

## The Foreign Economic Effect of the U.S. War on Drugs

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### INTRODUCTION

Since the beginning of the twentieth century,<sup>1</sup> the United States has waged a “War on Drugs” by attempting to reduce both the supply

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<sup>1</sup> See, e.g., Harrison Narcotics Tax Act, ch. 1, 38 Stat. 785 (1914). For a complete discussion of U.S. controlled substances regulation, see Peter J. Boettke et al., *Keep Off the Grass: The Economics of Prohibition and U.S. Drug Policy*, 91 OR. L. REV. 1069 (2013).

and the demand of illegal drugs. The attempt to reduce demand is a domestic policy, while the attempt to reduce the supply implicates both domestic and foreign policy. The foreign dimension includes both an attempt to stop the importation of drugs and an attempt to reduce the foreign production. As this Article will show, however, the United States's economic justifications for regulating foreign drug manufacturing is misguided and has resulted in more pervasive and severe crime abroad.

Part I of this Article proceeds with a general background of the United States's regulation of foreign drug manufacturing and importation. Part II examines the effects of the War on Drugs in individual countries. In those countries that have distanced themselves from the United States's regulatory model, the attempt to limit drug supply has been more successful. If the United States is willing to learn from those alternative models, the War on Drugs might become more effective both domestically and abroad. Part III poses support for more liberal regulation of illegal drugs and explores how U.S. regulators might begin facing obstacles to decriminalization or legalization.

## I

### THE U.S. WAR ON DRUGS

In 1988, James M. Van Wert, Executive Director of the U.S. State Department's Bureau of International Narcotic Matters, articulated the federal government's three justifications for narcotics control: (1) reducing the supply reduces the domestic use; (2) "reducing the supply of illicit narcotics may reduce the level of organized crime and lawlessness in the United States," although organized crime can be exacerbated when the least efficient traffickers are eliminated; and (3) reducing the supply helps defend friendly countries affected by traffickers.<sup>2</sup> However, each of these goals has been disputed if not refuted by economic and other studies.<sup>3</sup>

The economic effects of drug-reduction policy depend on the elasticities of supply and demand: the responsiveness of the quantity demanded and the quantity supplied to a change in cost. The costs of supplying drugs include the risk of being convicted and punished, the

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<sup>2</sup> James M. Van Wert, *The US State Department's Narcotics Control Policy in the Americas*, J. INTERAMERICAN STUD. & WORLD AFF., Summer–Autumn 1988, at 1, 1.

<sup>3</sup> E.g., GLENN GREENWALD, CATO INST., DRUG DECRIMINALIZATION IN PORTUGAL: LESSONS FOR CREATING FAIR AND SUCCESSFUL DRUG POLICIES (2009), available at [http://www.cato.org/sites/cato.org/files/pubs/pdf/greenwald\\_whitepaper.pdf](http://www.cato.org/sites/cato.org/files/pubs/pdf/greenwald_whitepaper.pdf).

loss of confiscated goods, and the cost of conflict among drug cartels. But even if these factors cause the supply of illegal drugs to fluctuate, demand remains the same. Given that the consumers of illegal drugs tend to be addicted, their demands are highly inelastic: the quantity demanded responds little to a change in the price.

Hence, a demand-side policy of educating people to avoid illegal drugs, plus propaganda on the bad effects, may be effective in reducing the quantity consumed; however, the supply-side policy of reducing production and importation is bound to fail, as its initial effect is mainly to drive up the cost of provision and the price paid by the users. Punishing the production and sale of drugs acts like a tax on supply, raising the cost of production.<sup>4</sup>

Subsequently, successful evasion may restore the previous supply, and successful “marketing” of addictive substances can then increase demand, which induces a greater quantity supplied.<sup>5</sup> The supply-reduction efforts may also alter the quality of the drugs, such as to increase the potency per volume.<sup>6</sup>

Such effects are easily illustrated. Despite the escalation of the War on Drugs during the 1980s, including foreign operations, illicit drugs were more readily available and cheaper in 1989 than at the beginning of the Reagan presidency in 1981.<sup>7</sup> Domestically, the well-publicized confiscations and destruction of marijuana and other illegal drugs, and the imprisonment of dealers and users, has had little effect on supply—even with harsh policies such as civil asset forfeiture. With asset forfeiture, property—mainly real estate and automobiles—associated with suspected crime is confiscated without any compensation.<sup>8</sup> Civil forfeiture does not require that the property owner be convicted of a crime because legally, the property itself has violated the law.<sup>9</sup> Civil asset forfeiture derives from the concept of

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<sup>4</sup> *Id.* at 176.

<sup>5</sup> See David W. Rasmussen & Bruce L. Benson, *Rationalizing Drug Policy Under Federalism*, 30 FLA. ST. U. L. REV. 679, 698–70 (2003).

<sup>6</sup> *Id.* at 698.

<sup>7</sup> Bruce Michael Bagley, *US Foreign Policy and the War on Drugs: Analysis of a Policy Failure*, J. INTERAMERICAN STUD. & WORLD AFF., Summer–Autumn 1988, at 189, 190, available at <http://www.jstor.org/stable/165986?seq=1>.

<sup>8</sup> TERRANCE G. REED, AMERICAN FORFEITURE LAW: PROPERTY OWNERS MEET THE PROSECUTOR 1 (Cato Inst. Policy Analysis No. 179, 1992), available at <http://www.cato.org/doc-download/sites/cato.org/files/pubs/pdf/pa179.pdf>.

<sup>9</sup> *Id.* at 1–2.

“deodand” in old English law.<sup>10</sup> But even these strong prosecutorial tools seem to have had little deterrent effect on illegal drug suppliers.

Domestically, the War on Drugs has greatly expanded the reach and power of federal, state, and local police powers, and along with it, increased theft and prison populations.

By the end of the 1980s, a third of all robberies and burglaries in the United States would be committed for money to buy drugs. The drug crime wave would have a devastating ripple effect. By 1994, drug offenders would make up 30 percent of new inmates pouring into the nation’s bursting jails, up from 7 percent in 1980.<sup>11</sup>

Hidden importation of illegal substances has also been used as the official justification for intrusive policies such as dogs sniffing the suitcases of Americans returning from abroad.<sup>12</sup>

However, the effect of the U.S. war on the drug trade has had the opposite effect on foreign countries, where the War has been destabilizing to governments. The elements of such society destruction include: (1) the creation of violent cartels, (2) exacerbation of already-existing rebellions, (3) drug-lord imperialism, and (4) and the creation of underground states.

First, the War on Drugs has contributed to the creation of violent cartels abroad. Since the substances that are illegal in the United States are also illegal in the Latin American countries where the drugs are produced, the prohibition induces organized crime, just as alcohol prohibition in the United States induced organized crime.<sup>13</sup> The illegality prevents normal competition by advertising, so the alternative is the use of force. Since the drug dealers are already criminals, the added threat of prosecution for theft and murder provides little extra deterrent. Additionally, the cartelization is territorial, which induces wars among the cartels for the control of space. Moreover, since the cartels do not pay rent or property taxes, their costs involve the costs of the violence, rather the normal

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<sup>10</sup> See *id.* at 2; see also BLACK’S LAW DICTIONARY 467 (8th ed. 2004).

<sup>11</sup> CELERINO CASTILLO III & DAVE HARMON, POWDERBURNS: COCAINE, CONTRAS AND THE DRUG WAR 21 (1994), available at <http://www.scribd.com/doc/111246977/Powderburns-COCAINE-CONTRAS-AND-THE-DRUG-WAR>.

<sup>12</sup> *All About Drug Detection Dogs*, DOG FENCE DIY, <http://www.dogfencediy.com/library/drug-detection-dogs/> (last visited Mar. 1, 2013); James Stuart, *Drug Dogs at Airports*, EHOW, [http://www.ehow.com/info\\_8395751\\_drug-dogs-airports.html](http://www.ehow.com/info_8395751_drug-dogs-airports.html) (last visited Mar. 1, 2013).

<sup>13</sup> See MARK THORNTON, ALCOHOL PROHIBITION WAS A FAILURE 5–8 (Cato Inst. Policy Analysis No. 157, 1991), available at <http://www.cato.org/doc-download/sites/cato.org/files/pubs/pdf/pa157.pdf>.

carrying cost of rentals and mortgages. One could call the gains from controlling territory a “drug rent.”

Second, the U.S. War on Drugs has exacerbated already-existing rebellions. Insurrections have occurred in Latin American countries such as Peru, Colombia, and Guatemala.<sup>14</sup> Illegal drugs are a source of funds, and since the rebels are already outside the law, the drug prohibition provides no deterrence. As stated by Pablo Dreyfus, “waging counterinsurgency operations and drug law enforcement are two very different matters that have to be treated separately. . . . [I]nvolving the armed forces in drug law enforcement only worsens the problem by facilitating the spread of corruption in the armed forces.”<sup>15</sup>

Third, U.S. regulation of foreign manufacturing has caused drug-lord imperialism. For the territorial entities, expanding the controlled territory provides more room to hide, greater areas for production, and more secure transit.

Fourth, the War on Drugs is responsible for the creation of underground states. Since territory is conquered and defended by force, the drug tyrants seek more powerful weapons, and then their power rivals that of the recognized government.<sup>16</sup> Territorially organized crime becomes an alternative state, collecting revenues via protection rackets and kidnaping in addition to the sale of drugs.<sup>17</sup> The territorial drug-based regimes become different from recognized governments in degree rather than in kind, since the governments recognized as legitimate also use force to impose costs and control territory.

Moreover, organized crime thrives on prohibition. Many people do not believe in the justice of the prohibition, and they feel a desire to do what is forbidden: drink alcohol, smoke marijuana, gamble, swim nude, or hire a prostitute. These strong demands provide a profit

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<sup>14</sup> TIMOTHY P. WICKHAM-CROWLEY, *EXPLORING REVOLUTION: ESSAYS ON LATIN AMERICAN INSURGENCY AND REVOLUTIONARY THEORY* 10 (1991).

<sup>15</sup> Pablo G. Dreyfus, *When All the Evils Come Together: Cocaine, Corruption, and Shining Path in Peru's Upper Huallaga Valley, 1980 to 1995*, 15 J. CONTEMP. CRIM. JUST. 370, 370 (1999).

<sup>16</sup> See *Drug Cartels Have Incredible Power in Mexico and USA*, EUR. UNION TIMES (Nov. 21, 2011), <http://www.eutimes.net/2011/11/drug-cartels-have-incredible-power-in-mexico-and-usa/> (describing the Los Zetas cartel, which is comprised of military-trained members).

<sup>17</sup> See *Colombia: A Disease with Staying Power*, STRATEGY ROOM, <http://www.strategypage.com/qnd/colombi/20130317.aspx> (last visited Mar. 20, 2013).

opportunity for organized crime in providing alcohol, illegal drugs, gambling venues, and prostitution.

While the U.S. role in the drug war in foreign countries has helped to intensify these conflicts and exacerbate the consequences, the United States did not initiate many of the drug wars of other countries. The governments of Mexico and other countries initiated their own wars on drugs.<sup>18</sup> However, the United States plays a leading role both in being an importer of drugs and in providing assistance to the governments of foreign countries.

## II FOREIGN EFFECTS

Each year, the U.S. President designates particular countries as being major drug transit or major illicit drug producers, pursuant to the Foreign Relations Authorization Act.<sup>19</sup> President Obama identified the following countries in 2011: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.<sup>20</sup> The list did not include the United States itself.

The memorandum stated that “[a] country’s presence on the Majors List is not necessarily an adverse reflection of its government’s counternarcotics efforts or level of cooperation with the United States.”<sup>21</sup> The report then identifies the countries that do have such adverse status: “I hereby designate Bolivia, Burma, and Venezuela as countries that have failed demonstrably during the previous 12 months to make substantial efforts to adhere to their obligations under international counternarcotics agreements.”<sup>22</sup> This was the fourth consecutive year in which the U.S. government had pointed to Bolivia

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<sup>18</sup> See *Drug Cartels Have Incredible Power in Mexico and USA*, *supra* note 16.

<sup>19</sup> Foreign Relations Authorization Act, Fiscal Year 2003 § 706(1), 22 U.S.C. § 2291j-1(1) (2006).

<sup>20</sup> Presidential Determination on Major Illicit Drug Transit of Major Illicit Drug Producing Countries for Fiscal Year 2012, 2011 DAILY COMP. PRES. DOC. 640 (Sept. 15, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/09/15/presidential-memorandum-major-illicit-drug-transit>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

and Venezuela, both hostile to the United States, as drug-war failures.<sup>23</sup>

### A. Country Studies

#### 1. Colombia

Colombia, torn by civil wars for decades, has incurred a substantial cost to both its society and its land because of rebels financed by illegal drugs. Colombia's largest leftist rebel movement, the Revolutionary Armed Forces of Colombia, commonly known as FARC, receives revenues from the drug trade.<sup>24</sup> "Some 500,000 families grow coca, opium poppies and marijuana because they have few other choices in raising their incomes."<sup>25</sup>

By providing aid to fight the rebels, the United States became involved in the conflict by initiating "Plan Colombia," a project that had cost \$5 billion as of 2008.<sup>26</sup> In 2000, there were several hundred U.S. military advisers in Colombia, including U.S. Special Forces, former Green Berets, Gulf War veterans, and personae from the CIA-backed operations in Central America.<sup>27</sup> Despite the war against the rebels and drug producers, coca production in Colombia expanded in the 1990s. In the decade after 2000, Colombia was the world's largest coca producer.<sup>28</sup> Much of the cocaine consumed in the United States has come from Colombia.<sup>29</sup>

An extradition treaty between the United States and Colombia enables Colombia to extradite any Colombian suspected of drug

<sup>23</sup> Phillip Smith, *Bolivia and Venezuela Scoff at Obama's Drug War Criticism, Tell US to Look in the Mirror*, ALTERNET (Sept. 19, 2012), <http://www.alternet.org/drugs/bolivia-and-venezuela-scoff-obamas-drug-war-criticism-tell-us-look-mirror>.

<sup>24</sup> *The Guerilla Groups in Colombia*, UNRIC BRUSSELS, <http://www.unric.org/en/colombia/27013-the-guerrilla-groups-in-colombia> (last visited Mar. 1, 2013).

<sup>25</sup> Fred E. Foldvary, *Colombia Ruined by Drug Wars*, PROGRESS REP., <http://www.progress.org/fold155.htm> (last visited Mar. 20, 2013).

<sup>26</sup> The Associated Press, *Colombia Aid Failed to Halve Drug Making, Report Finds*, N.Y. TIMES (Nov. 5, 2008), [http://www.nytimes.com/2008/11/06/world/americas/06colombia.html?\\_r=0](http://www.nytimes.com/2008/11/06/world/americas/06colombia.html?_r=0).

<sup>27</sup> *The US Plan for Colombia*, SOCIALISM TODAY (Oct. 2000), <http://www.socialismtoday.org/51/colombia.html>; see also *Quagmire in Colombia*, THIRD WORLD TRAVELER, [http://www.thirdworldtraveler.com/South\\_America/Quagmire\\_Colombia.html](http://www.thirdworldtraveler.com/South_America/Quagmire_Colombia.html) (last visited Mar. 2, 2013) (from the July 2001 edition of the *Progressive* magazine).

<sup>28</sup> Elizabeth Briggs, *Cocaine's Forgotten Victims*, COUNCIL ON HEMISPHERIC AFF. (Dec. 11, 2012), <http://www.coha.org/cocaines-forgotten-victims>.

<sup>29</sup> Frontline, *The Colombian Cartels*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/business/inside/colombian.html> (last visited Mar. 2, 2013).

trafficking to the United States and to be put on trial there for their crimes.<sup>30</sup> The Colombian internal war and U.S. involvement in the Colombian drug wars intensified after the Caguán peace negotiations came to an end in 2002.<sup>31</sup> But “[t]he elimination of the Medellín and Cali cartels merely decentralized the Colombian drug trade. Instead of two large organizations controlling the trade, today some 300 smaller, loosely organized groups do so.”<sup>32</sup>

Just as the United States used defoliation as a tactic in the Vietnam War, the United States used spraying to reduce the coca plantations.<sup>33</sup> However, this defoliation also destroys the rain forest.<sup>34</sup> The spraying also kills food crops such as yuca, plantains, and corn.<sup>35</sup> The fumigations force farmers to leave the coca-growing areas.<sup>36</sup> But the chemical fumigation attacks have not stopped the coca growing.<sup>37</sup> Colombia remains one of the world’s largest producers of cocaine, although since the peak of 2000, cocaine production has been reduced by 60 percent.<sup>38</sup>

Also, just as the destruction of marijuana farms in the United States drives some growers into national forests,<sup>39</sup> so too in Colombia, coca growers invaded the jungles to grow the crop there.<sup>40</sup> The United

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<sup>30</sup> Extradition Treaty with the Republic of Colombia, U.S.-Colom., Sept. 14, 1979, S. TREAT. DOC. NO. 97-8 (1981), *available at* <http://internationalextraditionblog.files.wordpress.com/2011/03/colombia1.pdf>.

<sup>31</sup> Refworld, *Human Rights Watch World Report 2003—Colombia*, UNHCR (Jan. 14, 2003), <http://www.unhcr.org/refworld/docid/3e2818780.html> (presenting a report by Human Rights Watch).

<sup>32</sup> TED GALEN CARPENTER, *TROUBLED NEIGHBOR: MEXICO’S DRUG VIOLENCE POSES A THREAT TO THE UNITED STATES* 8 (Cato Inst. Policy Analysis No. 631, 2009), *available at* <http://www.cato.org/sites/cato.org/files/pubs/pdf/pa631.pdf>.

<sup>33</sup> Thomas D. Williams, *US Role in Massive Aerial Herbicide Spraying Revealed*, PUB. REC. (July 19, 2009), <http://pubrecord.org/world/2547/aerial-herbicide-spraying-colombia/>.

<sup>34</sup> *Colombia: Where U.S. Policy Kills*, WITNESS FOR PEACE, [http://witnessforpeace.org/downloads/Col\\_Fumigations\\_factsheet.pdf](http://witnessforpeace.org/downloads/Col_Fumigations_factsheet.pdf) (last visited Mar. 2, 2013).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *UNODC Reports Divergent Coca Cultivation Trends in the Andean Countries*, UNITED NATIONS OFF. ON DRUGS & CRIME (June 22, 2010), <http://www.unodc.org/southerncone/en/frontpage/2010/06/22-unodc-mostra-tendencias-divergentes-do-cultivo-de-coca-nos-paises-andinos.html>.

<sup>39</sup> See Jennifer Welsh, *Pot Growers Destroying National Forests*, LIVE SCIENCE (Dec. 12, 2011, 9:27 AM), <http://www.livescience.com/17417-marijuana-growers-national-forests.html>.

<sup>40</sup> Juan Forero, *Deep in the Colombian Jungle, Coca Still Thrives*, NPR (Apr. 3, 2007, 5:45 PM), <http://www.npr.org/templates/story/story.php?storyId=9298685>.



States then responds with more chemical spraying.<sup>41</sup> “The Clinton administration . . . pressured the Colombian government to allow a . . . more toxic chemical (tebuthiuron, known as SPIKE 20) to be dumped across the land, which would permit the planes to fly at . . . higher altitudes,” despite the warning by environmentalists “that SPIKE 20 could poison ground water and permanently ruin the land for agriculture.”<sup>42</sup>

FARC chiefs have stated that the drug trade would only be stopped if the country resolves its social problems.<sup>43</sup> The peace negotiations held in Havana, Cuba, in 2012, between FARC and the government of Colombia, included, necessarily, the drug issue.<sup>44</sup>

In 2000, Acción Andina and the Transnational Institute in Colombia offered “A Proposal for Peace,” an alternative drug policy proposal for the country.<sup>45</sup> The plan includes greater economic development and a public health approach to drug consumption, but a continued law-enforcement approach to drug trafficking.<sup>46</sup> The proposal’s development prescriptions include the replacement of crop eradication with manual eradication in cooperation with local communities.<sup>47</sup> It advocates the decriminalization of the small producers of drug crops.<sup>48</sup>

Continued law enforcement may not be the effective solution. The Colombian National Police have captured and deported drug lords, but drug traffickers have resisted those actions through political assassinations.<sup>49</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> James Bovard, *U.S. Stuck in Colombia*, BALT. SUN (June 1, 2000), [http://articles.baltimoresun.com/2000-06-01/news/0006010162\\_1\\_colombia-coca-production-toxic-chemical](http://articles.baltimoresun.com/2000-06-01/news/0006010162_1_colombia-coca-production-toxic-chemical).

<sup>43</sup> See *Colombia: A Disease with Staying Power*, *supra* note 17; see also Arm the Spirit, “*We Are In a War*”: *The FARC-EP and the Laws of War*, SOODERSO ONLINE (Sept. 4, 2000), <http://www.sooderso.net/zeitung/magazin02/17krieg-en.shtml>.

<sup>44</sup> *Drugs on the Agenda of Colombian Peace Talks*, TRANSNAT’L INST. (Dec. 10, 2012), <http://www.tni.org/article/colombia-drugs-and-peace>.

<sup>45</sup> *Alternative ‘Drugs and Peace’ Policy for Colombia, Proposed by TNI and Acción Andina*, TRANSNAT’L INST. (June 26, 2002), [http://www.tni.org/archives/drugs-docs\\_pr260600](http://www.tni.org/archives/drugs-docs_pr260600).

<sup>46</sup> Martin Jelsma & Ricardo Vargas, *Drug Crops and Peace Process in Colombia: A Proposal for Peace*, TRANSNAT’L INST. (June 1, 2000), [http://www.tni.org/archives/archives\\_vargas\\_prop-summary](http://www.tni.org/archives/archives_vargas_prop-summary).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Illegal Drug Trade in Colombia*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Illegal\\_drug\\_trade\\_in\\_Colombia](http://en.wikipedia.org/wiki/Illegal_drug_trade_in_Colombia) (last visited Mar. 20, 2013); see also *Presidential Candidate Assassinated in Colombia*, DESERET NEWS (Apr. 26, 1990, 12:00 AM), <http://www>

With better economic opportunities, the farmers in Colombia could grow wholesome food crops rather than drugs. Colombia has much to offer: gems, flowers, fruits, oil, coffee and many other products.<sup>50</sup> That farmers resort to growing drug plants is an effect of economic illness. But rather than confronting the cause, the economic injustice and lack of opportunity, the government attacks the symptoms. What is needed most is a just distribution of the benefits of Colombia's natural resources and the elimination of legal barriers to production.

The central issue of the civil wars in Colombia has been land tenure. The inequality of wealth in Colombia, as in much of Latin America, began with large land grants to the Spanish conquerors and settlers, which included the use of Native Indian labor.<sup>51</sup> Greater equality in land tenure could be accomplished with the least social disruption with public revenue from the land rent. The simultaneous reduction of taxes on wages, profits, and goods would make Colombia more prosperous, and all of its people would then benefit more equally from its natural resources.

The drug trade has inflicted the reverse of land reform; it has induced a greater concentration in land tenure. The reduction of access to productive land has reduced per-capita income in rural Colombia.<sup>52</sup>

But greater social justice in Colombia is not sufficient to cure the drug problem. So long as drugs are illegal in the United States and in Colombia, there will be high profits from drug production. Only an end to the War on Drugs in the United States and in Colombia will eliminate the artificial incentives to grow the crops in Colombia.

## 2. Peru

In a study of the war on drugs in Peru, Cynthia McClintock concludes that "the results of Peru's war against drugs have been similar to results elsewhere: governments have won some battles, but they are losing the war."<sup>53</sup> The joint anti-drug programs of the United

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.deseretnews.com/article/99059/PRESIDENTIAL-CANDIDATE-ASSASSINATED-IN-COLOMBIA.html?pg=all.

<sup>50</sup> *Colombia Exports*, TRADING ECON., <http://www.tradingeconomics.com/colombia/exports> (last visited Mar. 2, 2013).

<sup>51</sup> Dale Adams, *Colombia's Land Tenure System: Antecedents and Problems*, 42 LAND ECON. 43, 43-44 (1966).

<sup>52</sup> See *Drugs on the Agenda of Colombian Peace Talks*, *supra* note 44.

<sup>53</sup> Cynthia McClintock, *The War on Drugs: The Peruvian Case*, J. INTERAMERICAN STUD. & WORLD AFF., Summer-Autumn 1988, at 127, 127.

States and Peruvian governments induced an alliance between the coca growers and Sendero Luminoso, the Shining Path guerilla rebels.<sup>54</sup> Peruvians supply coca to Colombians who manufacture it into cocaine.<sup>55</sup> Peru's farmers sell their coca to gangs controlled by Colombian traffickers.

The Shining Path started its rebellion against the Peruvian government in 1980.<sup>56</sup> The movement drew its ideology from Maoism, creating a tightly-disciplined military organization.<sup>57</sup> "By the late-1980s, it had . . . more than 10,000 full-time soldiers and controlled more than 40 percent of the countryside."<sup>58</sup> The capture in 1992 of Abimael Guzmán, head of the Shining Path, reduced the power of the movement, although there has been a continuing threat of resurgence.<sup>59</sup>

The U.S.-Peruvian drugs tactics change as they fail and are replaced by other methods. During the mid-1980s, the emphasis was on manual eradication.<sup>60</sup> Coca growers obtained \$300 for each hectare of coca destroyed, whereas a coca grower could obtain from \$4000 to \$20,000 per hectare of coca.<sup>61</sup> Eradications stalled when the Peruvians implementing the program were killed in the coca-producing Huallaga Valley.<sup>62</sup>

The manual eradication program was followed by "Operation Condor," using air raids to destroy cocaine laboratories and traffickers employing both Peruvian police forces and U.S. pilots and DEA officials.<sup>63</sup> Its initial successes were temporary. The traffickers changed locations, and cocaine refining increased.<sup>64</sup>

A third strategy was initiated in 1988: spraying with the herbicide Tebuthiuron.<sup>65</sup> However, the manufacturer, Eli Lilly and Company,

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<sup>54</sup> *Id.*; *BTI 2012: Peru Country Report*, TRANSFORMATIONSINDEX BTI 2012, <http://www.bti-project.de/countryreports/lac/per/2012/> (last visited Mar. 2, 2013).

<sup>55</sup> Jeffrey Hays, *Cocaine, Coca Cultivation, Trade and Anti-Drug Efforts*, FACTS & DETAILS, <http://factsanddetails.com/world.php?itemid=1214> (last updated Mar. 2011).

<sup>56</sup> Jeremy M. Weinstein, *A New Threat of Terror in the Western Hemisphere*, SAIS REVIEW, Winter-Spring 2003, at 1, 3.

<sup>57</sup> *Id.* at 3-4.

<sup>58</sup> *Id.* at 4.

<sup>59</sup> *Id.* at 5, 7-8.

<sup>60</sup> McClintock, *supra* note 53, at 133.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 130-31.

<sup>63</sup> *Id.* at 131; *see also* Peter Andreas, *Operation Condor 6: The U.S. Drug War in Peru*, NATION, Aug. 13, 1988, at 127, 129.

<sup>64</sup> McClintock, *supra* note 53, at 132.

<sup>65</sup> *Id.* at 133.

stated that it would not sell the herbicide to the State Department due to possible reprisals by the drug lords, plus possible liability for damaging people and the environment.<sup>66</sup> When Dow Chemical began spraying in Colombia with its herbicides, the firm demanded indemnification against lawsuits.<sup>67</sup> Thus, despite their creative and adaptive efforts, U.S. and Peruvian regulators have been unable to combat the strong economic incentives for illegal drug production in Peru.

### 3. *Bolivia*

Of the several countries discussed here, Bolivia is perhaps the only country in which governmental regulation of drug manufacturing—albeit through very different methods—has been effective. The election of Evo Morales, an Aymara native American Indian,<sup>68</sup> as President of Bolivia was a great moment for the Indians of the Americas. Morales was “a farmer who gr[ew] coca, the plant from which cocain is produced.”

[I]n its leafy raw [form,] coca is legal in some parts of Bolivia and has been chewed for centuries as a stimulant to help get workers through the day. Morales had been an advocate for the cocaleros, the coca farmers, seeking to expand coca growing while preventing its use for cocain.<sup>69</sup>

As in Colombia, the United States brought its war on the supply of drugs to Bolivia. “In 2004, the United States spent \$150 million on coca-eradication programs in Bolivia.”<sup>70</sup>

While the U.S. government still blames Bolivia as a source of drugs, the Morales government applies “social control” instead of destroying crops.<sup>71</sup> The state limits coca cultivation in cooperation with coca farmer unions by limiting registered coca farmers to a small plot of coca.<sup>72</sup> The Bolivian government has also promoted coca products such as colas, in contrast to cocaine.<sup>73</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Fred E. Foldvary, *Bolivia's Indian Chief*, FREE LIBERAL (Dec. 28, 2005), <http://freeliberal.com/archives/001753.php>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Sara Shahriari, *Bolivia Breaks the Mold in 'War on Drugs,'* DEUTSCHE WELLE (Oct. 10, 2012), <http://www.dw.de/bolivia-breaks-the-mold-in-war-on-drugs/a-16329550-0>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*; see also Alexander Frye, *Spotlight on Bolivia: The “Coca Diplomacy” of Evo Morales*, COUNCIL ON HEMISPHERIC AFFS. (Apr. 25, 2012), <http://www.coha.org>

Such options are possible in Bolivia due to the Bolivian government's recent exit from the U.S. and United Nations regulatory programs. The government expelled the U.S. Drug Enforcement Administration (DEA) from the country in 2008.<sup>74</sup> In 2011, Bolivia "withdrew from [the] United Nations convention that [designates] the coca leaf in its natural state [as] a narcotic substance."<sup>75</sup>

Bolivia's actions have helped to induce a major shift in Latin American drug policy. Some officials of other Latin American countries are considering joining Bolivia in moving away from U.S. policies. Presidents Otto Pérez Molina of Guatemala and Juan Manuel Santos of Colombia pushed the Organization of American States during its April 2012 summit in Cartagena, Colombia, to engage in a study for a more effective drug strategy.<sup>76</sup> "For the first time, the U.S. was unable to prevent an overt display of dispute over U.S. drug policies within the OAS and was forced to accept opening up the debate to look at potential alternative policy options."<sup>77</sup>

#### 4. Mexico

While the United States had been active in aiding the Mexican government in its war on drug producers and distributors, the Mexican war escalated in 2006 and again in 2008.<sup>78</sup> The U.S. government pressured Mexican President Felipe Calderón to "wage a more vigorous anti-drug campaign."<sup>79</sup> Calderon responded by authorizing the Mexican army to lead the country's war on drug dealers, rather than the corrupt police forces.<sup>80</sup>

In 2008, the United States promoted Calderon's policy with the Merida Initiative, a partnership with Mexico and Central American

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/spotlight-on-bolivia-the-coca-diplomacy-of-evo-morales/ (describing Morales's "Yes to Coca, No to Cocaine" policy).

<sup>74</sup> Jean Friedman-Rudovsky, *Why Bolivia Quit the U.S. War on Drugs*, TIME (Nov. 4, 2008), <http://www.time.com/time/world/article/0,8599,1856153,00.html>; Shahriari, *supra* note 71.

<sup>75</sup> Shahriari, *supra* note 71.

<sup>76</sup> AMIRA ARMENTA ET AL., A BREAKTHROUGH IN THE MAKING?: SHIFTS IN THE LATIN AMERICAN DRUG POLICY DEBATE 1–2 (Transnational Inst., Series on Legislative Reform of Drug Policies No. 21, 2012).

<sup>77</sup> *Id.* at 5.

<sup>78</sup> E. Eduardo Castillo, *22,700 Killed in Mexico Drug War Since 2006*, NBC NEWS (Apr. 13, 2010), [http://www.nbcnews.com/id/36485196/ns/world\\_news-americas/#.Uuqtp-r-i8n9](http://www.nbcnews.com/id/36485196/ns/world_news-americas/#.Uuqtp-r-i8n9); *Mexico's Calderon Targets Drug Traffickers*, CNN (Oct. 1, 2008, 2:28 AM), <http://www.cnn.com/2008/WORLD/americas/09/30/mexico.drugs/index.html>.

<sup>79</sup> CARPENTER, *supra* note 32, at 1.

<sup>80</sup> *Id.*

and Caribbean countries.<sup>81</sup> The project is modeled on Plan Colombia and has spent \$1.6 billion.<sup>82</sup> The State Department calls it an “unprecedented partnership between the United States and Mexico.”<sup>83</sup>

However, the country’s military confrontation with drug cartels has resulted in a quasi civil war in which 50,000 persons have died.<sup>84</sup> Drug-relations violence grew, became more vicious, and enhanced the corruption of government officials.<sup>85</sup> Drug murders tripled in Mexico after 2006.<sup>86</sup> About 13,000 persons were killed during the first nine months of 2011.<sup>87</sup>

Furthermore, the conflict between law enforcement and Mexican drug lords has had a collateral effect outside of Mexico as well. For example, there is evidence that cartel hitmen have attacked people inside the United States. People were killed in Laredo, Texas, and a child was kidnapped in Las Vegas.<sup>88</sup> Border patrolmen have been attacked on the U.S. side of the U.S.-Mexico border.<sup>89</sup>

The United States has also been involved as a source of guns for the drug cartels. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) operated some “gun walking” stings operations between 2006 and 2011 under Project Gunrunner and Operation Fast and Furious.<sup>90</sup> In a tactic called “gun walking” or “letting guns walk,”

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<sup>81</sup> U.S. DEP’T OF STATE, THE MÉRIDA INITIATIVE (2008), available at [http://pdf.usaid.gov/pdf\\_docs/PCAAB861.pdf](http://pdf.usaid.gov/pdf_docs/PCAAB861.pdf); *Merida Initiative*, U.S. DEP’T ST., <http://www.state.gov/j/inl/merida/> (last visited Mar. 2, 2013).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Alan Taylor, *Mexico’s Drug War: 50,000 Dead in Six Years*, ATLANTIC (May 17, 2012), <http://www.theatlantic.com/infocus/2012/05/mexicos-drug-war-50-000-dead-in-6-years/100299/>.

<sup>85</sup> TED GALEN CARPENTER, CATO INST., THE FIRE NEXT DOOR: MEXICO’S DRUG VIOLENCE AND THE DANGER TO AMERICA 12 (2012). For a related video, see Cato Institute, *The Fire Next Door: Mexico’s Drug Violence and the Danger to America (Ted Galen Carpenter)*, YOUTUBE (Nov. 28, 2012), [http://www.youtube.com/watch?feature=player\\_embedded&v=8qCmBuagOKA](http://www.youtube.com/watch?feature=player_embedded&v=8qCmBuagOKA).

<sup>86</sup> Ian Vásquez, *A Dubious Record in Mexico’s Drug War*, CATO INST. (Dec. 9, 2009), <http://www.cato.org/blog/dubious-record-mexicos-drug-war>.

<sup>87</sup> The Associated Press, *Mexican Drug War Toll: 47,500 Killed in 5 Years*, CBS NEWS (Jan. 11, 2012, 9:38 PM), [http://www.cbsnews.com/8301-202\\_162-57357503/mexican-drug-war-toll-47500-killed-in-5-years/](http://www.cbsnews.com/8301-202_162-57357503/mexican-drug-war-toll-47500-killed-in-5-years/).

<sup>88</sup> CARPENTER, *supra* note 32, at 3.

<sup>89</sup> *Id.* at 4.

<sup>90</sup> Sharyl Attkisson, *A Primer on the “Fast and Furious” Scandal*, CBS NEWS (June 26, 2012, 10:54 PM), [http://www.cbsnews.com/8301-31727\\_162-57461204-10391695/a-primer-on-the-fast-and-furious-scandal/](http://www.cbsnews.com/8301-31727_162-57461204-10391695/a-primer-on-the-fast-and-furious-scandal/); see also *Furious Folly: Report Finds Fault in ATF ‘Gun Walking’ Debacle*, PITTSBURGH POST-GAZETTE (Sept. 24, 2012, 12:00 AM),

the ATF allowed firearms dealers to sell guns in order to track the weapons to Mexican drug cartel leaders.<sup>91</sup> This operation has been criticized as counterproductive.<sup>92</sup> However, stricter restrictions on firearms would have little impact on the supply of guns in Mexico. Underground sales exist in Mexico as they do in the United States.<sup>93</sup>

Yet the Mexican drug campaign did not arise as an issue during the presidential debate of 2012 on foreign policy.<sup>94</sup> Perhaps this apparent lack of dialogue is due to the War on Drugs being a bipartisan issue with little disagreement. The only primary candidate to raise the drug issue was the Republican candidate Ron Paul.<sup>95</sup>

When the military campaign against the drug cartels has some impact, the cartels react by moving elsewhere, such as to the northern jungles of Guatemala, destabilizing those areas.<sup>96</sup> From a global perspective, the military campaigns are futile—they create death and destruction with little effect on supply and with the spread of the drug cartels to new territory.

Another proposed solution to the importation of drugs from Mexico is to seal or better secure the border, such as with the Secure Fence Act of 2006.<sup>97</sup> But already existing fences have not stopped drug importation nor illegal immigration. The importers can move to less guarded locations along the 2000-mile long border.<sup>98</sup> A fence along the entire border would require thousands of troops to keep

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<http://www.post-gazette.com/stories/opinion/editorials/furious-foolly-report-finds-fault-in-atf-gun-walking-debacle-654684/>.

<sup>91</sup> Attkisson, *supra* note 90.

<sup>92</sup> *See, e.g., id.*

<sup>93</sup> J.D. Tuccille, *Mexico Shows that Tight Gun Control Laws Don't Guarantee Compliance*, REASON.COM (Dec. 11, 2012, 1:47 PM), <http://reason.com/blog/2012/12/11/mexico-as-an-example-that-tighter-gun-co>.

<sup>94</sup> Ted Galen Carpenter, *Why Is Mexico Drug War Being Ignored?*, CNN (Oct. 30, 2012), <http://globalpublicsquare.blogs.cnn.com/2012/10/30/why-is-mexico-drug-war-being-ignored/>.

<sup>95</sup> Jonathan A. Cooper, *Ron Paul Blasts Misguided 'War On Drugs' in Washington State Campaign Speech*, HUFFINGTON POST (Feb. 17, 2012, 7:43 AM), [http://www.huffingtonpost.com/2012/02/17/ron-paul-war-on-drugs\\_n\\_1284214.html](http://www.huffingtonpost.com/2012/02/17/ron-paul-war-on-drugs_n_1284214.html).

<sup>96</sup> *See* Ezra Fieser, *The Invasion of Mexico's Drug Cartels*, GLOBALPOST (June 11, 2011, 8:34 AM), <http://www.globalpost.com/dispatch/news/regions/americas/110531/zetas-guatemala-mexico-gangs>.

<sup>97</sup> Secure Fence Act of 2006, Pub. L. No. 109–367, 120 Stat. 2638 (2006).

<sup>98</sup> Tony Payan, *The Drug War and the U.S.-Mexico Border: The State of Affairs*, 105 S. ATLANTIC Q. 863, 865, 870 (2006).

watch. As has happened in Gaza, the smugglers build tunnels and enter by air and by sea with ships and submarines.<sup>99</sup>

In 2009, Mexico enacted a law against drug dealing (“narcomenudeo”) that decriminalized the possession of small amounts of drugs for personal use.<sup>100</sup> However, so long as the production and sale are illegal, the government still creates the conditions for organized crime to flourish. Decriminalizing small household use does have the effect of concentrating law enforcement on the large users and dealers, but that then intensifies the militarization of the drug cartels.

An effective campaign against the drug lords has begun to be fought by the residents of some Mexican villages. Armed masked “vigilantes” guard roads and check travellers.<sup>101</sup> They capture suspected drug dealers and put them on trial with the villagers as the jury.<sup>102</sup> The village residents in the state of Guerrero prohibit Mexican police and troops from entering.<sup>103</sup> Kidnappings have ceased, and the action has reduced other crime.<sup>104</sup> The success, so far, of this home-grown security turns the conventional public-goods theory on its head. Whereas the conventional thought has been that security is a public good that needs to be provided by government due to free riders, the mutual aid of the villagers shows that where lack of security is a governmental failure, a cohesive community can provide its own security.

### 5. Guatemala

As Mexican drug cartels invade Guatemala’s flat northern jungles, the President of Guatemala has shifted to a new policy—one that is drastically different and, thus far, more successful than U.S. drug

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<sup>99</sup> John Hudson, *The Economics of Mexican Drug Tunnels*, ATLANTIC WIRE (Aug 3, 2012), <http://www.theatlanticwire.com/national/2012/08/economics-mexican-drug-tunnels/55387/>.

<sup>100</sup> JORGE HERNÁNDEZ TINAJERO & CARLOS ZAMUDIO ANGLÉS, MEXICO: THE LAW AGAINST SMALL-SCALE DRUG DEALING (Transnational Inst., Series on Legislative Reform of Drug Policies No. 3, 2009), available at <http://www.tni.org/sites/www.tni.org/files/download/dlr3.pdf>; see also The Associated Press, *Mexico Legalizes Drug Possession*, N.Y. TIMES (Aug. 21, 2009), [http://www.nytimes.com/2009/08/21/world/americas/21mexico.html?\\_r=0](http://www.nytimes.com/2009/08/21/world/americas/21mexico.html?_r=0).

<sup>101</sup> Nicholas Casey, *Mexico’s Masked Vigilantes Defy Drug Gangs—And the Law*, WALL ST. J. (Feb. 1, 2013, 10:10 PM), <http://online.wsj.com/article/SB10001424127887323829504578272032483616560.html>.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*



regulation. A former military general, President Otto Pérez Molina proposed a state-run legal market in drugs in March 2012.<sup>105</sup> President Molina stated,

We cannot eradicate global drug markets, but we can certainly regulate them as we have done with alcohol and tobacco markets. Drug abuse, alcoholism and tobacco should be treated as public health problems, not criminal justice issues. Our children and grandchildren demand from us a more effective drug policy, not a more ideological response.<sup>106</sup>

While drugs remain illegal in Guatemala, President Molina's proclamation is an encouraging example of new thinking that could redress caused by present drug policies.

### 6. Portugal

In 2001, Portugal decriminalized the personal purchase, possession, and consumption of all drugs, including cocaine and heroin.<sup>107</sup> However, "trafficking," possession of more than ten day's normal consumption, is still a crime.<sup>108</sup> The predictions of opponents of liberalization—that decriminalization would result in much higher rates of drug use or make Portugal an international drug haven—have not come true. However, the predicted benefits have come true: Portugal has seen a large drop in drug-related deaths as access to medical treatments for drug-related illness increases.<sup>109</sup> Other members of the European Union have also been moving towards depenalization, although still committed to keeping these drugs illegal.<sup>110</sup>

Unfortunately, "the United States has displayed very little interest in understanding the improving trends in Europe generally, and in Portugal specifically, that have clearly resulted in an environment of drug liberalization and decriminalization."<sup>111</sup> On the other hand, the

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<sup>105</sup> Sara Miller Llana, *How Latin America is Reinventing the War on Drugs*, CHRISTIAN SCI. MONITOR (July 30, 2012), <http://www.csmonitor.com/World/Americas/2012/0730/How-Latin-America-is-reinventing-the-war-on-drugs>.

<sup>106</sup> Otto Pérez Molina, *We Have to Find New Solutions to Latin America's Drugs Nightmare*, GUARDIAN (Apr. 7, 2012, 4:39 PM), <http://www.guardian.co.uk/commentisfree/2012/apr/07/latin-america-drugs-nightmare>.

<sup>107</sup> Maia Szalavitz, *Drugs in Portugal: Did Decriminalization Work?*, TIME (Apr. 26, 2009), <http://www.time.com/time/health/article/0,8599,1893946,00.html>.

<sup>108</sup> GREENWALD, *supra* note 3, at 3.

<sup>109</sup> *Id.* at 17, 19.

<sup>110</sup> *Id.* at 1.

<sup>111</sup> *Id.* at 27.

U.S. government evidently did not seek to prevent Portugal from its decriminalization, perhaps because it is not a major drug producer and has a relatively small population, and perhaps because President Clinton was occupied with more urgent matters when the legislation was considered in 1998–99 and passed in 2000.<sup>112</sup> With the recent passage of legislation decriminalizing marijuana in Washington and Colorado,<sup>113</sup> however, there is some hope that the debate may become more open.<sup>114</sup>

### 7. *Afghanistan*

The eradication programs of the United States have failed in Afghanistan as well,<sup>115</sup> as U.S. policy makers have ignored both economic theory and the lessons of history. It is the task of economics to reveal the implicit reality beneath superficial appearances. It seems as though the brute force method of destroying crops reduces the supply. But the reality is that a strong demand will defeat supply-reducing methods. For example, farmers could mix opium with legal crops. Moreover, if the United States spent many billions of dollars to totally wipe out the opium crop in Afghanistan, it would cause massive suffering and make even more and stronger enemies of the U.S. presence.<sup>116</sup> Eradication is damaging to farmers' livelihood, especially when it is done close to harvest time, when the farmer has already invested his labor and resources.

The poppy crop eradication in Afghanistan is conducted by the U.S.-controlled Central Poppy Eradication Force (CPEF) and the Afghan National Police (ANP).<sup>117</sup> The effective policy would be to replace poppy cultivation with other crops that would provide as

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<sup>112</sup> *Id.* at 6–7.

<sup>113</sup> Jonathan P. Caulkins et al., *Semi-legal Marijuana in Colorado and Washington: What Comes Next?*, OUPBLOG (Dec. 19, 2012, 10:30 AM), <http://blog.oup.com/2012/12/semi-legal-marijuana-co-wa/>.

<sup>114</sup> See The420Guy, *President Clinton States Marijuana Should Be Decriminalized*, 420 MAGAZINE (Dec. 14, 2000), <http://www.420magazine.com/forums/international-cannabis-news/4054-president-clinton-states-marijuana-should-decriminalized.html> (posting a message from the NORML Foundation).

<sup>115</sup> Azmat Khan, Frontline, *Why Eradication Won't Solve Afghanistan's Poppy Problem*, PBS (Jan. 3, 2012, 8:00 PM), <http://www.pbs.org/wgbh/pages/frontline/afghanistan-pakistan/opium-brides/why-eradication-wont-solve-afghanistans-poppy-problem/>.

<sup>116</sup> See *id.*

<sup>117</sup> UNITED NATIONS OFFICE ON DRUGS & CRIME & GOV'T OF AFGHANISTAN, AFGHANISTAN OPIUM SURVEY 2005, at iii (2005), available at [http://www.unodc.org/documents/crop-monitoring/Afghanistan/afg\\_survey\\_2005.pdf](http://www.unodc.org/documents/crop-monitoring/Afghanistan/afg_survey_2005.pdf).

much income. That would require attention to land tenure, since much of the value of crops is economically explicit or implicit land rent rather than wages.<sup>118</sup> Greater incomes would also require better opportunities for women. A shift to other sources of income would also require safety and security, in order to attract investment.

Regarding income from poppies versus other crops, Mohammad Ehsan Zia, Afghan Minister for Rural Rehabilitation and Development, disputed that poppy crops generally provide greater income:

Farmers who grow opium lose other possible sources of income. For example, agriculture and animal husbandry go hand in hand in Afghanistan. Farmers who grow other crops can also keep animals, such as a dairy cow, a donkey for transportation, goats or sheep. But if they grow poppy they don't have fodder from their plants to feed the animals. Instead they have to buy it, and if they lack the money they have to sell their animals. We must not only focus on what people get from their land but also on other possible sources of income.<sup>119</sup>

While the reduction of poverty requires economic development, it can be sabotaged by an eradication program. “[E]xperience from the field shows that the simultaneous use of alternative development and eradication—often referred to as the ‘carrot and stick approach’—is counterproductive.”<sup>120</sup> A thematic evaluation on alternative development by the U.N. Office on Drugs and Crime (UNODC) found that “[a]lternative development projects led by security and other non-development concerns were typically not sustainable—and might result in the spread or return of illicit crops or in the materialization of other adverse conditions, including less security.”<sup>121</sup>

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<sup>118</sup> David Ricardo, *On the Principles of Political Economy and Taxation, Chapters 2–3*, LIBR. ECON. & LIBERTY, <http://www.econlib.org/library/Ricardo/ricP1a.html> (last visited Mar. 3, 2013).

<sup>119</sup> Tillmann Elliesen, *Afghanistan Must Sit in the Driver's Seat*, QANTARA.DE (Aug. 3, 2006), <http://en.qantara.de/Afghanistan-Must-Sit-in-the-Drivers-Seat/6331c6400i1p459/> (interview with Mohammad Ehsan Zia, Minister for Rural Rehabilitation and Development of Afghanistan).

<sup>120</sup> MARTIN JELSMA ET AL., TRANSNATIONAL INST., LOSING GROUND: DRUG CONTROL AND WAR IN AFGHANISTAN 10 (Drugs & Conflict Debate Papers No. 15, 2006), available at <http://www.tni.org/sites/www.tni.org/files/download/200702281633543041.pdf>.

<sup>121</sup> UNITED NATIONS OFFICE ON DRUGS & CRIME, ALTERNATIVE DEVELOPMENT: A GLOBAL THEMATIC EVALUATION—FINAL SYNTHESIS REPORT, at vii (2005), available at [http://www.unodc.org/pdf/Alternative\\_Development\\_Evaluation\\_Dec-05.pdf](http://www.unodc.org/pdf/Alternative_Development_Evaluation_Dec-05.pdf).

The Taliban reportedly stimulates opium cultivation in the south by providing protection for those who grow poppies while harming those who do not.<sup>122</sup> If farmers grow poppy, the government destroys the crop. If they do not, the Taliban kills them. The refusal to grow poppy implies that the farmer is allied with the government. It is clear, then, that the United States's model, precipitated on theories of democracy, has not and does not translate well to Afghanistan and other unstable countries.

### III

#### DECRIMINALIZATION AND LEGALIZATION

The prohibition of substances has many dimensions: moral, religious, legal, economic, political, psychological, sociological, criminological, and historical. The moral dimension begins with the ethical issue of whether the ingestion of particular substances is inherently evil, or else whether it is the prohibition that is evil. Optimal policy requires a rational, non-arbitrary justification, which in turn implies a logical, non-arbitrary, comprehensive, and universal ethic.

“Harm” needs to be distinguished from mere “offenses.” Under Lockean theory of natural moral law, as expressed by the universal ethic, “harm” would consist of an invasion, an unwelcome entering into another’s domain.<sup>123</sup> In contrast, an offense is an act that the recipient deems to be disagreeable only because of his beliefs and values.<sup>124</sup> Just as speech is not really free if one may not make statements just because others dislike it, actions are not ethically free if any person may veto it from a personal whim. Hence, for the universal ethic, offenses are morally neutral, and only coercive harm is morally evil.<sup>125</sup>

For the ingestion of drugs, the basic rules of the universal ethic have a clear implication. The ingestion of food, drinks, and drugs does not inherently harm others, and is, by natural moral law, a neutral act. Since the function of natural moral law is to prescribe

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<sup>122</sup> See Okke Orstein, *Taliban Threatens ‘Grow Poppy or Die!’*, NEWSMAX.COM (Nov. 17, 2006), <http://archive.newsmax.com/archives/articles/2006/11/16/162941.shtml?s=lh> (stating that the Taliban distributes “Grow poppy or die” leaflets to farmers).

<sup>123</sup> See JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 123–24 (Thomas I. Cook ed., Hafner Press, The Hafner Library of Classics No. 2, 1947) (1690).

<sup>124</sup> See *id.*

<sup>125</sup> FRED E. FOLDVARY, *THE SOUL OF LIBERTY: THE UNIVERSAL ETHIC OF FREEDOM AND HUMAN RIGHTS* 41–47 (1980).

proper governance and proper legal law,<sup>126</sup> the universal ethic prescribes that there be no prohibition of any act which is good or neutral. Therefore, a society whose law is based on natural moral law does not prohibit the ingestion of any substance. Indeed, a free society, whose laws coincide with natural moral law, has no prohibition or restriction on the production, exchange, and consumption of any drug, so long as others are not coercively harmed.

Under moral law, too, the prohibition of peaceful and honest acts, those which are good or neutral, violates liberty and natural rights, by imposing the will of some persons on unwilling victims.<sup>127</sup> Natural moral law implies equal self-ownership. By natural law, an adult may do physical damage to his own health. The prohibition of drugs is therefore a moral evil.

The demand for illegal drugs derives from personal desire as well as from addiction. Many drug users evidently believe that ingesting the substances is not morally wrong, and they are not stopped by legal prohibitions. The fact that former illegal drug users have been elected President<sup>128</sup> and achieved other important offices shows that light to moderate use does not necessarily create long-term disabilities, and that much of the population does not heed the law,<sup>129</sup> just as many drivers exceed a speed limit when they think it is set below the safety limit. As to bodily damage, policy is inconsistent in having alcohol and tobacco legal, while prohibiting marijuana and other substances.

To the extent that drugs are addictive, as noted above, the demand is inelastic: the quantity has a small response to a higher price. The economic effect of drug prohibition is mainly to drive up the price, which then induces greater theft.

Even prisons, with their comprehensive security, do not keep drugs out, even with a zero-tolerance policy.<sup>130</sup> The prohibition of drugs in prisons has some justification, since to be a prisoner is to not have the normal rights to liberty and choice, and drugs can increase violence.

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<sup>126</sup> LOCKE, *supra* note 123, at 123–24.

<sup>127</sup> See FOLDVARY, *supra* note 125, at 37–41, 49–51, 273.

<sup>128</sup> See, e.g., The420Guy, *supra* note 114.

<sup>129</sup> JEFFREY DHYWOOD, WORLD WAR D: THE CASE AGAINST PROHIBITIONISM—A ROADMAP TO CONTROLLED RE-LEGALIZATION 318–19 (2011).

<sup>130</sup> *Drug Legalization Debate Divides the Americas*, HUFFINGTON POST CANADA (Apr. 13, 2012, 6:24 PM), [http://www.huffingtonpost.ca/2012/04/13/war-on-drugs-canada-us-mexico-summit-of-the-americas\\_n\\_1423020.html](http://www.huffingtonpost.ca/2012/04/13/war-on-drugs-canada-us-mexico-summit-of-the-americas_n_1423020.html).

Yet drugs get smuggled into prison in food and clothing brought by family members and inside human bodies.<sup>131</sup>

The prohibition of any substance drives the enterprise underground so long as there is a demand. The legalization of only possession still leaves production and distribution underground and subject to territorial conflicts and bribery.

Legalization removes the territorial imperative from the drug trade. For example, since food is legal, food stores have no turf to defend. Stores may coexist next to each other. Legal enterprises compete via price and advertising as well as by location, but the territory of a firm does not extend beyond the boundaries of the land title. It is perhaps for this reason that most economists favor decriminalization, or, to a lesser extent, legalization.<sup>132</sup>

The legalization of medical marijuana by several U.S. states, and now the legalization of any marijuana use in Colorado and Washington in the 2012 election,<sup>133</sup> could reduce the demand for the importation of marijuana, if the federal government does not interfere. The federal government has shut down medical marijuana distribution in California and other states,<sup>134</sup> so if it also seeks to stop the legalization process, the beneficiaries will be the drug cartels.

In order to move in the right direction, proponents will need to combat the stubborn forces that have supported the United States's War on Drugs. The tobacco and alcohol industries provide funding to political campaigns, including campaigns to oppose the legalization of marijuana.<sup>135</sup> Along with police unions dependent on drug-war grants, private prisons that profit from cannabis incarceration, pharmaceutical companies that would lose business to medical marijuana, and prison guard unions, the alcohol makers contributed to anti-legalization efforts.<sup>136</sup> The tobacco lobby also spends millions of dollars on candidates and campaigns.

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<sup>131</sup> *Id.*

<sup>132</sup> Mark Thornton, *Prohibition vs Legalization: Do Economists Reach a Conclusion on Drug Policy?*, 1 *ECON J. WATCH* 82, 82 (2004), available at [http://econjwatch.org/file\\_download/33/2004-04-thornton-reach\\_concl.pdf](http://econjwatch.org/file_download/33/2004-04-thornton-reach_concl.pdf).

<sup>133</sup> Caulkins et al., *supra* note 113.

<sup>134</sup> Lisa Leff, *California Pot Dispensaries Told by Feds to Shut Down*, *NBC NEWS* (Oct. 6, 2011, 7:56 PM), [http://www.nbcnews.com/id/44806723/ns/us\\_news-crime\\_and\\_courts/](http://www.nbcnews.com/id/44806723/ns/us_news-crime_and_courts/).

<sup>135</sup> Lee Fang, *The Top Five Special Interest Groups Lobbying to Keep Marijuana Illegal*, *REPUBLIC REP.* (Apr. 20, 2012, 9:04 AM), <http://www.republicreport.org/2012/marijuana-lobby-illegal/>.

<sup>136</sup> *Id.*

The root cause of many governmental iatrogenic ills—social problems caused by government—may well be in the structure of mass democracy, whereby there is an inherent demand for campaign funds by special interests.<sup>137</sup> Thus a decentralization of democracy that reduces the influence of moneyed interests may well be required in order to remove the political obstacles to the reform of the drug laws.

#### CONCLUSION

The evidence from the countries described in this Article is consistent with the conclusions from economic theory: that the supply-reduction policies promoted by the United States and other countries have failed because they have perverse effects on incentives. Because the demand for drugs is not reduced, prohibitionist policies create high-profit opportunities for drug criminals; their rent seeking in turn induces violent conflicts for territory.

The forward-thinking model of Portugal and the proposals of leaders such as the President of Guatemala provide solutions that remove the causes of the policy-induced drug wars by replacing chaotic violence with orderly markets. The experience of Portugal provides evidence that drug decriminalization does not result in massive demand; society will not fall apart when drug use is no longer a crime. The decriminalization of drugs in the United States would eliminate a costly exercise in futility as well as eliminate the demand for drugs from the cartels and reduce harms on foreign lands.

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<sup>137</sup> Fred Foldvary, *Recalculating Consent*, BUCHANAN-PROJECT, <http://publicchoice.info/Buchanan/files/foldvary.htm> (last visited Mar. 4, 2013).

