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MASTER OF MILITARY STUDIES

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Prohibition Repeal? Refocusing the War on Drugs from Supply to Demand

SUBMITTED IN PARTIAL FULFILLMENT  
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## Executive Summary

**Title:** Prohibition Repeal? Refocusing the War on Drugs from Supply to Demand

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**Thesis:** Drug use decriminalization and its realignment from a law enforcement to a public health issue are the only meaningful ways to reduce the destabilizing effects of the global narcotics trade.

**Discussion:** The global effort to stamp out narcotics supply has increased steadily from its origin during the early 20th century, through the 1961 United Nations Single Convention on Narcotic Drugs, to present day. Over the past two decades, multi-billion-dollar campaigns have been waged against the narcotics supply chain in Afghanistan, Colombia and Mexico with little to no lasting positive results. Likewise, hundreds of thousands of drug dealers and users are incarcerated each year within the United States with no reduction in domestic demand.

Ease of production, portability, profitability and inelastic demand make targeting narcotics supply untenable. Maintaining the global prohibitionist model against illicit narcotics is both illogical and a misuse of resources. Other nations such as Portugal have decriminalized drug use with surprisingly positive results with regard to drug demand. In addition, opioid substitution programs and the loosening of cannabis prohibition have shown strong public health and social benefits as well.

**Conclusion:** The only positive results in the global war on drugs have been achieved by methods other than total prohibition. Decriminalizing drug use and treating it as a public health issue may be a leap into the unknown and it will not likely rid the world of its evils completely; however, there is ample evidence that this strategy would produce better results than the status quo.

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## **Introduction**

Repeating the same mistakes over again and expecting different results is a cliché definition for insanity first appearing in a Narcotics Anonymous pamphlet from 1981.<sup>1</sup> When analyzing U.S. Government narcotics supply reduction activities over the past half century, this cliché is oddly fitting and its source deeply ironic. Billions of dollars have been spent across the globe in the fight against narco-trafficking with little to no impact in the amount of drugs being produced and smuggled into the U.S. At the source, U.S. efforts in Afghanistan and Colombia over the past two decades have been similar exercises in futility resulting in the two countries producing more narcotics than ever before. In both cases, terrorist networks with vastly differing ideologies found commonality in their ability to harness the immensely profitable drug trade to fund their activities. Further down the supply chain, counter-drug activities within Mexico and along the U.S. southern border have failed to stem the northward flow of narcotics and have contributed to the rise of some of the most violent drug cartels on the planet. Finally, the U.S. Judicial System has been completely unable to reduce domestic drug use despite the millions of users and suppliers who have been arrested, convicted and incarcerated since the war on drugs began.

Strict drug prohibition, much like alcohol prohibition almost a century ago, is evidently producing more harm than good. As long as Americans are willing to pay whatever is necessary to satisfy their need for illicit drugs, the supply always seems to follow accompanied by devastating societal effects. Is it possible for U.S. policymakers to take a cue from the first step of the Narcotics Anonymous program and admit that when it comes to eliminating narcotics supply, they are “powerless?”<sup>2</sup> After this first step is made, would it be possible to overcome the moral inertia necessary to characterize drug users and the demand they create differently?

Compared to all the resources committed to drug supply reduction, only a fraction is applied to the demand side of the basic Supply & Demand economic equation.<sup>3</sup> Drug use decriminalization and its realignment from a law enforcement to a public health issue are the only meaningful ways to reduce the destabilizing effects of the global narcotics trade.

### **Origins of the War On Drugs**

The motivational roots of the global drug war can be traced to Asia during the early part of the 20th Century. The United States' acquisition of the Philippine Islands after the Spanish-American war necessitated a response to the new territory's widespread opium trade. Likewise, the Chinese Opium epidemic, fueled by a morally questionable drug influx by the British Empire had reached such proportions as to threaten societal collapse within China. These two Far East concerns sparked U.S. moral, diplomatic and economic interest in anti-narcotics efforts abroad.<sup>4</sup> However, the great depression as well as World Wars I and II precluded any significant campaign to combat the global spread of narcotics until later in the century.<sup>5</sup>

In 1961, the United Nations adopted the "Single Convention on Narcotic Drugs" signed by an overwhelming majority of 184 out of 193 member states.<sup>6</sup> The Single Convention, along with the "1971 UN Convention on Psychotropic Substances" and the "1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" form the core of global prohibitionist policy that remains in place to this day.<sup>7</sup> The Single Convention's near universal adherence is significant in that despite the constraints it places on the sovereign rights of the signatories, when it comes to drugs, common ground is found for a wide variety of countries that are normally deeply divided by other issues.<sup>8</sup>

Another significant aspect of the Single Convention is the term “evil” within the preamble, which runs contrary to earlier UN shifts towards positivism when drafting language for international law.<sup>9</sup> As the preamble states, “addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,”<sup>10</sup> going further to identify an international “duty to prevent and combat this evil.”<sup>11</sup> The unequivocal negativity associated with the term evil leaves no room for debate as to the nature of narcotic drugs.<sup>12</sup> The use of “evil” is also unique in that other subjects which might seem to be more fitting of the term are not described by the UN as such. As Rick Lines, Director of the International Centre on Human Rights and Drug Policy, points out that “neither slavery, apartheid nor torture are described as being ‘evil’ in the relevant international conventions that prohibit them.”<sup>13</sup>

In combating this “evil,” the Single Convention compels signatories to enact strict laws criminalizing narcotics activities outside purely scientific or medical purposes. The fact that narcotics use can be defined as evil in the unofficial context and acceptable in the official context is arguably one of the Single Convention’s biggest contradictions.<sup>14</sup> Further, all non-scientific or medical narcotics use is placed firmly within the punitive vice public health realm with a heavy emphasis on counter-supply enforcement. The Single Convention, according to international politics scholar Christopher Hobson, “consolidated and confirmed the major elements of previous agreements, including maintaining a strong supply-side focus, with the burden firmly placed on countries in which narcotics are produced and trafficked.”<sup>15</sup>

In 1971 U.S. President Richard Nixon released his “Special Message to the Congress on Drug Abuse Prevention and Control,” detailing his administration’s comprehensive counter-drug strategy. Militaristic language is used frequently throughout the message beginning with a call

for legislation to “consolidate at the highest level a full-scale attack on the problem of drug abuse in America.”<sup>16</sup> President Nixon outlined his foreign counter-narcotics strategy as a, “strike at the ‘supply’ side of the drug equation--to halt the drug traffic by striking at the illegal producers of drugs, the growing of those plants from which drugs are derived, and trafficking in these drugs beyond our borders.”<sup>17</sup> This shift in tone from moral to martial represented a turning point for U.S. counter-drug policy with global ramifications. As Hobson argues, “in making the small step from the language of 'evil' to that of 'war', Nixon was essentially following the Single Convention to its logical conclusion: one does not mitigate evil; one does not compromise with evil: evil must be defeated.”<sup>18</sup>

The War on Drugs has been waged on many foreign and domestic fronts over the 56 years since the Single Convention was signed and 46 years since President Nixon sent his Drug Abuse Prevention and Control message to Congress. Progress has been elusive.

We will begin to analyze the problem with controlling narcotics supply by focusing on two of the primary producer countries, Afghanistan and Colombia. U.S. Military and Interagency efforts in each of these countries are two recent examples of the challenges that arise when attacking narcotics at their source.

### **Afghanistan**

The United States faced a complicated narcotics network situation from the onset of Operation Enduring Freedom in 2001. Ironically, it was the year leading up to the invasion of Afghanistan that saw the greatest reduction in opiate production and export. On July 28, 2000 the head of the Taliban, Mullah Omar, declared a ban on poppy cultivation which would in turn reduce the amount of opium leaving the country from an estimated 3,656 metric tons in the year

2000 to 74 in 2001.<sup>19</sup> The ban stemmed from an agreement between the Taliban and the United Nations Drug Control Program in exchange for funding for alternative development projects in Kandahar and other high opium producing areas. At the time, the Taliban controlled 90% of the country with the remaining 10% being controlled primarily by the group of anti-Taliban warlords making up the “Northern Alliance.”<sup>20</sup> It was this set of warlords, many of whom were key figures within the beleaguered Afghan opium market, that NATO forces chose to collaborate with to overthrow the Taliban after the September 11, 2001 attacks on the U.S.<sup>21</sup>

On March 23, 2002, shortly after the Taliban had been removed from power, Drug Enforcement Agency (DEA) Administrator Asa Hutchinson outlined “Operation Containment” to Congress. The plan included the opening of a DEA field office in Kabul, expanding the DEA footprint in Asia and Europe as well as improving communication and intelligence linkages with domestic resources and investigations.<sup>22</sup> There was also a strong counter-terrorism component to the initiative in line with the national zeitgeist at the time. As Director Hutchinson stated in his testimony, “The events of September 11, 2001, graphically illustrate the need to starve the infrastructure of every global terrorist organization and deprive them of the drug proceeds that might otherwise be used to fund acts of terror.”<sup>23</sup> Over the following years, the counter-narcotics and counter-terror mission in Afghanistan would become increasingly linked.<sup>24</sup>

NATO’s military role in supporting host nation counter-narcotics activities was minimal during the early portion of the conflict. Involvement in poppy eradication and other supply reduction efforts were seen as distracting and possibly detrimental to the coalition’s counter-insurgency mission.<sup>25</sup> NATO forces did not want to be seen directly damaging the livelihoods of local farmers and warlords for fear of losing their support against the insurgency. However, as

the conflict progressed, pressure to cut off insurgency income streams increased and NATO was compelled to elevate the priority of the counter-narcotics mission.<sup>26</sup>

By 2008, a five-pillar coalition counter-narcotics strategy was fully implemented focusing on: (1) Education and public information; (2) Alternative livelihoods; (3) Eradication interdiction; (4) Law enforcement; and (5) Anticorruption.<sup>27</sup> Progress was measurable, and an optimistic outlook was being voiced by both U.S. and Afghan government officials. Poppy production had decreased 22% since the previous year and the amount of poppy free provinces had increased from 15 to 18 of Afghanistan's 34 total.<sup>28</sup> Acting DEA Administrator Michele Leonhart declared that after seven years of Operation Containment "there's very little Afghan heroin that actually makes it to the United States."<sup>29</sup> In addition, NATO was now in direct support of Afghan counter narcotics efforts and routinely provided transportation, medevac and quick reaction force response to Host Nation counter-narcotics forces operating across the country.<sup>30</sup>

By 2011, counter narcotics efforts especially in the opium rich South-Western Helmand Province were showing further signs of success. Though there was evidence of a "balloon effect" displacing poppy cultivation to remote areas of the country with less governmental control, Helmand was virtually poppy free by the beginning of 2012.<sup>31</sup> However, this progress would soon be completely reversed by reductions in NATO troop numbers and force consolidation across the country.<sup>32</sup>

To date, over \$8 Billion USD has been spent on counter-narcotics since the conflict in Afghanistan began and the country is currently exporting 4,800 metric tons of opium representing 85% of the world's heroin supply.<sup>33</sup> This is up significantly from the 3,656 metric tons representing 70% of the world's heroin supply from before the Taliban crackdown in

2000.<sup>34</sup> The opium trade grew by \$3 Billion in 2016 and now represents 16% of the Afghan national economy. The 2017 poppy harvest has been the largest on record and eradication efforts across the country have become negligible.<sup>35</sup> An additional setback is that the majority of the narcotics produced by Afghanistan are now receiving some level of refinement before being exported. Bulky opium resin used to be the primary export, however morphine and heroin, both of which are much more transportable and profitable are now the most common forms of opiates leaving the country.<sup>36</sup>

As one senior Afghan government official stated in late 2017, “if an illiterate local Taliban commander in Helmand makes a million dollars a month now, what does he gain in time of peace?”<sup>37</sup> It is estimated that 60% of the Taliban’s current funding can be traced to narcotics and their profits show no sign of decreasing.<sup>38</sup>

We will now turn to the opposite side of the globe where an almost identical situation has occurred over the past 18 years regarding cocaine production in Colombia.

### **Colombia**

At the beginning of the millennium, Colombia was on the brink of becoming a failed state. Corruption was rampant throughout every governmental institution and internal violence was creating destabilizing effects across the country.<sup>39</sup> Among the many criminal and extremist organizations operating within Columbia, the Marxist rebel group Fuerzas Armadas Revolucionarias de Colombia (FARC) was engaged in a brutal insurgency against the Colombian government. Fueling all the disruption were astronomical profits associated with the cocaine trade.<sup>40</sup>

The United States intervened in 2001 to develop the multifaceted “Plan Colombia” in coordination with then Colombian President Pastrana’s administration. As author Juliana Sojo summarizes, “Plan Colombia was originally drafted as a ‘plan for peace, prosperity and the strengthening of the state,’ and consisted of five main elements: the Peace process, an economic recuperation strategy, an antinarcotics strategy, human rights and judicial reform, and the strengthening of the country's rule of law and democratic institutions.”<sup>41</sup> U.S. influence on the plan was significant and it is said that all original drafts were in English.<sup>42</sup>

Critics at the time claimed that the true purpose of Plan Colombia was not anti-drug, but a means for the U.S. to counter the regional influence of newly emergent leftist regimes in Venezuela, Bolivia and Ecuador.<sup>43</sup> These critics argued that the plan’s actual intent was to solidify Colombia as a U.S. client state while victimizing the Colombian peasant class in the process. At Plan Colombia’s onset, sociology scholar James Petras claimed that, “the greater U.S. presence means greater use of chemical defoliants, increasingly aggressive and destructive military forays to eradicate coca and food plants, and to eliminate persons that stand in the way.”<sup>44</sup> Notwithstanding the motivations behind it, Plan Colombia was unprecedented as a counter-narcoterrorism effort in scope and scale.<sup>45</sup>

As was true during narcotics supply reduction efforts in Afghanistan, there was a period of significant progress from 2005 to 2013 during which coca production decreased by almost two thirds in Colombia.<sup>46</sup> The investments made to professionalize the Colombian military and judicial system produced even greater dividends. Plan Colombia’s initiatives created strong improvements to the Colombian economy and were instrumental to beating back the FARC and forcing them to the negotiating table. In 2009, then U.S. Ambassador to Colombia William Brownfield stated, "by any measurable criteria, Colombia today is a better country than it was in

1999."<sup>47</sup> In November 2016, the decimated FARC leadership signed a final peace accord with the Colombian government agreeing to hand over their weapons to the United Nations and end the 52-year long conflict.<sup>48</sup>

Despite successful counterinsurgency efforts against the FARC, Colombian cocaine production has increased dramatically since 2013. In 2017, Colombia once again became the world's largest producer of cocaine and 90% of the drug on U.S. streets can now be traced back to Colombia.<sup>49</sup> The market share lost to the dwindling FARC was quickly picked up by other criminal organizations.<sup>50</sup> In 2017 William Brownfield, now the head of the State Department's Bureau of International Narcotics and Law Enforcement Affairs stated, "seizures are simply not keeping pace with the explosion in production."<sup>51</sup>

The U.S. State Department cites several factors behind the rise in Colombian cocaine production including a shift from aerial to manual eradication and FARC encouragement of farmers prior to the peace agreement.<sup>52</sup> However, increased demand for cocaine within the U.S. is undoubtedly a key factor to production increases as well. According to a recent National Survey, "1 in 20 American adults ages 18 to 25 used the drug in 2015, with the highest percentage concentrated in the Northeast. In New Hampshire, more than 10 percent of young adults used cocaine in 2015."<sup>53</sup>

To date, over \$10 billion has been spent by the U.S. Government in support of Plan Colombia.<sup>54</sup> The improvements that this investment has brought to Colombian governance, rule of law and other key sectors of society have been largely sustained.<sup>55</sup> Plan Colombia might be considered an unequivocal success if, as some critics have suggested, the true objective was to build a strategic U.S. partner in northern South America to counter anti-U.S. regional influence.

However, for a plan with counter-narcotics as its stated primary objective, the performance is dismal.

We will now trace the narcotics supply chain through Mexico, the country where the majority of illicit drugs entering the United States transits through.

## **Mexico**

In recent decades, Mexico has suffered some of the worst narcotics related violence of any country on the globe. According to the Mexican Government, over 160,000 Mexican citizens have been killed and 27,000 “disappeared” due to drug violence since 2006.<sup>56</sup> The country’s drug trade is currently controlled by nine cartels under continuous armed conflict with both Mexican security forces and each other for control of lucrative drug trafficking routes between Mexico’s southern and northern borders. Massacres, torture and dismemberment are now common practice as morality and rule of law continue to devolve in cartel-controlled areas.<sup>57</sup>

Before the late 1960s, security conditions in Mexico were vastly different than the present. U.S. Customs and Border Protection activities were minimal compared to today’s standards and the U.S. government largely followed what author R. Chuck Mason describes as “the Good Neighbor Policy, seeing the border as a way to engender goodwill-rather than spark division-in Latin America.”<sup>58</sup> In September 1969 however, President Nixon’s Treasury and Justice Departments launched “Operation Intercept” during which thousands of federal law enforcement officials were deployed along the U.S.-Mexico border to conduct thorough searches of vehicles and pedestrians entering U.S. territory.<sup>59</sup> The massive disruption to commerce that ensued was used to pressure the Mexican government to increase drug interdiction within its

borders. Nixon operative G. Gordon Liddy would later write in his autobiography that Operation Intercept was “an exercise in international extortion, pure, simple, and effective, designed to bend Mexico to our will.”<sup>60</sup>

Operation Intercept laid the groundwork for the beginning of President Nixon’s War on Drugs in 1971, but also began what Mason labels the “Wall Effect.” This describes the pattern of increasing resource application to shore up the 2,000-mile-long U.S. Southern border with limited effects beyond damage to U.S.-Mexico foreign relations.<sup>61</sup> Overtime, border patrol agents have increased from 1,500 in 1968, to 12,000 in 2006, to 21,000 in 2012.<sup>62</sup> Border patrol strength is projected to increase steadily throughout the Trump administration which may amplify the wall effect, not to mention the potential construction of a much publicized physical border wall itself.<sup>63</sup>

Beyond activities on the border, much of U.S.-Mexico counter-drug and security cooperation efforts since 2007 have been tied to an agreement originated by Presidents George W. Bush and Felipe Calderón known as the “Mérida Initiative.”<sup>64</sup> In a similar fashion to “Plan Colombia,” the “Mérida Initiative” seeks to improve Mexican capacity to counter narco-terrorism and transnational organized crime through U.S. investment; however, the total is much smaller at \$2.6 billion vice \$10 billion.<sup>65</sup> The original framework was broken into three general lines of effort: (1) “Counter-narcotics, counterterrorism, and border security assistance,” (2) “public security and law enforcement programs,” and (3) “institution building and rule of law promotion.”<sup>66</sup>

Violence in Mexico escalated dramatically during the Calderón administration’s crackdown on drug cartels following Mérida. Prior to his election in 2012, President Peña Nieto campaigned on a promise to change the course of the drug war from the failing aggressive

policies of Calderón.<sup>67</sup> Once in office, Peña Nieto initially followed through with his pledge by largely cutting off collaboration with the U.S. against cartel activities. Evidently, the political benefits of public arrests and assassinations of cartel leadership proved enticing enough for President Peña Nieto to reverse course and approve a series of large scale counter-narcotics operations in 2013 and 2014. These activities culminated in the capture of notorious Sinaloa Cartel leader, Joaquín "El Chapo" Guzmán, which was made possible by ample assistance from U.S. intelligence.<sup>68</sup>

Despite ever increasing investments to border security as well as staunch military and law enforcement efforts, Mexican drug cartels are still able to supply 90% of the cocaine, 50% of the heroin, and 80% of the methamphetamine on U.S. streets today.<sup>69</sup> Some experts argue that strategies such as targeting kingpins have actually intensified violence by splintering cartels and increasing territorial competition.<sup>70</sup> A significant portion of the over \$100 billion that U.S. citizens spend on illegal narcotics annually is funneled through Mexico giving the cartels ample incentive to violently compete for market share.<sup>71</sup>

Why have severe restrictions on the supply of illicit substances failed to produce a collapse in the markets for them? The answer, in line with basic economics, lies with demand.

### **The Demand**

It is important to first describe some challenging aspects intrinsic to narcotics that make control fundamentally difficult. As the examples from Afghanistan, Colombia and Mexico illustrate, narcotics supply is nearly impossible to eliminate no matter which portion of the supply chain is targeted. Ease of production, portability and profitability are all contributing factors. According to some public health experts, a heavy user will consume on average six

ounces of pure narcotics per year no matter what the type. A standard sized 40-foot shipping container could therefore contain a year's supply for 75,000 heavy narcotics users.<sup>72</sup> An optimistic estimate for the percentage of shipping containers inspected before entering the U.S. is 3%.<sup>73</sup> Narco-traffickers charge \$10,000 to move one kilogram of cocaine into the U.S. compared to \$60 charged by FedEx to ship a kilogram of licit items anywhere in the world.<sup>74</sup> These factors illustrate the futility of attacking the narcotics supply chain. There is simply too much money to be made.

In addition, quantitative drug seizure totals and high visibility drug interdictions create the false impression that meaningful progress is being made. It is erroneous to believe that the level of domestic consumption is decreased by the same amount as the total narcotics seized. Suppliers adjust by shipping more product, which is the standard reaction of any market.<sup>75</sup>

A common complaint from governments in both narcotics source and transshipment countries, is that there is little to no recognition of shared responsibility from the developed world where the preponderance of drug demand is generated. These governments, particularly in Latin America, argue that narcotics supply isn't solely to blame for the evils of the drug trade. Policy makers in the developed world have largely ignored these assertions. The resulting international relations impasse is described by scholar Frank G. Madsen as a "dialogue of the deaf."<sup>76</sup>

Within the United States, an analysis of domestic demand for illicit narcotics indicates at least some validity to the perspective of critics in the developing world. Between 80 and 90 million Americans have used illegal drugs at least once making up 42% of the population over 12 years old.<sup>77</sup> This population includes the last three former presidents of the United States by

their own admission.<sup>78</sup> Billions of illicit narcotics consumption incidents are carried out by an estimated and 15 million Americans in a typical year.<sup>79</sup>

The demand numbers on a global scale are even more staggering. According to United Nations reporting, “250 million people, or 5 percent of the global adult population, used drugs in 2015, and of those, about 29.5 million suffered from drug-use disorders, including addiction.”<sup>80</sup> The United Nations Office on Drugs and Crime estimates global drug revenues at \$320 billion per year and some experts put the figure closer to \$1 trillion.<sup>81</sup> With a true appreciation for the incredible size of this market and the associated revenues, it is not surprising why the global effort to combat narcotics trafficking seems to fail time after time.

As economist R.T. Naylor describes, “from Prohibition to prostitution, from gambling to recreational drugs, the story is the same. Supply-side controls act ... to encourage production and increase profits. At best a few intermediaries get knocked out of business.”<sup>82</sup> The addictive nature of narcotics makes for inelastic demand, meaning that it remains relatively the same as prices increase. Supply reduction therefore, creates a corresponding increase in price and profit potential. The real winners are those savvy or violent enough to meet the demand through the black market.<sup>83</sup>

Drug prohibition has set the conditions of what Madsen describes as “denied demand” under which organized crime thrives by providing society with what it simultaneously wants and prohibits.<sup>84</sup> Madsen argues that the extra-judicial system these criminal organizations create is more destructive to society than the drug abuse itself. “Denied demand creates the underground or shadow world, which houses the market, whose only *raison d'être* is the satisfaction of that same demand, with its auxiliary functions: litigation, arbitration (violence), security (corruption), and banking (money laundering) functions.”<sup>85</sup>

Domestically, the U.S. government targets narcotics suppliers and the users who buy from them with a massive \$41.3 billion annual criminal justice campaign.<sup>86</sup> At any given time 500,000 U.S. citizens are incarcerated for drug related crimes, which is higher than the total prison population of every other nation except for Russia and China. The amount of life years lost due to drug-related incarceration is comparable to the estimated amount of life years lost due to drug-related premature death.<sup>87</sup> Over half the Federal and 20% of the State Prison population is serving sentences linked to narcotics violations from dealers and money launderers to the users themselves.<sup>88</sup> These numbers have risen dramatically in the last few decades. During the Ronald Reagan administration, which was well known for strong anti-drug policies, there were only 10-20% as many Americans incarcerated for narcotics offenses as there are today.<sup>89</sup>

The U.S. Judicial system's efforts to incarcerate the demand for narcotics out of American society have evidently failed. Can domestic demand be dealt with by any other means?

### **Regime Change?**

In 1922 during the early years of Alcohol Prohibition in the U.S., the legendary newsman C.W. Barron wrote, "we are building up a nation-wide industry of smuggling and rum-running, lessening the national respect for law and order, promoting thousands of millions in untaxed profits to lawbreakers, and stimulating the consumption of alcohol in its worst forms."<sup>90</sup> Many may argue that heroin, cocaine and other highly addictive narcotics belong in an entirely different category than alcohol and should never be tolerated under any circumstances. Viewed objectively, however, it can be argued that the adverse secondary effects produced by the

criminalization of alcohol in the last century are congruent to those stemming from the ongoing criminalization of narcotics.

It is important to note that the laws governing alcohol prohibition at the time were much more lenient with regard to personal consumption than the current laws criminalizing illicit drugs. As criminal justice theorist Douglas Husak describes the dichotomy, “production and sale were banned, but not the use or mere possession of alcohol. If we replicated that approach in our drug policy, I would call it decriminalization. That is admittedly odd, but it underscores the fact that our response to illicit drug users today is far more punitive than anything we ever did to drinkers.”<sup>91</sup> Also historically relevant is the fact that virtually all intoxicating substances from opium to cocaine were essentially legal to purchase in drug stores or via mail order until the early part of the twentieth century with much lesser national levels of consumption.<sup>92</sup> The increasingly stringent application of anti-narcotics law over the previous century has been ineffectual in preventing the rise in drug abuse.

It would be intuitive to assume that illegal drug consumption is inversely related to punishment severity. In practice the opposite appears true. Husak points out that, “states with greater rates of incarceration for drug offenders tend to experience higher rates of drug use. Prohibitionists who predict a massive increase in drug use after decriminalization must struggle to explain these data.”<sup>93</sup> There is evidence that the same relationship is at play internationally as well. Drug use in Europe is much less prevalent than in the United States even though anti-drug laws are much less punitive and the drugs themselves are lower in price and higher in quality.<sup>94</sup>

According to Madsen, the laws enforcing the global prohibitionist regime have been essentially negated. “Narcotic drugs have already been legalized de facto, albeit not de jure. When drugs are freely available, when the market is at all times saturated, and when a market-

clearing equilibrium exists with little or no upwards price movement, then prohibition provisions are unenforced. In other words, the question of legalization has already been settled, namely by the market.”<sup>95</sup> If this is truly the case, what are the arguments for continuing to enforce the prohibition of narcotics?

Critics to narcotics decriminalization often predict a rapid price decrease followed by a corresponding increase in usage; however, this logic does not hold up if possession and usage were to be decriminalized vice sale and production.<sup>96</sup> The consumer would still need to absorb the costs of illicit production and smuggling which would likely keep prices stagnant. Even if decriminalization were to be extended to sale and production, the activities would then be subject to lawsuits and taxes. These influences would likely counter price deflation and may actually incentivize producers to maximize the safety of recreational narcotics in an effort to avoid litigation.<sup>97</sup>

Another argument against narcotics decriminalization is that it would remove the legal barriers disincentivizing youth from experimenting with and becoming addicted to drugs. Experts agree that the bulk of drug abusers begin using during adolescence when clouded judgement and a propensity to miscalculate consequences make them particularly susceptible to the lures of narcotics.<sup>98</sup> To counter the absence of legal restrictions, Husak posits that decriminalization might actually drive adolescents away from drugs by reducing the “forbidden fruit” effect. If narcotics use is legalized then the act could potentially lose some of the risk-taking appeal among thrill seeking youth.<sup>99</sup>

The true effects of narcotics decriminalization cannot be predicted with any degree of certainty. Many experts warn against the danger of over optimism and that such a drastic change in policy would be akin to “trading the devil you know for the devil you don’t know.”<sup>100</sup>

However, it is arguable that the tangible benefits of the current system equally uncertain. The value of prohibition is directly linked to the number of individuals not currently addicted to drugs who would be addicted if drugs were legal to consume.<sup>101</sup> This factor is unquantifiable. According to Husak, the one certainty about decriminalization is that, “the lives of drug users would not be devastated by a state that is committed to waging war against them. Punishment, we must always be reminded, is the worst thing a state can do to us. The single prediction we can safely make about decriminalization is that it will improve the lives of the hundreds of thousands of people who otherwise would be punished for the crime of using drugs for recreational purposes.”<sup>102</sup>

Alternative methods to total narcotics prohibition have been sporadically implemented across the globe. We will now analyze several of these methods that have produced positive outcomes.

### **Best Practices**

One country departed from conventional counter-narcotics strategy with surprising results. In 2001 Portugal decriminalized the use of all drugs and began viewing addicts through a public health lens. With an outlook emphasizing that the personal consequences of addiction are punishment enough, the Portuguese have invested their resources into anti-drug public messaging campaigns and programs to help drug abusers get their lives back on track. Recent polls indicate that compared to 2001 responses, less than half of Portuguese 15-24-year-olds report using drugs in the past month. After 16 years of decriminalization, drug abuse in Portugal has been reduced by 75% and is one fifth the current rate in the U.S.<sup>103</sup>

The disproportionately high return on investment of drug treatment compared to supply reduction activities has been known for decades. A 1994 study by the Rand Corporation found that “\$34 million invested in drug treatment reduced cocaine use as much as \$783 million spent on overseas counter-narcotics programs and \$366 million spent on interdiction.”<sup>104</sup> These findings have been further validated by the Portuguese treatment focused approach as well. According to the New York Times, the Portuguese “Health Ministry spends less than \$10 per citizen per year on its successful drug policy. Meanwhile, the U.S. has spent some \$10,000 per household (more than \$1 trillion) over the decades on a failed drug policy that results in more than 1,000 deaths each week.”<sup>105</sup>

One of the programs central to the Portuguese model is opioid substitution, which has the potential to greatly reduce the negative effects of the current opioid crisis in the U.S. The crisis has its roots in the widespread expansion of medically prescribed opioids for pain treatment during the 1990s. Unscrupulous pharmaceutical companies, doctors and pharmacists took advantage of this permissive environment to overprescribe medication through “pill mills” and other means.<sup>106</sup> Subsequent crack downs have forced users to buy heroin off the street to satisfy their addictions. It is this group that could benefit most from opioid substitution therapy which is currently offered through only 8-10% of U.S. treatment programs.<sup>107</sup> Each user treated by opioid substitution is one less contributing to the black-market demand for heroin.

Opioid substitution programs have been demonstrated to provide wide reaching public health and social benefits as well. According to the Global Commission on Drug policy, opioid substitution therapy, “has been repeatedly shown to reduce the spread of HIV and other bloodborne diseases, reduce drug use and injecting, as well as cutting crime.”<sup>108</sup> Coupled with needle exchange and supervised injection programs, the public health benefits are even more

substantial. Some experts argue that these programs are the reason why implementing countries such as Australia were able to effectively avoid the AIDS epidemic that spread throughout the U.S. during previous decades.<sup>109</sup>

Short of legalizing all drugs, legalization of medical marijuana has had a paradoxical effect on reducing the abuse of other narcotics. The factors behind this phenomenon are indicative of scholar Richard Cowan's Iron Law of Prohibition which states that, "strict bans on one substance will promote the use and sale of similar but more potent drugs that are easier to smuggle."<sup>110</sup> Over half a dozen studies indicate that medical marijuana has significantly reduced the use of opioids with one study suggesting that there is a 25% reduction in opioid abuse and overdose rates in states where patients are allowed access to cannabis.<sup>111</sup> Another study indicates that doctors in medical marijuana states write on average 1,800 fewer opioid prescriptions per year.<sup>112</sup>

The current push for legalization of recreational marijuana has the potential for widespread benefits as well. According to public health experts, marijuana rarely consumes the personal finances of its users and therefore contributes much less to theft and other crimes motivated by income generation.<sup>113</sup> In addition, there is much less physical risk to recreational users or those around them if marijuana becomes their drug of choice vice another more intoxicating or addictive alternative. The intrinsically less harmful qualities of cannabis greatly reduce the risk of dependence, overdose and dangerous intoxicated behavior among users.<sup>114</sup>

## **Conclusion**

Why are massive amounts of blood and treasure continued to be invested in stemming the flow of illicit narcotics from source countries such as Afghanistan and Colombia, through in-

transit countries such as Mexico, to the street level within the United States when nothing but negative progress has been achieved for over a century? This situation, according to Madsen, represents a “deviant use of knowledge, which in this context can be taken to signify the knowingly inefficient application of effort, as when governments attempt to oppose the narcotic drugs problem on the supply-side, knowing well that economics - and experience - have proved these efforts to be unsuccessful.”<sup>115</sup>

Does a moral imperative to remain steadfast in the prohibition of illicit narcotics justify the continued investment of lives and resources no matter how unwinnable the cause may seem? Numerous expertly crafted, heavily resourced, whole of U.S. government plans to combat narcotics supply across the globe have resulted in complete failure. Within U.S. borders, drug users and suppliers are continually replaced no matter how many the criminal justice system incarcerates. It appears evident that in the case of drugs, supply always meets demand regardless of the forces opposing it. The only positive results in the global war on drugs have been achieved by methods other than total prohibition. Decriminalizing drug use and treating it as a public health issue may be a leap into the unknown and it will not likely rid the world of its evils completely; however, there is ample evidence that this strategy would produce better results than the status quo.

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<sup>2</sup> Narcotics Anonymous World Services, *The Little White Booklet*. Narcotics Anonymous World Services, Inc., 1986.

<sup>3</sup> Behsat Ekici. "Why does the International Drug-Control System Fail?" *All Azimuth* 5, no. 2 (2016): 90.

<sup>4</sup> Christopher Hobson. "'Challenging 'Evil': Continuity and Change in the Drug Prohibition Regime." *International Politics* 51, no. 4 (2014): 525.

<sup>5</sup> Ekici. "Why does the International Drug-Control System Fail?," 92.

<sup>6</sup> Hobson, *Challenging Evil*, 527.

<sup>7</sup> Ekici. "Why does the International Drug-Control System Fail?," 93.

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- <sup>9</sup> *Ibid*, 529
- <sup>10</sup> United Nations, *Single Convention on Narcotic Drugs*. Geneva, Switzerland. 1961.
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- <sup>12</sup> Hobson. *Challenging Evil*, 529.
- <sup>13</sup> Rick Lines, "Deliver us from evil? - The single convention on narcotic drugs, 50 years on." *International Journal on Human Rights and Drug Policy*. 2010 1: 3.
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