September 28, 2017). While several legislators presented more comprehensive cannabis reform bills (Kánter 2020), what was eventually approved was more limited than the SCJN's ruling, or what reform advocates wanted: "It looks nothing like what we proposed" (Luisa Conesa, Interview, October 24, 2017). As Torres Landa notes:

There is an enormous distance between the initiatives that were presented and what got approved... It is better than nothing, but it did not achieve much... In this sense, the politicians have come up short, by a lot (Interview, November 6, 2017).

With legislative initiatives yielding little results, reform proponents looked again to the Supreme Court. According to the law, they had to secure five rulings against prohibition in order to create binding jurisprudence (Serna 2009). To do this, they filed additional *amparos* in 2015 (Andrés Aguinaco, Interview, September 27, 2017).⁸⁷ In early 2018, these *amparos* resulted in two more positive verdicts (Cossío 2018; Rebolledo 2018). On October 31, 2018, two further *amparos* were granted, reiterating that cannabis prohibition was unconstitutional (Piña 2018; Zaldívar 2018b).⁸⁸ These five decisions resulted in a *Declaratoria General de Inconstitucionalidad* (SCJN 2019a), which means legislators have to change the laws found unconstitutional. In the meantime, lower courts have to follow the SCJN's binding precedent, granting *amparos* to allow the cultivation of cannabis for personal consumption in Mexico.

⁸⁷ While numerous other activists and even legislators intended to copy SMART's approach to unleash "a shower of *amparos*" (Reyes & Solera 2015), only one of the *amparos* decided on was not prepared and litigated by MUCD and CEIS, but rather by the lawyer Ulrich Richter (Richter 2018).

⁸⁸ Each of these decisions coincides with the precedent set in 2015, arguing that cannabis prohibition infringes on fundamental rights protections.

Postscript: Success in Parliament?

While a full analysis of the consequences of the SCJN's decision falls outside the scope of this chapter as the legislative reform process is still ongoing at the time of writing, it is apparent that the new jurisprudence provides high rather than "hollow hope" for marijuana legalization in Mexico. The court's decision advanced marijuana legalization substantially by upending the previously deadlocked debates, and "shattered the prohibitionist paradigm" (Suárez-Ávila 2019:8; Tarello 2018; Flores & Marquéz 2020). By declaring the absolute prohibition of cannabis unconstitutional in October 2018, the Supreme Court forced the hand of both the executive and legislature to change extant drug laws. After its ruling the question is no longer if marijuana will be legalized in Mexico but how (Bejarano & von Hoffmann 2018).

At the time of writing, the Mexican Congress is poised to pass comprehensive cannabis regulation.⁸⁹ While reform proponents have critiqued several aspects of the proposed cannabis regulation (MUCD 2019; Madrazo 2020), as the result of outsider agenda setting and maintenance through legal mobilization, marijuana is set to become legal in Mexico. In late 2018, the then-designated Secretary of the Interior under newly-elected President Andrés Manuel López Obrador, Olga Sánchez, who as Supreme Court justice had ruled in favor of SMART's *amparo*, presented a comprehensive legislative initiative to legally regulate cannabis. The bill's justifications mention *primus inter pares* the court's argumentation and recent jurisprudence, stating: "the State must respect people's autonomy" (Sánchez-Cordero & Monreal 2018:5).

⁸⁹ Delayed several times, the current deadline set by the Supreme Court for passing new legislation is December 15, 2020. In March 2020, before legislative activities were suspended because of the Covid-19 pandemic, a joint committee passed the general outlines of a comprehensive cannabis reform bill.

Counterfactual Analysis of Cannabis Reform in Mexico

In Mexico, there was no insider agenda setting in contrast to Uruguay. This meant that, similarly to Chile, outsider challengers to the *status quo* had to set the agenda themselves. As shown above, a small group of elite members of civil society and expert lawyers engaged in legal mobilization to activate the Supreme Court and advance marijuana legalization in Mexico. As one of Juan Francisco Torres Landa stated: “Our goal is to move along the legalization debate and that the government gets to work because right now they are not doing it” (Rivera 2016). My argument is that the choices these actors made in strategically framing their legal challenge to cannabis prohibition, and in particular making it “fit” with the Supreme Court justices’ preferences, priorities and existing precedents were crucial for its eventual success. In turn, constructing strategic litigation that “mainstreamed” the issue and presented persuasive frames, required litigants and lawyers with the legal skills, expertise and resources to make the right choices in agenda manipulation and strategic framing.

The argument developed in the preceding section implies four counterfactuals. By explicitly analyzing these counterfactuals, I clarify the causal relationships between and weight of explanatory factors by investigating their hypothetical presence or absence. First, I provide evidence that *without* outsider agenda setting or maintenance, marijuana legalization would not have become a prominent political issue. Second, I highlight how *with* more targeted or timely agenda denial legal mobilization could have been handicapped. Third, I establish that *with* different framing, which were available but discarded, the legal challenge to cannabis prohibition would have fared worse. Fourth, I show that *without* the resources, expertise and organizational capabilities that MUCD and

CEIS brought to legal mobilization, grassroots cannabis activists would not had the wherewithal to engage in legal mobilization that convinced the Supreme Court justices to grant the *amparos* that ushered in legal marijuana in Mexico.

Counterfactual: Agenda Setting or Maintenance

Would legal cannabis have made progress in Mexico had there been no legal mobilization? Obviously without legal mobilization there would not have been transformative Supreme Court rulings. But in its absence, would there have been legislative change? It is not unreasonable to believe that marijuana legalization could have, at least, attracted attention if not approval, irrespective of legal mobilization. After all, substantial cannabis reforms were underway just north of the border, and Mexico is famously “so far from God, so close to the United States.”⁹⁰ However, there is reason to believe that in the absence of successive legal mobilization, marijuana legalization in Mexico would not have advanced much.

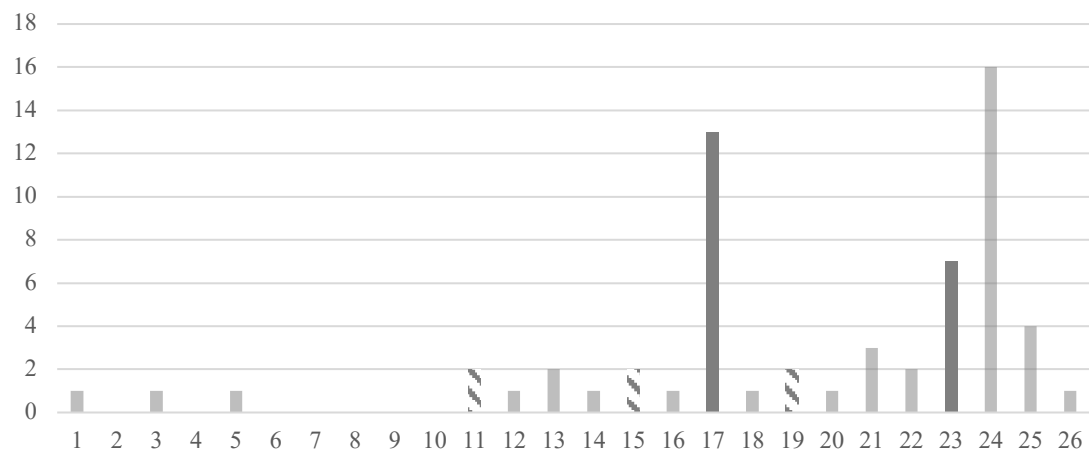
Perhaps unsurprisingly, those responsible for legal mobilization and involved in the Supreme Court’s ruling underscore its singular importance for drug policy reform in Mexico (Aguinaco & Barra 2017; Sánchez 2017; Richter, 2018; Ríos-Piter 2019). Without question, the SCJN’s 2015 *amparo* decision succeeded in “blowing the debate wide open” as Torres Landa put it (AFP 2015). By establishing that the prohibition of cannabis *autocultivo* was unconstitutional, the court – or as least part of it – effectively said “to the legislature and executive, the ball is in your court” (Arturo Bárcena, Interview, October 3, 2017). Despite just having won the first *amparo*, with all its

⁹⁰ For instance, Fernando Belaunzarán (2014:7).writes that “the changes in the world and especially in the United States, will make maintaining cannabis prohibition in Mexico unsustainable in no time.”

aforementioned limitations, the ruling generated an enormous amount of attention and empowered its proponents. As Javier Mancera explains:

Winning the *amparo* was very important because by establishing this right it allows the demand for legislative changes to be about the respect of this right...When engaging the legislature, it is more effective to ask for the recognition of an existing than creation of a new right (Interview, November 21, 2017).

More evidence for the importance of legal mobilization comes from legislative activity *before* and *after* the initial Supreme Court decision in November 2015 and its last two decision to establish *jurisprudencia* in October 2018. If outsider agenda setting and maintenance were irrelevant for cannabis reform, I would expect no change in legislative activity after these two dates. This is not what the record shows: the number of cannabis reform bills presented, the party affiliation of their sponsors and the dynamics of legislative activity, evidence a substantial divergence after the Supreme Court's rulings (Safie 2016; Kánter 2020; Basurto 2020). This “before-and-after” is illustrated by the two dark bars which correspond to the sixth months following the Supreme Court rulings in November 2015 and October 2018 (Figure 26). In the sixth months after the SCJN's 2015 decision more cannabis bills were presented than in the eight years prior. Similarly, in the year after the 2018 decisions almost three times more bills were introduced than in the two years preceding it (for a more detailed overview of legislative initiatives see Appendix 10). In contrast, none of the three sixth months periods which followed cannabis votes in the US in 2012, 2014 and 2016 (Hudak 2016) were characterized by heightened legislative activity.



Note: Count of total number of legislative initiatives presented in both the lower and upper chamber during sixth month periods whose start and end dates coincide with the Supreme Court decisions. Dark bars denotes the sixth month following the first and last Court rulings. The stripped bar denotes six months following state-level legalization votes in the US
Source: Authors compilation based on information from the *Sistema de Información Legislativa*.

Figure 26: Reform Initiatives Presented in the Mexican Congress (2008-2020).

There is also a decline in legislative activity after early 2016, which highlights the importance of agenda maintenance and securing five successful *amparos* in October 2018. While the second peak of legislative activity could conceivably correspond to the election of a new parliament and president in 2018, cannabis reform was not explicitly part of Andrés Manuel López Obrador’s (AMLO) electoral platform (Morena 2018), and AMLO had a history of contradictory and non-committal statements about marijuana legalization (politico.mx 2019). Of the bills presented after AMLO’s inauguration, only 8 of the 25 were introduced by members of his party, *Morena* (Appendix 10).

Counterfactual: Agenda Denial

Would legal mobilization have succeeded had there been more determined and organized agenda denial? Serrano (2015) suggests that there was more that could have been done by anti-cannabis actors. He decries that “we let them win.” In contrast to reform opponents’ “poor showing,” reform proponents “employed a successful strategy and

executed it correctly.” For instance, whereas reform proponents tried their best to nudge the justices in the direction they wanted and *Amicus Curiae* briefs were submitted by allies of reform advocates,⁹¹ detractors did not submit briefs outlining their point of view. While I previously presented evidence that most agenda denial efforts occurred *after* agenda setting through legal mobilization, what would have happened in the case of agenda denial *before* the 2015 SCJN decision is more speculative. Limited evidence that suggests that available but not realized interventions from state and non-state actors could have changed the course of legal mobilization and judicial decision-making. As Armando Santacruz from *MUCD* remarked:

With the topic of drugs, we felt no real resistance from the state. I believe we did not see it for various reasons. One because [cannabis reform] does not affect their own purse, because when it comes to corruption it is different... On the other hand, they saw it as something crazy, a ‘super long shot’... What worried me more were the narcos... If they had threatened us and said this is the last time that you talk about the topic or tomorrow your children disappear, that is where you have to stop.... but turns out the narcos do not follow public policy discussions (Interview, November 13, 2017).

Less extreme and violent forms of agenda denial could have influenced the trajectory of legal mobilization. For instance, according to pro-reform lawyer and former Supreme Court clerk, Luisa Conesa, if COFEPRIS, whom SMART had petitioned to for its authorization to grow cannabis for personal consumption, had denied on procedural rather

⁹¹ *Amicus curiaes* were submitted both by international pro-reform groups (Release, CDPC, CDARI, Harm Reduction Coalition, ICSDP, IDPC, etc.) and high-profile Mexicans (María Elena Morera Mitre, Hector Aguilar Camín, Pedro Aspe, Jorge Castañeda, Juan Ramón la Fuente and Fernando Gomez Mont).

than substantive grounds, this would have complicated pursuing the *amparo* and challenge the constitutionality of cannabis prohibition (Interview, October 24, 2017).

Additionally, if SMART's case had been assigned to a different justice or decided on by the court *en banc* or by the *Segunda Sala*, the outcome could have been different. That the case was assigned to the SCJN's *Primera Sala* was good news for proponents of cannabis reform, insofar as it is widely considered more liberal and expansive in its interpretation of the constitution than the *Segunda Sala*. Similarly, the prospect of the case being heard by the full SCJN's more conservative plenum caused "fear among the litigants." (Lozano 2018:37). As Andrés Aguinaco recalls:

Our worry was that between the *Primera* and *Segunda Sala* we did not know who would be responsible for the case... in Human Rights questions and progressive issues, the *Segunda Sala* is a death sentence. The *Primera Sala* is not a guaranteed victory, but you have better chances (Interview, September 27, 2017).

That the responsibility for the case randomly fell to Justice Arturo Zaldívar was "a stroke of great luck" according to Torres Landa (Lozano 2018:37). Zaldívar is one of the court's most progressive jurists. Both known for his liberal positions and willingness to withstand public and political pressure (Beauregard 2015), he has made expanding constitutional guarantees an issue at the top of his agenda (Zaldívar 2017). According to his clerks, another justice would have been less likely to engage in jurisprudential innovation, invoking the *libre desarrollo de la personalidad* and performing an exhaustive proportionality test (Arturo Bárcena and Ana María Ibarra, Interviews, October 3 and 30, 2017). As Raúl Mejía, Justice Cossío's clerk stated, "if it had been our responsibility, the discussion would have been different" (Interview, October 25, 2017).

Nonetheless, Zaldívar's decision on cannabis was not a forgone conclusion. Andrés Aguinaco remembers being "very nervous, because although he is a very thoughtful person, this was not a topic he knew much about" (Interview, September 27, 2017). To make their case, litigants had private meetings with justices and their clerks to present their arguments and clear up doubts, and provide information. Such "private pleading" is customary in high-level law suits in Mexico (Elizondo & Magaloni 2015), but requires doors to open and schedules to free up.⁹² Despite their efforts, litigants were still uncertain about the outcome. Torres Landa recalls that Zaldívar "vacillated over several months from not very convinced to a little" (Interview, November 6, 2017). According to him, Zaldívar played his cards close to his chest: "he asked questions, listened and made notes, that's it." (Lozano 2018: 39). As I will detail below, if reform proponents had presented themselves or represented their legal challenge differently, they would not have convinced Zaldívar or the other three justices of the *Primera Sala*.

Counterfactual: Strategic Framing

As I argued above, the way in which the legal challenge to cannabis prohibition was constructed, in particular the messages and messengers it featured, were crucial for the success of SMART's *amparo*. The actors behind the legal challenge, including Torres Landa, were acutely aware that they "had to design a strategy of strategic litigation that would enable us to win" (Pérez-Stadelmann 2015a). Andrés Aguinaco considered it necessary not only to develop solid legal arguments, but also to "tell a good story" (Lozano 2018:33). Would legal mobilization have succeeded had reform proponents

⁹² While opponents of marijuana legalization also had meetings with justices to sway their opinion, their efforts might have been too little too late. As Andrés Aguinaco relates, opponents were initially "taken by surprise" and ineffective in their efforts (Ríos-Piter 2019).

chosen different framings, arguments and plaintiffs? This is not a wholly speculative question, but one the actors devising and implementing strategic litigation faced. In fact, alternatives existed and were contemplated.

For instance, litigants had to decide whether to mount a criminal or administrative challenge to prohibition. The former required a volunteer to break the law and be arrested. However, “nobody wanted to be the Nelson Mandela of cannabis in Mexico” (Lozano 2018:35). Criminal proceedings would not only have been detrimental to recruiting attractive litigants, but also for receiving a sympathetic hearing from a Court that has been substantially more reserved in criminal than administrative matters.⁹³ One Supreme Court clerk confirms that “if this had been criminal case the chances of success would have been substantially lower” (Arturo Bárcena Interview, Interview, October 3, 2017). Other legal frames were available and could have been employed. For instance, the impact of punitive drug policies on the enjoyment of the constitutional guaranteed “right to health” (Zedillo *et al.* 2018). If litigation had been up to Alejandro Madrazo, who was approached to litigate but refused, the negative consequences of prohibition – in terms of its “constitutional costs” (Barreto & Madrazo 2015) – would have been the argumentative thrust of the legal challenge (Interview, November 29, 2018).

However, the lawyers in charge of strategic litigation from CEIS and Aguinaco Abogados considered the court not to be the adequate venue for a political analysis of the “war on drugs” (Lozano 2018:32). According to Andrés Aguinaco, “the same old political and prudential arguments did not fit with this judicial context” (Ríos-Piter 2019:165). In their estimation, because of where, by whom, and from what perspective the case would be

⁹³ I am thankful to Prof Pérez-Correa for this insight.

analyzed, arguments that prohibition is a failure or the cause of widespread violence would not work:

You cannot use those arguments, because they are arguments of public policy... Because the SCJN is the forum, the arguments of the *amparo* cannot be linked with pragmatic considerations of public policy, but rather human rights (Andrés Aguinaco, Interview, September 27, 2017).

Another aspect that was deemed central for making their case was choosing the right litigants. The four members of SMART were all successful and established professionals, who undermined the prejudices associated with cannabis (Ríos-Piter 2019). They were all recruited from the Mexican elite and were members of a prestigious civil society organization (Martínez 2020). Andrés Aguinaco deemed the litigants' respectability an essential factor: "If we had used the classic drug user... we would have never had the same effect as with utilizing four people with the highest of reputations" (Andrés Aguinaco, Interview, September 27, 2017).

Hence, those involved in constructing strategic litigation carefully considered their tactical choices, well-aware that the optics of their case would matter to maximize their chances. They discarded available alternatives to presenting their legal challenge, judging them inferior for achieving their goals. While this evidence goes a long way to support the hypothesized importance of framing for the success of legal mobilization, it does not disconfirm plausible alternative explanations. First, the SCJN could have been so pro-reform that it would have ruled in favour of *any* legal challenge to cannabis prohibition. Second, the lawyers engaging in strategic litigation could have been so effective that *any* of their efforts would have been successful. To rule out these alternative explanations, I

compare the SMART case to other legal challenges to cannabis prohibition before the Supreme Court. Indeed, three cannabis cases were decided by the SCJN recently, which vary only on key dimensions of interest.

The Possession Cases concerned two individuals convicted for possession of cannabis. In both criminal cases, their public defenders filed *amparos* appealing the prison sentences and the *Primera Sala* rejected the challenge to the criminalization of cannabis possession (SCJN 2019b). For the majority, constitutional challenges to the criminal sanctioning of cannabis possession were “inoperative” and alleged violations of constitutional guarantees “unfounded” (Pardo 2019; Gutiérrez 2019). The *Rubicon* Case was the result of proactive strategic litigation undertaken by the same lawyers behind the *SMART* Case. Despite mirroring SMART’s argumentation, the characteristics of this *amparo* made it less appealing to the justices.⁹⁴ As one of the clerks explained: “They basically just copied the same arguments, but the case was not the same” (Arturo Bárcena, Interview, October 3, 2017). The majority of justices ruled that a juridical person does not enjoy the same rights, such as the *libre desarrollo de la personalidad*, as a natural person (SCJN 2016).

While an all-too-brief comparison, these failures of legal challenges to prohibition provide verification of my argument that different framings would not have worked. First, all cases were heard by the SCJN and two cases were litigated by the same expert lawyers. However, the cases differed substantially in their characteristics, plaintiffs and framings and only the SMART case was successful. Thus, specific framing of both the message and were key for the success of legal mobilization for marijuana legalization in Mexico.

⁹⁴ A specifically established company applied for a commercial authorization to produce and distribute cannabis-based medicine for the sole purpose of being denied and appeal this administrative decision. This raised suspicion among some justices, according to one participant in the deliberations (David Sarubbi, Interview, October 10, 2017).

Counterfactual: Professional Litigation

In general, much of the literature on legal mobilization focuses on litigants' material resources, organizational structures and legal expertise. Famously, Galanter (1974) distinguished between those litigants that are "one shotters" and those that are "repeat players," arguing that the latter enjoy an advantage due to their superior organization, experience, and resources. Material resources, knowledge and organizational structures are widely considered decisive, as litigation requires expertise, time and money (Epp 1998). Resources result in more skilled attorneys, more legal research, and more time spent preparing cases. Willing and able lawyers can provide "professional and technical expertise" (McCann 1994:109) and are "familiar with court personnel and procedures" (Cowan 1976). Thus, successful legal mobilization requires "cause lawyers" (Sarat & Scheingold 2006) with the necessary skill, expertise and knowledge.

Specifically, the literature on strategic litigation in Mexico highlights the importance of resources and legal acumen to navigate the formalistic barriers, technical requirements and procedural complexity of the *amparo* process. The *amparo* has been characterized as "ineffective, costly and inefficient legal recourse, embedded with legal uncertainty and complex technicalities that made it inaccessible for the majority of the population" (Castillejos 2013:142) and a "[j]ungle of procedural complexity, full of technicalities, grounds for dismissal" (Pou-Giménez 2016). As such, the group that has over proportionally taken advantage of it has been "a tiny, privileged segment of society" (Pou-

Giménez 2012:23).⁹⁵ In contrast, “[i]t is unlikely that an average Mexican lawyer can elaborate the complex strategy capable of beating the system” (Rosales 2012:30).

As mentioned above, responsible for the legal challenge to cannabis prohibition were highly skilled and experienced lawyers. Arguing the case before the SCJN fell on Fabián Aguinaco, an experienced commercial lawyer who happened to be Andrés’ father.⁹⁶ Having appeared before the court on numerous occasions, he knew how to argue a case and what the justices’ likely positions would be. As Alejandro Madrazo, a pioneer of public interest litigation in Mexico, highlights: “They just know how to win” (Madrazo, Interview, November 29, 2018). David Sarubbi, a Supreme Court clerk, explains: “they are among the best lawyers in Mexico” (Interview, October 10, 2017). Another clerk, Ignacio Valdés, emphasizes that “they have intimate knowledge of the internal dynamics of the court, its precedents and even the justices’ positions” (Interview November 9, 2017) In other words, the Aguinacos were quintessential “repeat player” (Martínez 2020). They were uniquely positioned and capable to construct a legal challenge that could succeed. According to Fabián Aguinaco:

Strategic litigation is no unknown adventure for us... On many occasions our arguments have been resolved before the Supreme Court. Our law firm has existed for 45 years, exclusively dedicated to questions of constitutionality. This has allowed us to develop serious arguments (Interview, September 27, 2017).

⁹⁵ Thus, the appeal on grounds of unconstitutionality has been “largely an avenue for economic elites to protect their financial interests” (Ingram 2016). The vast majority of *amparos* filed, decided on and granted are in tax cases (Pou-Giménez 2014; Castagnola & Noriega 2016b). Indeed, a thriving “industry of the writ of *amparo* in tax issues” formed by specialist law firms have developed the necessary expertise to recur to the *amparo* process and cater to well-heeled clients (Elizondo 2009).

⁹⁶ Fabián Aguinaco has argued before the IACHR, was head of the Mexican Bar Association (2005-2007), and is a managing partner of the law firm *Aguinaco Abogados*, which specializes in financial *amparos* and was founded by his father, a former president of the SCJN.

Those involved in the court's decision-making deemed the case to be persuasively presented and well-argued.⁹⁷ However, even the expert lawyers and elite actors were uncertain about their chances before the Supreme Court. Alejandro Madrazo remembers being pessimistic about pursuing litigation (Interview, November 29, 2018). Andrés Aguinaco recalls being doubtful: "We could not promise that we would win a case like this one, there is no way" (Andrés Aguinaco, Interview, September 27, 2017). In many regards, legal mobilization was a "Hail Mary." As Torres Landa put it: "We have nothing to lose. In losing, the only thing you do is confirm the status quo which we already have. But, if we win, we can have a decision that allows us to change it. That was the gamble" (Interview, November 6, 2017). If even these actors – arguably the most-likely to succeed – considered their chances of success as slim, actors with less expertise, legal skills and connections, would have been less-likely to succeed to advance cannabis liberalization to a similar degree.

Would other reform proponents have been capable of engaging in legal mobilization? Mexican grassroots cannabis activists are rather poorly organized, and are confronted by a paucity of available resources, as my interviews with various grassroots cannabis activists indicate (Julio Zenil, Leopoldo Rivera, Mariana Sevilla, Jasiel Espinosa, Aldo Contró and Alfonso García, September 25 and 28, October 19, November 6 and 14, 2017). My own participant observations at several events organized by grassroots cannabis activists confirm Guerra's (2018:114) observation that Mexico's cannabis movement has a limited ability to mobilize resources. For instance, the cannabis movement never

⁹⁷ In interviews, Zaldívar's clerk Arturo Bárcena stated that he believed that the case was well-planned and executed: "invoking liberties that Zaldívar was interested in advancing was a great strategy," Cossío's clerk, Raúl Mejía, believes that having four highly respectable plaintiffs who did not intend to consume cannabis themselves "allowed the Court to do what it did," and, Sánchez's clerk, Ignacio Valdés, qualified the controversy as "brilliantly presented, as is to be expected by some of Mexico's premier lawyers."

developed the legal expertise that external elite actors possessed.⁹⁸ Capitalizing on its prestige and connections to the press, politicians and the private sector, as well as its organizational structures and salaried staff of professionals, MUCD possessed organizational capacities unparalleled by other pro-reform actors (Martínez 2020). According to Alejandro Madrazo, institutional and professional structures provided certain reform proponents “access and legitimacy to make an impact” that “grassroots activists could not have made” (Interview, November 29, 2018).

Conclusion

By closely tracing legal mobilization for marijuana legalization in Mexico and analyzing relevant counterfactuals, the chapter shows how the choices made in constructing strategic litigation conditioned its chances for success. Unparalleled access to and interviews with key actors allow me to zoom in on important aspect on the input side of legal mobilization, such as litigants’ calculations, their resources and disposal of alternatives, and, in particular, controlling the case’s optics. Based on original evidence I trace both litigant and judicial decision-making to pinpoint why challengers’ choices in devising legal mobilization influenced justices’ determination that cannabis prohibition is unconstitutional in Mexico.

In particular, the chapter establishes that the specific way in which challengers devised and carried out the legal challenge accounts for the puzzling success of legal mobilization for marijuana legalization in Mexico. In line with my overall argument, the framing of

⁹⁸ When the Mexican *Cáñamo* magazine was taken out of circulation for allegedly promoting drug use, its editors Leopoldo Rivera and Julio Zenil, who are also leading cannabis activists and organizers of the annual *Marcha*, secured legal representation from Luisa Conesa, who is a partner at a white-shoe law firm (Interview, October 24, 2017). In contrast, MUCD has developed in-house expertise and established a legal clinic that focuses on strategic litigation (Lisa Sánchez, October 20, 2017).

the message and the messenger mattered for the success of legal mobilization. The ways in which challengers presented themselves and their case, and thereby created a “fit,” were important. By strategically framing their legal challenge to emphasize how prohibition infringed on constitutional guarantees, challengers managed to connect the issue to extant precedents and priorities, and, ultimately, to persuade the SCJN’s justices.

Strategically framing the legal challenge to drug prohibition required both legal opportunities and know-how and resources. Challengers capitalized on their capabilities as “repeat players.” Expert lawyers and elite members of civil society, usually distant from cannabis activism employed their professional skills, connections and resources, because they – rightly or wrongly – believed that cannabis reform was a necessary step to reduce drug violence in Mexico. In line with my overall argument, making the right choices in agenda manipulation and strategic framing required actors that were both willing and able to do so. The successful outcome of legal mobilization was not predetermined, but rather depended on contingent choices in discursively constructing the challenge to the *status quo*; for instance, alternative framings were discarded and other legal challenges failed before the same court.

The “positive” Mexican case shows that cannabis reform can succeed, even in the absence of insider agenda setting, when reform proponents have the necessary means to make the right choices to achieve their ends. In contrast to Uruguay, there was no insider agenda setting, as successive governments proposed cannabis regulation only as result of judicial decisions. As in Chile, reform proponents had to set the agenda themselves. But, in comparison to Chile, Mexico appears to have been less-likely case for cannabis reform in terms of public opinion, levels of normalization or strength of mass mobilization.

However, in contrast to Chile, Mexican reform proponents possessed the resources, organizational structure and professional skills that enabled them to engage in effective agenda manipulation. Unlike in Uruguay, organizational capabilities were not provided by international actors, but rather by members of the Mexican elite championing the issue as solution to the problem of drug-related violence in Mexico. What both the Uruguayan and Mexican cases show is that broadening the pro-reform coalition beyond “grassroots” activists is the key to successfully engaging policymakers and persuading them to embrace risky alternatives to the prohibitionist *status quo*.

In sum, by excavating the role of outsider agenda setting through legal mobilization for engineering change and of the tactical choices by a small group of elite civil society actors in crafting successful strategic litigation, the chapter echoes Epp’s (1998:197) observation that rights are not gifts but won through concerted collective action. The Mexican Supreme Court’s decision in favor of legal cannabis was neither a gift nor a given, it was the product of strategic and smart collective action. Leading to binding jurisprudence, legal mobilization for marijuana legalization in Mexico is reason for high hope that comprehensive cannabis reform will follow.

Cannabis Reform in Chile:

Where there is Smoke, is there Fire?

On June 3, 2017, thousands attended the thirteenth annual *Marcha Mundial de la Marihuana* in Chile. The seemingly endless colourful procession winding its way down Santiago's main avenue was a sight to behold.⁹⁹ This outward show of mobilizational strength notwithstanding, the Chilean cannabis movement has important weaknesses. For example, only days before, at a meeting held in preparation for the upcoming *Marcha*, the organizers' lack of resources and professional structures were palpable. We huddled around a fire to warm ourselves on a cold May evening because *Movimental*, one of the leading pro-reform organizations, does not have its own premises. I was thus reminded of one of the contradictions of Chile's cannabis movement: its ability to mobilize thousands despite its organizational weaknesses.

The title of this chapter alludes to a further set of contradictions: much political activity with few results. Even though cannabis reform initially garnered attention, it ultimately failed to secure the necessary approval to become law.¹⁰⁰ What explains the trajectory of Chile's cannabis reform process? How did recreational cannabis reform initially succeed in 2015, subsequently stall and eventually fail in 2017? Why was there no marijuana legalization in Chile, arguably the "most likely" case after Uruguay in Latin America? Drawing on original data sources, including thirty-six interviews with key actors, the chapter provides the most detailed account of cannabis reform in Chile to date. I tease out how reform proponents succeeded in setting the agenda but failed to maintain the agenda,

⁹⁹ I conducted participant observations and interviews at the *Marcha* in 2017, 2018 and several meetings.

¹⁰⁰ For the sake of clarity and limitations in scope I focus on legislative recreational cannabis reform.

how reform opponents inside and outside the government frustrated drug policy reform through agenda denial, and how the Bachelet administration’s ambiguous stance neither fully precluded nor facilitated cannabis reform.

The activities, articulations and interactions of different actors explain *why* recreational cannabis reform ultimately failed in Chile. In the absence of insider agenda setting, cannabis reform initially made progress because cannabis activists set the agenda. This resulted in an *autocultivo* reform bill that was approved in its first reading in the lower house of parliament. This success led both insider and outsider reform opponents to engage in agenda denial which resulted in the government tabling highly restrictive amendments. Unwilling to compromise and unable to secure concessions, because they lacked the organizational resources and capabilities to appeal to decisionmakers beyond a core constituency, reform proponents withdrew their support. The reform process subsequently broke down after a negative committee vote. The chapter’s argument is summarized in Figure 27.

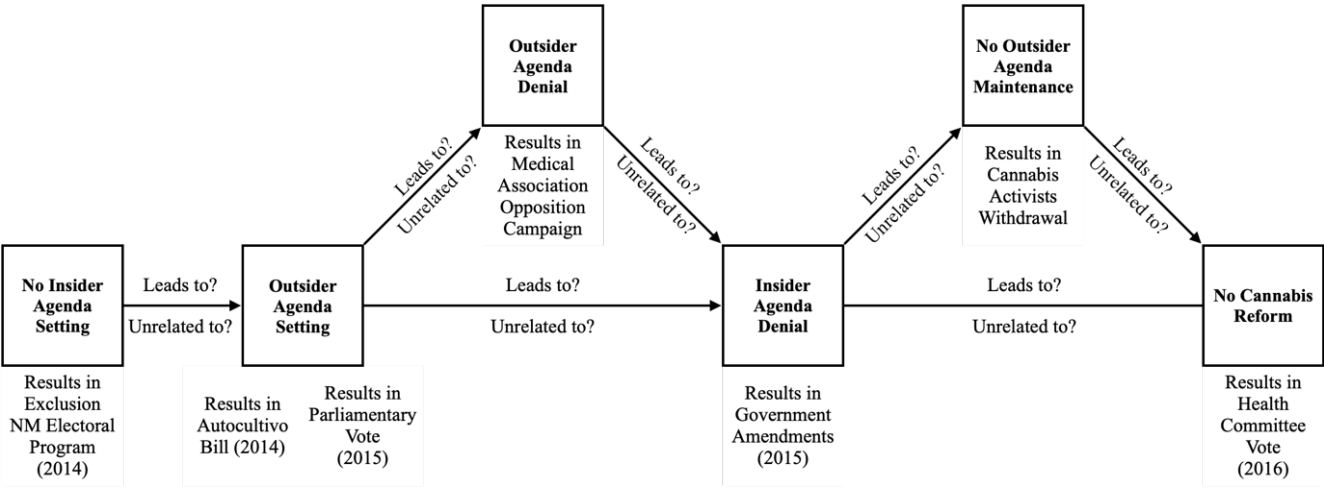


Figure 27: Causal Graph of Cannabis Reform Process in Chile

While the absence of top-down support and presence of agenda denial undoubtedly impacted the cannabis reform process, reform proponents are not without blame for its failure. The chapter shows *what* was missing from pro-reform advocacy. Chilean cannabis activists lacked professional organizational structures which explains *why* they were unable to provide clear rationales for action, linking their demands to politicians' extant concerns. In other words, they failed to develop resonant frames. Furthermore, the chapter explains *why* they were unwilling to support an exceedingly limited reform bill and instead insisted on more comprehensive changes. In the absence of institutionalized movement structures, activists' agenda manipulation and strategic framing was haphazard, amateurish and uncompromising rather than coordinated, professional and adaptive. In Chile there was no equivalent to international reform proponents as in Uruguay or domestic elite civil society actors as in Mexico that infused cannabis reform advocacy with professionalism and pragmatism. Rather, Chilean cannabis activism was predominantly home grown and grassroots.

Analytically, cannabis reform in Chile presents a distinct challenge. Not only is the absence of events more difficult to explain or trace in general, but there is little specific literature on drug policy to engage with. Nevertheless, the “negative case” of Chile helps to further assess the importance of the causal factors identified as important in the “positive” cases of Uruguay and Mexico. In particular, combining process tracing and counterfactual analysis allows me to establish *how* organizational characteristics enable or constrain reform proponents' choices and abilities in strategic framing and agenda manipulation. The fact that there was both initial movement toward reform and eventual breakdown of the process allows me to pinpoint *where* and *when* the flow of causal energy present in the Uruguayan and Mexican case were interrupted in Chile.

With regards to my overall argument, the “negative” Chilean case highlights three points. First, in the more common circumstances that the government does not set the agenda, outsider challengers to the *status quo* have to do so themselves. Second, determined agenda denial efforts by actors inside and outside government can undermine reform proponents’ efforts, contesting their preferred framings and providing decision-makers with rationales for inaction. Third, making the right choices in strategic framing to present oneself and represent the issue in ways that resonate with the audience requires professional organizational structures, resources and know-how that not all outside challengers have at their disposal.

The remainder of the chapter proceeds as follows. Section 1 sets the scene by reviewing the extant literature on drug policy and cannabis reform in Chile, introducing *status quo* drug laws and assessing the evidence for structural alternative explanations. Section 2 closely traces the reform process, thereby highlighting the reasons both for its initial success and eventual failure in parliament. Section 3 scrutinizes the importance of different explanatory factors through analysis of relevant counterfactuals. The conclusion summarizes the chapter’s argument and highlights the implication of the “negative” Chilean case for the overall argument.

Setting the Scene

In this section I first discuss Chile’s *status quo* drug laws to establish the legal context in which reform proponents operated and which they tried to change. While there are exemptions of criminal liability for possession for immediate personal consumption, cultivation remains prohibited. The section then discusses what the extent literature has to say about the failure of reform in Chile. Finally, I show that Chile was arguably the

“most likely” candidate to follow Uruguay in legally regulating marijuana in Latin America. In other words, Chile is a “possible” negative case (Goertz & Mahoney 2004). The evidence shows that cannabis was highly “normalized,” public opinion supportive and cannabis activists able to mobilize large numbers of protesters in Chile. Together with changing attitudes towards other “morality policies,” this evidence counters the argument that the absence of cannabis reform can be simply accounted for by Chile’s “conservativism.” Quite the contrary, cannabis cultivation and consumption are socially, if not legally, accepted in Chile. Espinosa (2018:1) aptly captures the situation:

Today, despite the cops, the illegality, and the imprecisions of drug laws, despite the fear, the violence and the injustices, despite the persecution and the repression, Santiago nevertheless smells of marijuana.

Status Quo Drug Laws

Under Chilean drug law *Ley 20 000* a variety of drug-related activities are illegal and punishable (Article 3). Consumption itself, unless in public or as a result of prior coordination, is neither a crime nor misdemeanour (Article 50). Possession can be either a crime, misdemeanour or not-sanctioned at all, depending on the circumstances (Article 4). Only under very specific circumstances can cannabis cultivation be exempt from sanctions (Article 8, 9 and 50). The intention and circumstances of both possession and production of illicit substances matter. However, the *onus probandi* falls on the defendant: “Whoever alleges that the purpose of drugs is personal consumption, must prove his or her being a user” (Ruiz 2009:424).

The main problem is that the line between crimes, misdemeanours and legal activities is not clearly drawn: “Nobody, not the prosecutor, not the defence lawyer have any clue if

the defendant will be sentenced as a trafficker, small-scale dealer or absolved as a mere consumer” (Cisternas 2011:36). Because “the delimiting criteria... are vague and indeterminate” (Alvarado & Marquéz 2018:86), the overriding feature of Chile’s drug laws is their ambiguity. *Status quo* drug laws create a high degree of legal indeterminacy, inequality, and, insecurity.

According to Article 4, if drugs are found to be destined exclusively for immediate personal consumption (*uso personal exclusivo y próximo en el tiempo*), they are not subject to criminal sanctions. Personal consumption represents grounds for an exclusion of penal liability. Yet, Chile’s drug laws leave it completely up to judges to decide what is to be understood as *uso personal exclusivo y próximo en el tiempo* (Casas *et al.* 2013; Alvarado & Marquéz 2018; Rodríguez 2019). This means that courts, prosecutors and the police play a key role in the application of drug laws (Fierro 2017).

This ambiguity also applies to home cultivation for personal consumption (*autocultivo*). Article 4 and 9 contain two explicit circumstances under which cultivation can be exempt from sanctions: either medical use with prescription, or if a prior authorization has been issued (Figuerola 2016:24).¹⁰¹ This has led analysts to conclude that home cultivation is illegal. For example, a parliamentary evaluation of the *Ley 20 000* found that “home cultivation, meaning cultivation exclusively for immediate personal consumption, in actuality is not considered licit by the law” (Lorenzini *et al.* 2014:127). Others, however, argue that *Ley 20 000* implicitly includes a third exculpatory circumstance in which home cultivation should not be penalized: *uso personal exclusivo y próximo en el tiempo*. For instance, this is the position taken by the Public Defenders’ office (Fierro 2017:43).

¹⁰¹ The responsible agency, the *Servicio Agrícola y Ganadero* (SAG) has never given authorization to an individual to cultivate cannabis (Ibáñez 2018:81)

In fact, a series of rulings issued by the Supreme Court starting in 2015 have accepted personal consumption as a valid justification for home cultivation under certain circumstances (del Real & Vergara 2016; Fierro 2017; Alvarado 2018). But these judicial decisions are neither binding, nor is this legal criterion applied uniformly across cases or courts (Alvarado & Marquéz 2018). In sum, for all its faults and ambiguities, the *Ley 20 000* remains the law of the land and many cannabis consumers and cultivators are effectively criminalized. Why have attempts to reform it failed?

Existing Literature

There is relatively little literature on Chilean drug policy in general and cannabis reform specifically. Most existing studies are legal analyses of existing drug laws. While several publications address the history of Chilean drug policy (Fernández 2011, 2018; Barr-Melej 2017), only a few publications deal with contemporary drug policy.¹⁰² To my knowledge, few scholars have tried to put forward explanations for the success and failure of cannabis reform in Chile. Despite these shortcomings, we can draw a series of conclusions from the literature.

For one, Cannabis reform has increasingly become a topic of political debate and contestation. Valenzuela (2010:13) notes that until recently, debates about drug policy reform attracted “more academic controversy than political.” Yet, by 2014 new cannabis legislation became “a very real possibility” (Huerta & Navarro 2015:90). Chile seemed “*ad portas*” of drug policy reform (Sánchez 2016:216), and “inches away from legalizing cannabis” (Ibáñez 2018:80). However, most existing accounts are relatively silent about

¹⁰² Writings on cannabis reform are either partisan (FJG 2014; Garay 2016; Greene, Fynmore & Vinagre 2018; Purto 2019), or descriptive (Huerta & Navarro 2015; Vergara 2016; Ibáñez 2018; Sánchez 2018).

why cannabis legalization did not occur. The exception is Ibáñez (2018) who focuses on activists as a decisive factor both for the rise and fall of cannabis reform. He argues that legislative initiatives “did not bear fruit because its supporters did not manage to agree among each other [about what they wanted]” (Ibáñez 2018:93). By doing so, he seems to suggest that if pro-legalization actors had behaved differently, specifically if they had acted in unison, they could have succeeded. Yet, Ibáñez does not explain how activists could have overcome the lack of governmental support that he and others have identified as detrimental to the prospects of cannabis reform.

Several authors have highlighted the distinct lack of top-down support. Sánchez (2016:224) observes the “almost complete absence of the executive in the matter.” Gajardo (2015:2) characterizes the reform initiative as occurring “without the support of the government.” And Ibáñez (2018:90) notes that “there was never real political will to reformulate the *Ley 20 000*.” While certain lawmakers enthusiastically took the lead, the executive only followed reluctantly. According to Vergara (2016:96), “in contrast to the urgency with which Congress has acted, the executive has maintained a less pro-active agenda.” Yet, questions of why there was no political support, how this lack of insider support affected the reform process, and, if reform proponents could have engineered insider support remain unanswered.

That top-down support is highly important is out of the question. The Chilean president’s “preponderant” (Alemán 2013:30), “prominent” (Alemán & Navia 2016:92), or “dominant” role (Siavelis 2002:85) in the lawmaking process is well-known. Several constitutional prerogatives grant the president “near-monopoly control over the legislative agenda” (Aninat *et al.* 2006:6). In effect, “[g]iven these broad powers to

formulate and propose legislation and control the legislative agenda, the president is not merely a ‘co-legislator’... but the most important legislator in the country” (Siavelis 1997:334). Thus, without presidential support reforms are difficult, though not impossible, to achieve.

Finally, opposition to cannabis liberalization has been only mentioned in passing (Huerta & Navarro 2015; Vergara 2016; Ibáñez 2018). However, studies of other morality policy issues have long pointed to the strength of a conservative opposition as crucial for the lack of reform outcomes (Htun 2003; Blofield 2006; Álvarez 2017). Regarding the failure of allowing same-sex marriage in Chile, Valiquette and Waring (2018:39) argue that the demand has been “muted by the overwhelming influence of conservative actors.” Schulenberg (2019:119) states that “the greatest difficulty” for reformers has been to overcome “conservative legislators.”

Chile’s political context has long favored gradualism and maintaining the *status quo*, by incorporating and giving conservative actors and reform opponents a say in policymaking.¹⁰³ For instance, regarding same-sex marriage, “formal and informal features of [Chile’s] institutional design and party system have allowed for a more inordinate access to the policy process by opponents” (Díez 2015:196). Institutionalized emphasis on moderation, and prominence of conservative voices, have traditionally prevented seemingly radical reforms.

¹⁰³ All post-dictatorship center-left governments included the more conservative Christian Democrats, which allowed to them to stay in power, but also required limiting the ambitions of reforms (Huber, Pribble & Stephens 2010; Roberts 2011; Sehnbruch & Siavelis 2014). Informal institutions developed that influenced the operation of the center-left coalition government and prized consensus (Siavelis 2007, 2014, 2016).

Despite several factors seemingly conspiring against change, such as a lack of political supply of drug policy reform and near veto power of conservative actors in policymaking, Chile has a number of structural characteristics that make the absence of cannabis reform rather puzzling. In the following, I present evidence of the normalization of cannabis, public support for change and mass mobilization for marijuana legalization. Furthermore, I further assess whether Chile’s “conservatives” can explain the absence of cannabis liberalization.

Normalization

According to available quantitative and qualitative evidence, cannabis has become normalized in Chile despite the prohibitionist *status quo*. First, the rates of cannabis use in Chile are remarkably high both in the regional and global comparison: recent past-year prevalence is the highest in Latin America and the third-highest globally (Figure 4). There has been a clear increase in cannabis consumption, or the willingness to report it, over the past few years. In 2016, the most recent year for which data is available (SENDA 2018b), past-year prevalence doubled from 2012 (Figure 28).

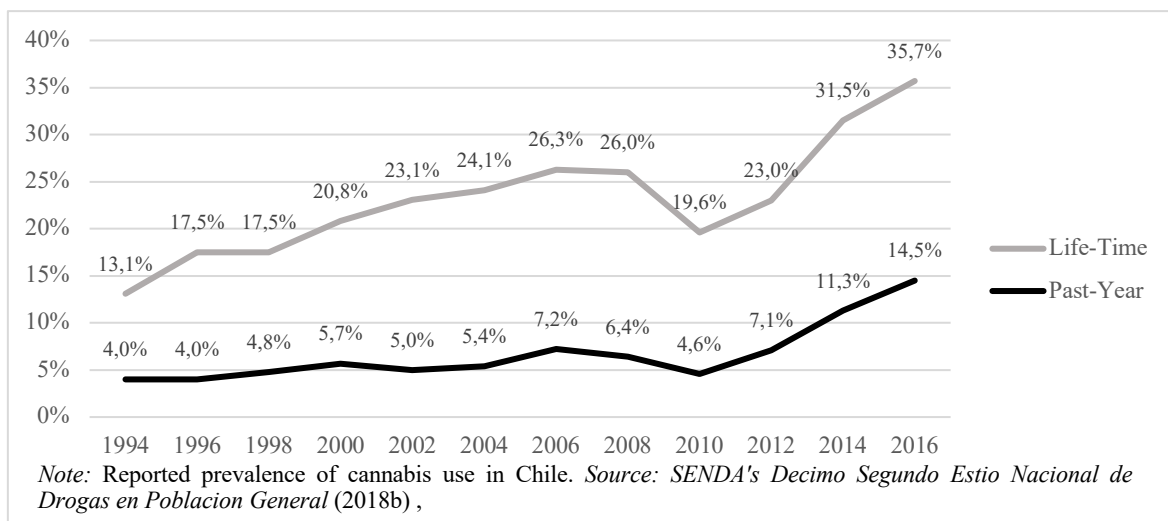


Figure 28: Prevalence of Cannabis Consumption in Chile (1994-2016)

Second, cannabis is widely and readily available in Chile. SENDA's (2018a) bi-annual survey of drug habits of high-school students shows that the ease with which cannabis can be accessed is more similar to legally sold alcohol than other illicit substances. Since 2013 respondents rate marijuana as easier to access than alcohol (Figure 29).

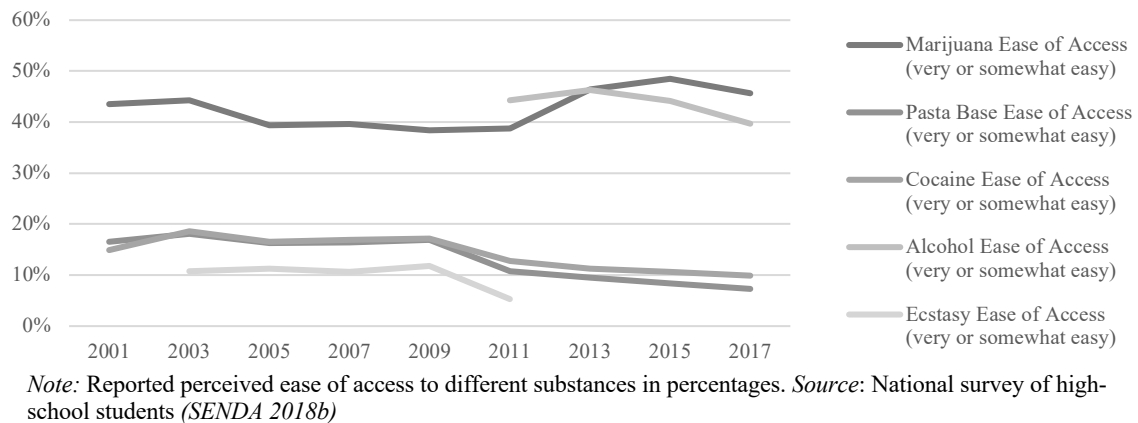
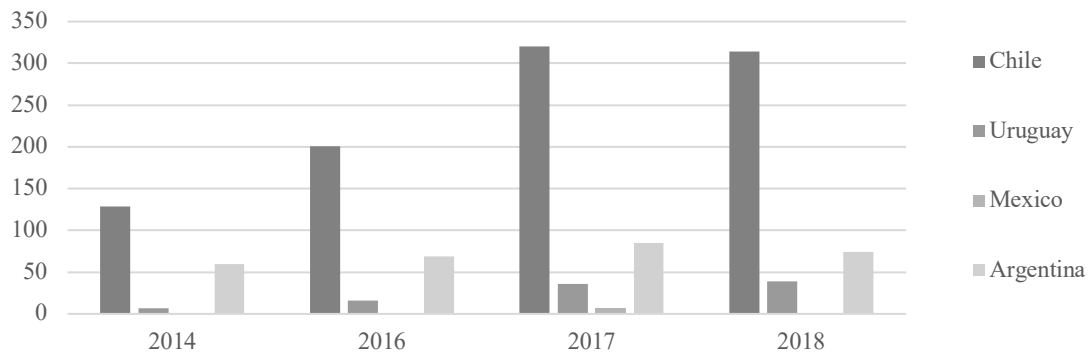


Figure 29: Perceived Ease of Access to Different Substances in Chile (2001-2017)

Third, Chileans have access to home grown, high quality cannabis (Álvaro Ahumada, Interview, June 7, 2017). The practice of *autocultivo* (home cultivation) is widespread and has expanded substantially (Ibáñez 2018:53-54). Evidence for the prevalence of *autocultivo* comes from the high number of shops catering to those growing their own cannabis at home. As reported in Figure 30, Chile has by far the largest number of *grow shops* in the region.



Note: Number of grow shops in Latin America. Source: *Soft Secrets' Guide of Latin America* annual directory of grow shops.

Figure 30: Number of Grow Shops in Latin America (2014-2018)

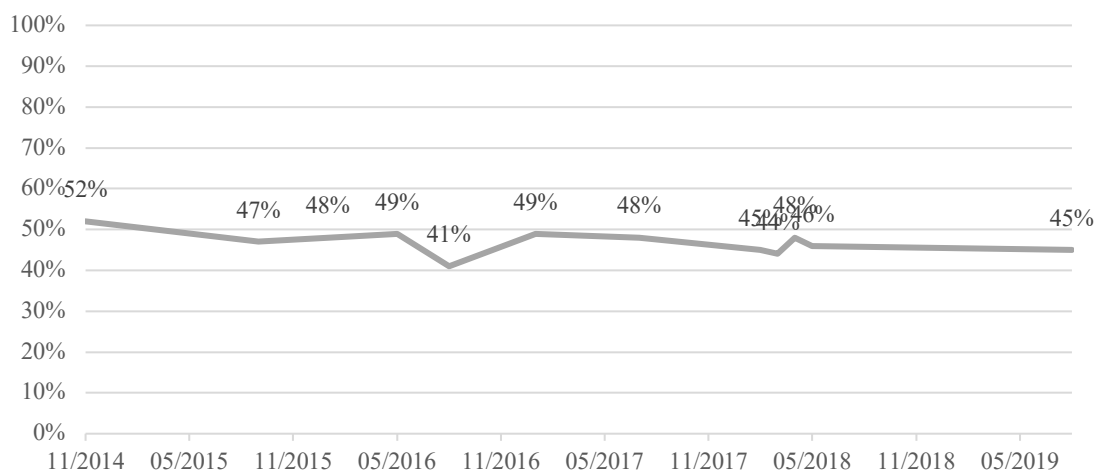
Fourth, evidence of normalization also comes from the value judgements attached to cannabis, its use and users. Latinobarometro (2016) found that Chileans have the highest levels of acceptance of cannabis consumers (Figure 5, Introduction). Similarly, in their comparative study of vices, IPSOS (2019) uncovered that Chile has the highest numbers of respondents in Latin America who state that cannabis consumption is morally acceptable (37%). In fact, a higher number deems consuming cannabis acceptable than pornography (25%) or gambling (33%).

Finally, evidence of normalization comes from qualitative studies. Using focus groups to understand young people's attitudes toward marijuana, Canales, Estrella and Cottet (2014:10) find that "marijuana has ceased to be socially objectionable, antisocial; its use is now socially accepted." Cannabis consumption has become accepted as part of daily life: "the new reality of the acceptance of marijuana is consolidated by its mundaneness and commonality, ... it is perceived as normal or habitual" (ibid:11). This contrasts starkly with earlier focus group research that found cannabis as stigmatized (Arellano *et al.* 2003). More impressionistic evidence of normalization comes from journalistic sources. For instance, one newspaper report states "marijuana has stopped being a taboo" (Sánchez, Tacchi & Jacque 2016). Another article speaks of alcohol and marijuana as two "very socially accepted drugs in Chile" (Ramón 2018). Ibáñez's (2018) book *Un viaje fantástico* is a story about how cannabis consumption, cultivation and culture became part of everyday life. Simón Espinosa (2018) writes in his book *Historias en volá:*

In Santiago you smoke. The city smells of marijuana. You don't have to pay too much attention to sense its presence... Cannabis cultivation is something common... Sometimes you even forget that it remains illegal.

Public Opinion

Public opinion is relatively favourable towards marijuana legalization in Chile. In comparative perspective, Chile is the Latin American country with the highest levels of public support for legalization, and the only country in the region with majoritarian support in 2015 (Figure 6, Introduction). In a more recent cross-country survey Chile had the third highest levels of support for cannabis regulation, surpassed only by the US and Canada, where cannabis is partially or fully legally available (IPSOS 2019). Furthermore, 46% of Chileans believe that cannabis will be legal within 10 years. However, public opinion surveys conducted over the past few years show that, despite years of activism, exposure to salient political debates, public support for marijuana legalization has not increased (Figure 31). In fact, there seems to be a slight downward trend since public opinion surveys found majoritarian support for marijuana legalization.¹⁰⁴



Note: Author's compilation of CADEM periodic opinion surveys (2014-2019). Source: CADEM

Figure 31: Public Opinion on Marijuana Legalization in Chile (2014-2019)

¹⁰⁴ In 2014 CADEM reported and 52% of Chileans supported legalization. In 2015 GfK Adimark found that 54% supported legalization and Latinobarometro that 53% of Chileans supported legalization.

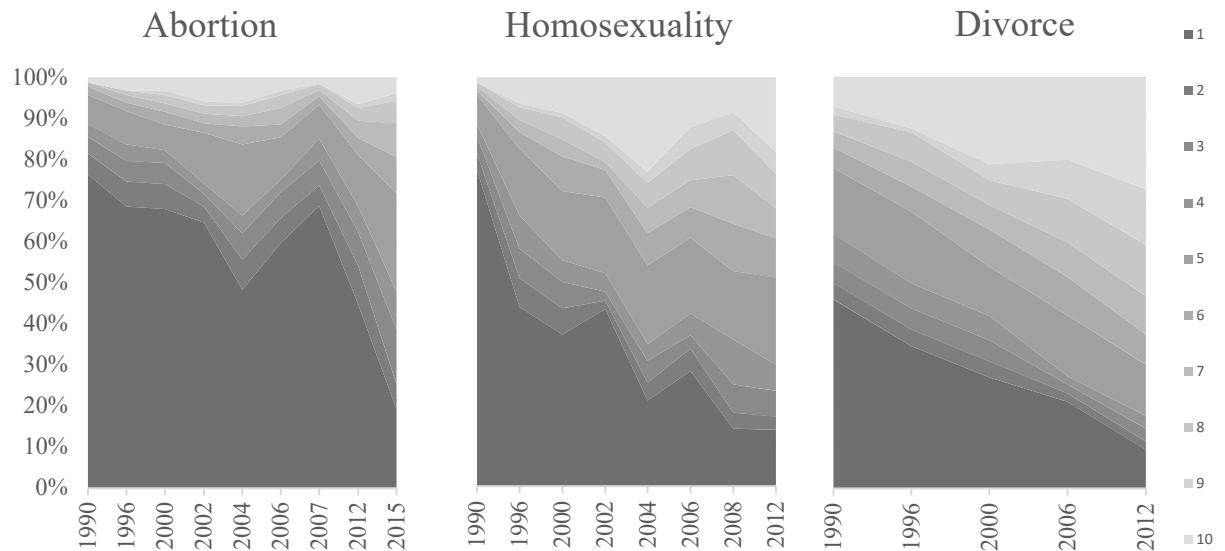
Based on the available information on public opinion, two further observations can be made. First, as elsewhere, public support for the legalization of medical marijuana is substantially higher than for recreational cannabis. As far back as 2008, 57% of those surveyed supported medicinal uses, increasing to 59% in 2010, 68% in 2012 and 85% in 2014, the last time the question was asked by SENDA (2014). Similarly, IPSOS (2019) reports that 76% say that marijuana should be legal for medicinal use (the highest percentage in the world). Second, younger, urban and more educated respondents display higher level of support for marijuana legalization (INJUV 2014). In sum, there is strong and stable, if stagnant, public support for marijuana legalization in Chile.

Coda: Conservative Chile

The reason for making the case that cannabis is normalized and popular in Chile in such detail is that it runs counter to the narrative that Chilean society's inherent "conservativeness" explains the absence of cannabis reform (Sergio Sánchez, Eduardo Vergara, Ricardo Lagos, Interviews, May 16, 23, May 30, 2017). But just as Uruguay's "progressiveness," Chile's purported "conservativeness" cannot by itself explain the absence of marijuana legalization. Comparative studies of moral policy reforms in Latin America have long rejected the notion that "cultural values" can on their own explain policy variation regarding divorce (Htun 2003), abortion (Blofield 2006), or same-sex marriage (Díez 2015).

On the other hand, change over time casts doubt on the assertion that Chile is overwhelmingly conservative. Neither Chilean society nor its politics have remained stagnant (Lagos 2013; Rovira 2019). A liberal turn, or "*destape*" (Luna, Monestier & Rosenblatt 2013:930), has seen growing acceptance and support for abortion, same-sex

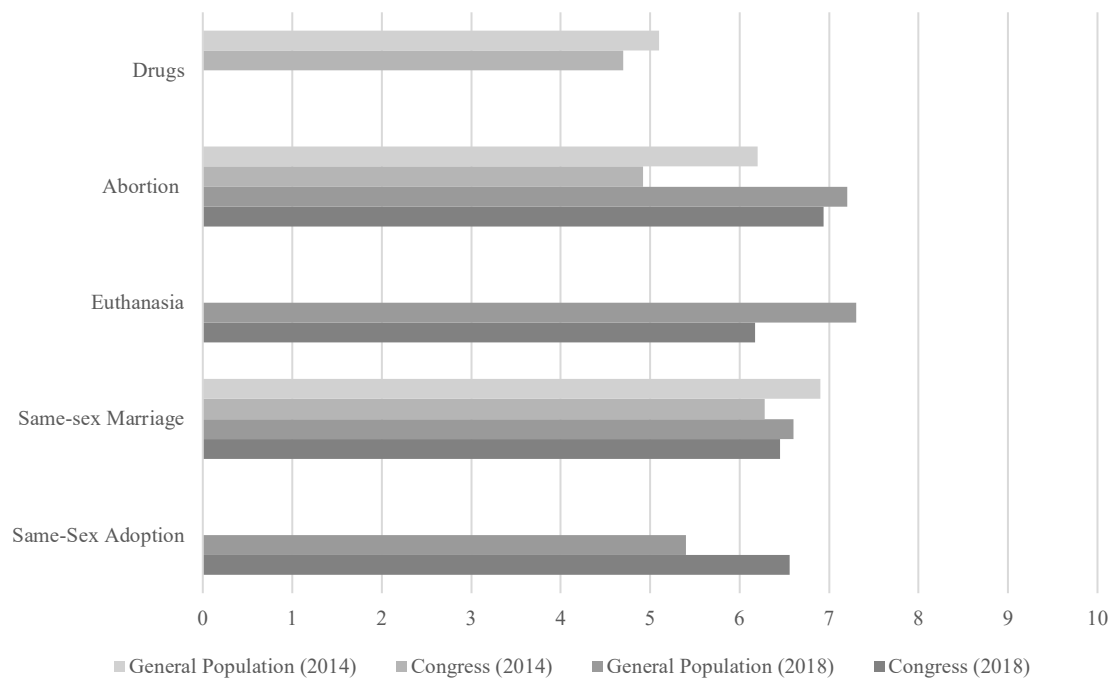
marriage and divorce. The *World Values Survey* and *Latinobarometro* ask respondents to rank how justifiable abortion, divorce and homosexuality are from 1 (never) to 10 (always). For each survey item, a trend towards greater acceptance of moral issues is evident (Figure 32).



Note: Author's elaboration of responses about the acceptability of "morality" issues. Respondents ranked issues on how justifiable these actions are from 1 (never) to 10 (always). *Source:* Several waves of *WVS* and *Latinobarometro*

Figure 32: Public Acceptance of Moral Issues in Chile (1990-2015)

It is of course conceivable that the "conservative Chile" thesis applies to the political rather than the societal level, and should therefore be taken seriously when trying to account for reform failure. After all, it is the political elite that has to approve of these changes. Yet, a comparison of respondents' self-identification and identification of party positions on morality issues, shows that the general population does not consider itself substantially more progressive than political parties (Raymond & Felth 2012). In general, there are high levels of elite-mass congruence (Siavelis 2009). Contrasting the levels of support and acceptance of moral issues from general population surveys (ADS 2014; CADEM 2018) with those from surveys of members of Congress (PELA 2014; UDP 2018), shows no clear signs that the population is more permissive (Figure 33).



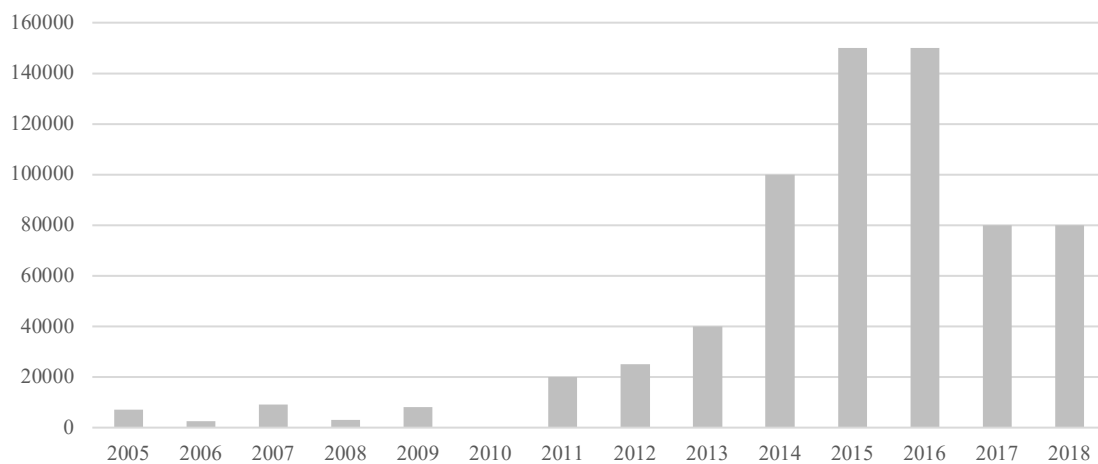
Note: Author's elaboration of positions of public and politicians on "morality" issues on a 1-10 scale of support.
Sources: ADS (2014), PELA (2014), UDP (2018) and CADEM (2019).

Figure 33: Attitudinal Distance Between Population and Congress in Chile

That Congress in general is not substantially more conservative on moral issues than the population does not mean that specific conservatives do not wield substantial influence over legislation on morality issues. There might be an influential conservative opposition inside and outside parliament that is able to block or limit change. For instance, former-President Ricardo Lagos argued that “those who want to maintain the *status quo* are very strong, they practically have veto power” (Interview, May 30, 2017). As we shall see, specific, well-organized opposition groups did play an important role in the cannabis reform process. In principle, however, this opposition could have been neutralized or weakened, especially because Chile has a vociferous cannabis movement clamoring for change. In fact, the Chilean movement is arguably stronger in some regards than the one in Uruguay or Mexico, two countries where reform efforts did not fail.

Social Mobilization

Chile has one of the most vibrant and visible cannabis movements in Latin America (Corda, Cortés & Piñol 2020), which is able to turn out impressive numbers for the annual *Marcha de la Marihuana*. Under the motto *Cultiva tus Derechos*, Chilean cannabis activists have mobilized since 2005. The *Marcha* has come a long way from its first edition when organizers thought “that only 50 people would show up” (Nicolás Espinoza, Interview, May 23, 2017). Since then, the annual *Marcha* has significantly grown until reaching its apex in 2015/2016 (Figure 34). Despite signs that the sustained growth of turn-out has stalled, Santiago’s annual *Marcha* remains one of the largest pro-cannabis gatherings in Latin America (Figure 7, Introduction).



Note: Absolute turn-out at the annual *Marcha*. Source: Analysis of contemporary media reports (Appendix 4)

Figure 34: Turn-out at the annual *Marcha de la Marihuana* in Chile (2005-2018)

Having said this, based on participant observation at 2017 and 2018 it is possible to argue that the *Marcha* is more a colorful celebration than a politicized or goal-oriented protest. Participants seemed more interested in having a good time and smoking cannabis in public than in the intricacies of public policy. In this sense, the lack of signs or chants

alluding to the need for reform was noteworthy, and a sharp contrast with other marches I witnessed in Santiago. While the act of mobilizing large numbers itself is potentially a statement, and for Nicolás Espinoza, leader of *Movimental* and organizer of the *Marcha*, serves “to put an open and democratic debate about a new drug policy on the public agenda” (Huerta & Navarro 2015:82-83), the challenge is to translate it into political pressure. According to Nicolás Espinoza:

It is a carnival, a party, an isolated event. At the end of the *Marcha*, we always ask ourselves: “Why did we do this? For people to smoke lots of marihuana on the streets?” [...] The masses on the streets do not translate directly into willingness of the authorities to legislate [cannabis]. There is no direct correlation (Interview, May 23, 2017).

This observation is in line with my overall argument that sporadic shows of mobilizational strength are unlikely to directly lead to policy outcomes, because reforms require sustained attention, neutralizing opponents and persuading decisionmakers. Nevertheless, with its mobilization, public support, growing prevalence and increasing societal acceptance of cannabis and other “morality policy” issues, the structural context in Chile seemed more conducive to marijuana legalization than in either Uruguay or Mexico. In contrast to Chile, however, the Uruguayan government proposed cannabis reform, opponents were weak, and proponents were willing to adopt more pragmatic positions and able to sustain the reform process. Similar to Chile, in Mexico reform proponents had to set the agenda, in the absence of insider agenda setting, however, Mexican would-be reformers adopted a novel strategy of agenda manipulations and adapted their strategic framing, which Chilean activists were unable or unwilling to do.

Cannabis Reform in Chile

In this section I trace how recreational cannabis reform initially gained attention and even limited approval support in Chile but subsequently stalled and failed to achieve the necessary elite approval to become law. In the absence of insider agenda setting, cannabis reform was a convoluted and complex process with both highs and lows. Whereas outsider agenda setting was successful, insider and outsider agenda denial and the lack of outsider agenda maintenance contributed to the failure of cannabis reform in Chile.

Press coverage of cannabis reform in Chile's largest newspaper *El Mercurio* from 2010 to 2018 offers a useful overview of the reform process (Figure 35). Reporting on the issue reached its apex with the successful parliamentary vote in July 2015. This reflects the success of outsider agenda setting. The subsequent decline in media stories illustrates the failure of agenda maintenance. Confronted by opposition inside and outside the government, pro-reform actors struggled to maintain the issue on the agenda. The bill's eventual failure in the parliamentary Health Commission in January 2017 barely registered in the news (Appendix 11 provides a timeline of events).

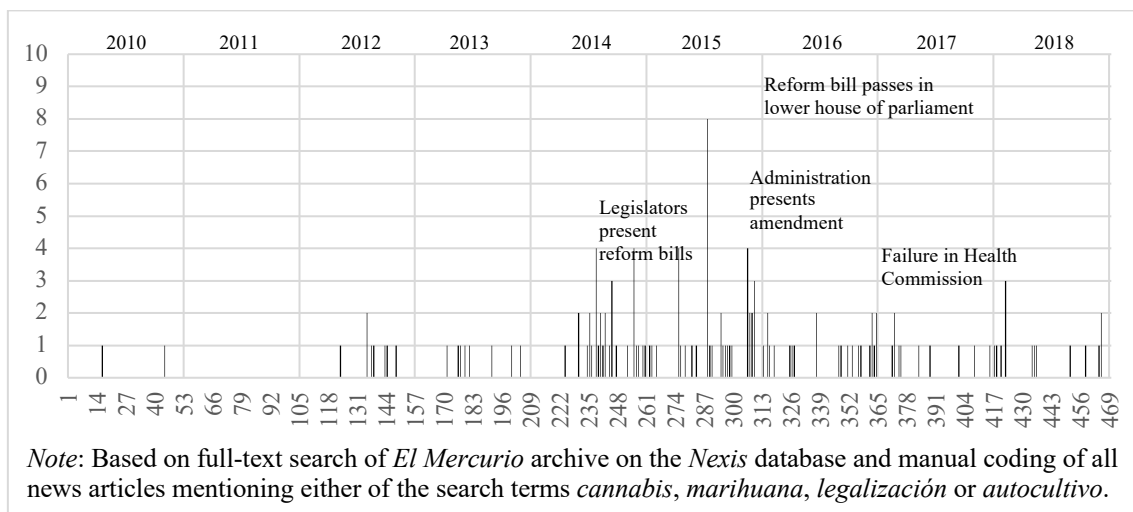


Figure 35: News Items on Cannabis Reform Published in Chile (2010-2018)

My description of successful agenda setting is divided into three parts. First, I show that in the absence of interest and initiative from the Bachelet administration, cannabis activists needed to put cannabis reform on the agenda. Second, I detail how new messages and messengers advanced the cause of cannabis reform and activists managed to cultivate legislative allies from 2013 onwards. Third, I discuss why the activist-sponsored *autocultivo* bill achieved approval in its first reading in the lower of house of parliament in July 2015.

The account of failure in agenda maintenance has five parts. First, I show how reform opponents engaged in vehement and organized agenda denial efforts. Second, I highlight how insider detractors, in particular the director of the *Servicio Nacional para la Prevención y Rehabilitación del Consumo de Drogas y Alcohol* (SENDA), Mariano Montenegro, endeavored to sabotage the reform process. Third, I establish why the government's introduction of restrictive amendments to the reform bill presented an opportunity for agenda maintenance. Fourth, I explain why reform proponents did not rise to the occasion and rather retreated from supporting the reform bill, focusing on the organizational characteristics of the Chilean cannabis movement. Fifth, I detail how the reform bill ultimately failed in a committee vote in January 2017.

Tracing Chile's cannabis reform process reveals that in contrast to Uruguay, not only did President Bachelet not set the agenda – as President Mujica did – but she also showed continuing indifference toward cannabis reform. Furthermore, whereas in Uruguay and Mexico there was no strong agenda denial in reaction to reform proposals or anticipation of the court ruling, in Chile opponents inside and outside the government continuously organized to counteract and curtail the reform process. Both these factors undeniably

complicated progress, but in light with my theoretical argument, cannabis reform proponents did not help either. They lacked several of the factors that made it possible for Uruguayan and Mexican reform proponents to engage in effective agenda manipulation and strategic framing. Specifically, what Chilean cannabis activists lacked were professional organizational structures and resources, external assistance, and advocacy know-how. As such, they were unwilling to make pragmatic compromises and unable to make the choices required to broaden the pro-reform coalition and persuade key decision making with compelling rationales for action.

The Need for Outsider Agenda Setting

In contrast to Uruguay, there was no insider agenda setting in Chile. In two instances the executive could have assumed a more protagonist role but did not. While some cannabis activists believe that Bachelet was personally opposed to cannabis reform,¹⁰⁵ Bachelet's public statements suggest a certain openness to cannabis liberalization.¹⁰⁶ But the issue was never a priority (Gajardo 2015). According to Lucía Dammert, who worked at the Interior Ministry, "this was not something Bachelet was personally committed to" (Interview, April 25, 2018). According to former SENDA director Mariano Montenegro, she "was never interested in the topic" (Interview, April 20, 2018). However, according to one report, "those privy to Bachelet's thinking on the topic signal that perhaps she will never move towards legalization in her government because she believes that this is a debate that only elites can understand" (Carmona 2013).

¹⁰⁵ For instance, Sergio Sánchez argued that "Bachelet is a conservative who thinks that marijuana is harmful and that drugs prevent the revolution... she is a typical pediatrician" (Interview, May 16, 2017).

¹⁰⁶ In an interview, Bachelet said that smoking a joint was no worse than getting drunk (Fernández 2013). She stated, "the drug problem in Chile is not consumption but rather narco-trafficking" (CNN Chile 2014b). After a meeting with Mujica, she said that drug prohibition "has not achieved its goal. It has neither reduced consumption...nor has been an effective tool to combat drug trafficking" (Muñoz 2014).

While all major candidates positioned themselves on the issue of cannabis reform during the 2013 electoral campaign (de Rementería 2013), only one unsuccessful candidate promised to legalize marijuana.¹⁰⁷ By contrast, Michelle Bachelet, the presidential candidate of the center-left *Nueva Mayoría* was reluctant to address the topic throughout the electoral campaign (Carmona 2013). The ambiguity of her position was reflected in the *Nueva Mayoría's* electoral program. Reportedly, “tensions” and “frictions” accompanied the drafting of the section on drugs of the *Nueva Mayoría's* electoral program (Godoy, Vallejo & Pinto 2015). There were those, such as Eduardo Vergara and Sergio Sánchez, who wanted to insert “progressive steps towards regulation” (Carmona 2013). Others, such as Mariano Montenegro, prevailed in preventing bolder reform commitments (Interview, April 20, 2018). The subcommittee ultimately responsible for authoring the relevant section rejected legal regulation as “inconvenient,” because it would “distract from topics that had greater priority for the Bachelet administration” (Godoy, Vallejo & Pinto 2015). The program reflected the minimal consensus inside the *Nueva Mayoría* promising to “review” the *Ley 20.000* (NM 2013:103).

The government followed up on this electoral promise by setting up two *mesas de trabajo* to review the *Ley 20 000* (Baeza 2014). According to the Minister of Justice, José Antonio Gómez, these inter-ministerial working groups would analyze anything related to cannabis, its therapeutic use, autocultivo, all those questions that are discussed today” (Campos 2014b). Cannabis activists, such as Ana María Gazmuri, the leader of

¹⁰⁷ Marco Enriquez-Ominami’s 2013 program reads like the wish list of cannabis activists, stating “the most adequate position... is to not criminalize cannabis consumption, nor possession or cultivation for personal use” (PRO 2013:3). His program would allow *autocultivo*, cannabis social clubs and distribution under the auspices of the state (PRO 2013:5). This position was the result of close collaboration with cannabis activists (Claudio Venegas, Interview, June 4, 2017). Laura Merinho remembers that “he was very receptive...delegating to us the responsibility of his platform regarding drugs” (Interview, May 29, 2017). According to Nicolás Espinoza: “He told us, if I am president, your group will be responsible for drug policy” (Interview, May 23, 2017).

Fundación Daya, had high hopes, expecting that this official review of drug policy would recommend substantial policy action (Interview, May 31, 2017). However, government sources highlighted “that there was no political decision yet about allowing medicinal or recreational use” (Campos 2014).

There was no insider agenda setting because “there is not just one opinion on the topic in the government” (Muñoz 2014). Internally split, the government adopted a hands-off rather than pro-active approach. Mariano Montenegro, a key figure in Chilean drug policy and an opponent of cannabis reform, stated that “the government was unfortunately divided, there were even some in favour” (Interview, April 20, 2018). While reform proponents did not perceive the Bachelet administration as opening a window of opportunity for cannabis reform, they did not think her government had fully shut down that possibility. One thing was clear: if change was to occur, reform proponents had to set the agenda themselves.

Outsider Agenda Setting

In the absence of insider agenda setting, outsider agenda setting was responsible for the fact that “legalization debates gained national relevancy” (Ibáñez 2018:74). Specifically, a series of high-level arrests in 2013 drew attention to the inadequacy of drug prohibition and motivated new actors to get involved in cannabis activism. Some of these new actors emphasized the medical uses of cannabis, which thus began to garner public support (Rivera-Veléz 2019). These new actors, chief among them *Fundación Daya*, joined a fledgling grassroots cannabis movement. At the forefront of the movement was *Movimental*, an organization that played a pre-eminent role especially in promoting the annual *Marcha*. Other small or local groups such as *Triagrama* also advocated for

cannabis reform. Despite differences, these traditional cannabis activists were “traditional” cannabis activists, collectives of cannabis growers and consumers with limited resources, reach and resonance.¹⁰⁸

These newcomers partially changed the cannabis reform coalition, introducing more appealing messages and messengers and a more pragmatic and elite-centered approach. In other words, like in Uruguay and Mexico, the confluence of traditional, idealistic grassroots activists and more pragmatic, professional institutionally minded actors added momentum to the reform process. In contrast to the other two cases, however, the resources, organization, coordination and linkages with other social movement organizations at the disposal of cannabis reform proponents remained limited. In Chile, neither did domestic elite actors bring their expertise to bear on the struggle for drug policy liberalization, as in Mexico, nor did international “advocates without borders” get involved to transfer legitimacy, funding and knowledge to already more capable pro-reform campaigners, as in Uruguay.

In May 2013, Manuel Lagos was arrested on a drug charge (Mandiola & Peña 2013). His brother Sergio Lagos, one of Chile’s most famous TV presenters and musicians, began a campaign to defend him and denounce Chile’s drug laws. His celebrity status gave him a platform to air his grievances – even organizing a concert in support of his brother which attracted a crowd of thousands (Ibáñez, 2018:76). Sergio Lagos became a highly effective and visible “lobbyist for cannabis liberalization” (Wilson 2014). According to Nicolás Espinoza, leader of *Movimental*:

¹⁰⁸ The exception was *Latinoamerica Reforma*, whose membership included professionals and academics, such as Sergio Sánchez or Ibán Rementería, who focused on harm reduction and drug policy reform in general.

Everyone loved [Sergio Lagos], and his brother is arrested for cannabis. So, he organized a huge campaign in which they publicized the faults of the *Ley 20 000*. He could more easily access spaces that were closed to us. We wouldn't be invited to a prime-time TV show to talk about the topic, but he was....He did it really well installing the topic and making it very visible (Interview, May 23, 2017).

Aside from new messengers, cannabis activists embraced a new message. Framing cannabis reform to be about allowing the medical uses of cannabis proved highly persuasive (Rivera-Veléz 2019). The personal experiences of patients, such as Cecilia Heyder whose suffering was alleviated by cannabis-based medicines (Interview, April 26, 2018), and parents, such as Paulina Bobadilla who used cannabis oils to treat their sick children (Interview, May 4, 2018), presented cannabis in a more sympathetic light. Denying legal access to those in dire need was more difficult than to those with “dreadlocks and reddened eyes from smoking a joint” (Ana María Gazmuri, Interview, April 17, 2018). While framing cannabis as medicine was a “can opener” for cannabis reform and helped to win over supporters (Sánchez 2016:223), as I will discuss in more detail below, combining these two separate issues also created confusion, muddying the waters in terms of the public rationales for cannabis reform.

In addition to new messengers and messengers, cannabis activists changed their tactics. They increasingly realized that to succeed in changing drug laws “you have to work with politicians” (Claudio Venegas, June 4, 2017). According to cannabis activist Laura Merinho: “We understood that the only way to get things done was to get involved in politics. You cannot change the laws by just marching in the streets” (Interview, May 29, 2017). As another long-time reform activist, Mariana Pérez, recalls, activists coordinated

some of their otherwise disparate advocacy efforts, as they were united in their goal to change the prohibitionist *status quo* (Interview, June 7, 2017). However, lobbying was more scattershot than targeted: Cannabis activists “approach[ed] all members of the lower and upper house of Congress who might be interested” (Valenzuela 2015). As the editor of *Cáñamo* and long-time observer of drug policy Claudio Venegas put it:

We tried everything, from private meetings, to public debates and fights in the media, to constructing a social movement on the streets. We have fought for this issue on all fronts. This is how we advanced this issue (Interview, June 4, 2017).

Not unlike in Uruguay, with a little bit of luck and a lot of grit, outsider agenda setting efforts paid off. Cannabis activists managed to persuade a small group of friendly legislators to take action in the absence of any agenda setting from the executive. In July 2014, *Diputados* Karla Rubilar, Pedro Browne and Joaquin Godoy introduced a bill that would end the criminalization of *autocultivo* “whether for therapeutic, recreational or sacramental purposes” (Rubilar, Browne, and Godoy 2014:5). Cannabis activists played a key role in tabling this legislative initiative. Rubilar stated that the arrest of Milton Flores marked the beginning of her collaboration with cannabis activists and that the bill originated from these interactions: “The project is born out of the concerns of pro-cannabis organizations, some in particular, who met with me” (Interview, May 26, 2017).

In August 2014, parliamentarians from the governing *Nueva Mayoría* presented their own autocultivo bill (Arriagada et al. 2014). Cannabis cultivation would be exempted from criminal sanctions and possession of up to 5g of cannabis for immediate personal use allowed. Again, cannabis activists were highly important in drafting this bill. One of its authors, Alberto Robles reveals that “I was in contact with many pro-cannabis

organizations... I met a lot with them to write the bill.” According to him, “it was them who initiated the [process]... I would say that the pro-cannabis groups are those who have put the topic on the table” (Interview, May 30, 2017). Vlado Mirosevic, another sponsor of the cannabis bill, confirms the “synergy with Milton Flores and other [pro-reform] groups” (Interview, April 27, 2018). And, Karol Cariola, another legislative champion of cannabis liberalization, reported that she had “maintained permanent coordination” with activists “with whom I have always been in contact to receive and give advice. They helped us a lot” (Interview, May 2, 2018). Thus, it is no exaggeration that “this bill was written jointly by the *Diputados* and us activists” (Mariana Pérez, Interview, June 7, 2017). Outsider challengers with the help of a small group of legislative allies thus managed to put cannabis reform on the agenda.

Success in Parliament

Initially, outsider agenda setting and maintenance provided crucial momentum for cannabis reform in Chile. For the next few months the lower house’s Health Commission debated a combined legislative initiative and heard from a number of actors: activists, medical professionals and government representatives, both in favour and against cannabis liberalization. After hearing these testimonies, the Health Commission approved the general outline of the bill on November 18, 2014. The bill would allow *autocultivo* of up to six plants for any purpose, production of and access with prescription to cannabis and set a limit of 10g for possession (Cámara de Diputados 2015c). With the final touches being completed, the bill successfully exited the Health Commission to be voted on by the lower house’s plenary.

On July 2 and 7, 2015 Chilean legislators debated and voted on the cannabis reform bill.¹⁰⁹ Forty-five of the 120 members of the lower house took advantage of the opportunity to take a public stance on cannabis liberalization. For opponents, liberalizing cannabis was “a mistake,” “a disastrous public policy which will create a gigantic problem,” and, “negative and lamentable for the country.” As Sergio Espejo put it: “This is a bad project because it is mistaken in its diagnosis, hides the real problem and proposes solutions that make the problem worse.” On the other hand, pro-reform legislators considered this bill an opportunity to create “intelligent legislation that prevents youth consumption, respects liberty and leaves behind the inefficiency and injustice of prohibitionism.” For them changes to the status quo were both “necessary and urgent,” as the current war on drugs had “completely and spectacularly failed.” The time had come to allow cannabis cultivation. As Denise Pascal put it: “Today is the day we say: ‘No more!’ No more judging citizens who want to simply enjoy themselves. No more sanctioning of people who only want to alleviate their pain.”

Despite widespread support for *autocultivo*, at least among legislators from the center-left *Nueva Mayoría*, there was a myriad of rationales for cannabis liberalization. Speeches in the chamber reveal the lack of a master frame through which legislators understood and justified their support for the initiative. Proponents advanced different arguments, citing personal liberties,¹¹⁰ fighting drug trafficking,¹¹¹ the shortcomings and

¹⁰⁹ The following pages draw on the proceedings of the plenary debate. Cámara de Diputados. *Diario De Sesiones Numero 363/42 and 363/43*, July 2 and 7, 2015.

¹¹⁰ For instance, for Alberto Robles “an adult’s essential freedom” was at the heart of the proposal. Godoy considered it an “issue of individual liberties.” Sergio Ojeda declared that “*autocultivo* for personal consumption is part of people’s freedom, and this right to private sphere and privacy.”

¹¹¹ For example, Pascal proclaimed that “with this project we are attacking narco-trafficking.” Matías Walker characterized it as “the best instrument to combat the miserable narco-trafficking.” Pepe Auth declared: “The approval of this bill is a mortal blow to micro-trafficking, the real bane affecting our communities.”

contradictions of the *status quo*,¹¹² or the benefits of medicinal marijuana as reason why to support cannabis reform.¹¹³ When all was said and done, the cannabis reform initiative passed its first reading in the lower house of parliament with 68 votes in favour, 39 votes against. Votes were cast mostly along party-lines. Legislators from the governing centre-left *Nueva Mayoría* voted for the bill and legislators from the right opposition against (for a detailed breakdown of the vote see Appendix 12).¹¹⁴

Despite sensationalist headlines claiming that Chile had just legalized marijuana (e.g. BBC 2015), this vote was just one step in the lengthy parliamentary process to become the law of the land. After the first reading of the bill or its *discusión general* (BCN 2019:10), the reform bill had to return first to the Health Commission for discussion and voting on any amendments introduced and the particular articles of bill. Then the bill had to pass the lower chamber's plenary again before being debated and voted the Senate (Cámara de Diputados 2013). What legislators had passed was the “idea to legislate” (CPyP 2016), rather than marijuana legalization itself.

Nevertheless, cannabis reform appeared on the right track. The first hurdle for marijuana legalization in Chile had been cleared. Reform proponents rejoiced. Ana María Gazmuri considered the proposal a “step in the right direction” (Cooperativa 2015). Another cannabis activist celebrated the “great progress in the fight against prohibitionist policies” (Danilla 2015). Mariana Pérez reminisced:

¹¹² Another argument presented reform as fix the “absurdity” and “hypocrisy” of the status quo. The proposed reform, then, would “put an end to the legal contradiction of the Ley 20.000.”

¹¹³ Medical use of cannabis received support even from those who otherwise opposed cannabis liberalization. Four-fifths of legislators who spoke out against cannabis reform, registered their support for medicinal marijuana.

¹¹⁴ The exceptions were two conservative legislators that voted in favour (Marcela Sabat (RN) and Pedro Álvarez-Salamanca (UDI)) and three members of the centre-left coalition that did not vote for it because they opposed cannabis reform: Jorge Sabag, Iván Flores and Sergio Espejo (DC).

That day in the plenary we made a show, screaming, waving flags and applauding when they voted in favor. We were very excited and thought that something very powerful had happened and were happy with the approval. We left that day with the good feeling that very soon there would be a change in the law (Interview, June 7, 2017).

Outsider Agenda Denial

Opponents of cannabis reform were indignant. The approval of cannabis reform in its first reading in the lower house of parliament provoked reform opponents to step up their agenda denial efforts. Organized reform opponents, specifically from the medical community, tirelessly endeavored to discredit both the message and messengers behind cannabis liberalization. They marshalled their professional prestige and the impartiality of scientific evidence against changing the *status quo*. They advanced the counterframing that “cannabis is dangerous” and “the real drug problem is consumption itself” (Carlos Ibáñez, Interview, April 27, 2018). As such, the medical community emerged as the most outspoken and formidable adversary of marijuana legalization.

Doctors and their medical associations forcefully worked in public and private to stop the reform initiative. According to one of the sponsors of the cannabis bill, “medical associations have been the principal activists against [cannabis reform]” (Karol Cariola, Interview, May 2, 2018). Medical professionals emphasized that they were presenting the available evidence and should be listened to (Paris 2015:15). To prevent cannabis liberalization, medical doctors and medical association engaged with great insistence and

vehemence in a wide variety of activities.¹¹⁵ Their claim to scientific expertise and dispassionate interest in public health gave their interventions credibility and additional forcefulness.

In opposing cannabis reform, medical professionals argued that it was unnecessary, unworkable, and unsafe. First, facilitating legal access to cannabis was unnecessary, because the “greatest” (Venegas 2014:657), “principal” (SONEPSYN 2015) and “most relevant” (SOPNIA 2015a:273) problem was cannabis consumption itself. Second, Chile was not “culturally prepared” or “mature enough” for allowing cannabis (Rojas 2013). Regulation might sound good, but it was unworkable: “regulation is a grand word, but implementing it effectively is very difficult” (Venegas 2014:654). Third, reform was unsafe because cannabis is dangerous: “The reasons for our rejection is the overwhelming scientific evidence of the direct harm provoked by marijuana” (SOCHIPE 2015a:7). Their framing counteracted those advanced by reform proponents, stoked fears about the consequences of legalization and provided opponents with rationales for inaction.

In particular, medical associations had one audience in mind: President Bachelet, a doctor herself (Carlos Ibáñez, Interview, April 27, 2018). They tried to get the president to oppose cannabis liberalization: “We call on the government to live up to its responsibility” (SONEPSYN 2015). A full-page advertisement published in *El Mercurio* addressed Bachelet directly:

¹¹⁵ Medical doctors inserted themselves in public debates by writing letters to the editor of Chile’s leading newspaper *El Mercurio* (Venegas & Acevedo 2015; Venegas & González 2015; Soriano, González, & Risco 2017), or opposing cannabis reform in TV appearances. To influence political debates, they issued position papers (SONEPSYN 2015; Gaete 2016; Zambrano, Cuadrado & Huneeus 2019), testified in congressional debates and lobbied politicians in private (Álvarez and Vega 2015). Medics made their case in academic publications (Venegas 2014; Mönckeberg 2014; Nitsche *et al.* 2018), and even specifically published a book arguing against cannabis liberalization (SOPNIA 2015b).

Madam President, as a medical doctor like us, you have been educated based on scientific rigor, empirical facts and the sole intention to improve public health...

In the debate about the bill that intends to legalize cannabis cultivation, we believe that it is your duty as president and as medic to listen to us. Our organizations represent the voice of the medical doctors of Chile (Paris *et al.* 2015).

By December 2015, Enrique Paris, the president of the *Colegio Medico de Chile*, seemed optimistic that they had managed to get through to President Bachelet: “She is a doctor and has a special sensitivity for health matters. We have to remember that this is a parliamentary initiative not one from the executive” (Cáñamo 2016).

Insider Agenda Denial

Whereas the legislature took action by passing a limited cannabis reform bill in its first reading, the executive had long been indifferent (Muñoz 2014). As a newspaper article put it, “[i]n the Government they are monitoring the project but have not expressed their support. Neither have they rejected it explicitly” (El Mostrador 2015c). Javier Piedra, a legislative aide of one of the parliamentarians in favor of reform, stated: “We asked them to provide their opinion or information on several occasions, but nothing happened” (Gajardo 2015:1). The government had adopted a “wait and see” attitude. As Health Minister Carmen Castillo said: “we are watching how this bill is going, but this is not a topic we are prioritizing...our objectives are elsewhere” (La Tercera 2015).

The day after the parliament’s vote, Mariano Montenegro, the newly instated director of SENDA and staunch opponent of cannabis liberalization, broke what he described as a “deafening silence” from the government (Interview, April 20, 2018). Montenegro declared that “the true problem of cannabis in Chile is consumption not trafficking or

crime” and easier access would “invariably translate into more consumption” (Guzmán 2015). His framing mirrored that of outsider reform opponents and denied that cannabis reform was a solution to any other problem. Reacting in this manner, Montenegro positioned the government as opposing cannabis liberalization (El Mostrador 2015b).

Reform proponents were alarmed. Montenegro’s statements were a reminder that cannabis reform had “an enemy on the inside” (Sergio Sánchez and Ana María Gazmuri Interviews, May 16 and 31, 2017). Montenegro relished in the opportunity to publicly “show his face and appear on the news to tell [reform proponents] that they are wrong” (Interview, April 20, 2018). Behind the scenes, Montenegro was actively trying to sabotage the reform process (El Mostrador 2015a). The pro-reform legislator, Juan Luis Castro, charged that “SENDA’s director has been constantly obstructing rather than help constructing a way to decriminalize cannabis” (Publimetro 2015). According to Ana María Gazmuri, “the only thing he did was blocking, blocking, blocking” (Interview, April 17, 2017). Claudio Venegas admitted that his “nemesis” Montenegro was highly effective and “managed to articulate the opposition [to reform], something that had not happened before” (Interview, June 4, 2017). With Montenegro leading the internal opposition to cannabis reform, its fate was more uncertain than ever.

The Opportunity for Agenda Maintenance

In early September, Interior Minister Jorge Burgos invited members of the Health Commission from the Nueva Mayoría to *La Moneda* to “for the first time, present the government’s position on allowing autocultivo” (Álvarez & Vega 2015). As *Diputado* Juan Luis Castro explained, he intended to “ask the executive to adopt a position and decide whether there is political will to decriminalize the possession and home

cultivation” (El Mercurio 2015). However, the meeting evidenced a gulf between the government and the pro-reform legislators (AgenciaUno 2015a). After months of letting the discussion “run its course,” the executive finally got involved (Godoy, Vallejo & Pinto 2015). Taking charge, the Interior Minister created a ministerial “reaction team” that worked on “turning down the volume” of the project (ibid). According to sources, the government intention was to “water down the bill, especially regarding autocultivo” and make it more restrictive (Álvarez & Vega 2015).

In October, the executive presented amendments to the reform bill that would reduce the number of plants that could be grown at home from six to one and cannabis to be possessed from ten to two grams (Bachelet *et al.* 2015). This was as far as the government was willing to go. According to Antonio Leiva, a high-level SENDA official, this represented “a revolution in how the Chilean state addresses the question of cannabis” (Interview, June 1, 2017). For reform proponents, the restrictions to possession and cultivation were too reactionary. Karla Rubilar dismissed the amendment as “ridiculous” (Interview, May 25, 2017), Marco Antonio Núñez as “impractical” (Interview, April 25, 2018), and for Vlado Mirosevic, the amendments “would mutilate, butcher, kill the spirit of the bill” (Interview, April 27, 2018).

Some pro-reform legislators remained optimistic that the differences could be bridged. As Castro related, “there are different positions, but we hope to find common ground” (Cádiz 2015). Those who met with government officials thought the executive’s position was not set in stone. According to pro-reform legislator Víctor Torres, “this is a first get-together, but nothing definitive” (ibid). The proposed amendments were perceived as an

opening offer for further negotiations. Marco Antonio Núñez, another supporter of reform, summed up the meeting:

We have not reached an agreement. We will continue our dialogue with the Interior Ministry and hope that in the coming weeks this initiative can advance with their support (Álvarez 2015)

To find common ground, pro-reform legislators “decided to negotiate with the executive. We sat down to talk and proposed that they would allow us to continue with our regulation” initiative (Karol Cariola, Interview, May 2, 2018). In other words, they were willing to make concessions to rescue the reform. As Cariola stated at the time: “We could come to an agreement, even regarding the number of plants” (AgenciaUno 2015b). It seemed that the government was also willing to compromise. As Marcelo Díaz, the government’s spokesman, stated:

We know there are differences with the legislators about the quantities that will be authorized, but we will initiate a discussion with them, and I am convinced that at the end of the day we can come to an agreement (AgenciaUno 2015b).

Yet, these discussions between the government and pro-reform legislators failed to produce any agreement. It eventually became clear that despite public statements to the contrary, neither side was willing to budge (Marco Antonio Núñez, Interview, April 25, 2018). The government insisted on its amendments and legislators close to cannabis activists on more radical provisions. As Cariola explained: “We were not in agreement and that generated tension which did not allow us to advance” (Interview, May 2, 2018). Pro-reform legislators and the Bachelet could not agree on a compromise reform bill.

No Outsider Agenda Maintenance

Activists were unable to secure meaningful changes to the government's amendments and as a result, they were unwilling to support them. In contrast to Uruguay, Chilean cannabis activists were not involved in discussions with the government. Only after Montenegro left his post as SENDA director did state officials meet with cannabis activists (Antonio Leiva, Interview, June 1, 2017). Their inability to influence the substance of the reform bill and the government's insistence on restrictive amendments soured cannabis activists on the legislative process. Cannabis activists disowned a cannabis reform they no longer supported, rather than assume ownership or seek to engage in agenda maintaining efforts.

This attitude contrasted sharply with their initial role in agenda setting or the agenda maintenance efforts of Uruguayan cannabis activists. Initially, Chilean cannabis activists were highly invested in the reform bill. They saw themselves not only as "witnesses but also actors directly involved in this discussion" (Valenzuela 2015). Activists actively followed the legislative hearings, privately lobbied legislators and contributed to public debates. As Mariana Pérez remembers:

We were always there and participated actively in the Commission. Every Tuesday we went to Congress. We wanted to show our presence and voice our opinions. We wanted to be included, and that they thought of civil society (Interview, June 7, 2017).

Increasingly frustrated with the procedural moves and substantive concessions, however, "activists stopped lobbying" (Sergio Sánchez, May 16, 2017). Cannabis activists were

unwilling to support the government-imposed restrictions.¹¹⁶ Nicolás Espinoza deemed the project to have “become something completely different from what we wanted” (Interviews, May 23, 2017). Because of the executive’s amendments, “*Daya* decided we can no longer support it” (Ana María Gazmuri, Interview, May 31, 2017). *Triagrama*, “disappointed with immaturity and direction of the project,” no longer worked with legislators (Reyes 2015). What was being discussed “did not have the support of the cannabis movement any longer” (Nicolás Espinoza, Interview, May 23, 2017). Instead of engaging in outsider agenda maintenance, activists withdrew their support from a limited but possible cannabis reform bill.

Cannabis activists’ unwillingness to support the cannabis reform bill was a result of their inability to secure provisions they agreed with (Mariana Pérez, Interview, June 7, 2017). In the negotiations between pro-reform legislators and state officials they had been sidelined and only indirectly participated through their legislative allies (Ana María Gazmuri, Interview, May 31, 2017). The tactics that had served cannabis activists well in initially setting the agenda were unsuitable for influencing policymaking later on. Claudio Venegas called “what remains of activism just sad because they don’t know what to do” (Interview, April 30, 2017). Sergio Sánchez deemed that cannabis activists “had not tried or not done what is required, because they don’t know how to do it or don’t want to do it” (Interview, May 16, 2017). Laura Merinho argued that “articulation and strong organization were missing” (Interview, May 29, 2017). Eduardo Vergara stated:

¹¹⁶ Activists feared that low threshold quantities for possession and cultivation would lead to more rather than less criminalization. They preferred the ambiguous prohibitionist *status quo* to exceedingly restrictive legal access with clearly delineated thresholds for the home cultivation. For Nicolás Espinoza, “in this form the initiative is not a step forward but a step back, because at least today we have no fixed quantities” (Interview, May 23, 2017).

the efforts in the last few years have been caricatural. If your goal is to convince the average citizen, you cannot convince them marching in the street with a black hoodie and marijuana leaf smoking... all those are to blame who were part of this strategy that made a splash but did not manage to convince. At this stage, you have to convince with evidence, responsibility and not extremes (Interview, May 23, 2017).

Rather than professionalizing their advocacy, most cannabis activists struggled with a lack of resources and deficient organizational structures. According to Laura Merinho, one of *Movimental's* earliest activists, the group “continues to be as artisanal as always” (Interview, May 29, 2017). The core of *Movimental* remained half a dozen volunteers that had to juggle their advocacy efforts with their day jobs (Nicolás Espinoza, Interview, May 23, 2017). As Mariana Pérez, one of *Movimental's* leaders revealed, the group was chronically cash-strapped (Interview, June 7, 2017). In stark contrast to Uruguay, the lack of professionalization, organizational structures and resources, meant that Chilean recreational cannabis activists were poorly equipped to meet the requirements of agenda maintenance and counteract agenda denial.

Instead of redoubling their efforts, long simmering “internal power struggles in the cannabis movement” boiled over (Sergio Sánchez, Interview, May 16, 2017). According to Claudio Venegas, “the demand for drug policy reform has fractured” (Interview, April 30, 2018). As Nicolás Espinoza lamented: “cannabis organizations have serious problems between them... there is so much ego. Today, there are no common efforts” (Interview, May 23, 2017). Symbolic of the internal splits of the cannabis movement, in 2018, a second *Marcha* was held by rivalling cannabis activists. Bedeviled by lack of unity,

resources, organizational structures, outsider reform proponents were unable to counteract reform opponents and to broaden the appeal of reform. In lieu of agenda maintenance, they abandoned a reform bill they no longer perceived as representing their demands.

Failure in Parliament

With civil society and governmental actors unwilling or unable to find a workable compromise, the cannabis bill had become something that in late 2015 few, if any, actors supported. According to Sergio Sánchez: “The amendment left nobody happy. Neither does it satisfy the conservatives that want to prohibit [cannabis], because it still contains allowing one plant, nor does it satisfy the people who want to cultivate more” (Interview, May 16, 2017). In trying to please everyone, the executive’s amendments managed to satisfy almost no one. As result, Juan Luis Castro thought the project “is in danger” (Radio UChile 2016):

We have the confluence of two extremes, those who want to know nothing about changing the law and those how think the modification is so small and insignificant that they are going to reject it. That is why I think the project with the amendments of the government, which I support, is in danger.

There were some legislators in the Health Commission who were happy to go along with the lower number of plants proposed by the government. For instance, Castro considered that “we are on the right track, because this is not about liberalizing or opening the floodgates” (AgenciaUno 2016a). Other legislators remained categorically opposed to allowing any form of home cultivation. For example, José Antonio Kast dismissed the bill as a “fundamentally bad project” that would “promote cannabis consumption”

(Morgedo 2016). More problematic for the prospects of the bill, however, were that those legislators closest to cannabis activists, did not agree with limiting *autocultivo*. As Karol Cariola put it: “I do not agree with the amendments of the executive... regarding the quantities for possession and cultivation, therefore we will try to maintain this central element” (Radio UChile 2016).

On January 17, 2017 cannabis reform failed.¹¹⁷ With several pro-reform legislators not in attendance, a narrow vote in the Health Commission eliminated the core provisions of the cannabis reform bill. While committee members voted against one government amendment (rejecting a decriminalized threshold of 2g of cannabis for possession and a limit of one plant for *autocultivo*), they also voted to accept another government amendment (increasing penalties for those supplying cannabis to children), which inadvertently deleted all references to allowing cannabis cultivation.¹¹⁸ Realizing the ramifications of their vote, pro-reform legislators frantically tried to undo the damage it had caused. Karol Cariola called for legal scrutiny of what had occurred and Alberto Robles tried to have the vote annulled. Pro-cannabis legislators were furious about the confusing formatting of the government amendment and their misunderstanding of the repercussions of their routine-seeming vote, but there was nothing more that could be done to save the cannabis reform bill. Presiding over the committee meeting, Víctor Torres upheld the vote: “there is no way of correcting it now, after we voted.”

With this vote, the *autocultivo* bill that had first entered the legislative arena in 2014 and was passed in its first reading by the lower house’s plenary in 2015 effectively died

¹¹⁷ The following description is based on the audio-visual recording of the session.

¹¹⁸ The approved part of the amendment stated both “replace” and “add” which caused confusion. Because the “replace” came first, the approved text eliminated allowing cannabis cultivation and possession completely.

because of poor attendance and misunderstandings. Yet, the unceremonious death in and by committee was not an accident or planned assassination. With little support left from reform proponents and intransigence from the executive, the cannabis reform bill had long been on life support. The eventual failure of cannabis reform, whose initial success in July 2015 had received front-page headlines, received little attention in the press (Figure 35). Even more tellingly, cannabis activists, whose agenda setting had been central for the reform's initiation, voiced their approval of its unsuccessful conclusion.

Counterfactual Analysis of Cannabis Reform in Chile

The narrative presented in the previous sections might give the reader the impression that the failure of the *autocultivo* bill was overdetermined, mainly because of governmental intransigence and determined opposition. While these were undoubtedly important factors that contributed to the failure of cannabis reform in Chile, its initial success serves as a reminder that there was momentum behind change efforts. In fact, counterfactual analysis reveals not only *how* but also *why* cannabis activists played a crucial role for both early success and later failure. In line with my theoretical argument, a lack of professional structures, organizational resources and coordination weakened the cannabis movement's ability to advocate, lobby and frame cannabis reform in persuasive ways.

By exploring alternative paths not taken at crucial moments, this section reveals that the destination could have been different. The counterfactual analysis not only helps to probe the connections between different steps in the causal chain but also the causal weight of different factors at work or absent in Chile's cannabis reform process. The section is divided into six parts that explore *what was not but could have been* to elucidate *what was*. First, I present evidence for the claim that *without* outsider agenda setting cannabis

reform would not have become an agenda item. Second, I show that *without* strong and organized outsider agenda denial cannabis reform would have fared better. Third, I highlight how *without* insider agenda denial momentum grew, but *with* the opposition of key actors the scope of possible change narrowed. Fourth, I establish that *with* outsider agenda maintenance a limited cannabis reform bill might have progressed further. Fifth, I discuss evidence that suggests that *with* different framings of cannabis, reform proponents would have been more persuasive. Sixth, I reveal that *without* professional organizational structures and resources, most cannabis activists were unable to engage in strategic framing and agenda maintenance.

Counterfactual: Outsider Agenda Setting

The first question is whether the public and political attention that resulted in the initial parliamentary approval of the cannabis reform bill would have materialized had cannabis activists not put the issue of marijuana legalization on the agenda. It is highly likely that without the work of activists politicians would not have made significant progress on their own. As Vergara (2016:102) writes, “the progress made... would not have been possible without the long and arduous work of a series of actors from civil society.”

Perhaps unsurprisingly, cannabis activists see themselves as indispensable for progress during this initial stage of the reform process. Ana María Gazmuri argued that “societal pressure has been of fundamental importance. We have dragged the state [to do something]” (Interview, May 31, 2017). Nicolás Espinoza claimed that “we have been responsible for the politicians not only seeing [the issue] but doing something” (Interview, May 23, 2017). According to Claudio Venegas, in Chile “the social movement

has been much more important than the politicians, who have lagged behind” (Interview, June 4, 2017). He continued:

This was not at all easy; it was not an inertial process or logical progression. We pushed, pushed, pushed for this to get to where it got.... Even those who do not like what we did must acknowledge that we did things well and worked hard.

While activists boasting of their importance is to be expected, more telling is the fact that pro-reform legislators agreed with this assessment. Lautaro Carmona characterized the bill as “an initiative that comes from organized civil society” (Cámara de Diputados 2015a:40). Loreto Carvajal highlighted how pro-cannabis groups “had led the way” (ibid: 48) and Carlos Jarpa congratulated them “for having advanced this issue to where it is now” (Cámara de Diputados 2015b:30). Vlado Mirosevic contended that “thanks to civil society efforts we have been able to have this debate” (Interview, April 27, 2018).

Reform opponents equally blamed cannabis’s agenda status on activists. Enrique Paris, the president of *Colegio Medico*, considered that a small group had been able “influence public opinion on this issue” (2015:15). For Ana Luisa Jouanne (2013), reform opponent and director of a drug treatment NGO, activists had succeeded with a supposedly “well-financed and strategic campaign.” Carlos Ibáñez, a medical professional opposed to cannabis liberalization, stated that “pressure of the cannabis lobby” had led the legislative debates (CNN Chile 2014a).

Thus, activists, proponents and opponents of cannabis reform agreed that without activists’ agenda setting the issue would not have become a legislative concern. However, outsider agenda setting was not without problems. As I will expand on below the campaign never provided a clear rationale of action or sought to professionalize advocacy

efforts. Outsider agenda setting achieved initial success, but also set reform proponents up for failure. First, as discussed above, reform proponents failed to insert marijuana legalization into Bachelet's program. This early failure provided reform opponents with the argument that the Bachelet administration had "no mandate" to legalize marijuana (Ana Luisa Jouanne, Interview, April 11, 2018). Second, reform proponents failed to prevent Mariano Montenegro from becoming SENDA director, despite campaigning to stop his nomination.¹¹⁹ Claudio Venegas considered this a "key battle" that activists lost (Interview, April 30, 2018). If activists had been able to prevent Montenegro's appointment, who had earned the nickname "Doctor No" (Sanhueza 2016), they might have had better chances later on. Last but not least, agenda setting did not feature a coherent or cogent framing of cannabis reform. Rather than creating a "fit" with decisionmakers' extant priorities and concerns, as it happened in Uruguay and Mexico, different framings of cannabis reform coexisted and competed against each other.

Counterfactual: Outsider Agenda Denial

The attention and approval that cannabis reform achieved in 2015 triggered the emergence of a powerful opposition. If the government had simply shut down cannabis reform proposals, opponents would not have perceived the necessity to take matters into their own hands (Carlos Ibáñez, Interview, April 27, 2018). According to Carlos Ibáñez, one of the medical professionals opposed to cannabis reform, "as medical associations we have ended up as the bad guys because the government has not done its work" (Huerta & Navarro 2015:29). Instead, medical professionals and their associations worked hard

¹¹⁹ *Cáñamo* and *Movimental* (2014) issued a public statement denouncing the rumored appointment of Montenegro as "political, technical and ethical mistake." *Cultiva Medicina* (2015) called on the president "to demonstrate her interest in improving the situation by changing the strategy and those in charge, especially Mariano Montenegro."

to stop cannabis reform, establishing a task force to influence political and public debates, lobbying high-level government officials and testifying in Congress.

Did these agenda denial efforts matter? Medical associations extolled their “advocacy work” as “certainly having had an impact” (SOCHIFE 2015b:27), and Ibáñez claimed that “we managed to halt liberalization” (Interview, April 27, 2018). More importantly, there is contemporaneous evidence that medical professionals were listened to by decision makers. Reportedly, the “opinions [of the medical associations] have increasingly permeated the government” (Muñoz 2014). Gabriel Silber, a *Diputado* from the *Nueva Mayoría* who opposed the reform, stated that “we have to listen to the experts” (AgenciaUno 2015c). Similarly, Sergio Espejo cited medical opinion as the reason to oppose cannabis liberalization (Álvarez 2015). Crucially, Interior Minister Jorge Burgos said of medical association’s opposition to cannabis reform: “This is an opinion that has to be heard in the debate” (Gálvez & Olivares 2015).

Not surprisingly, reform proponents behaved as if opponents were a major roadblock for reform. Ana María Gazmuri explained that “we are always thinking about how to respond and how to neutralize these attacks” (Interview, April 17, 2018). Activists recognized that they could not let the “evidence” and “experts” contradict their position uncontested. However, these attempts to counteract agenda denial were mostly limited to medicinal not recreational marijuana, which was *Fundación Daya*’s priority.

If there had been no bottom-up agenda denial from medical professionals, would cannabis reform have progressed? This is not purely a hypothetical question, as prior to coming out against any and all uses of cannabis, the *Colegio Medico* had shown more openness and receptiveness to cannabis reform. In fact, Vergara (2016:92) argues that: “the role of

the medical associations has been critical for this debate.” Under the leadership of Sergio Sánchez, himself a medical doctor and a leading cannabis proponent, COLMED critiqued cannabis prohibition and stoked the first tentative flames of debate.¹²⁰ As Sánchez remembers: “Working for the Colegio Medico allowed me to push the debate” (Interview, May 16, 2017). Yet, when Sánchez lost his position and several medical associations came out against cannabis liberalization, the Colegio Medico “assumed a different role, in a radical reversal to the openness with which they had previously approached the topic” (Vergara 2016:94). From then on, COLMED vehemently opposed cannabis reform (Zambrano, Cuadrado & Huneus 2019).

Although it might be coincidental rather than causal that while the COLMED was supportive of cannabis reform it made progress, there are other reason to believe that without bottom-up agenda denial cannabis reform would have fared better. Pro-reform actors behaved as if medical professionals’ opposition was important, and political actors listened to the “experts.” Anti-reform legislators echoed the framing advanced by medical doctors. In other words, agenda denial made it easier for them oppose cannabis reform. As we shall see, cannabis activists did not provide the same rhetorical resources to their congressional allies.

Counterfactual: Insider Agenda Denial

After taking no position on cannabis liberalization during agenda setting, the executive adopted a position that was neither fully supportive nor opposed to cannabis reform.

¹²⁰ In 2011, the COLMED sponsored the publication of a book that was critical of *status quo* drug policy edited by Sánchez and Musalem (2011). In 2013, a conference at the *Colegio Medico*, brought together reform proponents from the region (COLMED 2013). In 2014, a journal special issue edited by Sánchez stated: “we have pushed the debate,... we have contributed to reform drug policy” (Sanchez 2014:7).

Eventually, the administration proposed restrictive changes to the reform bill. Reportedly, the decision to “tone down the legislation, specifically with regards to *autocultivo*” was made by the Ministries of the Interior, Health, Justice and SENDA (Álvarez & Vega 2015). Bachelet remained on the sidelines. As the director of SENDA, Mariano Montenegro complained “there was no presidential leadership... a tragedy” (Interview, April 20, 2018). In the absence of explicit presidential interest or ownership, more conservative actors inside the government took the lead in responding to cannabis reform.

Reform proponents blamed Burgos and Montenegro instead of Bachelet for the government’s amendment and unwillingness to compromise. Cariola suspected that the government’s stance was “the result of the beliefs of particular people within the executive.” She alleged that the amendments had been drafted without Bachelet’s input: “she told us directly that she did not have knowledge of any amendments” (AgenciaUno 2015a). Particularly Montenegro was blamed for halting the reform bill’s progress: “he did a lot of damage because he is a great lobbyist” (Ana María Gazmuri, May 31, 2018). Núñez blamed not only Montenegro but also the Interior Minister (Interview, April 25, 2018). In Jorge Burgos, who took the lead in dealing with cannabis reform, Montenegro had a powerful ally with whom he closely collaborated (Gálvez 2016). Together, they “came up with the amendments” (Mariano Montenegro, Interview, April 20, 2018).

If Burgos and Montenegro were instrumental for insider agenda denial, would the reform process have been different without them? If this were the case, there should be observable differences in approach before they were in office. Before Burgos was appointed Interior Minister in May 2015 (Molina 2018), his predecessor Rodrigo Peñanillo had remained “at the margins” of the reform process and did not block its

advancement (Godoy, Vallejo & Pinto 2015). According to an insider, the initiative “ran its course and *La Moneda* did not intervene” because he “decided that the government would not to get involved” (ibid.). For Montenegro, under Peñanillo “this topic has been completely left unattended” (Fernández 2015). According to Montenegro, only his arrival and work with Burgos put an end to the ambiguity: “we only started to have a clear position, which had not existed before, when I came in” (Interview, April 20, 2018).

However, the influence of detractors of cannabis reform does not fully explain why the government insisted on lowering instead of eliminating the number of plants to be allowed to be grown at home. If Mariano Montenegro had gotten his way there would have been zero plants: “I was completely against allowing any cultivation” (Interview, April 20, 2018). Thus, it seems plausible that the government was unwilling to make further concessions because it already saw its proposal as a substantial concession to pro-reform actors. According to Antonio Leiva, a high-level SENDA official, this was already “a revolution in how the Chilean state addresses the question of cannabis,” (Interview, June 1, 2017). The amendment tried to balance the demands of those for and against cannabis reform. In fact, “instead of taking a position that it believes that the initiative is good or bad, [the executive] adopts a meaningless intermediate position” (Editorial *La Tercera* 2015). Such balancing of different positions through negotiated settlements and consensus-building was not untypical of the “*democracia de acuerdos*” that had become a hallmark of policymaking in Chile (Siavelis 2007:48).¹²¹ Activists failed to understand or were unwilling to accept to the primacy of the politics of compromise.

¹²¹ Reform by compromise had become a hallmark of post-dictatorial Chilean governments (Huber, Pribble & Stephens 2010; Roberts 2011; Weeks & Borzutzky 2012). While allowing for governability and stability (Siavelis 2014), “the overriding concern with maintaining consensus limited the playing field for reform” (Sehnbruch & Siavelis 2014:313). This did not preclude any or all change, “but rather that change, when it happens, has been most often extremely slow and gradual” (Weeks & Borzutzky 2012:103).

Counterfactual: Outsider Agenda Maintenance

If reform proponents had supported the amendments introduced by the government, would cannabis reform have succeeded? There are some who claim that the lack of outside agenda maintenance was inconsequential because legislative reform would have been highly unlikely to pass the Senate. For instance, Marco Antonio Núñez claimed: “We knew that it would die in the Senate, because of the balance of power and because conservatives don’t understand the issue” (Interview, April 25, 2018). Karla Rubilar agreed: “in the Senate everything would have ended anyways. The Senate is still extremely conservative. There was no way this would have passed the Senate” (Interview, May 25, 2017). Considering that both of these legislators missed the decisive committee vote in January 2017 in which cannabis reform was defeated, such *post hoc* rationalizations might be self-serving.

In fact, it is not wholly unreasonable to believe that the amended reform bill could have made further progress. After all, with the restrictions to home cultivation and possession, this was the reform bill that the Bachelet administration could support. Presidential support has long been identified as an important factor for legislative success (Siavelis 2002; Alemán & Navia 2016; Olavarria-Gambi 2016). With the *Nueva Mayoria* controlling both houses of parliament (Walker 2018), a reform that had the blessing of the president, legislators and civil society might have succeeded. While there is no way to know for certain, my contention is that limited cannabis reform could have progressed further if reform proponents had made the pragmatic decision to support a reform bill they rejected in principle. However, without outside agenda maintenance how far the amended cannabis reform bill would have progressed was never put to the test.

For outsider reform proponents the amendments introduced by the executive were a poison pill they were unwilling to swallow. Pedro Mendoza stated that the changes made the bill so bad that it was “better to not succeed” (Interview, June 1, 2017). For Ana María Gazmuri, “the reform bill was so bad that we could no longer support it that it is truly better to keep the Ley 20 000” (Interview, May 31, 2017). Activists preferred the ambiguity of *status quo* drug laws: “the bill is not a step forward but a step back because at least today we don’t have fixed quantities” (Nicolás Espinoza, Interview, May 23, 2017).¹²² Instead of supporting the cannabis reform process they had initiated, activists withdrew their support, thereby dooming it.

When activists stopped to actively support the reform bill, most pro-reform politicians, such as Karla Rubilar, followed suit (Interview, May 25, 2017). This left legislators, such as Juan Luis Castro, who were willing to compromise and work within the parameters set by the executive, squeezed between reactionary forces opposed to any and all cannabis liberalization and pro-cannabis groups opposed to this particular but possible reform bill (Radio UChile 2016). Considering how important mobilization, advocacy and lobbying was for the bill’s initial momentum, in the absence of outsider agenda maintenance the cannabis reform process lost all its urgency. Without activists pressuring and working for change, the initiative was doomed: “because there are always detractors trying to undermine and undercut our efforts, our efforts have to be permanent” (Ana María Gazmuri, Interview, May 31, 2017).

¹²² A number of judicial rulings that absolved cannabis growers (Fierro 2017) and adjustments in the prioritization of law enforcement away from criminalizing cannabis possession (Eduardo Vergara, Interview, May 23, 2017), had made the need for legislative change less pressing: “When you can plant in your house and almost nobody is in jail for it, there is less urgency” (Laura Merinho, May 29, 2017).

Counterfactual: Different Framing

Reform activists advanced a plethora of reasons for cannabis reform instead of one clear framing of why cannabis reform was necessary. SENDA official Álvaro Ahumada complained that “there is no clear vision of what they want or why they want it. There is so much confusion” (Interview, June 7, 2017). The analysis above of the legislative debates reveals there was a myriad of frames advanced to explain why cannabis should be legalized. The lack of a clear framing complicated agenda maintenance: “it is difficult to keep majorities together when the reasons to justify support are dissimilar” (Marco Antonio Núñez, Interview, April 25, 2018). Reform proponents were unable to connect their demands to extant priorities or concerns of decision makers. As such, activists were “only able to convince those who were already somewhat convinced, but we never convinced those who were unconvinced” (Nicolás Espinoza, Interview, May 23, 2017).

While imperfect, a brief comparison with medical marijuana highlights the impact that different messengers and messengers could have had. In contrast to recreational cannabis proponents, patient activists were effective in garnering sympathy and support by highlighting the alleviation of pain and suffering of cannabis-based treatments (Vergara 2016; Ibáñez 2018; Rivera-Veléz 2019). By emphasizing positive personal experiences with cannabis-based medications, especially in the treatment of young children, activists demanded access to medicinal marijuana (Núñez *et al.* 2019). Rivera-Veléz (2019:94) highlights particularly the importance of mothers in this struggle, as they were “privileged claim-makers because their expertise is based on firsthand evidence and their emotional narratives are usually real and credible.” Ibáñez (2018:90) considers the emergence of actors that could not be stereotyped as “*volaos de esquina*” [loitering potheads] vital.

Principally among these different actors was Ana María Gazmuri who begun working to advance medicinal marijuana and founded *Fundación Daya* in 2013. According Claudio Venegas, as a well-known soap opera actress she projected a “cleaner and more polished image” that made her a more appealing interlocutor (Interview, June 4, 2017). As Gazmuri herself recognized: “We had to get away from the stereotypes. Strategically, we had to move away from the figure of the typical cannabis user” (Interview, May 31, 2017). Nicolás Espinoza acknowledged this importance:

Ana María Gazmuri managed to get this topic into the homes of people. She is someone who had been on *novelas* since a young age and then starts talking about cannabis...this is when a cultural change happens that we potheads with dreads, bling and tattoos cannot achieve. The housewife doesn't believe us, doesn't trust us, but with her they do. And, this is where a number of changes regarding cannabis start, when it stops being just an issue of the young, the outcasts and pariahs (Interview, May 23, 2017).

Initially, recreational cannabis activists were enthusiastic about their new allies and the attention and approval they attracted (Claudio Venegas, Interview, June 4, 2018). Recreational cannabis activists embraced the framing of cannabis as medicine, as the medical frame presented cannabis in a positive light and served as a “can opener” (Sánchez 2016:223). According to Huerta and Navarro (2015:81), “because of the discussion of therapeutic use of the plant the topic has become an issue not only for the public but also for the legislative and governmental agenda.” However, the alliance between recreational and medicinal cannabis activists was uneasy and unsustainable. First, recreational and medicinal marijuana activists’ policy demands were not fully

commensurate.¹²³ Second, the background of activists was very different.¹²⁴ Third, medical users tended to publicly present themselves as more reasonable and deserving *vis-à-vis* radical and irresponsible “recreational” users (Núñez *et al.* 2019). Over time, relationships between different activists frayed, as recreational cannabis became increasingly overshadowed by medicinal cannabis (Rivera-Veléz 2019).

If recreational cannabis activists had framed their demands differently, would they have had more success? At least some leading cannabis activists believe that reform efforts could have advanced further had they behaved differently. Claudio Venegas bemoaned a “lack of strategic purpose and tactical finesse” (Interview, June 4, 2018). Sergio Sánchez opined: “The issue of recreational reform is on standby until the movement does the work that is necessary. But this requires more than just protesting” (Interview, May 16, 2017). Nicolás Espinoza from *Movimental* agreed:

We have to do more and other things... We have been protesting for 12 years, campaigning for 12 years, trying what we can to achieve change for 12 years. But, it has not been enough. our work must be more specific, methodical and professional (Interview, May 23, 2017).

The lack of clear and compelling framing in Chile helped reform opponents in their efforts to convince legislators and government officials to stop or water down the bill. The

¹²³ Recreational activists wanted legal access to cannabis as expression of self-determination and personal freedom (Claudio Venegas, Interview, April 30, 2018), the latter as treatment for specific illnesses and suffering. Thus, medical cannabis activists were more willing to accept restrictions, such no allowance of smokable cannabis or supply only with a physician’s prescription (Ana María Gazmuri, Interview, April 17, 2018).

¹²⁴ Many leading medical activists, such as Paulina Bobadilla, were middle class and middle-aged parents that had ended up in cannabis activism out of desperation (Interview, May 4, 2018). They were distant from the “cannabis culture” central to many recreational cannabis activists (Rodríguez 2014a). Some proponents of medical cannabis outright rejected smoking cannabis for non-medical reasons (Ríos 2014).

limited appeal of framing cannabis reform contrasts with campaigning in Uruguay and legal mobilization in Mexico which managed to persuade specific decisionmakers to support reforms. In difference to Uruguayan reform proponents who adapted their framing to changing circumstances and Mexican actors who adopted new frames to appeal to different audiences, Chilean cannabis activists did not “change the form in which the issue is communicated and use a language that is better suited” (Eduardo Vergara, Interview, May 23, 2017). For instance, there was little innovation or improvement in *Movimental*’s framing of cannabis reform; they continued to emphasize failures of the *status quo* and rights frames – “we don’t defend substances; we defend rights” (Crovari 2008:24) – rather than connecting their demand with decisionmakers’ preferences or priorities.¹²⁵ According to my overall argument, this failure to create a “fit” contributed to the limited persuasiveness of the idea of cannabis liberalization.

Counterfactual: Professionalized Advocacy

The chapter opened with an anecdote capturing the precariousness of cannabis activism in Chile: I found myself huddling around a fire outside in the cold at a preparatory meeting for the annual *Marcha* because *Movimental* does not have actual headquarters. Such a lack of resources and institutionalized structures limited most Chilean cannabis activists in their ability to influence policymaking or to make informed choices in advocating for change. Despite asking international drug policy reformers for financial support, they have not received any assistance.¹²⁶ Without a salaried staff or professional structures,

¹²⁵ A comparison of *Movimental*’s first available call to action issued in 2005 and the one contained in the booklet sold a dozen years later at the *Marcha* evidences a broad overlap and relatively little evolution of messages (Movimental 2005, 2017). Both contain a plethora of frames and arguments, most of which are backwards looking to costs of the *status quo*, rather forwards looking and emphasizing the benefits of drug policy change.

¹²⁶ None of the Chilean cannabis activists have received substantial financial support from *Open Society Foundation* (Sergio Sánchez, Laura Merinho, Ana María Gazmuri, May 16, 29 and 31, 2017).

leading activist organization *Movimental* has remained as “artisanal as always” (Laura Merinho, Interview, May 29, 2017). As such, members of *Movimental* had to rely on their own devices to design pro-reform materials and messages (Nicolás Espinoza, Interview, May 23, 2017). If recreational cannabis activists in Chile had been more professional, with more stable structures and plentiful resources, would they have had more impact?

In contrast to recreational cannabis activism, the different trajectory of medical activism is once again informative. In comparison to their purely recreational counterparts, medical cannabis activists from *Fundación Daya* have been able to scale up their operations and professionalize their activities: “Volunteerism only gets you so far. *Fundación Daya* would not be what it is today if we did not have the ability to hire professionals” (Ana María Gazmuri, Interview, April 17, 2018). *Daya* have innovated in their advocacy, cleaned up their public appearance and, “moved away from just protesting as dominant tactic” (Ana María Gazmuri, Interview, May 31, 2017). Furthermore, *Fundación Daya* has more pro-actively confronted agenda denial than recreational activists.¹²⁷ Their efforts have resulted in the cultivation of cannabis as part of a medical study in *La Florida* (Interview, Ricardo Mercado, April 18, 2018) and the elaboration of a cannabis-based medication that was sold legally for a while in Chile (AFP 2018).

Aside from a lack of professionalization, the lack of coordination among different activists and their rivalries has complicated reform advocacy. Conflicts and “*desencuentros*” between cannabis activists have “divided the little and diminishing power they have” (Claudio Venegas, Interview, April 30, 2018). While earlier in the

¹²⁷ Not only have they challenged every negative assertion made by the medics, but *Fundación Daya* also endeavored to develop their own scientific expertise, undertake studies, organize an annual international conference on medical cannabis and enlist medical professionals as allies (Ana María Gazmuri, Interview, May 31, 2017).

reform process, “everyone was in agreement about changing the law” (Mariana Pérez, Interview, June 7, 2017), later on “everyone fights for themselves” (Laura Merinho, May 29, 2017). If the cannabis movement had remained united, would cannabis reform have succeeded? Some suggest that missing unity was a decisive for the failure of cannabis reform (Ibáñez, 2018:91). For instance, Mariana Pérez argued:

I think what is missing is that the activists unite, ally and coordinate between them, so that we can be much more potent force. Everyone for themselves ... doing what they want doesn't work. If we were all together, as a national front for the liberation of cannabis, things would have been different (Interview, June 7, 2017).

What suggests that cannabis activists might have been more effective in drawing decision-makers to their side with coordinated and professional efforts is the Chilean *Regulación Responsable* campaign set up in 2017. Eschewing the usual iconography of cannabis, this campaign included not only cannabis activists but other civil society organizations such as MILES Chile (reproductive rights), MOVILH (same-sex marriage) and MARCA (new constitution). The goal of the campaign was to put cannabis reform on the agenda and to get politicians on the ballot to commit to supporting marijuana legalization (ADN 2017). While the *Nueva Mayoría* presidential candidate, Alejandro Guillier, had long supported cannabis reform (Riquelme 2017), prior to the second round he signed a “contract” with *Regulación Responsable*, promising to allow home cultivation, cannabis clubs and medical cannabis (Guillier & Gazmuri 2017). According to Ana María Gazmuri: “If Guillier had won, we would have gotten legalization” (Interview, April 17, 2018).

In line with my argument, would-be reformers require resources to develop and implement “winning” strategies. In contrast to Uruguay and Mexico where reform proponents had the organizational structures and resources to step up their campaigning and carry out strategic litigation, most Chilean cannabis activism remained amateurish and under-resourced. Whereas Uruguay’s *Regulación Responsable* focus group tested its message and *Mexico Unido Contra la Delincuencia* runs a legal clinic to file *amparos*, *Movimental* barely managed to organize the *Marcha* in 2017. Such differential means and capabilities of reform proponents resulted in succeeding or failing in achieving their ends.

Conclusion

The proceeding discussion shows why cannabis reform in Chile initially gained attention and even approval, but subsequently stalled and eventually failed. The combination of process tracing and counterfactual analysis, based on unparalleled access to key actors and a plethora of primary and secondary sources, unearthed how “a legislative harvest that promised to be historic...did not bear fruits” (Ibáñez 2018:93). Although the configuration of actors and ideas provided less fertile ground for marijuana legalization than in Uruguay, the failure of cannabis reform in Chile was not a foregone conclusion. In fact, initially the seeds of reform grew quickly.

The chapter shows that cannabis reform failed in Chile not only because of a lack of governmental support or societal opposition, but also because early agenda setting was not followed by later agenda maintenance. Due to their lack of organizational structures and resources, recreational cannabis activists’ advocacy capacities did not evolve to meet the increasing demands of the reform process. Their limited professionalism and skills

resulted in reform proponents being unable to advocate for cannabis reform in a way that could advance a coherent or cogent framing of cannabis reform or set the terms of debate.

Not presenting clear rationales for action and engendering support outside a core group of allied legislators, endangered the reform initiative. Without linking allowing *autocultivo* to decisionmakers' extant concerns, this left room reform opponents to attack cannabis reform on their terms. Without improving their organizational capabilities, cannabis activists were unable to silence reform opponents inside and outside the government, who counter-framed cannabis reform as harmful and problematic. Furthermore, reform proponents could not convince the Bachelet administration from refraining to demand exceedingly restrictive changes to cannabis reform. Instead of embracing an extremely limited, but politically feasible, cannabis reform bill, reform proponents insisted on their principles rather than acting pragmatically. Rejecting this amendment and unable to secure any concessions, cannabis activists became unwilling to engage in agenda maintenance. As result, the reform process withered away.

While it is tempting in hindsight to see the failure of marijuana legalization in Chile as foreordained, the country displayed several characteristics that made it appear as the “most likely” case to follow Uruguay in legally regulating cannabis in Latin America. Over the last decade, cannabis has become increasingly part of every-day life, societally accepted and supported by public opinion. The annual *Marcha* has consistently attracted ten-thousands participants to take to the streets for cannabis reform. As Ana María Gazmuri observed: “it is difficult to find a place where there is more cannabis than in Chile” (Interview, April 17, 2018).

With regards to strategic framing, the chapter shows that cannabis reform proponents were unable to capitalize on these background conditions. Aside from medical uses, cannabis activists failed to advance messages and messengers that presented cannabis reform in positive light, or as “lesser evil” *vis-à-vis* another problem. Rather, reform opponents inside and outside the government emphasized how “the principal problem is consumption” (Mariano Montenegro, Interview, April 20, 2018). Incapable to contest such counterframing and persuade the most important decisionmaker – President Bachelet – of the importance of cannabis reform, activists fell short in building a diverse coalition that could effect change.

In highlighting the organizational features of the Chilean cannabis movement, the chapter explains why cannabis activists were unable to engage in agenda manipulation and strategic framing that pressured decisionmakers to act, persuaded them to make concessions and neutralized agenda denial efforts. Marred by a chronic lack of resources and institutionalized structures, cannabis activists struggled to make their case for cannabis reform and step up their efforts to lobby for change when the reform process required new articulations and tactics. While “artisanal” structures were sufficient to mobilize great numbers of people every year and work with a small number of affine legislators, scant resources, limited skills and minimal professionalism proved insufficient to transform initial attention into eventual approval. Neither membership characteristics nor organizational structures of the cannabis reform coalition instilled the pragmatic outlook or discipline that would been required for moderating their demands *vis-à-vis* its limited, available supply of drug policy reform.

Five differences between the “negative” Chilean case and the “positive” Uruguayan case

in terms of agenda manipulation, strategic framing and organizational structures stand out. First, Chileans did not have “their Mujica” (Nicolás Espinoza, Laura Merinho, Mariana Pérez, Interview, May 23 and 29, June 7, 2017). In contrast to Uruguay, the Bachelet administration did not set the agenda. Second, while there were little agenda denial efforts of cannabis reform in Uruguay, in Chile liberalization was resisted both from inside and outside government. Third, whereas in Uruguay each side made side made concessions, in Chile there was no willingness to compromise. Fourth, in Uruguay President Mujica positioned legalization as measure against drug trafficking. In Chile this framing was just one among many. According to former president and reform proponent, Ricardo Lagos: “this has not been a discussion about taking away resources from drug traffickers” (Interview, May 30, 2017). The lack of coherent framing and pressing problem that cannabis reform “solved” undermined reform efforts. Fifth, in Uruguay reform proponents provided crucial agenda maintenance by upgrading their organizational capacities. In Chile, struggling with a lack of resources, organization and dissension, efforts to professionalize cannabis activism were too little too late.

Four differences between the “negative” Chilean case and the “positive” Mexican case are noteworthy in terms of my overall argument. First, while in neither country insiders set the agenda, outsider agenda setting occurred in different ways in Mexico and Chile. That cannabis liberalization became an agenda items was the result of legal mobilization in the former and mass mobilization and lobbying in the latter. Second, these differences of agenda setting and institutional venue in which cannabis was debated conditioned the impact of agenda denial by anti-reform. In particular, the medical community vociferously rejected cannabis reform in Chile but not so in Mexico. Third, in contrast to Mexican reform proponents, who strategically and surgically framed the messages and

messengers they advanced to appeal to the justices of the Supreme Court, Chilean reform proponents were uncoordinated, unmethodical and ultimately unsuccessful with appealing to new or different decisionmakers. Fourth, whereas in Mexico a small group of elite actors spearheaded cannabis reform advocacy, in Chile the pro-reform coalition was dominated by “grassroots” activists with few resources, connections or experience influencing policy. No civil society organization of the caliber of MUCD got involved with cannabis reform in Chile. Where Mexican reform proponents were “repeat players,” Chilean reform proponents were “one shotters” (Galanter 1974).

In sum, the “negative” case of failure in limited cannabis reform in Chile highlights what happens to the flow of causal energy when certain factors my argument posits as necessary are missing. Without insider agenda setting, not only outsider agenda setting but also maintenance is vital. The latter is likely to be more difficult than the former, because gaining approval is more difficult than garnering attention. Without a particular set of skills, resources and capacities engaging in strategic and resonant framing is improbable if not impossible, because persuasion requires advancing appealing messengers and messages that link the issue to extant concerns and counteract opponents. Achieving alterations of ideas of decisionmakers through their articulations and activities is difficult for pro-reform actors regardless, hence coordinated counterframing and agenda denial by credible anti-reform actors complicate it especially.

Conclusion

At the time of writing, there are three countries in the world that have legalized marijuana, two of which are in Latin America. Uruguay and Mexico legally regulated cannabis through new legislation in 2013 or binding jurisprudence 2018. Canada legalized marijuana in 2018 and New Zealanders had the opportunity to vote on legal regulation cannabis in a referendum in October 2020. In explaining why marijuana legalization occurred in Uruguay and Mexico, but not in Chile, my thesis uncovers and explores the most likely pathway to more drug policy change in the future: *joint politics*. This pathway contrasts with the two other possibilities of achieving drug policy reforms, *high politics* and *grassroots politics*, because it has wider applicability and greater potential.¹²⁸ Rather than relying on the electoral incentives of conventional decision-makers or on the existence of non-conventional, direct democratic forms of policymaking, heterogenous civil society coalitions that engage in agenda manipulation and strategic framing sometimes succeed in *alterating the ideas* of institutional decision-makers.

The following conclusion has four parts. First, I look back at the argument developed throughout the thesis. I summarize my argument and highlight its contributions and limitations. Second, I look forward to lines of inquiry that grow out of the limitations and the findings of my thesis. Third, I look at cannabis reform in three other Latin American countries. By applying my argument to Costa Rica, Colombia and Argentina, I assess its ability to travel. Finally, I look beyond the specific instance of cannabis policy change by drawing out the implications of my thesis for policy change in general.

¹²⁸ Cannabis reform in Canada is an instance of “high politics”, when a government comes into office which had campaigned on the promise to legalize cannabis. Cannabis reform in New Zealand would be an instance of “grassroots” reform, a population that opined through a referendum about marijuana legalization.

Looking Back

My thesis looks at the processes and outcomes of marijuana legalization in Latin America. Specifically, I answer why legal access to recreational cannabis was allowed in Uruguay and Mexico, but not in Chile. Without underestimating the importance of political will or societal opposition, my thesis emphasizes the agency, activities and articulations of pro-reform actors as the driving force behind recent cannabis liberalization episodes. I argue that change can be the result of strategic choices of pro-cannabis reform actors, and pinpoint both how and why they can achieve policy change.

My thesis contends that those wanting to change the *status quo* must often draw attention to the issue and engender approval. Would-be reformers must actively pursue the issue and persuade reluctant or uninterested policymakers to embrace reform. I show that in some contexts, for instance Uruguay, they can build and capitalize on independently emerging support for marijuana legalization. In other contexts, such as Mexico and Chile, reform proponents must pro-actively manufacture the change they seek through agenda manipulation and strategic framing. Depending on whether ideational change occurred endogenously or must be exogenously manufactured, change agents behave differently and perform different functions in the reform process. Even if there has been independent insider agenda setting, as in Uruguay, reform proponents still have a role to play in maintaining the agenda. In the absence of insider agenda setting, change agents must actively displace old ideas and introduce new ones, draw attention to the issue and persuade decision makers to approve of change. Sometimes outsider agenda setting and maintenance are successful, as was the case in Mexico. At other times, agenda setting or maintenance fall short of achieving policy change, as was the case in Chile.

My thesis explains why some reform proponents succeed with agenda manipulation and achieve cannabis reform, but not others. In particular, my thesis shows how and why the way in which reform proponents package and sell their demands for change matters. If they frame cannabis reform in such a way that makes sense to the institutional decision-makers they are trying to persuade and manage to link it to extant institutional concerns and goals, they have better chances to find allies for their cause. Framing cannabis reform in instrumental and specific terms can succeed, especially when conducted by credible actors that are able to “mainstream” the issue and create a “fit” with extant institutional ideas and interests. Thus, both the message and the messenger are important to change existing ideas about cannabis and cannabis policy.

Differences in framing explain the observed variation in reform outcomes. In Uruguay, a group of civil society actors, with the help of international reformers, focus group-tested the messages they adopted and deliberately adapted the imagery of the *Regulación Responsable* campaign, to make cannabis reform more palatable to a skeptical public and wavering politicians, who needed reassurance and encouragement to follow through with cannabis regulation. In Mexico, a small group of elite members of civil society and experienced, high-caliber lawyers deliberately constructed a legal challenge with favorable characteristics, unassailable litigants and appealing arguments that made it as safe as possible for the Supreme Court, which had already shown willingness in protecting and expanding personal liberties, to engage in innovative and potentially risky judicial decision-making to declare the prohibition of cannabis unconstitutional. In Chile, reform proponents failed to offer a coherent or conclusive rationale for action. Unable to connect their demands for marijuana legalization to any overarching or audience-specific concerns, several framings of cannabis reform coexisted and competed.

My thesis elucidates how and why some reform proponents were able to make the “right” choices in agenda manipulation and strategic framing, whereas others were unable to devise and implement resonant frames. Organizational structures, resources and technical skills that actors already possess or that are provided by others influence what tactical choices reform proponents make, how effectively they can implement them and why some activities and articulations are more persuasive than others. Professionalism and know-how, resources and linkages result in more effective campaigning, advocacy, lobbying and litigation.

Variation in organizational characteristics, capabilities and resources explain differences in strategic framing in Mexico, Uruguay and Chile. Both in Uruguay and Mexico, reform proponents were highly pragmatic, professional and deliberate in framing the messages and messengers they chose to represent cannabis reform. By contrast, Chilean reform proponents’ efforts were more amateurish, haphazard and decentralized. In Chile cannabis activism was dominated by traditional “grassroots” cannabis activists with limited means to achieve their ends. Conversely, in Uruguay and Mexico, key protagonists in cannabis reform were more institutionalized actors, with professional staff with relevant expertise and skills, and had experience in lobbying state actors or litigating in court. If the “usual suspects” had been responsible for cannabis reform advocacy in Mexico or Uruguay, they would have likely failed.

In short, my argument about marijuana legalization in Latin America has three parts. One, organizational characteristics, capacities and resources shape the strategic framings reform proponents can produce and distribute. Two, messages advanced by credible messengers that are made to “fit” with extant ideas of institutional decisionmakers are

more likely to be persuasive. Three, strategically packaging and selling cannabis reform is vital for agenda setting, maintenance and counteracting agenda denial efforts, because agenda manipulation determines the attention and approval cannabis reform achieves.

Contributions

In elucidating why Uruguay and Mexico legalized marijuana and Chile has not, my thesis makes a four-fold contribution. Substantively, my thesis is the most detailed and thorough comparative analysis of the politics of marijuana legalization in Latin America. Cannabis reform is a contemporary and significant instance of progressive policy reform that merits careful study and a theoretically-grounded explanation, just like changes regarding same-sex marriage (Díez 2015), abortion (Marcus-Delgado 2019), or transitional justice (González-Ocantos 2016).

Conceptually, by emphasizing the demand-side of policy reform and how it interacts with and influences the supply-side, my thesis contributes to theoretical debates about the determinants of policy change. I highlight outsider actors' role in setting, maintaining or denying the agenda through strategic framing and clarify the function of movement structures and organizational resources for making the right decisions in pursuing policy change. Marijuana legalization in Latin America was unpopular, unproven and unexpected. Nonetheless, cannabis liberalization has occurred in Uruguay and Mexico because of the concerted and collective actions of certain challengers to the *status quo*. That these actors achieved their goal under unfavorable circumstances highlights the significance of mainstreaming the issue, shopping it around to more sympathetic decision-making venues and manufacturing a “fit” with extant ideas and interests through strategic framing of both message and the messengers

Empirically, my thesis provides unique and original evidence about the politics of marijuana legalization in Latin America gathered during extensive fieldwork. While I leverage a variety of primary and secondary sources, created novel data sets, and utilize both quantitative and qualitative evidence, in particular, unparalleled access to key actors and 149 interviews allow me to zoom in on important aspects of the input side of the advocacy for legal cannabis.

Analytically, my thesis goes beyond describing *how* cannabis reform processes unfolded, to discern *why* reform proponents' efforts affected policymaking. To establish the weight of and relationships between different explanatory factors, I carefully trace cannabis reform processes both as they were and counterfactually as they could have been. This innovative combination allows me to establish the causal role of agenda manipulation, strategic framing, organizational characteristics and countermovement opposition.

Limitations

Like all studies, my thesis has several weaknesses and limitations. Some limitations result from implementation. Even though I feel that I know *enough* about the cannabis reform processes and outcomes in my three cases and through my interviews and research reached “saturation” (Guest, Bunce & Johnson 2006), I simply did not manage to access *all* existing evidence. For instance, there are interviews with key actors, such as President Mujica in Uruguay or Justice Zaldívar in Mexico, I tried but failed to realize. There are documents that I know exist, but did not manage to access, such as Fernández Huidobro's original proposal to legalize marijuana presented in the *Gabinete de Seguridad*. As such, my thesis reflects my best, but still incomplete, knowledge of the politics of marijuana legalization in Latin America.

Other limitations are by design and a function of the still limited scope of an already lengthy thesis, such as my bracketing of *international* factors. While I am convinced that such a focus is justified because *domestic* dynamics and processes, factors and actors, opportunities and constraints explain most of the success of cannabis reform in Uruguay and Mexico and failure in Chile, I recognize that international factors could be part of a more complete story. My choice to limit the scope of analysis to the domestic level whilst relegating international factors to the background was based on their irrelevancy for the outcomes I am interested in and their invariance for the period under study. On the one hand, I found little evidence in Chile and Mexico that international factors affected domestic reform process. In contrast to Uruguay, transnational activists did not have an appreciable presence. On the other hand, a more hospitable international context for drug policy existed at least since Uruguay legally regulated cannabis in 2013, and should have affected both Chile and Mexico equally. Nevertheless, how these “background” conditions interact with and influence what occurs in the “foreground” might be included in a more complete study of cannabis reform.

Last but not least, there are limitations which might be considered inherent in the type of research I undertook and argument I develop. Any analytical strategy has strength and weaknesses, and any research design involves unavoidable trade-offs (Coppedge 2012). Part of my argument is that both messages and messengers are key for understanding the alteration of ideas of specific decision makers. While I believe that I unearthed and presented detailed evidence for the internal validity of my argument through a unique combination of process tracing and counterfactual analysis, the argument that framing via ideational change affects cannabis reform in Latin America has the limitation that could be seen as “tautological sufficient cause” (Mahoney 2004:83). Because I do not have

experimental evidence yet – to use the language of variables – I cannot verify the effect of the treatment (framing) on an intervening variable (alterations of ideas) without reference to the dependent variable (cannabis reform).¹²⁹ For now, I infer framing effects from contextual and comparative, counterfactual and process tracing evidence which in combination corroborates my causal claims. As I expand on below, a promising additional way of establishing the causal effect of framing would be to conduct controlled experiments as further “indirect test” (González-Ocantos & LaPorte 2019).

Looking Forward

My thesis suggests several lines of future inquiry. This future research 1) responds to the limitations of my research design, i.e. the lack of independent, experimental testing of the framing mechanism; 2) ameliorates limitations in scope of my thesis, i.e. my choice to focus on domestic *vis-à-vis* international factors, actors and processes; 3) expands on certain aspects of my findings that merit further investigation, i.e. the importance of opposition to cannabis reform and role of legal mobilization to activate judicial decision-making venues.

Framing and Cannabis Reform

One major future direction of study that arises from my thesis is to quantitatively test the effect of different framings. Controlled experiments represent a promising avenue to corroborate my claim that framing can make a difference for the attention and approval

¹²⁹ I am indebted to Prof David Doyle for pushing me to address the tautological nature of my argument. However, I am neither the first nor last qualitative researcher to struggle with making an argument that establishes the explanans independently of the explanandum (Gerring 2006). In particular arguments about framing have been criticized for “frequently employ[ing] tautological reasoning: frames are successful because they are resonant and they are resonant because they are successful” (Kubal 1998:542).

that cannabis liberalization engenders. I see conducting experiments to test the effect of different representations of messages and messengers as crucial complimentary, next step, as it would increase the internal validity of my argument and attenuate possible concerns of circularity.

A small number of studies has relied on survey or framing experiments to test the effect of varying the representation of the messengers and messengers for cannabis regulation. Some studies have used experiments to investigate the effects of specific terms of debates, finding some evidence that they can make a difference.¹³⁰ Others have used news items or speeches as treatment to show that exposure to positive or negative frames can change respondent's attitudes toward cannabis reform.¹³¹ One study employs an experiment to test whether the actors associated with cannabis liberalization influence public support.¹³² These existing studies suggest that experiments can be a fruitful way to quantitatively test the effects of framing cannabis reform that I found through qualitative methods in my thesis.

¹³⁰ Kelly and Westerhoff (2009) found that respondents evidenced different judgements about individuals depending on whether they were shown a vignette that used "substance abuser" or "having a substance use disorder." Through a survey experiment, Kilmer *et al.* (2019) established that support increased for prescribing diamorphine to dependent user when it was called "diamorphine" instead of "heroin." Through focus groups, reform proponents in Uruguay established prior to launching *Regulación Responsable* that "regulation" attracted more support and generated less rejection than "legalization" (Musto 2018). While these studies find that differences in wording can make a difference, Mikos and Kam (2019) show that there is no difference between using "cannabis" and "marijuana" in levels of support for legalization.

¹³¹ Kim (2017) observes that respondents exposed to news articles with reasons to support marijuana legalization had more positive attitudes toward drug policy reform than those exposed to stories with reasons to oppose it. Gutiérrez (2014) presented respondents with a pro-criminalization, anti-criminalization and unrelated speech by Presidents Nixon and Obama which produced different levels of attitude change.

¹³² De Alencar (2018) found that varying cues about which politician was identified as supportive of cannabis reform changed respondents' levels of support. Among respondents in Brazil, approval increased if a center-right politician was identified as proposing cannabis liberalization than a center-left politician, despite the substantive content of the reform initiative staying the same.

The experiment I have in mind would vary what wording is used to present cannabis reform, why cannabis reform is proposed, emphasizing different costs and benefits, and who is identified as supporting cannabis reform. Because I argue that achieving a “fit” between existing concerns, priorities and ideas and the framing of cannabis reform is crucial for being persuasive, I envision an experiment that both matches and randomly assigns frames to respondent characteristics and concerns. Such experimental conditions would allow me to isolate the effect of messages, messengers and their “fit” with the audience. As my goal is to verify the causal effect of the framing mechanism, conducting a controlled experiment would be an important “indirect test” (González-Ocantos & LaPorte 2019). Despite its out-of-context nature, the survey experiment would still provide important information about the effect of framing drug policy reform in general, and in particular the importance of senders, messages and their “fit” with receivers.¹³³

Transnational Involvement and Cannabis Reform

The second future direction of investigation is informed by the aforementioned limitation in scope. While I bracketed international factors and sidelined international actors for the most part throughout the thesis, a fruitful future direction of study would be to integrate the reception of international reform “entrepreneurship” by groups such as the Global Commission on Drug Policy (Alimi 2015), perception of international opportunities and

¹³³ While conducting the framing experiment with specific decision makers at the time of the outcomes I intend to explain would have been ideal, a more realistic option is to recruit non-elite respondents in the future. This is not a fatal flaw, because “data gathered in a different time period, even involving different actors, can effectively shed light on the mechanism in question, especially when such data are the result of replicating the same fundamental psychological cues and reactions to external stimuli specified in the theory” (González-Ocantos & LaPorte 2019:19). For instance, in his excellent book *Party Brands in Crisis*, Lupu (2011) tests the microfoundations of his argument about brand dilution not with a survey or focus group at the time it occurred, but rather through a series of out-of-context survey experiments years later, which nevertheless allow him to document the underlying logic of his argument about information processing and brand dilution.

constraints (Álvarez, Pose & Lujan 2017), and the direct involvement of international actors in domestic reform processes (Murkin 2014). Although I maintain that international factors do not have an effect by themselves or that transnational activists are not able to act independently, they can nevertheless play an important for empowering local cannabis activists and encouraging decision makers, by providing resources, expertise and legitimacy.

International non-state actors can get directly involved in domestic policy-making. The “epistemic communities” approach provides a useful way to conceptualize and analyze the involvement of international “experts.” According to Adler and Haas (1992), such experts have “proved to be significant actors” in the policy-making process and “increasingly shape policymakers’ visions.” The “transnational advocacy networks” (TANs) approach shows how the activity of “activists beyond borders” can influence domestic policy outcomes. Keck and Sikkink (1998) argue that TANs are “an important part of an explanations for changes in world politics” (ibid:2). Because both “epistemic communities” and “transactional advocacy networks” can change the dynamics of domestic policymaking, I believe it would be beneficial to specifically investigate the impact of transnational actors on domestic reform processes. This would allow me to clarify what, if anything, the presence and activities of international actors contributes to domestic reform processes. I have shown in detail elsewhere that the direct involvement of international actors played a role in Uruguay’s unfolding cannabis reform process (von Hoffmann 2016b). While, I did not find evidence that transnational activists played an equally prominent role in either Mexico or Chile, the presence or absence of international actors might nonetheless help or hinder cannabis liberalization.

Opposition and Cannabis Reform

A third future direction of study is to more thoroughly investigate the role of organized opposition to cannabis liberalization. In the present study, I focused mostly on the motivations, choices and activities of reform proponents. However, the Chilean case shows that opponents inside and outside of government can play an important role in counteracting reform proponents' efforts and derailing the reform process. Such efforts to deny the reform agenda represented a marked difference to Uruguay where I did not find that opponents were present, or Mexico where detractors were unable to influence judicial decision-making. The Chilean experience suggests that studying the countermovement against cannabis liberalization represents an important direction for future research into cannabis reform in Latin America and elsewhere.

Indeed, a number of studies of drug policy in other contexts, such as Canada (Martel 2006), Australia (Mendes 2008) or Argentina (Cunial 2016), have established that organized opposition can make cannabis reform more difficult. The most notorious case of opposition to drug policy liberalization is the parent movement in the US (Massing 2000; Lune 2002; Dufton 2017). While most studies focus on past countermobilization and framing,¹³⁴ cannabis reform opponents, such as *Smart Approaches to Marijuana* (SAM), are active in the present (Mosher & Atkins 2019:144-148). Nevertheless, opposition to drug policy liberalization remains systematically understudied (Josephson 1981). As such, I believe it is warranted to specifically and more explicitly scrutinize

¹³⁴ In the US, thousands of parents organized and mobilized beginning in the late 1970s against “drug culture,” expanding cannabis consumption and growing decriminalization. “Grassroots, non-profit, parent-based social movement organizations dedicated to the elimination of drug use,” such as *National Families in Action*, were explicitly a “countermovement” (Lune 2002:149). In advocating against drug use and influencing decision makers, the parent movement was remarkably successful politically in slowing down or rolling back the liberalization of drug laws in the US (Himmelstein 1986; Lune 2002; Dufton 2017).

what choices reform opponents make and what activities they undertake, what opportunities and constraints they face, what organizational resources and structures they have at their disposal. Detailed analysis of how reform opponents organize, mobilize and frame cannabis reform would elucidate why they become influential in some but not in other contexts.

Such a study of the “organized response to a social movement with the purpose of blocking the movement’s activities, resisting change and presenting alternative points of view” (Scott & Marshall 2009), would speak to two bodies of literature. On the one hand, it would add to the general literature on the role of countermovements, that generally receive short shrift *vis-à-vis* progressive movements (Mottl 1980; Meyer and Staggenborg 1996; Whittier 2003). On the other hand, it would contribute to the literature on backlash to progressive social rights in Latin America. While backlash against new or expanded gender and LGBTQ rights in Latin America has attracted increasing study (Morán & Peñas 2016; Corrales 2019; Payne & de Souza 2020; Zulver forthcoming), backlash against drug policy reform has not received much attention thus far (the notable exception is Cunial 2016). Conceived of as one specific instance of the backlash against the “rights agenda” in Latin America, a study dedicated to the countermovement against drug liberalization would add a novel issue area and case studies to these literatures.

Legal Mobilization and Cannabis Reform

A fourth and final line future inquiry is to focus on legal mobilization in the context of drug policy liberalization. The Mexican case clearly shows that legal mobilization can be crucial way in which cannabis reform proponents achieve success by framing their demands in the language of rights, constructing controversies with advantageous

characteristics and activating a hitherto absent decision makers with a different set of preferences and concerns. Considering the importance that legal mobilization played in the Mexican case, more analysis is necessary to understand why courts act not only as enforcers but reformers of drug laws.

In fact, Mexico is not the first or only instance in which courts have played an important role for cannabis liberalization. Court decisions have resulted in decriminalization, cannabis social clubs and home cultivation.¹³⁵ Despite the fact that “legal intervention can lead to interpretations of law that clarify and solidify the rights of cannabis users” (Blickman *et al.* 2019:49), the role of courts in drug policy liberalization remains underexplored and understudied. While the limited literature on judicial interventions in drug policy mostly consists of legal analyses of court rulings,¹³⁶ there are no studies – as far as I am aware of – of those bringing forward legal challenges. Even though drug policy advocates have long recognized that courts can be an alternative avenue for change,¹³⁷ legal mobilization in the context of drug policy has received little attention thus far.

This is unfortunate because legal mobilization has led to important changes in distinct areas, such as pay equality, same-sex marriage and disability rights (McCann 1994; Andersen 2005; Vanhala 2010). The study I have in mind would compare and contrast

¹³⁵ In Colombia, the Constitutional Court (1994) ruled that possession within fixed limits for personal consumption was permissible. In Spain, the Supreme Court’s “shared consumption doctrine” led to formation of cannabis social clubs (Marks 2019). In South Africa, the Constitutional Court declared that “the right to privacy entitles an adult person to use or cultivate or possess cannabis in private for his or her personal consumption” (CCSA 2018:35). However, not all legal challenges to drug laws have succeeded. For example, the US Supreme Court has ruled on several occasions against cannabis liberalization (Soler 1974; Blaine 2002; Aggarwal, Carter & Steinborn 2005).

¹³⁶ For example, contrasting decisions of South Africa’s Constitutional Court, Lubaale and Mavundla (2019:822) argue that “anchoring the argument of infringement in the right to privacy eliminated the barriers that seemed insurmountable in previous decisions”

¹³⁷ For instance, Trebach (1989:257) writes that “during the struggle for racial justice, legal action in the courts was the most effective path to reform. This may also be the case in this struggle for compassion and rationality in the drug policy arena.”

cases of success and failure of legal mobilization for cannabis liberalization, by building on the factors that have been found to be important in the comparative studies of legal mobilization, such as legal opportunities (Hilson 2002; Wilson & Rodríguez 2006; Vanhala 2012), litigant resources and characteristics (Galanter 1974; McCann 1994; Epp 1998) and framing of legal challenges (Morgan 2004; Smith 2007; Paris 2010). Such a study would clarify when and where, how and why strategic litigation influences judicial decision-making, and therefore judges act not only as enforcers but rather reformers of punitive drug laws.

Looking Elsewhere

Do my theory and argument travel to other countries? External validity, generality or generalizability are widely considered one of the criteria for a “good theory.”¹³⁸ While “generalization is a defining characteristic of theory” (Coppedge 2012:55), it often suffers in the trade-off between intensive and extensive testing (Coppedge 2012; Beach & Pedersen 2013; Bennett & Checkel 2014). Thus, what I present here are both tentative and “contingent generalizations” (George & Bennett 2004). More definitive explanations would require more detailed study. Nevertheless, I apply my theoretical argument to other relevant cases, which I identified in the introduction but did not select for intensive scrutiny, to test its portability. Costa Rica, Colombia and Argentina follow Mahoney and Goertz’s (2004) “possibility principle”: negative cases that are neither irrelevant nor is the outcome of interest impossible.

¹³⁸ For Coppedge (2012:53) “a general theory is one that is intended to apply to all relevant cases, both all those that have been observed and all that could be observed.” Similarly, Gerring and Christenson (2017:25) and Goertz and Mahoney (2012) deem generality to be vital.

Cannabis Reform in Costa Rica

My argument helps to understand why there has been no marijuana legalization in Costa Rica, even though the country shares several characteristics with Uruguay that purportedly make cannabis liberalization more likely. First, cannabis is fairly normalized and accepted (IAFA 2018). Second, public support for cannabis reform is at comparable levels in Costa Ricans to Uruguay in 2013 (Ipsos 2017). Third, there have recently been progressive changes in morality policies, such as abortion (Reuters 2019) and same-sex marriage (Corrales 2020). Fourth, Costa Rica has experienced an increase in violence and homicides, which has led to increasing alarm about insecurity (Chirino 2017; Hernández 2018; Saborio 2019). However, the crisis of drug-related violence in Costa Rica has not led to alternative drug policies, as it did in Uruguay.

The substantially different configuration and performance of distinct actors in Uruguay and Costa Rica explains why marijuana legalization occurred in the former but not the latter. Whereas in Uruguay societal and state actors worked on cannabis reform, in Costa Rica neither seem willing or able to do so. In contrast to President Mujica who proposed cannabis reform, President Carlos Alvarado has been evasive. The current administration made only a vague commitment about drug policy reform in its electoral program, promising to “open a national dialogue about the regulation psychoactive substances” (PAC 2017:134). Alvarado’s Minister of Health, Giselle Amador, sympathetic towards cannabis reform and associated with the pro-reform *Asociación Costarricense para el Estudio e Intervención en Drogas* (ACEID) (Amador & Cortés 2016), was dismissed from office because her son was under police investigation for growing and selling cannabis (Jiménez 2019).

Yet, even if the government were to come out in support of cannabis liberalization, Costa Rican reform advocates, in contrast to their Uruguayan counterparts, appear unable to capitalize of such an opportunity and to contribute to policy reform in any meaningful way. News reports suggest that pro-reform actors in Costa Rica are poorly organized, marred by internecine strife and lack professionalism.¹³⁹ “Dispersed and fragmented” (Corda, Cortés & Piñol 2019:78), reform proponents are unlikely to achieve marijuana legalization “for a couple of decades” (Tierney 2017). The weakness of cannabis reform activism probably goes a long way in explaining why in regard to marijuana legalization Costa Rica is unlikely to live up to its historical track-record of “important advances in the introduction of human rights-based approaches to drug policy” (Cortés 2017:53).

Cannabis Reform in Colombia

My argument also explains why there has been no recreational cannabis reform in Colombia thus far, but also suggests how changes may be achieved through legal mobilization, similar to Mexico. With regards to cannabis policy reform, the situation in Colombia today is not dissimilar to the situation in Mexico at the beginning of President Peña Nieto’s *Sexenio*: President Duque has made it clear that he does not support marijuana legalization (Espinosa 2018; Colprensa 2019; EFE 2019). Without presidential support, there have been isolated legislative initiatives, which have failed to make much progress.¹⁴⁰ Cannabis and its consumers are stigmatized (Restrepo 2017), and public opinion rejects cannabis liberalization (Mendiburo-Seguel *et al.* 2016).

¹³⁹ In Costa Rica, infighting between different activists has hampered their ability to influence policy making (Garza 2016). The annual *Marcha* has failed to attract more than a few “dozen” participants (Cerdas 2015). cursory analysis suggests that there is little institutionalization of cannabis activism (Díaz 2020). The problems of Costa Rican cannabis activism are exemplified by the fact that a leading cannabis activist has been accused of selling non-existent medical marijuana licenses (Retana 2017; Sequeira 2017).

¹⁴⁰ At the time of writing the latest cannabis reform bill is being discussed in the lower house of parliament (Rivas & García 2019; Semana 2020; Forero Ortiz 2020).

As in Mexico, traditional cannabis activists are poorly organized and have had limited impact on public and political debates in Colombia. Despite having protested for years to demand marijuana legalization (Restrepo 2013, 2018; Salgar 2015), changes have not been forthcoming.¹⁴¹ While Restrepo (2013:78) describes Colombian cannabis activists *in toto* as “capable of influencing the public and potentially state institutions,” Salgar (2015) finds vast differences in reform proponents’ ability to make their voices heard.¹⁴² Most Colombian grassroots activists have few resources, professional structures or links with other societal and state actors.¹⁴³ Considering their limited impact, one possible alternative for reform proponents in Colombia would be to pursue legal mobilization, which proved successful in Mexico.

Several factors suggest that strategic litigation might be promising strategy for advancing cannabis liberalization in Colombia as well. First, not only has Colombia’s Constitutional Court has been “very active in the protection of rights” (Ríos-Figueroa 2011:27), but access to the judicial review is easy (Cepeda 2005).¹⁴⁴ Second, legal mobilization has led to important changes regarding other morality policies, such as easier access to abortions (Ruibal 2014), and the recognition of rights of same-sex couples and transgender people (Albarracin 2012; Lehoucq 2017). Third, the Constitutional Court has a track record of landmark decisions on drugs unpopular with politicians, such as establishing a decriminalized *dosis personal* for personal consumption (López & Gómez 2014).

¹⁴¹ The notable difference is a medicinal marijuana law that came into effect in 2017 (Rivera-Veléz 2017).

¹⁴² By comparing grassroots activists (*Comunidad Cábica Colombiana*) with more institutionalized and professional advocates (*Acción Técnica Social*), Salgar (2015) finds that the latter are more effective to interact with the state and influence decision-making than the latter.

¹⁴³ Góngora reports from a meeting he witnessed that even ostensibly pro-reform politicians have tried to keep their distance to cannabis activists, whom they consider as “tainting” the issue (Góngora 2017:239).

¹⁴⁴ “Not only can any citizen present in front of a lower court a concrete review case (*tutela*) that will eventually reach the constitutional court but also, with very few formalities, any citizen can file a constitutional challenge to legislation” (Rodríguez-Raga 2011:96).

Equally to many “everyday Colombians” who turn to the legal system because it “offers one possible ray of hope in an otherwise limited choice set” (Taylor 2018:341), strategic litigation might represent the best chance for cannabis reform proponents in Colombia. If legal mobilization represents the best, or only, alternative for those disadvantaged otherwise (Cortner 1968), then, in line with my argument, it will be central *who* presents a legal challenge to cannabis prohibition and *how* they do so. In Mexico, success of legal mobilization required elite actors to develop and carry out careful and competent litigation. In Colombia, there are actors highly experienced with cause lawyering and able to engage in strategic litigation (Lehoucq 2017), who in the case of *Dejusticia* are already working on drug policy reform. However, at the CONFEDROGAS 2018 in Mexico City, Isabel Pereira from *Dejusticia* explained their tactical decision to “not undertake strategic litigation,” because they perceived the “risk of a juridical closure or a worse outcome than the present situation... due to the current configuration of the court” (Personal observation, October 31, 2018). Rightly or wrongly, actors similarly capable to those who succeeded in Mexico are not willing to engage in legal mobilization in Colombia.

Cannabis Reform in Argentina

Lastly, my argument explains why there has not been recreational cannabis reform in Argentina. Despite having one of the most numerous cannabis movements in Latin America (Corda, Cortés & Piñol 2019), both a determined opposition to drug policy liberalization (Cunial 2018) and an absence of political leadership (Soriano 2017) have made achieving changes difficult in Argentina thus far. Similar to the situation in Chile during the second Bachelet administration, President Alberto Fernández has neither given

his blessing nor condemned cannabis reform.¹⁴⁵ Whether, reform proponents in Argentina can take advantage of this opening to set and maintain the agenda - in line with my argument - depends on their organizational characteristics and strategical framings of cannabis reform.

As in Chile, there is vibrant cannabis activism in Argentina that has put cannabis reform on the public agenda (Sclani 2014; Curto 2018; Corbelle 2019). There are a number of activist organizations, which engage in a variety of activities to promote cannabis liberalization (Corbelle 2019). Similar to their Chilean counterparts, Argentinean cannabis activists are able to mobilize impressive numbers of participants at the annual *Marcha* in Buenos Aires (Corda 2018). However, “this multitudinous mobilization... has not managed to articulate the demand sufficiently organized and united to transform [greater] legitimacy into legalization” (Basalo 2019:379).

Last but not least, Argentinean reform proponents have to attend and counteract agenda denial efforts by reform opponents, lest they want to suffer a similar fate as their Chilean counterparts. While there have been a number of legislative initiatives over the years (Fusero 2015), recreational cannabis reform has not prospered thus far.¹⁴⁶ While more in-depth research might reveal problems with reform proponents’ tactical choices and strategic framing in advocating for drug policy reform,¹⁴⁷ reform opponents seem to have played an important role in blocking progress. In particular, the Catholic Church has played an outsized role in drug policy and strongly opposed any liberalization (Corda &

¹⁴⁵ Fernández has called the “war on drugs” a “failure” and called for “reviewing” cannabis prohibition (La Nación ARG 2019). As president, he said “this was a complex issue” which had to be discussed more (Télam 2020).

¹⁴⁶ In Argentina, a medicinal marijuana law was passed in 2017 (Labiano 2019).

¹⁴⁷ Corbelle’s detailed ethnographic work on cannabis activists’ interactions with legislators during parliamentary hearings suggests a few lines of inquiry (Corbelle 2013; 2019)

Rossi 2016; Cunial 2016, 2018).¹⁴⁸ When Pope Francis repeatedly spoke out against drug liberalization (Carosa 2013; Agren 2013; John 2014), this determined opposition derailed a modest drug reform proposal. As a former official at the Ministry of Health explains: “Cristina [Kirchner] was very blunt with me: ‘I am not going to get into a fight with the Pope about this law’” (Cunial 2016:238).

Nonetheless, there might be some reason for hope for Argentinean cannabis reform proponents. In contrast to Chile, there are not only grassroots cannabis activists involved in the struggle for drug policy reform, but also a number of NGOs with professional structures and experience in lobbying and litigation, such as *CELS*, *Intercambios* and *RESET* (Labiano 2019). Furthermore, reform proponents seem to be coordinating their efforts. They presented a joint cannabis reform proposal and shared principles in 2019 (Regulación Legal 2019). According to one of the organizers of the *Agreement for Legal Regulation of Cannabis*, the goal is “to unify the demands of all organizations working on reforming drug control policies; to bring together all those who believe in the necessity of a distinct model for the regulation of cannabis” (Tejada 2019).

Looking Beyond

Trying to achieve substantial policy change often appears quixotic. More often than not, would-be reformers and their reform attempts fail. Yet, sometimes policies veer off of path-dependent trajectories, defy inescapable-seeming inertia, and dramatic or substantial change does occur. By investigating one specific instance of often controversial and unpopular policy change – the contemporary legal regulation of recreational cannabis in

¹⁴⁸ In addition to the Catholic Church’s general influence in Argentinean politics (Esquivel 2016), Catholic priests, so-called *curas villeros*, play a key role on the frontline of dealing with drug use which provides with specific “expertise” and legitimacy to opine about drugs (Jones and Cunial 2017).

Latin America – I unearth the role that change agents can play in altering the *status quo*. Rather than politician’s independent puzzling about what to do, or activists’ brute powering through public initiatives or mass mobilization, reform proponents’ persuasion was crucial for achieving of decisionmakers’ attention and approval and thereby affecting policy change. I found that reform proponents’ agency was vitally important. Specifically, the strategic choices and mobilizational tactics they made and implemented in articulating their demand for change were key for engendering support. In turn, making the right choices and carrying out effective agenda manipulation and strategic framing was helped or hindered by organizational forms and resources.

What, then, can be learned from the particulars of the politics of marijuana legalization for the study of policy change in general? For one, change does not just happen; it is made to happen. Ideas do not become influential because their “time has come,” but rather because specific actors pro-actively promote, package and sell these ideas. Further, one does not simply achieve policy changes that are controversial, unpopular or unproven. Policy reform processes take time and require persistent efforts of reform proponents to set, maintain and defend the agenda against indifference and opponents. Additionally, outsider challengers are crucial for unsettling and dislodging an entrenched *status quo*. Cognizant of their target audience’s preferences and priorities, a vocal minority can overcome a silent majority, as in Uruguay. Or, a small group of actors can flip the script and take advantage of the same legal system, used previously to their disadvantage, as in Mexico. However, not all reform proponents have the necessary capabilities, characteristics and creativity to adopt innovative advocacy tactics, as in Chile. Prior capacity and coalition building might be necessary pre-requisites for later, successful advocacy.

It is commonplace that drug policy reformers and academics assail prohibitionist drug policies as qualifying as insanity under the definition famously misattributed to Albert Einstein (e.g. Johnson 2005; Debusmann 2008; Walther 2012; O’Neil 2015). Considering the staggering costs in blood and treasure and limited results, they might be on to something. However, my thesis is not concerned with *whether* alternative drug policies are a good idea but rather *why* marijuana legalization has occurred in Latin America. As such, one final implication of my research is that pro-reform actors should focus on developing the capacities themselves or building coalitions with others to establish the necessary means to achieve their desired ends before jumping into the policy arena to influence policy outcomes, instead of trying the same thing over and over again expecting different results. Successful marijuana legalization in Latin America was not the result of any or all demands for change but strategic and surgical advocacy efforts that managed to engender the supply of drug policy reform.

While marijuana legalization may well be insufficient to address drug-related violence in Latin America, it may also be a necessary first step towards saner, alternative drug policies. In Latin America, cannabis reform has been the only political possibility thus far, and its accomplishment required capable and dedicated civil society actors to advocate, litigate and campaign. However, substantial change in the legal access to recreational cannabis might lead to policy changes regarding other substances more directly implicated in the region’s drug trafficking and violence. On election day, voters in Oregon – one of the states at the forefront of marijuana legalization – legalized psilocybin and decriminalized the possession of any drug for personal consumption (Levin 2020). Whereas marijuana is no “gateway” drug (Kleiman *et al.* 2011), marijuana legalization might turn out to be a “gateway” reform.

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Appendices

Appendix 1: Overview of Drug Control Policies in Latin America

Appendix 1 lists the drug control policies of seventeen Latin American countries, provides their source in law or legal precedent and classifies them as either having a *prohibition*, *decriminalized* or *legal availability* drug policy regime regarding recreational cannabis.

Country	Law	Comments	Classification
Argentina	Law 23.737 (1989) SC V. 515 “Arriola” (2009)	The 1989 law distinguished between possession with intention to sell and possession with intention to consume with penalties for both. In 2009, the Supreme Court declared criminalising drug possession for personal consumption unconstitutional (Fallo Arriola).	<i>Decriminalized</i>
Bolivia	Law 1.008 (1988)	Bolivian Law 1008 is very repressive toward drug use, possession and small-scale trafficking of all controlled substances except coca.	<i>Prohibition</i>
Brazil	Law 11.343 (2006)	Non-criminal penalty for unauthorized possession for personal, private use	<i>Prohibition/ Decriminalized</i>
Chile	Law 20,000 (2005)	No penalty for unauthorized possession of a controlled substance for personal, private use by an adult (No threshold quantity).	<i>Decriminalized</i>
Colombia	CCC C-221/94 (1994) Legislative Act 2 (2009) CCC C-574/11 (2011) Law 1.453 (2011) CCC C-491/12 (2012) Decree 1844 (2018)	In 2009, President Uribe succeeded in recriminalizing possession for personal consumption, which had been decriminalized since a Constitutional Court ruling in 1994. In 2011, the CCC declared this change unconstitutional. The same year, Uribe’s government criminalized the possession and consumption again. The CCC invalidated this change once more. In 2018, President Duque signed a decree that terminates allowance of the <i>dosis minima</i> .	<i>Decriminalized to Prohibition to Decriminalized to Prohibition to Decriminalized to Prohibition</i>
Costa Rica	Law 8.204 (2002)	Article 79 decriminalizes possession for personal consumption.	<i>Decriminalized</i>
Ecuador	Law 108 (1990) Constitution (2008) Penal Code (2014)	Article 364 of the constitution states that drugs are a health problem and consumption should not be criminalized. In 2013 quantity thresholds for personal consumption (10g for cannabis) were established and included in Article 220 of the new penal code.	<i>Prohibition Decriminalized</i>
El Salvador	Decree 153 (2003)	Drug possession is both criminalized and penalized (Article 34). Simple drug possession is punishable by 1 to 3 years in jail.	<i>Prohibition</i>
Guatemala	Decree 48 (1992)	There is no threshold to distinguish possession for personal consumption from possession for trafficking. This has led to exceedingly punitive sentences for simple possession	<i>Prohibition</i>
Honduras	Decree 128 (1989)	Possession for personal consumption incurs penalties: criminal sanctions of up to a month internment or if deemed “addicted” compulsory treatment (Article 26).	<i>Prohibition</i>
Mexico	Ley General de Salud (1984) Ley de Narcomenudeo (2009) SCJN Amparo 237/2014 (2015), 623/2017, 1115/2017, 547/2018, 548/2018 (2018)	The 2009 reform established decriminalized quantity thresholds (cannabis 5g). In November 2015, Mexico’s Supreme Court ruled that the prohibition of cannabis cultivation for personal consumption was unconstitutional. Reiterating its affirmative decision five times, the Supreme Court created binding jurisprudence in 2018.	<i>Prohibition to Decriminalized to Legal Availability</i>
Nicaragua	Law 285 (1999)	Article 67, states that possessing up to 5g of cannabis represents a misdemeanour. The punishment is “non-commutable light imprisonment of up to thirty days,” which increases with repetition	<i>Prohibition</i>
Panama	Law 23 (1981), Law 34 (2010)	Criminal penalties for simple possession are not automatic but can apply.	<i>Prohibition</i>
Paraguay	Law 1.340 (1988)	No penalty for unauthorized possession of a controlled substance for personal, private use by an adult (less than 10g of cannabis).	<i>Decriminalized</i>
Peru	Código Penal (1991)	No penalty for unauthorized possession of a controlled substance for personal, private use by an adult (less than 5g of cannabis)	<i>Decriminalized</i>
Uruguay	Law 17.016 (1998) Law 19.172 (2013)	No penalty for unauthorized possession of a “reasonable” quantity of a controlled substance for personal, private use by an adult. Law 19.172 established three different ways of legally accessing cannabis.	<i>Decriminalized to Legal Availability</i>
Venezuela	Law 4.636 (1993) Law 39.546 (2010)	Penalties for possession of a controlled substance for personal, private use by an adult (less than 20g of cannabis)	<i>Prohibition</i>

Appendix 2: Changes in Drug Control Regime Types (2008-2018)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Legal Availability						Uruguay	Uruguay	Uruguay	Uruguay	Uruguay	Uruguay Mexico
Decriminalized	Chile Colombia Costa Rica Paraguay Peru Uruguay	Argentina Chile Costa Rica Ecuador Mexico Paraguay Peru Uruguay	Argentina Chile Colombia Costa Rica Ecuador Mexico Paraguay Peru Uruguay	Argentina Chile Costa Rica Ecuador Mexico Paraguay Peru Uruguay	Argentina Chile Colombia Costa Rica Ecuador Mexico Paraguay Peru Uruguay	Argentina Chile Colombia Costa Rica Ecuador Mexico Paraguay Peru	Argentina Chile Colombia Costa Rica Ecuador Mexico Paraguay Peru	Argentina Chile Colombia Costa Rica Ecuador Mexico Paraguay Peru	Argentina Chile Colombia Costa Rica Ecuador Mexico Paraguay Peru	Argentina Chile Colombia Costa Rica Ecuador Mexico Paraguay Peru	Argentina Chile Costa Rica Ecuador Paraguay Peru
Prohibition	Argentina Bolivia Brazil Ecuador El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela	Bolivia Brazil Colombia El Salvador Guatemala Honduras Mexico Nicaragua Panama Venezuela

Appendix 2 presents changes in drug policy regime types, according to the definition developed previously, and based on a close reading of legal text and judicial decisions (Appendix 1), as well as the secondary literature (OAS 2013; Mathieu & Niño 2013; Moroy 2013; Pérez-Correa, Corda & Boiteux 2015; Corda 2015; Corda & Filomena 2019). This legal mapping identifies instances of cannabis policy change in Latin American between 2008 and 2018.

Appendix 3: Electoral Platforms on Drug Policy Reform (2008-2019)

Appendix 3 reports the positions on drug policy reform (*for, against or ambiguous*) of all winners and runner-ups in each presidential elections in all Latin American countries that fall within my scope condition between 2008-2019. Positions were classified based on electoral programs whenever possible or public statements.

Country	Year	Candidate	Position	Source
Argentina	2011	Cristina Kirchner	n/a	
		Ricardo Alfonsín	n/a	
	2015	Mauricio Macri	Against	Statement
		Daniel Scioli	Against	Statement
Chile	2009	Sebastián Piñera	Against	Statement
		Eduardo Frei	Against	Statement
	2013	Michelle Bachelet	Ambiguous	Program
		Evelyn Matthei	Ambiguous	Statement
	2017	Sebastián Piñera	Against	Statement
		Alejandro Guillier	For	Program
Colombia	2010	Juan Manuel Santos	n/a	
		Antanas Mockus	Ambiguous	Statement
	2014	Juan Manuel Santos	Ambiguous	Statement
		Ivan Zuluaga	Against	Program
	2018	Ivan Duque	Against	Statement
		Gustavo Petro	Against	Statement
Costa Rica	2010	Laura Chinchilla	Against	Statement
		Otton Solís	Against	Statement
	2014	Luis Guillermo Solís	Ambiguous	Statement
		Johnny Araya	Against	Statement
	2018	Carlos Alvarado	Ambiguous	Program
		Fabrizio Alvarado	Against	Statement
Ecuador	2013	Rafael Correa	Against	Statement
		Guillermo Lasso	n/a	
	2017	Lenín Moreno	Against	Statement
		Guillermo Lasso	Against	Statement
Mexico	2012	Enrique Peña Nieto	Against	Statement
		Andrés Manuel López Obrador	Ambiguous	Program
	2018	Andrés Manuel López Obrador	Ambiguous	Program
		Ricardo Anaya	Ambiguous	Program
Paraguay	2013	Horacio Cartes	Against	Statement
		Efraín Alegre	n/a	
	2018	Mario Abdo	Against	Statement
		Efraín Alegre	Ambiguous	Statement
Peru	2011	Ollanta Humala	Against	Statement
		Keiko Fujimori	Against	Statement
	2016	Pedro Pablo Kuczynski	Against	Statement
		Keiko Fujimori	Against	Statement
Uruguay	2009	José Mujica	Ambiguous	Program
		Luis Alberto Lacalle	Against	Statement
	2014	Tabaré Vázquez	For	Program
		Luis Lacalle Pou	Against	Program

Appendix 4: Turn-out at the *Marcha Mundial de Marihuana* and their Sources (2002-2018)

Appendix 4 reports the absolute numbers for turn-out at the annual *Marcha Mundial de Marihuana* and their sources. Most of this information does not come from official sources, but rather news reporting or participants themselves, therefore it might be of questionable reliability. Whenever I have found two turn-out numbers reported, I have reported the average. Data is missing when there were no specific numbers mentioned (Chile 2010, Mexico 2012), or the protest did not take place (Mexico 2007, 2009; Argentina 2004, 2005, 2006; Colombia 2014; Ecuador 2015). I chose Medellin because the larger cannabis protests are held there, and not in Bogota.

Argentina

2003	12 000 (Videla 2003) to 15 000 (Ruchansky 2007)
2004	No occurrence
2005	No occurrence
2006	No occurrence
2007	500 (Blejman 2007)
2008	3000 (Sierra 2008)
2009	2000 (infobea 2009) to 5000 (Pagina12 2009)
2010	8000 (Informe Psicoactivo 2010)
2011	10 000 (Ruchansky 2011) to 15 000 (La Nación 2011)
2012	40 000 (Ruchansky 2012)
2013	100 000 (Provendola 2013)
2014	150 000 (Belén 2014)
2015	150 000 (Pêche 2015; Rodríguez 2015; Dubove 2015)
2016	70 000 (Clarín 2016) to 150 000 (Barreiro 2016)
2017	150 000 (organizers' own estimate)
2018	100 000 (Hagelstrom 2018)

Chile

2005	7000 (Publimetro 2006)
2006	2500 (El Ciudadano 2009)
2007	9000 (El Ciudadano 2009)
2008	3000 (El Ciudadano 2009)
2009	8000 (Noyce 2009)
2010	No information available
2011	20 000 (organizers' own estimate)
2012	20 000 (La Tercera 2012) to 30 000 (El Ciudadano 2012)
2013	30 000 (González 2013) to 50 000 (The Clinic 2013),
2014	50 000 (CNN Chile 2014c) to 150 000 (Rodríguez 2014b),
2015	100 000 (Noticias Terra 2015) to 200 000 (Félix 2016)
2016	300 000 (Cáñamo 2017)
2017	80 000 (Fundación Daya 2017)

Colombia

2008	50 (Salgar Lozano 2015)
2009	2500 (El Tiempo 2017)
2010	4500 (Soft Secrets 2015)
2011	500 (El Tiempo 2011) to 15000 (RM 2012),
2012	50 000 (Salgar Lozano 2015; Soft Secrets 2015)
2013	70 000 (Vargas 2013)
2015	50 000 (RCN 2015) to 100 000 (Soft Secrets 2015),
2016	10 000 (Caracol 2016) to 12 000 (Gallo 2016),
2017	2500 (EFE 2017) to 100 000 (Giraldo 2017),
2018	5 000 (Colprensa 2018) to 30 000 (Caracol 2018),

Costa Rica

2013	dozens (Cascante 2013)
2014	dozens (Telesur 2015)
2015	dozens (Barquero 2015), 30 (Cerdas 2015)

Ecuador

2009	dozens (Buitrón Almeida 2016)
2010	dozens (Buitrón Almeida 2016)
2011	dozens (Buitrón Almeida 2016)
2012	200 (El Comercio 2012)

2013	400 (Gaibor Sarmiento 2015)
2014	200 (El Comercio 2014)
2015	No Occurrence
2016	over 1000 (organizers' own estimates)
2017	over 1000 (organizers' own estimates)
2018	4000 (Paz 2018)

Mexico

2002	500 (Feder 2003)
2003	1500 (Feder 2003)
2004	500 (Feder 2004)
2005	500 (Cuenca 2005)
2006	500 (AP 2006)
2007	No occurrence
2008	750 (Martínez Rentería 2009)
2009	No occurrence
2010	1000 (Milenio 2010) to 3000 (Rosales 2010)
2011	6000 (Hernández 2011)
2012	No information available
2013	5000 (CUPIHD 2013; Camacho 2013)
2014	5000 (Hernández 2014)
2015	2000 (Poy Solano 2015) to 10 000 (Ochoa 2015)
2016	8000 (Angles 2016)
2017	10 000 (La Dosis 2017)
2018	8000 (Villa y Caña and Rivera 2018) to 10 000 (Tovar 2018)

Paraguay

2015	less than 100 (EFE 2015)
2016	around 100 (EFE 2016)
2017	dozens (La Nación 2017)
2018	dozens (EFE 2018)

Peru

2010	dozens (organizers' own estimate)
2011	300 (Garces 2011)
2012	500 (organizers' own estimate)
2013	1000 (Weinberg 2013)
2014	hundreds (Avila 2014)
2015	hundreds (Avila 2015)
2016	hundreds (El Popular 2016)
2017	hundreds (RPP 2017)

Uruguay

2005	200 (García 2005)
2006	600 (Notargiovanni 2006) [different date]
2007	2000 (lr21com.uy 2007) to 6000 (Lemos 2014)
2008	3000 (El País 2008) to 5000 (Garat 2012)
2009	10 000 (R180 2009b) no more than 5000 (R180 2012)
2010	>1000 (Muñoz 2010)
2011	3000 (R180 2012)
2012	5000 (Pettit-Schieber 2012) 2500 (Garat 2012)
2013	10 000 (La Diaria 2013) to >10 000 (Lemos 2014).

Appendix 5: Set-theoretic Logic of Case Selection

Case selection guidelines, appropriate for variance-based designs (Gerring 2008; Seawright & Gerring 2008), might be less useful when trying to trace processes and mechanisms using in-depth case studies (Beach & Pedersen 2013). An alternative way of differentiating and selecting cases is to employ set-theoretic logic (Goertz 2008, 2012; Goertz and Mahoney 2012). The starting point is some prior cross-case knowledge which is used to “map” cases in terms of their membership of the set of X and Y (Beach & Pedersen 2013:12). Cases are selected according to their placement in the resulting 2x2 table (Figure 36). This selection is strategic, as there is “a clear hierarchy of importance among the cells” (Goertz 2012:22). The differential analytical leverage that cells provide informs case selection.

	X=0	X=1
Y=1	(0,1)	(1,1)
Y=0	(0,0)	(1,0)

Figure 36: Set-theoretic Logic of Case Selection

Cases should be selected that “allow one to test the empirical implications of the hypothesis being investigated. If the model proposes a necessary condition, a good strategy is to select Y=1 cases. If the hypothesis concerns a sufficient condition, the best cases are usually the X=1 ones” (Goertz & Mahoney 2012:181). First, (1,1) cases, in which both the potential cause and effect are present, allows to scrutinize if a hypothesized causal relationship actually exists. Second, if X=1 is a necessary cause, then the (0,1) cell is of particular interest, as any case in this cell would disconfirm necessity and suggest equifinality. Third, in the (1,0) cell, the necessary cause is present but the outcome is absent. Any case in this cell disproves that X is a sufficient cause. These cases suggest that “the mechanism is not working” as hypothesized or the causal chain is interrupted (Goertz 2012:14-15). Fourth, cases from the cell (0,0) in which neither cause nor effect are present are not very useful or relevant for intensive examination (Mahoney and Goertz 2004).

Appendix 6: List of Interviews

Aguiar, Sebastián	Sociologist (UdelaR), Activist (Proderechos)	Montevideo, Uruguay	September 5, 2014
Aguilar, Rubén	Advocate, Author	Montevideo, Uruguay	September 24, 2014
Aguinaco, Andrés	Lawyer (Aguinaco Abogados), Advocate (CEIS, SMART)	Mexico City, Mexico	October 12, 2017
Aguinaco, Fabián	Lawyer (Aguinaco Abogados), Advocate (CEIS, SMART)	Mexico City, Mexico	September 27, 2017
Ahumada, Álvaro	Public servant (SENDA)	Mexico City, Mexico	September 27, 2017
Álvarez Maynez, Jorge	Diputado (MC)	Santiago, Chile	June 7, 2017
Álvarez, Eliana	Researcher (UCatolica Uruguay)	Mexico City, Mexico	November 14, 2017
Álvarez, Ricardo	PRD Parliamentary Group	Montevideo, Uruguay	March 7, 2018
Area, Bibian	Activist (Fundación Batar)	Mexico City, Mexico	October 6, 2017
Astorga, Luis	Academic	Montevideo, Uruguay	March 8, 2018
Bahamondes, Eduardo	Advocate (Red Reducción de Daños)	Mexico City, Mexico	October 16, 2017
Baldovino, Andrea	Activist (Fundación Batar)	Santiago, Chile	May 15, 2017
Bango, Julio	Diputado (FA)	Montevideo, Uruguay	March 8, 2018
Bárcena, Arturo	Secretario de Cuenta (Justice Zaldívar, SCJN)	Montevideo, Uruguay	September 9, 2014
Barquera, Odracir	Advisor (Senator Christina Díaz)	Mexico City, Mexico	October 3, 2017
Barra, Aram	Advocate (MUCD, Espolea), Author, Litigant	Mexico City, Mexico	November 21, 2017
Battistoni, Julio	Diputado (FA)	Montevideo, Uruguay	September 22, 2017
Belaunzarán, Fernando	Diputado (PRD)	Montevideo, Uruguay	September 11, 2014
Blanco, Laura	Activist (AECU)	Mexico City, Mexico	October 9, 2017
Blasina, Eduardo	Activist, Director Cannabis Museum	Montevideo, Uruguay	August 29, 2014
Bobadilla, Paulina	Activist (Mama Cultiva)	Montevideo, Uruguay	February 22, 2018
Boidi, María Fernanda	Researcher (UCatolica Uruguay)	Santiago, Chile	May 4, 2018
Calistros, Álvaro	Activist (RUDU)	Montevideo, Uruguay	September 17, 2014
Calzada, Julio	Secretary (JND)	Montevideo, Uruguay	September 11, 2014
Cánepa, Diego	Mujica's chief of staff	Montevideo, Uruguay	September 19, 2014
Cariola, Karol	Diputada (PC)	Montevideo, Uruguay	February 2, 2018
Castilla, Alicia	Activist	Montevideo, Uruguay	February 2, 2018
Collazo, Martín	Activist (Proderechos)	Valparaiso, Chile	March 15, 2018
Conde, Elsa	Diputada, Advocate (CUPIHD)	Rocha, Uruguay	May 2, 2018
Conesa, Luisa	Advocate, Lawyer	Montevideo, Uruguay	March 9, 2018
Contró, Aldo	Activist (MCM)	Montevideo, Uruguay	September 26, 2014
Dammert, Lucía	Academic, Advisor (Ministerio del Interior)	Mexico City, Mexico	November 29, 2017
de Posadas, Ignacio	Ex-Finance Minister (PN), Against Advocate (Red Reducción de Daños), Academic	Mexico City, Mexico	October 24, 2017
de Rementeria, Ibán	Activist (Proderechos)	Mexico City, Mexico	November 6, 2017
Delgado, Hernán	Senator (PRI)	Santiago, Chile	April 25, 2018
Díaz, Christina		Montevideo, Uruguay	September 25, 2014
		Valparaiso, Chile	May 17, 2017
		Montevideo, Uruguay	September 1, 2014
		Mexico City, Mexico	November 21, 2017

Draper, Guillermo	Journalist (Busqueda), Author	Montevideo, Uruguay	September 18, 2014
Enciso, Froylán	Academic (CIDE PPD)	Montevideo, Uruguay	March 2, 2018
Espinosa, Jasiel	Activist (Xochipili Cannabis Club)	Aguascalientes, Mexico	November 24, 2017
Espinoza, Nicolás	Activist (Movimental)	Mexico City, Mexico	October 19, 2017
Labbe, Marcos	Academic, Author: Chile y Drogas	Santiago, Chile	May 23, 2017
Fernández, Carmen	Advocate Against (CIJ)	Santiago, Chile	April 16, 2018
Fernández, Martín	Lawyer (AECU and IELSUR)	Mexico City, Mexico	November 28, 2017
Flores, Milton	Activist (Triagrama)	Montevideo, Uruguay	September 8, 2014
Galain, Pablo	Researcher, Director (OLAP)	Valle de Maipo, Chile	May 22, 2017
Garat, Guillermo	Journalist, Author	Montevideo, Uruguay	September 23, 2014
García Vallejo, Juan Manuel	Activist (AMEM)	Montevideo, Uruguay	March 2, 2018
García Vallejo, Juan Pablo	Activist, Author	Mexico City, Mexico	November 8, 2017
García, Alfonso Jesus	Activist (Frente de Artistas Liberación)	Mexico City, Mexico	October 17, 2017
García, Diego	Activist (AECU)	Mexico City, Mexico	November 14, 2017
Gazmuri, Ana María	Activist (Fundacion Daya)	Montevideo, Uruguay	September 2, 2014
Giacomello, Corina	Academic	Santiago, Chile	April 17, 2018
González, Paulina	Activist (Triagrama)	Santiago, Chile	May 31, 2017
Gracia, Aídee	PRD Parliamentary Group, Author	Mexico City, Mexico	October 10, 2017
Guerra, Edgar	Academic (CIDE PPD)	Valle de Maipo, Chile	May 22, 2017
Gutiérrez, Daniel	Activist (Cultiva Conciencia)	Mexico City, Mexico	October 6, 2017
Hakim, Peter	Expert (IAD)	Aguascalientes, Mexico	November 24, 2017
Hernández Tinajero, Jorge	Activist (AMECA, CUPiHD), Author	Santiago, Chile	April 20, 2018
Hetzer, Hannah	Latin America Director (DPA)	Washington DC, USA	December 15, 2014
Heyder, Cecilia	Activist	Mexico City, Mexico	September 21, 2017
Ibáñez, Carlos	Academic (Against)	Skype	January 9, 2014
Ibarra, Ana María	Secretario de Cuenta (Justice Zaldivar SCJN)	Santiago, Chile	April 26, 2018
Identity withheld	High-ranking civil servant (Interior Ministry)	Santiago, Chile	April 27, 2018
Jouanne, Ana Luisa	Advocate Against (Fundacion La Esperanza)	Mexico City, Mexico	October 30, 2017
Kleiman, Mark	Academic, Author, Expert (UCLA)	Montevideo, Uruguay	September 23, 2014
Lagos, Ricardo	Former President, Global Commission on Drug Policy	Santiago, Chile	April 11, 2018
Leiva, Antonio	Civil servant (SENDA)	Montevideo, Uruguay	September 15, 2014
Lepetina, Agustin	Civil servant (Ministerio de Salud), Academic	Santiago, Chile	May 30, 2017
Llerenas, Vidal	Diputado ALDF (PRD), Diputado (Morena)	Santiago, Chile	June 1, 2017
Machado, Sofía	Activist (Proderechos)	Montevideo, Uruguay	March 6, 2018
Madrazo, Alejandro	Academic (CIDE PPD), Advocate (CUPiHD), Advisor	Mexico City, Mexico	November 22, 2017
Mancera, Javier	Advocate (MUCD)	Montevideo, Uruguay	September 29, 2014
Marinho, Laura	Activist (Movimental, Cáñamo)	Aguascalientes, Mexico	November 29, 2018
Mathieu, Hans	Advocate (Friedrich Ebert Stiftung)	Mexico City, Mexico	November 21, 2017
		Santiago, Chile	May 29, 2017
		Mexico City, Mexico	October 25, 2017

Mejía, Raúl	Secretario de Cuenta (Justice Cossío, SCJN)	Mexico City, Mexico	October 25, 2017
Mendoza, Pedro	Activist and Lawyer	Santiago, Chile	June 1, 2017
Mercado, Ricardo	Civil servant (Municipio La Florida)	Santiago, Chile	April 18, 2018
Michellini, Felipe	Diputado (FA)	Montevideo, Uruguay	September 9, 2014
Mirosevic, Vlado	Diputado (Partido Liberal)	Santiago, Chile	April 27, 2018
Montenegro, Mariano	ex-Director (SENDA)	Santiago, Chile	April 20, 2018
Morales, Isaac	Civil servant (Ministerio de Relaciones Exteriores)	Mexico City, Mexico	November 29, 2017
Musto, Clara	Activist (Proderechos), Academic (UdelaR and UKent)	Montevideo, Uruguay	September 29, 2014
Núñez, Marco Antonio	Diputado (PPD), Speaker House of Representatives	Santiago, Chile	April 25, 2018
Núñez, Nicolás	Diputado (FA)	Montevideo, Uruguay	September 9, 2014
Olivera, Diego	Secretary (JND)	Montevideo, Uruguay	March 20, 2018
Ordorika, Amaya	Activist (ReverdeSer)	Mexico City, Mexico	October 26, 2017
Pérez, Mariana	Activist (Movimental)	Santiago, Chile	June 7, 2017
Peyraube, Raquel	Advocate, Medical Doctor	Montevideo, Uruguay	February 28, 2018
Pieri, Diego	Activist (Proderechos)	Montevideo, Uruguay	March 6, 2018
Pompei, Remo	Advocate (Red Reducción de Daños)	Santiago, Chile	May 24, 2017
Queirolo, Rosario	Academic (UCatolica)	Montevideo, Uruguay	March 7, 2018
Radío, Daniel	Diputado (PI)	Montevideo, Uruguay	September 8, 2014
Ramsey, Geoffrey	Journalist (LatAmBlog/OSF)	Montevideo, Uruguay	September 23, 2014
Reuter, Peter	Expert (University of Maryland)	Montevideo, Uruguay	September 15, 2014
Rey, Julio	Activist (CNRC)	Montevideo, Uruguay	September 6, 2014
Rivera, Leopoldo	Activist (Cáñamo, AMECA)	Mexico City, Mexico	September 28, 2017
Riveros, Belén	Activist (Cannabicas Latinas, NMPP)	Santiago, Chile	May 20, 2017
Robaina, Gustavo	Activist (Proderechos)	Montevideo, Uruguay	March 5, 2018
Robles, Alberto	Diputado (PRSD)	Valparaiso, Chile	May 30, 2017
Romani, Milton	Secretary (JND), Ambassador (OAS)	Montevideo, Uruguay	February 21, 2018
Romero, Jorge Javier	Academic (Grupo Cáñamo, CIDE PPD), Advocate	Mexico City, Mexico	September 28, 2017
Rubilar, Karla	Diputada (Independent)	Santiago, Chile	May 25, 2017
Sabini, Sebastián	Diputado (FA)	Montevideo, Uruguay	September 22, 2014
Safie, Rosemary	Advocate, Lobbyist (Safie Consultores)	Mexico City, Mexico	November 17, 2017
Sánchez Bustos, Sergio	Advocate (FLR), Medical Doctor	Santiago, Chile	May 16, 2017
Sánchez, Antonio	Advocate, Lobbyist (Safie Consultores)	Mexico City, Mexico	November 17, 2017
Sánchez, Lisa	Advocate (MUCD, Espolea), Author	Mexico City, Mexico	October 20, 2017
Santacruz, Armando	Advocate (SMART, MUCD), Litigant	Mexico City, Mexico	November 13, 2017
Sarubbi, David	Secretario de Cuenta (Justice Gutiérrez SCJN)	Mexico City, Mexico	October 10, 2017
Schievinini, Domingo	Academic	Mexico City, Mexico	October 13, 2017
Sepúlveda, Mauricio	Academic, Advocate (IGIA)	Santiago, Chile	May 26, 2017

Serrano, Mónica	Academic	Mexico City, Mexico	November 20, 2017
Sevilla, Mariana	Activist (MCM)	Mexico City, Mexico	October 19, 2017
Silva, Diego	Lawyer (Cámara de Representantes)	Montevideo, Uruguay	September 26, 2014
Snapp, Zara	Advocate (ATS, Espolea, ReverdeSer), Author	Mexico City, Mexico Mexico City, Mexico	December 11, 2018 October 18, 2017
Solari, Silvia	Activist (Fundación Batar)	Montevideo, Uruguay	March 8, 2018
Strauss, Julian	Cannabis Entrepreneur	Montevideo, Uruguay	September 18, 2014
Suárez, Héctor	Director (OUD)	Montevideo, Uruguay	September 10, 2014
Tagle, Martha	Senator (Independent)	Mexico City, Mexico	November 21, 2017
Torres Landa, Juan Francisco	Advocate (SMART, MUCD), Litigant	Mexico City, Mexico	November 6, 2017
Trajtenberg, Nicolás	Criminologist (UdelaR)	Montevideo, Uruguay	September 26, 2014
Tree, Sanho	Expert (IPS)	Washington DC, USA	December 16, 2014
Valdés, Ignacio	Secretario de Cuenta (Justice Sánchez, SCJN)	Mexico City, Mexico	November 9, 2017
Valdés, Maximiliano	Activist (Cultiva Conciencia)	Santiago, Chile	April 20, 2018
Valdomir, Sebastián	Researcher (FESUR)	Montevideo, Uruguay	September 25, 2014
Vanderschuren, Franz	Academic (Universidad Alberto Hurtado)	Santiago, Chile	May 23, 2017
Varela, Juan	Activist (Owner Urugrow)	Montevideo, Uruguay	September 2, 2014
Vargas, Andrés	Journalist	Mexico City, Mexico	November 15, 2017
Vásquez, Hortensia	Advisor (Senator Martha Tagle)	Mexico City, Mexico	November 21, 2017
Vaz, Juan	Activist (AECU)	Montevideo, Uruguay	September 16, 2014
Velbab-Brown, Vanda	Expert (Brookings)	Washington DC, USA	December 18, 2014
Venegas, Claudio	Activist and editor of Cábano Chile	Santiago, Chile Santiago, Chile	April 30, 2018 June 4, 2017
Vergara, Eduardo	Advocate, Civil servant (Interior Ministry), Author	Santiago, Chile	May 23, 2017
Villegas, Miguel	Activist (ReverdeSer)	Mexico City, Mexico	October 26, 2017
Vitale, Augusto	Director (IRCCA)	Montevideo, Uruguay Montevideo, Uruguay	September 24, 2014 March 22, 2018
Walsh, John	Expert (WOLA)	Washington DC, USA	December 17, 2014
Yaffé, Jaime	Political Scientist (UdelaR)	Montevideo, Uruguay	September 19, 2014
Youngers, Coletta	Expert (WOLA)	Washington DC, USA	December 17, 2014
Zabicky, Gady	Advocate (CUIPHD), Psychologist	Mexico City, Mexico	October 18, 2017
Zamudio, Carlos	Activist (AMECA, CUIPHD), Author	Mexico City, Mexico	September 21, 2017
Zenil, Julio	Activist (Cábano, AMECA)	Mexico City, Mexico	September 25, 2017
Zwitsers, Guus	Academic (CIDE PPD)	Aguascalientes, Mexico	November 24, 2017

Appendix 7: Timeline of Cannabis Reform Process in Uruguay

Every May since 2005	<i>Annual Marcha Munidal de la Marihuana in Uruguay</i>
December 2008	Cannabis reform not included as explicit commitment in FA' program
November 2009	Mujica elected president, young legislators arrive in parliament
November 2010	Luis Lacalle Pou's (PN) limited cannabis reform bill gains no traction
February 2011	Arrest of Alicia Castilla for cultivating cannabis in her home draws attention to contradictions of <i>status quo</i> drug laws
March 2011	Activist-sponsored <i>autocultivo</i> bill presented by Sabini and others
May 2011	Julio Calzada replaces Milton Romani as JND Secretary
August 2011	<i>Debate Nacional de Drogas</i> brings together domestic and international actors to discuss alternative drug policies.
May 2012	Public assassination in <i>La Pasiva</i> highlights drug-related violence
June 2012	Executive proposes cannabis reform as part of the <i>Estrategia por la vida y convivencia</i>
August 2012	Executive sends the <i>articulo unico</i> reform bill to parliament
Second half of 2012	Informal negotiations between state and societal pro-reform actors Parliament committee holds hearings on reform initiative
November 2012	Compromise cannabis reform bill presented
December 2012	President Mujica puts reform process on hold
February 2013	<i>Regulación Responsable</i> formed to advance reform process
Throughout 2013	Members of the <i>Junta Nacional de Drogas</i> and pro-reform politician tour the country to explain the reform initiative <i>Regulación Responsable</i> mobilizes for reform by <i>inter alia</i> organizing public events, lobbying in private and running TV advertisements
First half of 2013	<i>Comisión especial de Drogas y adicciones con fines legislativos</i> refines and votes on cannabis reform bill
June 2013	Vote in the lower house postponed because of lacking votes Mujica intervenes to secure Dario Pérez's vote
July 2013	Legal regulation of cannabis passes lower house of parliament
December 2013	Legal regulation of cannabis passes upper house of parliament Mujica signs cannabis bill into law

Appendix 8: Timeline of Cannabis Reform Process in Mexico

Every May since 2001	Annual <i>Marcha Mundial de la Marihuana</i> in Mexico
2007	Cannabis reform bill presented by Elsa Conde
2012	<i>Mexico Unido Contra la Delincuencia</i> and <i>Centro Estratégico de Impacto Social</i> begin working together
Early 2013	SMART was formed and applied for authorization to grow cannabis
May 2013	COFEPRIS denies authorization and SMART files an <i>amparo</i>
Late 2013 to early 2014	Discussions about cannabis reform in Mexico City's <i>Asamblea Legislativa del Distrito Federal</i>
December 2013	Amparo is denied in the first instance by a lower circuit judge
February 2014	Mexico City mayor Mancera declares he no longer supports cannabis liberalization
April 2014	SCJN agrees to hear the case because of its importance and SMART's amparo is randomly assigned to Justice Zaldívar
October 2015	Justice Zaldívar's cannabis opinion becomes public
November 2015	First <i>amparo</i> decision, the Primera Sala of the Supreme Court rules that absolute cannabis prohibition is unconstitutional. Decision has <i>inter partes</i> effect
November 2015-May 2016	Thirteen reform bills presented in Congress
January 2016	Public discussions about cannabis reform organized in Congress
January-April 2016	Executive holds National Debate about the Use of Marijuana
March 2018	Second amparo granted
May 2018	Third amparo granted
October 2018	SCJN rules on fourth and fifth <i>amparo</i>, creates jurisprudence with <i>erga omnes</i> effects
November 2019	Then Senator, now Secretaria de Gobernación Olga Sánchez presents comprehensive cannabis reform bill
February 2019	SCJN informs the legislature that has declared cannabis prohibition unconstitutional, sets deadline for reforms for October
October 2019	Extension is granted to pass legislation till April 2020
March 2020	Cannabis reform bill voted on and passes Committee stage
April 2020	Further extension is granted because of Covid-19 pandemic
December 2020	Last and final deadline for passing legislative cannabis reform

Appendix 9: SCJN Justice Zaldívar's Opinion on Cannabis

In his opinion, the reporting justice of the SMART case (AR 237/2014), Arturo Zaldívar argued that absolute prohibition was unconstitutional, because it is disproportionate *vis-à-vis* alternative measures to reduce drug use, and the right to free development of personality provided a residual space of liberties which includes growing and using cannabis for personal consumption (Zaldívar 2015). Central to the proposed ruling was that the consumption of cannabis is an activity protected by the “free development of personality [*libre desarrollo de la personalidad*]” (hereafter LDP). While the LDP itself is not explicitly established in the Constitution, previous SCJN precedents had already begun to create a “residual area of liberty” guaranteeing the freedom to choose, for instance, in cases of gender reassignment surgery or abortion (ibid: XI).

To assess whether the absolute prohibition of personal consumption of cannabis was constitutional, Zaldívar carried out a detailed proportionality test. First, he looked at whether prohibition pursued a *constitutionally valid end*, finding that protecting public health represents a constitutionally valid goal (ibid:XVI). Second, the ruling analyzed the *adequacy* of prohibition to achieve that goal, evaluating if this end justified the employed means. A detailed review of scientific evidence found that cannabis had some negative impacts on health, but these were by and large not as grave as widely held (ibid:53-62). Nonetheless, this meant that strictly speaking, prohibition was suitable to prevent damages to public health. However, the *necessity* of prohibition also had to be assessed. Drawing on the regulation of alcohol, tobacco, and cannabis in other countries, Zaldívar argued that there were less restrictive alternatives producing similar results (ibid:XXI). Thus, the goal of reducing the public health consequences of cannabis consumption could be pursued through less heavy-handed restrictions to liberties. Finally, assessing the proportionality of prohibition in its *strict sense*, Zaldívar established its “intense affectation of the LDP” *vis-à-vis* “minimal achievement of its goals” (ibid: XXII). Based on this proportionality test, the ruling concludes:

The articles that establish a prohibition... of the acts related to the personal consumption with recreational ends (plant, grow, harvest, prepare, possess and transport) in regards exclusively to cannabis are unconstitutional. (ibid:79-80.)

Appendix 10: Legislative Cannabis Reform Initiatives in Mexican Congress (2006-2020)

Appendix 10 presents the legislative initiatives presented in Mexico's Congress regarding cannabis between 2006 and 2020. The information is compiled with information from the *Sistema de Información Legislativa* (SIL) (see also Safie 2016; Kánter 2020; Basurto 2020).

<u>Legislative Period</u>	<u>Diputados</u>			<u>Senate</u>		
	Sponsor	Party	Date	Sponsor	Party	Date
LX (2006-2009)	Elsa Conde	PASDC	29.04.08			
	Elsa Conde	PASDC	09.12.08			
LXI (2009-2012)	Víctor Círigo	Convergencia	21.04.10			
LXII (2012-2015)	Fernando Belaunzarán	PRD	15.11.12	Mario Delgado	PRD	11.03.14
	Fernando Belaunzarán	PRD	28.02.13	Roberto Gil	PAN	19.03.14
	Fernando Belaunzarán	PRD	18.09.13			
	Fernando Belaunzarán	PRD	04.11.14			
	Fernando Belaunzarán	PRD	25.11.14			
	Rene Fujiwara	PANAL	05.03.15			
LXIII (2015-2018)	Jorge Álvarez	MC	05.11.15	Jesus Casillas	PRI	13.10.15
	Cristina Díaz	PRI	12.11.15	Mario Delgado	PRD	05.11.15
	Jonadeb Martínez	MC	19.11.15	Cristina Díaz	PRI	10.11.15
	José Zambrano	PRD	26.04.16	Angelica de la Peña	PRD	31.03.16
	Guadalupe Acosta	PRD	29.04.16	Roberto Gil	PAN	07.04.16
	Cristina Díaz	PRI	15.12.16	Ejecutivo Federal	PRI	21.04.16
	PVEM	PVEM	03.10.17	Martha Tagle	No Party	26.04.16
	Mario Delagado	PT	12.12.17	Yolanda de la Torre	PRI	27.04.16
	Jorge Álvarez	MC	30.04.18	Yolanda de la Torre	PRI	27.04.16
				Manuel Gardenas	No Party	25.10.16
				Cristina Díaz	PRI	15.12.16
				Mario Delgado	PT	06.12.17
LXIV (2018-2021)				Marlon Berlanga	PT	13.12.18
	Veronica Juárez	PRD	02.10.18	Indira Kempis	MC	06.11.18
	MC	MC	27.11.18	Olga Sánchez	Morena	08.11.18
	Martha Tagle	MC	06.12.18	Miguel Osorio Chong	PRI	18.11.18
	Martha Tagle	MC	26.09.18	Raúl Paz	PAN	25.04.19
	Mario Delagado	Morena	15.10.19	Cora Pinedo	PT	10.07.19
	MC	MC	15.10.19	Miguel Angel Mancera	PRD	03.09.19
	Luis Fernando Salazar	Morena	15.10.19	Julio Menchaca <i>et al</i>	Morena	03.09.19
	Gerardo Novelo	Morena	17.10.19	Miguel Angel Mancera	PRD	18.09.19
	Manuel Añorve	PRI	22.10.19	Mónica Fernández	Morena	18.09.19
	Silvia Villavicencio	Morena	24.10.19	José Navarro	Morena	15.10.19
	Héctor Cruz	PES	29.10.19	Gerardo Novelo	Morena	15.10.19
	PRD	PRD	22.02.20	Manuel Añorve	PRI	17.10.19
	Jorge Montes	Morena	10.03.20	Juan Manuel Fócil	PRD	22.10.19
	Martha Tagle	MC	08.09.20	Claudia Anaya	PRI	30.10.19
				Eruviel Ávila	PRI	11.12.19
				José Clemente	MC	06.02.20

Appendix 11: Timeline of Cannabis Reform Process in Chile

Every May Since 2005	<i>Annual Marcha Munidal de la Marihuana in Chile</i>
March 2013	Milton Flores arrested for cannabis cultivation, begins campaigning
May 2013	Manuel Lagos arrested, Sergio Lagos begins campaigning
Mid 2013	<i>Fundación Daya</i> launched
August 2013	Cannabis liberalization not included in Bachelet's electoral program
December 2013	Bachelet wins presidential elections
May 2014	<i>Marcha</i> reaches 100 000 participants
June 2014	<i>Mesas de trabajo</i> installed to review drug policy
July 2014	Opposition <i>autocultivo</i> bill presented
August 2014	<i>Oficialismo autocultivo</i> bill presented
September 2014-April 2015	Hearings and discussions in Health Commission
Throughout 2015	Medical associations ramp up resistance to cannabis liberalization
April 2015	Health Commission approves reform bill in general
May 2015	Jorge Burgos appointed Interior Minister
May 2015	Mariano Montenegro appointed director of SENDA
June 2015	<i>Colegio Medico</i> comes out against cannabis liberalization
July 2015	Reform bill passes first reading in the lower house of parliament
September 2015	First meeting between government officials and pro-reform legislators
October 2015	Government presents restrictive amendments
October 2015-January 2017	Hearings and discussions in Health Commission
November 2015	Medical Associations public letter to Bachelet
September 2016	Anti-reform legislators present amendment to prohibit <i>autocultivo</i>
Throughout 2016	Negotiations between government and reform proponents break down, no agreement can be found
Throughout 2016	Activists retreat from supporting cannabis reform bill
October 2016	Mariano Montenegro fired from SENDA
January 2017	Committee vote effectively ends cannabis reform initiative

Appendix 12: Cannabis Votes in Chile's *Cámara de Diputados* (2015)

Appendix 12 visualizes the distribution of votes that the *autocultivo* bill received in Chile's *Cámara de Diputados* on July 7, 2015. Votes are grouped by their outcome (*for*, *against*, *absent* or *abstain*) and political party (DC, PS, PPD, PRSD, PC, UDI, RN, Evópoli, Amplitud, RD, PL, IC and Independents). In Figure 37, the size of each box corresponds to each outcome by each party and the number of votes. Information sourced from the records of the *Cámara de Diputados de Chile*.

	Political Party	For	Against	Abstain	Absent	Total
Opposition	Unión Demócrata Independiente (UDI)	1	25	2	0	28
	Renovación Nacional (RN)	1	10	2	1	14
	Evópoli (EVO)	1	0	0	0	1
	Amplitud (AMP)	1	0	0	0	1
	Independientes (IND)	8	2	0	1	11
	Partido Liberal (PL)	1	0	0	0	1
	Revolución Democrática (RD)	1	0	0	0	1
Government Coalition	Partido Demócrata Cristiano (DC)	16	2	1	1	20
	Partido Por la Democracia (PPD)	12	0	0	2	14
	Partido Radical Social Demócrata (PRSD)	6	0	0	0	6
	Partido Socialista (PS)	13	0	0	3	16
	Izquierda Ciudadana (IC)	1	0	0	0	1
	Partido Comunista (PC)	6	0	0	0	6
		68	39	5	8	120

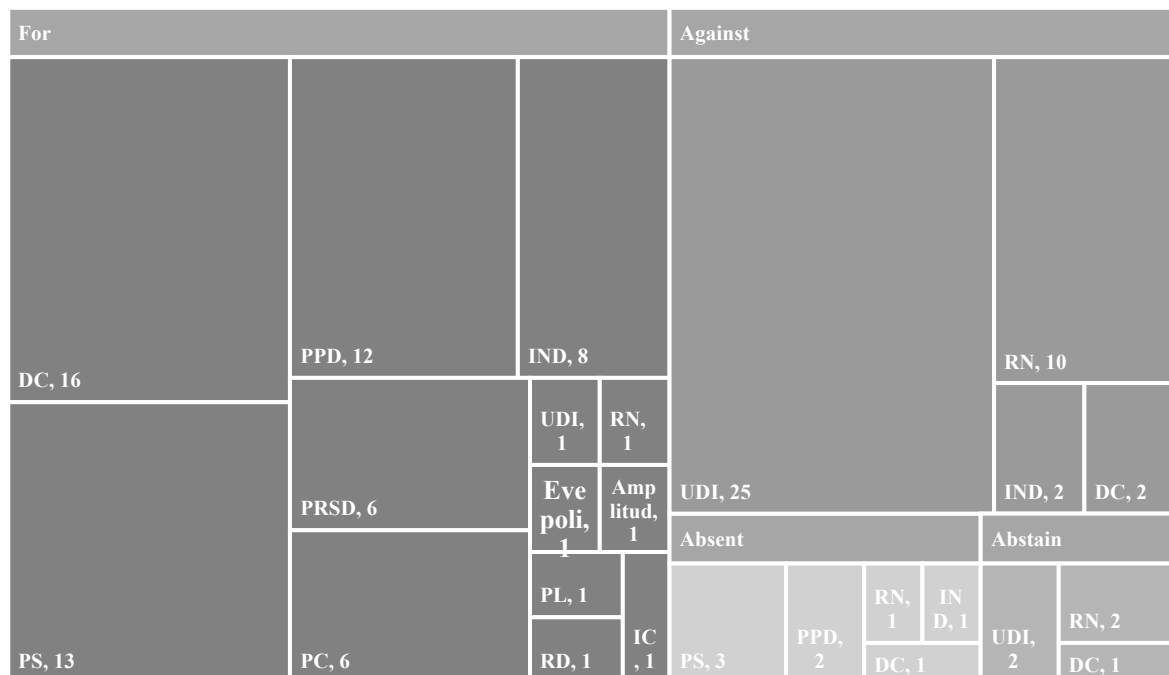


Figure 37: Cannabis Reform Votes Distribution by Outcome and Party in Chile (2015)

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