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AMERICAS NEWS | APRIL 25, 2009
ESSAY

Drugs: To Legalize or Not

Decriminalizing the possession and use of marijuana would raise billions in taxes and eliminate much of the profits that fuel bloodshed and violence in Mexico.

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By [STEVEN B. DUKE](#)

The drug-fueled murders and mayhem in Mexico bring to mind the Prohibition-era killings in Chicago. Although the Mexican violence dwarfs the bloodshed of the old bootleggers, both share a common motivation: profits. These are turf wars, fought between rival gangs trying to increase their share of the market for illegal drugs. Seventy-five years ago, we sensibly quelled the bootleggers' violence by repealing the prohibition of alcohol. The only long-term solution to the cartel-related murders in Mexico is to legalize the other illegal drugs we overlooked when we repealed Prohibition in 1933.

Problem of Relaxed Drug Restrictions



Read [John P. Walters's essay on how progress in Colombia](#) provides clear evidence that the war on drugs is winnable, while history repeatedly shows that **relaxed restrictions lead to more**

abuse and addiction.

In 2000, the Mexican government disturbed a hornets' nest when it began arresting and prosecuting major distributors of marijuana, cocaine, heroin and amphetamines. Previously, the cartels had relied largely on bribery and corruption to maintain their peaceful co-existence with the Mexican government. Once this *pax Mexicana* ended, however, they began to fight not only the

government but among themselves. The ensuing violence has claimed the lives of at least 10,000 in Mexico since 2005, and the carnage has even spilled north to the United States and south to Central and South America.

Some say that this killing spree -- about 400 murders a month currently -- threatens the survival of the Mexican government. Whether or not that is the exaggeration that Mexican President Felipe Calderón insists it is, Mexico is in crisis. The Mexicans have asked the Obama administration for help, and the president has obliged, offering material support and praising the integrity and courage of the Mexican government in taking on the cartels.

The U.S. should enforce its laws against murder and other atrocious crimes and we should cooperate with Mexican authorities in helping them arrest and prosecute drug traffickers hiding out here. But what more can and should we do?

Is gun control the answer? President Calderón asserts that the cartels get most of their guns from the U.S. We could virtually disarm the cartels, he implies, if we made it harder to buy guns here and smuggle them into Mexico. President Obama has bought into this claim and has made noises about reducing the availability of guns. However, even if the Obama administration were able to circumvent the political and constitutional impediments to restricting Americans' access to handguns, the effect on Mexican drug violence would be negligible. The cartels are heavily armed now, and handguns wear out very slowly.



Even if the Mexican gangsters lost their American supply line, they would probably not feel the loss for years. And when they did, they would simply turn to other suppliers. There is a world-wide black market in military weapons. If the Mexicans could not buy pistols and rifles, they might buy more



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Mexican police agents with drugs and weapons seized during an operation near Tijuana last December.

bazookas, machine guns and bombs from the black market, thus escalating the violence.

Also hopeless is the notion -- now believed by almost no one -- that we can keep the drugs from coming into this country and thereby cut off the traffickers' major market. If we could effectively interdict smuggling through any of our 300-plus official border crossing points across the country and if we eventually build that fence along our entire border with Mexico -- 1,933 miles long -- experience strongly suggests that the smugglers will get through it or over it. If not, they will tunnel under or fly over it. And there is always our 12,383 miles of virtually unguarded coastline.

Several proposals have been submitted in the Mexican congress to decriminalize illegal drugs. One was even passed in 2006 but, under pressure from the U.S., President Vicente Fox refused to sign it. The proposals rest on the notion that by eliminating the profit from illegal drug distribution, the cartels will die from the dearth of profits. A major weakness in such proposals, however, is that the main source of the cartels' profits is not Mexican but American. Mexican drug consumption is a mere trickle compared to the river that flows north. However laudable, proposals to decriminalize drugs in Mexico would have little impact on the current drug warfare.

Secretary of State Hillary Clinton recognized the heart of the matter when she told the Mexicans last month that the "insatiable demand for illegal drugs" in the U.S. is fueling the Mexican drug wars. Without that demand, there would be few illegal drug traffickers in Mexico.

Once we have recognized this root cause, we have few options. We can try to eliminate demand, we can attack the suppliers or we can attempt a combination of both. Thus far, the Obama administration, like every other U.S. administration since drug prohibition went into effect in 1914, seems bent on trying to defeat the drug traffickers militarily. Hopefully, President Obama will soon realize, if he does not already, that this approach will not work.



The Granger Collection

A federal agent in Chicago destroys contraband kegs of alcohol during Prohibition in the 1920s.

Suppose the U.S. were to "bail out" the Mexican government with tens of billions of dollars, including the provision of military personnel, expertise and equipment in an all-out concerted attack on the drug traffickers. After first escalating, the level of cartel-related violence would ultimately subside. Thousands more lives would be lost in the process, but Mexico could thereby be made less hospitable to the traffickers, as other areas, such as Colombia, Peru and Panama, were made less hospitable in the past. That, after all, is how the Mexicans got

their start in the grisly business. Eventually, the traffic would simply move to another country in Latin America or in the Caribbean and the entire process would begin anew. This push-down, pop-up effect has been demonstrated time and again in efforts to curb black markets. It produces an illusion of success, but only an illusion.

An administration really open to "change" would consider a long-term solution to the problem -- ending the market for illegal drugs by eliminating their illegality. We cannot destroy the appetite for psychotropic drugs. Both animals and humans have an innate desire for the altered consciousness obtainable through drugs. What we can and should do is eliminate the black market for the drugs by regulating and taxing them as we do our two most harmful recreational drugs, tobacco and alcohol.

Marijuana presents the strongest case for this approach. According to some estimates, marijuana comprises about 70% of the illegal product distributed by the Mexican cartels. Marijuana will grow anywhere. If the threat of criminal prosecution and forfeitures did not deter American marijuana farmers, America's entire supply of that drug would be home-grown. If we taxed the marijuana agribusiness at rates similar to that for tobacco and alcohol, we would raise about \$10 billion in taxes per year and would save another \$10 billion we now spend on law enforcement and imprisoning marijuana users and distributors.

Even with popular support, legalizing and regulating the distribution of marijuana in the U.S. would be neither easy nor quick. While imposing its prohibitionist will on the rest of the world for nearly a century, the U.S. has created a network of treaties and international agreements requiring drug prohibition. Those agreements would have to be revised. A sensible intermediate step would be to decriminalize the possession and use of marijuana and to exercise benign neglect of American marijuana growers. Doing both would puncture the market for imports

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from Mexico and elsewhere and would eliminate much of the profit that fuels the internecine warfare in Mexico.

After we reap the rewards from decriminalizing marijuana, we should move on to hard drugs. This will encounter strong resistance. Marijuana is a relatively safe drug. No one has ever died from a marijuana overdose nor has anyone gone on a violent rampage as a result of a marijuana high. Cocaine, heroin and amphetamines, on the other hand, can be highly addictive and harmful, both physically and psychologically. But prohibition makes those dangers worse, unleashing on vulnerable users chemicals of unknown content and potency, and deterring addicts from seeking help with their dependency. There is burgeoning recognition, in the U.S. and elsewhere, that the health benefits and the myriad social and economic advantages of substituting regulation of hard drugs for their prohibition deserves serious consideration.

A most impressive experiment has been underway in Portugal since 2001, when that country decriminalized the possession and personal use of all psychotropic drugs. According to a study just published by the Cato Institute, "judged by virtually every metric," the Portuguese decriminalization "has been a resounding success." Contrary to the prognostications of prohibitionists, the numbers of Portuguese drug users has not increased since decriminalization. Indeed, the percentage of the population who has ever used these drugs is lower in Portugal than virtually anywhere else in the European Union and is far below the percentage of users in the U.S.. One explanation for this startling fact is that decriminalization has both freed up funds for drug treatment and, by lifting the threat of criminal charges, encouraged drug abusers to seek that treatment.

We can try to deal with the Mexican murderers as we first dealt with Al Capone and his minions, or we can apply the lessons we learned from alcohol prohibition and finish dismantling the destructive prohibition experiment. We should begin by decriminalizing marijuana now.

Steven B. Duke is a professor of law at Yale Law School.

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