public-health language has entered into the debate. However, the agencies tasked with implementing state-level legalization in Washington (the Liquor Control Board) and Colorado (the Department of Revenue) do not have public health as their mandate. It is fair to say that failing to address public-health concerns is a missed opportunity, but the two initiatives were not passed as public-health measures. The agencies are executing narrowly what the initiatives called upon them to do.

Room raises the challenges that Washington and Colorado present for international drug treaties, noting that legal non-medical markets ‘clearly contravene the 1961 and 1988 drug conventions’ [emphasis added]. The author mistakenly conflates the states of Washington and Colorado with the country of Uruguay: Uruguay is a party to the international drug treaties; the states of Washington and Colorado are not. That ‘treaties “are superior to state law”’ follows from the Supremacy Clause of the Constitution, which prohibits states from preventing the federal government from enforcing federal law that contradicts state law: indeed, federal law-enforcement agencies continue to act, selectively, against medical marijuana operators who are in compliance with their respective states’ laws. The Constitution does not, however, allow the federal government to compel the states to enforce federal law, nor do federal laws automatically pre-empt discordant state laws (pre-emption requires the finding of a ‘positive conflict’ between state and Federal law, to which courts have been disinclined in drug-law cases).

In our own research, we surveyed more than a dozen leading scholars on the mutual implications of state-level legalization and the international drug-control regime. Whether the Single Convention requires federal pre-emption is not evident from a plain reading, and is much disputed. The International Narcotics Control Board (INCB), empowered with keeping the drug treaties and long opposed to drug legalization, has expressed its concern about marijuana legalization in Washington and Colorado, advocating in its most recent annual report that ‘the Government of the United States . . . take necessary measures to ensure full compliance with the international drug control treaties in its entire territory’. In December 2012 Attorney General Holder affirmed that changes in state laws had no bearing on the status of marijuana under federal law; the INCB President called Holder’s statement ‘good but insufficient’; but most constitutional and international law scholars maintain that the Conventions do not bind member states with federal systems of government to over-ride legalization in their constituent political units, no matter that the spirit of the treaties does.

Should it be determined that the United States is in contravention of the Single Convention, and should it seek a remedy, the several options that Room lays out are all reasonable—as are many others, some of which Room has proposed in previous papers. However, mere concerns about treaty obligations are not likely to compel the federal government to act against its other competing interests (including public opinion), although these obligations might be appealed to if they are consistent with the government’s preferred course of action. For that matter, the drug-treaty regime is barely enforceable: Bolivia suffered no lasting harm from its denunciation and re-accession, despite the INCB’s objections and the European Union’s threats of retaliation, and charges from abroad of hypocrisy or applying double standards have not been particularly effective in obliging the United States to abide by some less-ambiguous treaty obligations.

The apparent purpose of Room’s paper is to argue that international drug treaties are outdated, that marijuana legalization compels their revision and that this occasion creates an opportunity for scheduling alcohol (which appears to be the matter with which Room is most concerned). Whatever the merits of scheduling alcohol, it has little to do with the matters at hand in Colorado and Washington. We agree with Room that the treaties are obsolete and sorely in need of revision with regard to marijuana, but the events in Washington and Colorado do not compel the US government to agitate for such change.

Declaration of interests

The authors were part of the BOTEC team advising the Washington State Liquor Control Board on regulations implementing the Washington marijuana-legalization initiative.

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Reference


SOME CRITICAL ISSUES IN CANNABIS POLICY REFORM

The paper by Robin Room on ‘Legalizing a market for cannabis for pleasure’ [1] is a good starting-point for a
debate on the ongoing process of implementing a policy change. In addition to former comprehensive reports [2,3], Room’s paper provides detailed information on all three initiatives in Washington State, Colorado and Uruguay, allowing for comparisons. He stresses the need to prioritize a public health and order agenda. A few critical issues may need additional clarification.

Will the intended age limit of 21 protect teenagers? A possible answer comes from experience with the introduction of medical marijuana. While there are some indications on diversion to adolescents from a treatment agency [4], a comprehensive data analysis states: ‘A considerable body of data shows that no state with a medical marijuana law has experienced an increase in youth marijuana use since their law’s enactment’ [5]; but if an increase should happen, alcohol use by adolescents may drop [6]. It is an open question as to how the regulations will work and with what effects.

Will traffic accidents increase under the influence of marijuana? What would be the acceptable tetrahydrocannabinol (THC) content in the drivers’ blood? Washington State plans a threshold of 5 nanograms THC per millilitre [1]. A review of nine studies showed divergent results as to the risk for fatal and non-fatal accidents, and no safe threshold could be identified [7].

The planned taxation of marijuana production and sale is partly earmarked for prevention, research, health and educational purposes. This creates an institutional dependency on such funding and potential conflict in times of decreasing prevalence rates (as observed when tobacco smoking decreased). Raising taxes reaches a limit when cheaper illegal production and trade become profitable again: linking the price per unit to street price, as foreseen in Uruguay [1], also limits the margins for taxation.

The estimated costs and benefits of legalization are a major issue. It is surprising how little attention is given to this aspect. The intended taxation does not consider the scope of administration and control resources needed or the increased demand in the educational and health sectors [8].

The paper reminds me of experience with weakening restrictive regulations on alcohol availability and advertising, and raises doubts about how the planned restrictions for legal marijuana will work. How will it be possible to resist moves to undercut product restrictions (THC content) and sale restrictions (number and location of outlets, sale in pharmacies only) for a ‘legal commodity’? I may add the question: what is the risk that tobacco industry or new industries will engage in mass production of marijuana cigarettes and marijuana e-cigarettes? Is there any legal barrier? Serious doubts have been raised [9]. A rationing system (e.g. in Uruguay at 40 g per month per adult, and cultivation by individuals restricted to six plants with an annual yield of 480 grams) [10] involves a major bureaucratic control system. Rationing a legal commodity is a vulnerable system (in Sweden, the well-functioning Bratt system for alcohol was abolished as paternalistic and incompatible with civil liberty). Until now, any attempts at restrictions of alcohol availability have been confronted with ‘lessons from prohibition’ [11].

More importantly, the way forward in cannabis policy is at stake. Room argues for a change in the United Nations conventions on illicit drugs: a long way to go [12]. Are there alternatives? An obvious demand is for more accurate data to inform a rational evidence-based policy [13], which is promising only from a mid- to long-term perspective. The ongoing change process in the United States indicates a more imminent and pragmatic approach: to delegate the decision on how to respond to local/regional cannabis problems to federal states and communes while central government keeps the power of decision on specific policy aspects, not interfering in federal states in other defined aspects. This position of the Obama administration was, in fact, preceded by Amendment 21 ending alcohol prohibition [14].

A cannabis policy allowing for experimentation alongside credible documentation and evaluation of effects not only improves the chances for evidence-based decisions, but also the chances for public acceptance.

Declaration of interests
None.

Keywords Cannabis legalization, drug policy reform, marijuana, regulated cannabis market, taxation, United Nations conventions on drugs.

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References
US courts would necessarily decide this way. Hawken & Kulick [2] dispute my assertion that in setting up legal non-medical markets Washington and Colorado clearly contravene the Conventions. I acknowledge that my assertion was too strong, if it is read as implying that clearly contravene the Conventions. I acknowledge that public health over private profit’. To counter this, Pedersen [7] suggests the model of a state retail monopoly, as in Norway for alcohol, and Reuter [10] agrees that pushing alternative approaches such as a monopoly, as in Norway for alcohol, and Reuter [10] agrees that pushing alternative approaches such as a restrictive legalization of ‘grow your own’ or a state monopoly is ‘a cause worth taking up’. Interestingly, versions of both of these approaches are part of the Uruguay legislation (contrary to Hawken & Kulick’s comment [2]; in my view, Uruguay’s model is well attuned to public health issues). In the United States, an Oregon voter’s initiative that came close to passing in 2012 (46% in

Control models, commercialization and public health

A theme weaving through four of the commentaries is a shared concern about the ‘active commercialization’ [7] already evident in the Colorado and Washington processes. Uchtenhagen [8] reminds us of the ‘experience with weakening restrictive regulations on alcohol availability and advertising’ under pressure from private interests, and Lenton [9] wonders whether the outcome of the next 20 years of experimentation will be ‘the triumph of public health over private profit’. To counter this, Pedersen [7] suggests the model of a state retail monopoly, as in Norway for alcohol, and Reuter [10] agrees that pushing alternative approaches such as a restrictive legalization of ‘grow your own’ or a state monopoly is ‘a cause worth taking up’. Interestingly, versions of both of these approaches are part of the Uruguay legislation (contrary to Hawken & Kulick’s comment [2]; in my view, Uruguay’s model is well attuned to public health issues). In the United States, an Oregon voter’s initiative that came close to passing in 2012 (46% in