

Demand Reduction or Redirection?  
Channeling Illicit Drug Demand  
towards a Regulated Supply to  
Diminish Violence in Latin America

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INTRODUCTION

Prohibitionist drug policies have not only failed to achieve their stated objectives of reducing drug consumption and improving public health, but they have also caused or contributed to remarkably high levels of death, disease, crime, corruption, violence, incarceration, and a vast and destructive underground market. This Article focuses on the illicit drug markets generated by prohibition

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and their attendant harms, especially the widespread violence currently afflicting many drug transit and producer countries like Mexico, the nations of Central America, and Colombia. It recommends major policy shifts away from prohibition and towards regulatory alternatives in order to diminish the size and profitability of illegal drug markets and, in turn, the power of violent trafficking organizations.

## I

### PROHIBITION'S DEVASTATING IMPACT ON LATIN AMERICA

The global system of prohibition<sup>1</sup> has failed to curb the supply of, and demand for, currently prohibited substances. The United States, for example, arrests 1.5 million people annually,<sup>2</sup> and in 2011, almost 500,000 people were incarcerated<sup>3</sup> for drug law violations. However, most illicit drugs remain widely available and consumed at fairly stable rates.<sup>4</sup> The harms of drug misuse, meanwhile, are often significantly amplified due to the criminalization of drug use,<sup>5</sup> and the

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<sup>1</sup> The United States has been the principal exporter of drug prohibition around the world, advocating for repressive drug laws in nearly every country. *See, e.g.*, PETER ANDREAS & ETHAN NADELMANN, *POLICING THE GLOBE: ORIGINS AND TRANSFORMATION OF INTERNATIONAL CRIME CONTROL* 42–45 (2006).

<sup>2</sup> FED. BUREAU OF INVESTIGATION, *CRIME IN THE UNITED STATES, 2011*, at 1 (2012), available at [http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/arrestmain\\_final.pdf](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/arrestmain_final.pdf).

<sup>3</sup> THE SENTENCING PROJECT, *TRENDS IN U.S. CORRECTIONS: STATE AND FEDERAL PRISON POPULATION, 1925–2011*, at 2 (2012).

<sup>4</sup> *See* SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERV., *RESULTS FROM THE 2011 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 1–2* (2012) [hereinafter *NATIONAL SURVEY*] (finding that “[i]n 2011, an estimated 22.5 million Americans aged 12 or older were current (past month) illicit drug users,” representing 8.7% of the population; in 2002, by contrast, there were 19.5 million current users, or 8.3% of the population. While the survey shows that use of some drugs, notably cocaine, has been declining in the United States, use of illicit drugs overall has increased, and use of some specific drugs, especially marijuana, has increased); *see also* U.N. OFFICE ON DRUGS & CRIME, *WORLD DRUG REPORT 2012*, 11 (2012) [hereinafter *UNODC WORLD DRUG REPORT 2012*] (showing that while cocaine use and the size of the cocaine market have declined in the United States, cocaine use and cocaine markets have increased in Europe and Latin American countries like Brazil).

<sup>5</sup> The criminalization of drug use, aggressive drug law enforcement practices, and the resulting fear of arrest encourages high-risk behaviors, such as poly-drug use and bingeing, and drive many people who inject drugs into unhygienic, unsupervised environments, where HIV risks are greatly elevated, and away from HIV testing, prevention and other public health services. *See* Corey S. Davis et al., *Effects of an Intensive Street-Level Police Intervention on Syringe Exchange Program Use in Philadelphia, Pa.*, 95 *AM. J. PUB. HEALTH* 233, 233–34 (2005); Samuel R. Friedman et al., *Drug Arrests and Injection Drug Deterrence*, 101 *AM. J. PUB. HEALTH* 344, 344 (2011). Fear of arrest is also the most

racially disparate enforcement of drug laws in the United States has led to the mass incarceration of people of color.<sup>6</sup> These failures have come with a price tag conservatively estimated at \$1 trillion since Richard Nixon declared the modern War on Drugs.<sup>7</sup>

For the United States's neighbors to the south, prohibition's failures manifest primarily in the creation of immense underground markets that generate endemic crime, corruption, and violence.<sup>8</sup> Antonio Maria Costa, former head of the United Nations Office on Drugs and Crime (UNODC), admitted that the global prohibition regime has created many serious "unintended consequences," foremost among which is "a huge criminal black market that now thrives in order to get prohibited substances from producers to consumers . . . the financial incentives to enter this market are enormous. There is no shortage of criminals competing to claw out a share of a market in which hundred fold increases in price from production to retail are not uncommon."<sup>9</sup> According to UNODC, the global drug market is consistently estimated to be worth more than \$300 billion—or roughly one percent of the annual global economy;<sup>10</sup>

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common reason that witnesses to an overdose do not immediately call 911. See Peter J. Davidson et al., *Witnessing Heroin-Related Overdoses: The Experiences of Young Injectors in San Francisco*, 97 ADDICTION 1511, 1515 (2002).

<sup>6</sup> See generally Michele Alexandre, *First Comes Legalization, Then Comes What? Tips to Washington and Colorado to Help Break the Cycle of Selective Prosecution and Disproportionate Sentencing*, 91 OR. L. REV. 1253 (2013); Ernest Drucker, *Drug Law, Mass Incarceration, and Public Health*, 91 OR. L. REV. 1097 (2013).

<sup>7</sup> See Martha Mendoza, *US War on Drugs Has Met None of Its Goals*, HUFFINGTON POST (May 13, 2010), [http://www.huffingtonpost.com/2010/05/13/us-war-on-drugs-has-met-n\\_n\\_575351.html](http://www.huffingtonpost.com/2010/05/13/us-war-on-drugs-has-met-n_n_575351.html). Average annual drug war spending in the U.S. totals roughly \$51 billion. See OFFICE OF NAT'L DRUG CONTROL POL'Y, 2012 NATIONAL DRUG CONTROL STRATEGY 19 (2012) (revealing federal spending amounts to roughly \$26 billion); JEFFREY A. MIRON & KATHERINE WALDOCK, CATO INST., THE BUDGETARY IMPACT OF ENDING DRUG PROHIBITION 1 (2010) (showing state and local spending on prohibition enforcement totals more than \$25 billion).

<sup>8</sup> See, e.g., PHILIP KEEFER ET AL., INNOCENT BYSTANDERS: DEVELOPING COUNTRIES AND THE WAR ON DRUGS 9 (2010).

<sup>9</sup> COMM'N ON NARCOTIC DRUGS, U.N. OFFICE ON DRUGS & CRIME, MAKING DRUG CONTROL 'FIT FOR PURPOSE': BUILDING ON THE UNGASS DECADE 10 (2008), available at <http://www.unodc.org/documents/commissions/CND-Session51/CND-UNGASS-CRPs/ECN72008CRP17E.pdf>.

<sup>10</sup> U.N. OFFICE ON DRUGS & CRIME, WORLD DRUG REPORT 2005, at 127 (2005), available at [http://www.unodc.org/pdf/WDR\\_2005/volume\\_1\\_web.pdf](http://www.unodc.org/pdf/WDR_2005/volume_1_web.pdf) (estimating that the retail drug market is dominated by the marijuana trade, which represents \$113 billion of the estimated total).

and drug trafficking is now the world's primary revenue source for organized crime.<sup>11</sup>

The persistence and scope of the global drug trade show the absurdity of attempting to eliminate or significantly reduce drug supply. Yet for many decades, the dominant policy response of the United States has been to try to do just that: to reduce supply through a combination of domestic enforcement, interdiction, illicit crop eradication, and military aid.<sup>12</sup> The effort has been largely fruitless, even futile. In spite of increasing arrests, seizures of drug shipments, and eradication of drug crops, prohibited drugs continue to be widely available and generally at cheaper prices and higher potency (albeit with short-term fluctuations).<sup>13</sup>

Even where drug production or transit has been reduced in one country or region, these activities have simply been pushed into another country or region—a phenomenon known as the “balloon effect.”<sup>14</sup> So-called “successes” in the drug war have merely resulted in the geographic displacement of drug production, drug trafficking routes, and power centers in the drug trade. Increased eradication efforts in Bolivia and Peru during the 1980s and 1990s pushed coca cultivation into Colombia, which became the world's primary coca

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<sup>11</sup> U.N. OFFICE ON DRUGS & CRIME, ESTIMATING ILLICIT FINANCIAL FLOWS RESULTING FROM DRUG TRAFFICKING AND OTHER TRANSNATIONAL ORGANIZED CRIMES 5 (2011) (“The largest income for transnational organized crime seems to come from illicit drugs, accounting for a fifth of all crime proceeds.”); *see also* UNODC WORLD DRUG REPORT 2012, *supra* note 4, at 84 (reporting that “drug trafficking generates between a fifth and a quarter of all income derived from organized crime, and almost half of the income from transnational organized crime”).

<sup>12</sup> Roughly sixty percent of the U.S. federal drug control budget is destined for such supply-reduction efforts, while only forty percent is devoted to treatment, education, and prevention—or what is commonly known as “demand reduction.” The U.S. federal government has maintained this same skewed budget ratio, with few alterations, for decades. *See* OFFICE OF NAT'L DRUG CONTROL POL'Y, THE NATIONAL DRUG CONTROL BUDGET: FY 2013 FUNDING HIGHLIGHTS 1 (2012), *available at* [http://www.whitehouse.gov/sites/default/files/ondcp/fy\\_2013\\_budget\\_highlights.pdf](http://www.whitehouse.gov/sites/default/files/ondcp/fy_2013_budget_highlights.pdf).

<sup>13</sup> Over the past two decades, prices for cocaine and heroin have been on a long-term downward trajectory, despite occasional upticks due to short-term supply disruptions (as may have occurred recently with cocaine in the United States). *See* David A. Bright & Alison Ritter, *Retail Price as an Outcome Measure for the Effectiveness of Drug Law Enforcement*, 21 INT'L J. DRUG POL'Y 359, 361–62 (2010); Jonathan P. Caulkins & Peter Reuter, *How Drug Enforcement Affects Drug Prices*, 39 CRIME & JUST. 213, 213 (2010).

<sup>14</sup> *See* COMM'N ON NARCOTIC DRUGS, *supra* note 9, at 10 (“It is often called the *balloon effect* because squeezing (by tighter controls) one place produces a swelling (namely, an increase) in another place, though it may well be accompanied by an overall reduction. This can be historically documented over the last half century, in so many theatres around the world.”); BRUCE BAGLEY, DRUG TRAFFICKING AND ORGANIZED CRIME IN THE AMERICAS: MAJOR TRENDS IN THE TWENTY-FIRST CENTURY 1 (2012).

producer.<sup>15</sup> At roughly the same time, stepped-up enforcement in the Caribbean forced major trafficking routes to shift to Mexico and the isthmus of Central America.<sup>16</sup> Mexican traffickers became increasingly important partners to the major Colombian cartels (Medellín and Cali); when these Colombian mega-cartels were dismantled, Mexican drug trafficking organizations (DTOs) became the ascendant actors in the drug trade.<sup>17</sup>

In addition, supply-side policies aimed at killing or apprehending leading figures in DTOs tend to result in a process of dispersion and fragmentation that creates power vacuums and typically leads to more violent, smaller, and more nimble criminal organizations in a more competitive market environment—all of which, in turn, ratchets up violence. This type of fragmentation occurred in Colombia and, according to many observers, has been occurring in Mexico as well.<sup>18</sup>

Militarized enforcement strategies simply push DTOs into other locales, as has been occurring with the current offensive in Mexico, which has driven DTOs to move or expand their operations to Guatemala, Honduras, El Salvador, and other Central American countries—where they have found safe havens in smaller countries with weaker institutions, legacies of armed conflicts, and existing criminal networks. There is evidence that as trafficking becomes more

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<sup>15</sup> More recently, evidence suggests that coca cultivation has decreased somewhat in Colombia, only to increase again in Peru and Bolivia. See UNODC WORLD DRUG REPORT 2012, *supra* note 4, at 93.

<sup>16</sup> See RODRIGO SERRANO-BERTHET & HUMBERTO LOPEZ, CRIME AND VIOLENCE IN CENTRAL AMERICA: A DEVELOPMENT CHALLENGE 12 (2011) (estimating that ninety percent of cocaine destined for the U.S. market is trafficked through the Central America corridor).

<sup>17</sup> See LUIS ASTORGA & DAVID A. SHIRK, DRUG TRAFFICKING ORGANIZATIONS AND COUNTER-DRUG STRATEGIES IN THE U.S.-MEXICAN CONTEXT (2011). The U. S. Department of Justice estimated that Mexican and Colombian DTOs' annual wholesale drug export revenues from the United States market ranged from \$18 billion to \$39 billion. See NAT'L DRUG INTELLIGENCE CTR., U.S. DEP'T OF JUSTICE, NATIONAL DRUG THREAT ASSESSMENT 2009 (2008), *available at* <http://www.justice.gov/archive/ndic/pubs31/31379/31379p.pdf>. Other estimates have placed overall Mexican DTO revenues from drugs exported to the United States at between \$6 billion and \$7 billion. See BEAU KILMER ET AL., REDUCING DRUG TRAFFICKING REVENUES AND VIOLENCE IN MEXICO: WOULD LEGALIZING MARIJUANA IN CALIFORNIA HELP? 31 (2010), *available at* [http://www.rand.org/content/dam/rand/pubs/occasional\\_papers/2010/RAND\\_OP325.pdf](http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP325.pdf).

<sup>18</sup> See BAGLEY, *supra* note 14, at 1; DAVID A. SHIRK, THE DRUG WAR IN MEXICO: CONFRONTING A SHARED THREAT (2011); CORY MOLZAHN ET. AL., DRUG VIOLENCE IN MEXICO: DATA AND ANALYSIS THROUGH 2012, at 1 (2013).

difficult along the Central America-Mexico corridors, DTOs will shift back to the Caribbean.<sup>19</sup>

The effect has been intense bloodshed in parts of Mexico, where an estimated 70,000 people have been killed, 25,000 disappeared, and hundreds of thousands internally displaced in the past six years as a result of violence related to the trade in prohibited drugs.<sup>20</sup> The death toll has claimed an increasing number of innocent civilians, journalists, law enforcement and public officials, and migrants.<sup>21</sup> The Mexican security forces—sent into the streets to fight the DTOs—

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<sup>19</sup> CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., LATIN AMERICA AND THE CARIBBEAN: ILLICIT DRUG TRAFFICKING AND U.S. COUNTERDRUG PROGRAMS 1 (2011) (“The Caribbean-South Florida route continues to be active, and although it is currently less utilized than the Central America-Mexico route, some observers have warned that activity along this route may surge once more in the near future.”).

<sup>20</sup> See E. Eduardo Castillo, *Mexico Drug War: List of Missing Raises Doubts in Mexico*, HUFFINGTON POST (Dec. 22, 2012), [http://www.huffingtonpost.com/2012/12/23/mexico-drug-war-missing-list\\_n\\_2355789.html](http://www.huffingtonpost.com/2012/12/23/mexico-drug-war-missing-list_n_2355789.html) (reporting “20,851 people disappeared over the past six years . . . [w]ith at least another 70,000 deaths tied to drug violence”); MÉXICO EVALÚA, INDICADORES DE VÍCTIMAS VISIBLES E INVISIBLES DE HOMICIDIO [Indicators of Visible and Invisible Victims of Homicide] 43 (2012) [hereinafter INDICADORES] (reporting by a Mexican nongovernmental organization, which recently estimated that over 100,000 homicides occurred during the presidency of Felipe Calderón (2006–2012), and that at least fifty percent were associated with organized crime); ZETA Investigaciones, *EPN en 100 días: 4 mil 549 ejecuciones* [EPN in 100 Days: 4,549 Executions], ZETA (Mar. 11, 2013), <http://www.zetatijuana.com/ZETA/reportaje/epn-en-100-dias-4-mil-549-ejecuciones/> (reporting in Tijuana-based weekly that more than 4,500 organized crime-related “executions” have occurred in President Peña Nieto’s first 100 days in office—continuing the trend of ex-President Felipe Calderón, under whose watch the magazine estimates 83,000 executions occurred). The number of homicides, disappearances and displaced people related to the war on drugs is likely far higher than those figures reported by government and media sources, for eighty to ninety percent of crimes in Mexico go unreported, uninvestigated, unsolved, and unpunished, and the complicity of security forces (who are often perpetrators of violence) has had a chilling effect on people coming forward to report crimes. See INDICADORES, *supra*, at 31–32.

<sup>21</sup> See CORY MOLZAHN ET AL., DRUG VIOLENCE IN MEXICO: DATA AND ANALYSIS THROUGH 2012, at 29–32 (2013), available at <http://justiceinmexico.files.wordpress.com/2013/02/130206-dvm-2013-final.pdf> (estimating that at least forty-five mayors or ex-mayors, seventy-four journalists or media-support workers, and hundreds of law enforcement or military personnel have been killed since 2006); see also Rafael López, *Matan a 100 policías y militares en 3 meses* [They Kill 100 Police and Military in 3 Months], MILENIO (Mar. 1, 2013, 4:33 AM), <http://www.milenio.com/cdb/doc/noticias/2011/e33b3f03372f269bfdcac6449ccc75ae> (reporting that nearly 3,000 “executions” have been committed by organized crime in the first three months of Enrique Peña Nieto’s presidential term, including 100 police or military officials); *México registrar 11 mil secuestros de inmigrantes en un año: CNDH* [Mexico has 11,000 Kidnappings of Immigrants in a Year: CNDH], LA JORNADA (Mar. 4, 2013), <http://www.lajornadajalisco.com.mx/2013/03/04/mexico-registra-11-mil-secuestros-de-inmigrantes-en-un-ano-cndh/> (reporting that at minimum 11,000 migrants are kidnapped every year in Mexico, according to Mexico’s National Human Rights Commission).

have perpetrated widespread, well-documented, and grievous human rights violations, not unlike what has occurred in Colombia.<sup>22</sup> And Central America has become one of the most violent regions in the world outside of active war zones.<sup>23</sup> None of these costly efforts has made a dent in the drug trade.<sup>24</sup>

The current surge in violence in Mexico and Central America—indeed, most “drug-related violence”—is directly linked to systemic factors in the illegal drug market (e.g., competition over the exorbitant profits of the illegal market that prohibition has spawned)<sup>25</sup> or to aggressive enforcement of drug prohibition.<sup>26</sup> Drug prohibition has enriched criminal organizations, much as alcohol Prohibition fostered and empowered organized crime. And since illegal

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<sup>22</sup> See, e.g., HUMAN RIGHTS WATCH, MEXICO’S DISAPPEARED: THE ENDURING COST OF A CRISIS IGNORED 1 (Feb. 2013); HUMAN RIGHTS WATCH, NEITHER RIGHTS NOR SECURITY: KILLINGS, TORTURE, AND DISAPPEARANCES IN MEXICO’S “WAR ON DRUGS” (Nov. 2011); see also INT’L CRISIS GRP., PEÑA NIETO’S CHALLENGE: CRIMINAL CARTELS AND RULE OF LAW IN MEXICO (2013), available at <http://www.crisisgroup.org/~media/Files/latin-america/mexico/048-pena-nietos-challenge-criminal-cartels-and-rule-of-law-in-mexico.pdf>.

<sup>23</sup> See U.N. OFFICE ON DRUGS & CRIME, GLOBAL STUDY ON HOMICIDE 2011 (2011), available at [http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa\\_study\\_on\\_homicide\\_2011\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf).

<sup>24</sup> See UNODC WORLD DRUG REPORT 2012, *supra* note 4, at 1 (showing that global drug supply and demand are essentially stable); U.S. CUSTOMS & BORDER PROT., DRUG TRAFFICKING ORGANIZATIONS ADAPTABILITY TO SMUGGLE DRUGS ACROSS SWB AFTER LOSING KEY PERSONNEL 1 (2011) (“Generally, a steady stream of drugs are trafficked across the Southwest border (SWB) as long as they are available in Mexico . . . . While the continued arrest or death of key DTO leadership may have long-term implications as to the control and viability of a specific DTO, there is no indication it will impact overall drug flows into the United States.”).

<sup>25</sup> GABRIEL DEMOMBYNES, DRUG TRAFFICKING AND VIOLENCE IN CENTRAL AMERICA AND BEYOND BACKGROUND PAPER TO THE WORLD DEVELOPMENT REPORT 2011 (2011), available at <http://documents.worldbank.org/curated/en/2011/04/14266056/drug-trafficking-violence-central-america-beyond> (“Whenever there are high rents from criminal activities and the costs of bribing are low, intensified sanctions and policing may actually generate the perverse consequences of promoting organized crime, widespread corruption, higher crime rates.”); see also SERRANO-BERTHET & LOPEZ, CRIME AND VIOLENCE IN CENTRAL AMERICA: A DEVELOPMENT CHALLENGE ii (2011) (concluding that “[d]rug trafficking is both an important driver of homicide rates in Central America and the main single factor behind rising violence levels”).

<sup>26</sup> All illicit markets have the potential to be violent, but not all are equally violent. Experts tend to agree that the degree of violence in an illegal market depends upon the degree of competition in the market and the intensity of prohibition enforcement. See FRANKLIN E. ZIMRING & GORDON HAWKINS, CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA (1999); Jeffrey A. Miron, *Violence and the U.S. Prohibitions of Drugs and Alcohol*, 1 AM. L. & ECON. REV. 78, 78 (1999); Peter Reuter, *Systemic Violence in Drug Markets*, 52 CRIME, L. & SOC. CHANGE 275, 275 (2009). Drug prohibition in Latin America in the last several decades has often satisfied both conditions.

businesses have no legitimate means of resolving disputes, violence is always possible and often the norm in illegal drug markets—much as it was during alcohol Prohibition.<sup>27</sup> Moreover, evidence shows that aggressive enforcement strategies designed to disrupt drug markets—such as those Mexico is pursuing today with the ready backing of the United States<sup>28</sup>—also intensify violence.<sup>29</sup>

Demand reduction efforts have been no less of a failure,<sup>30</sup> especially in the United States, the largest consumer market in the world, whose demand is almost universally recognized as a major driver of the current security crisis in Latin America.<sup>31</sup> While the United States ought to make a better (and wiser) investment in effective prevention and treatment programs, evidence does not suggest that the United States will be able to significantly reduce its national demand—at least not in the near term or to a sufficient degree to diminish the illicit markets for currently prohibited drugs.<sup>32</sup>

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<sup>27</sup> See, e.g., ROBERT J. MACCOUN & PETER REUTER, *DRUG WAR HERESIES: LEARNING FROM OTHER VICES, TIMES, AND PLACES* (2001).

<sup>28</sup> See WYLER ET AL., *LATIN AMERICA AND THE CARIBBEAN: ILLICIT DRUG TRAFFICKING AND U.S. COUNTERDRUG PROGRAMS* (2011) (providing more information on the nearly two billion dollar U.S. military aid package to Mexico and Central America, known as the Merida Initiative).

<sup>29</sup> Dan Werb et al., *Effect of Drug Law Enforcement on Drug Market Violence: A Systematic Review*, 22 INT'L J. DRUG POL'Y 87, 87 (2011) (“[T]he existing evidence base suggests that gun violence and high homicide rates may be an inevitable consequence of drug prohibition and that disrupting drug markets can paradoxically increase violence. In this context, and since drug prohibition has not meaningfully reduced drug supply, alternative regulatory models will be required if drug supply and drug market violence are to be meaningfully reduced.”).

<sup>30</sup> See PETER REUTER, *HOW CAN DOMESTIC U.S. DRUG POLICY HELP MEXICO?* 121 (2011) [hereinafter REUTER, *HELP MEXICO*] (finding “*Prevention* remains largely an aspiration. Few of even the most innovative programs have shown substantial and lasting effect, while almost none of the popular programs have any positive evaluations. *Treatment* can be shown to reduce both drug consumption and the associated harms of drug dependent clients. However, given the chronic relapsing nature of drug dependence, it is unlikely that treatment expansion will have large effects on aggregate consumption. *Enforcement*, aimed at dealers and traffickers, which has received the dominant share of funds for drug control, has failed to prevent price declines; thus supply side efforts are unlikely to reduce the demand for Mexican source drugs.”).

<sup>31</sup> See, e.g., Arshad Mohammed, *U.S. to Blame for Much of Mexico Violence: Clinton*, REUTERS (Mar. 25, 2009, 7:54 PM), <http://www.reuters.com/article/2009/03/25/us-usa-mexico-idUSTRE52O5RF20090325> (quoting former Secretary of State Hillary Clinton stating, “Our insatiable demand for illegal drugs fuels the drug trade”).

<sup>32</sup> Policy interventions have only a limited impact on demand, which is influenced to a far greater degree by consumers’ knowledge, fads, cultures, and mores. See, e.g., REUTER, *HELP MEXICO*, *supra* note 30, at 122 (“[P]olicy is only a modestly important factor in determining the demand for drugs. Culturally-formed attitudes towards the dangers and pleasures of drugs are much more influential. In addition, the use of drugs (apart from



Against this backdrop, regional leaders—whose nations have borne the brunt of prohibition’s “unintended consequences”—have begun calling for a fundamental transformation of global drug policy. In December 2011, the heads of state of Mexico, Colombia, Chile, all of Central America, and the Dominican Republic called on the United States and other consumer countries to either reduce their demand, or “if that is not possible, as recent experience demonstrates, then . . . to explore possible alternatives to eliminate the exorbitant profits of the criminals, including regulatory or market-oriented options to this end.”<sup>33</sup> Several other leaders have echoed these sentiments.<sup>34</sup>

## II

### ALTERNATIVE STRATEGIES: DEMAND REDIRECTION, SUPPLY REGULATION

#### *A. Legally Regulate Marijuana*

Marijuana has long dominated domestic law enforcement efforts in the United States: in 2011, there were 757,969 marijuana arrests, comprising half of all drug arrests and more arrests than for all violent crimes combined,<sup>35</sup> and disproportionately affecting people of color.<sup>36</sup> Yet marijuana is the most widely used illegal drug in the United States and the world, its prohibition notwithstanding. More

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marijuana) is an epidemic phenomenon. . . . The cocaine epidemic has been waning for many years as the number of regular users is declining and they are aging. The demand for cocaine has been falling for perhaps 20 years and, without the outbreak of a new epidemic, this trend is likely to continue.”).

<sup>33</sup> Declaración Conjunta Sobre Crimen Organizado y Narcotráfico [Joint Statement on Organized Crime and Drug Trafficking], Presidente de la República, 5 de Diciembre de 2011 (Mex.), available at [http://www.sela.org/attach/258/default/Declaracion\\_Conjunta\\_Sobre\\_Crimen\\_Organizado\\_y\\_Narcotrafico\\_-\\_XIII\\_Cumbre\\_de\\_Jefes\\_de\\_Estado\\_y\\_de\\_Gobierno\\_del\\_Mecanismo\\_de\\_Tuxtla.pdf](http://www.sela.org/attach/258/default/Declaracion_Conjunta_Sobre_Crimen_Organizado_y_Narcotrafico_-_XIII_Cumbre_de_Jefes_de_Estado_y_de_Gobierno_del_Mecanismo_de_Tuxtla.pdf) (translated from Spanish source).

<sup>34</sup> See Juan Manuel Santos et al., Statement to the General Assembly of the United Nations (Oct. 1, 2012) (declaring, “[t]he United Nations should exercise its leadership, as is its mandate . . . and conduct deep reflection to analyze all available options, including regulatory or market measures, in order to establish a new paradigm that prevents the flow of resources to organized crime organizations”).

<sup>35</sup> FED. BUREAU OF INVESTIGATION, *supra* note 2.

<sup>36</sup> See H.G. LEVINE & D.P. SMALL, MARIJUANA ARREST CRUSADE: RACIAL BIAS AND POLICE POLICY IN NEW YORK CITY 1997–2007 (2008); see also Andrew Golub et al., *The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City*, 6 CRIMINOLOGY & PUB. POL’Y 131, 159 (2007); H. Nguyen & P. Reuter, *How Risky Is Marijuana Possession? Considering the Role of Age, Race, and Gender*, 58 CRIME & DELINQUENCY 879, 883 (2012).

than 100 million U.S. residents—about forty-two percent of the population—admit to having tried marijuana, and over 18 million people report using it in the past month.<sup>37</sup>

Maintaining a prohibition on such a highly demanded commodity is impracticable and illogical—especially a commodity that health experts agree is objectively less harmful to individual and public health than most other intoxicating substances, legal or illegal.<sup>38</sup> Perhaps unsurprisingly, marijuana is a top revenue generator for Mexican DTOs; in fact, the U.S. Department of Justice asserts that “marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.”<sup>39</sup> Although other estimates place marijuana second to cocaine in revenues for Mexican DTOs,<sup>40</sup> it is clear that a considerable proportion of DTOs’ profits derive from the marijuana trade. In the words of the Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI), marijuana is “a cash crop that finances corruption and the carnage of violence year after year.”<sup>41</sup>

Legally regulating marijuana, then, could dramatically shrink the illegal marijuana market and resultant profits to organized crime. Researchers at the RAND Corporation estimate that DTOs earn between fifteen and twenty-six percent of their illicit drug export revenues from marijuana; if the United States legalized and regulated marijuana nationally (or if one state provided legalized marijuana to the rest of the country, approximating nationwide legalization), then

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<sup>37</sup> NATIONAL SURVEY, *supra* note 4, at tbls. 1.24B and 1.24A.

<sup>38</sup> See ROBIN ROOM, CANNABIS POLICY: MOVING BEYOND STALEMATE 152 (2010) (“The probability and scale of harm among heavy cannabis users is modest compared with that caused by many other psychoactive substances, both legal and illegal, in common use, namely, alcohol, tobacco, amphetamines, cocaine, and heroin.”); *In re* Marijuana Rescheduling Petition, Docket No. 86-22 (Drug Enforcement Admin. Sept. 6, 1988), available at <http://www.oregon.gov/pharmacy/Imports/Marijuana/Public/SRay/CourtDocket86-22.pdf> (finding that marijuana is “one of the safest therapeutically active substances known to man . . . In strict medical terms, marijuana is far safer than many foods we commonly consume”).

<sup>39</sup> Memorandum from David G. Ogden, Deputy Attorney Gen., U.S. Dep’t of Just., on Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana, to Selected U.S. Attorneys (October 19, 2009) (on file with author).

<sup>40</sup> See KILMER ET AL., *supra* note 17, at 32–33.

<sup>41</sup> *Drug Trafficking Violence In Mexico: Implications For The United States: Hearing Before the S. Caucus on Int’l Narcotics Control*, 111th Cong. (2010) (statement of Kevin L. Perkins, Assistant Director, FBI Criminal Investigative Division, and Anthony P. Placido, DEA Assistant Administrator for Intelligence).

Mexican DTOs' illicit drug export revenues could decline by twenty percent, or between \$1 billion and \$2 billion.<sup>42</sup>

Several states have, in fact, begun acting as laboratories for marijuana regulation. In November 2012, Colorado and Washington became the first political jurisdictions in the world to vote to permit the legal regulation of marijuana sales, cultivation, and distribution for adults twenty-one and older within their borders.<sup>43</sup> A 2012 report by the Mexican Institute for Competitiveness estimated that marijuana regulation in Colorado and Washington could reduce profits of criminal organizations in Mexico by \$2.5 billion or more.<sup>44</sup> Such estimates have prompted some experts to recommend that “the federal government should permit states to legalize the production, sale, taxation, and consumption of marijuana” as part of a comprehensive strategy to aid Mexico.<sup>45</sup> In addition, medical marijuana is already legal in eighteen states and the District of Columbia, where more than one million patients now reside who are no longer purchasing their marijuana from the underground market, and, by extension, likely no longer financing organized crime through their consumption.<sup>46</sup> These jurisdictions have also created a variety of regulatory models for the

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<sup>42</sup> See KILMER et al., *supra* note 17, at 3–4.

<sup>43</sup> The two states have already begun implementing their laws, completely eliminating penalties for marijuana possession by adults, and are in the process of establishing regulations for the cultivation, distribution, and retail sale of marijuana to adults—a process to be completed in late-2013.

<sup>44</sup> ALEJANDRO HOPE & EDUARDO CLARK, SI LOS VECINOS LEGALIZAN: REPORTE TÉCNICO [If Neighbors Legalize: Technical Report] (2012), available at <http://imco.org.mx/images/pdf/reporte-tecnico-legalizacion-marihuana.pdf>. That study assumes the two states will supply the rest of the country and undercut the more expensive, imported Mexican marijuana—a “leakage” scenario that state officials in Colorado and Washington have pledged to prevent. See Letter from Governor Jay Inslee to the Honorable Eric Holder, U.S. Attorney Gen., U.S. Dep’t of Just. (Feb. 12, 2013) (on file with author) (stating Inslee’s intent to oversee “the development of a highly regulated system designed to prevent diversion of marijuana across state borders,” and “the creation of a system that minimizes the illicit market through price, access and convenience while simultaneously controlling the product”).

<sup>45</sup> SHIRK, *supra* note 18, at 26.

<sup>46</sup> See Russ Belville, *America’s One Million Legalized Marijuana Users*, HUFFINGTON POST (June 2, 2011, 1:38 PM), [http://www.huffingtonpost.com/russ-belville/americas-one-million-lega\\_b\\_869509.html](http://www.huffingtonpost.com/russ-belville/americas-one-million-lega_b_869509.html) (estimating between 1 and 1.5 million lawful medical marijuana patients nationwide); see also JONATHAN P. CAULKINS ET AL., MARIJUANA LEGALIZATION: WHAT EVERYONE NEEDS TO KNOW 219 (2012) (recounting that, prior to recent changes in Montana’s medical marijuana laws, fully half of regular marijuana users in the state were enrolled in the state’s program).

distribution and production of marijuana, with few discernible problems.<sup>47</sup>

As medical marijuana spread from one state (California) in 1996 to one-third of the country today, recreational marijuana could follow the same pattern. Indeed, more than a half-dozen states have introduced legislation to regulate marijuana as of this writing,<sup>48</sup> while advocates are gearing up in different states for ballot initiative campaigns in either the 2014 or 2016 elections.<sup>49</sup> New York was the first state to repeal its laws prohibiting alcohol in 1923; a decade later when federal Repeal arrived, it had been joined by ten others—suggesting that as more states abandon marijuana prohibition, the federal government may be forced to follow suit.<sup>50</sup> Federal legislation has even been introduced to end marijuana prohibition nationally and defer the issue to the states,<sup>51</sup> which nearly two-thirds of the population supports.<sup>52</sup>

The effects of the watershed 2012 election spilled outside the U.S. borders as well. Within weeks of the polls closing in Colorado and Washington, legislators in Mexico introduced a bill to regulate marijuana in their country,<sup>53</sup> questioning why their countrymen and women should continue dying to prevent a substance from reaching

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<sup>47</sup> See Nancy J. Kepple & Bridget Freisthler, *Exploring the Ecological Association Between Crime and Medical Marijuana Dispensaries*, 73 J. STUD. ALCOHOL DRUGS 523, 528 (2012) (finding no increase in crime in vicinities of dispensaries); see also Sam Harper et al., *Do Medical Marijuana Laws Increase Marijuana Use? Replication Study and Extension*, 22 ANN EPIDEMIOL 207, 207 (2012) (finding that medical marijuana laws have not resulted in increasing drug use rates).

<sup>48</sup> See Tim Dickinson, *The Next Seven States To Legalize Pot: Why Oregon, California and More are Likely to Follow Colorado and Washington Toward Legalization*, ROLLING STONE (Dec. 18, 2012, 9:00 AM), <http://www.rollingstone.com/politics/news/the-next-seven-states-to-legalize-pot-20121218>.

<sup>49</sup> See, e.g., David Downs, *A Grand Plan for California Pot Legalization in 2016 Revealed*, SF GATE (Jan. 28, 2013, 9:07 AM), <http://blog.sfgate.com/smellthetruth/2013/01/28/activists-energized-for-california-pot-legalization-in-2016/>; Kristen Gwynne, *Who Will Legalize Pot Next?*, THE NATION (Feb. 18, 2013), <http://www.thenation.com/article/172538/who-will-legalize-pot-next>.

<sup>50</sup> See CAULKINS ET AL., *supra* note 48, at 185.

<sup>51</sup> Ending Federal Marijuana Prohibition Act of 2013, H.R. 499, 113th Cong. (2013); see also Marijuana Tax Equity Act of 2013, H.R. 501, 113th Cong. (1st. Sess. 2013).

<sup>52</sup> See Frank Newport, *Americans Want Federal Gov't Out of State Marijuana Laws*, GALLUP (Dec. 10, 2012), <http://www.gallup.com/poll/159152/americans-federal-gov-state-marijuana-laws.aspx>.

<sup>53</sup> Iniciativa de Ley General para el Control de la Cannabis [General Law for the Control of Cannabis], la Atención a las Adicciones y la Rehabilitación [Care for Addiction and Rehabilitation], Cámara de Diputados [Chamber of Deputies], Republica de Mexico, 322, LXII Legislatura (2012) (Mex.).

consumers who, in the case of these two states, clearly want it. Lawmakers in Uruguay, already planning legislation to regulate marijuana, are now moving full steam ahead.<sup>54</sup>

### *B. Regulatory Options for Harder Drugs: Medical Models for Serious Consumers*

Given marijuana's prominence in the illicit drug trade and its relatively modest harms, it is a logical starting point for exploring regulatory alternatives to prohibition.<sup>55</sup> The "harder" drugs, such as heroin, cocaine and methamphetamine, pose more difficulties for possible regulation. Yet the number of people who use these harder drugs is relatively small and pales in comparison to those who use marijuana.<sup>56</sup> Furthermore, a small minority (roughly twenty percent) of the drug-using population consumes the majority (more or less eighty percent) of these harder drugs.<sup>57</sup> These "heavy" consumers, in other words, represent the lion's share of U.S. demand for heroin, cocaine, and methamphetamine.<sup>58</sup> Offering a wide variety of effective

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<sup>54</sup> See Proyecto de Ley sobre Cannabis 2012 [Cannabis Bill 2012], Asamblea General de la Republica de Uruguay [General Assembly of the Republic of Uruguay] (2012) (Uru.), available at [http://medios.presidencia.gub.uy/jm\\_portal/2012/noticias/NO\\_G830/proyecto\\_ley1.pdf](http://medios.presidencia.gub.uy/jm_portal/2012/noticias/NO_G830/proyecto_ley1.pdf).

<sup>55</sup> See REPORT OF THE GLOBAL COMM'N ON DRUG POL'Y, WAR ON DRUGS 2 (2011) (recommending "experimentation . . . with models of legal regulation of drugs to undermine the power of organized crime and safeguard the health and security of their citizens. This recommendation applies especially to cannabis, but we also encourage other experiments in decriminalization and legal regulation that can accomplish these objectives and provide models for others").

<sup>56</sup> NATIONAL SURVEY, *supra* note 4, at 14–16 ("In 2011, marijuana was the most commonly used illicit drug, with 18.1 million current users. . . About two thirds (64.3 percent) of illicit drug users used only marijuana in the past month . . . An estimated 8.0 million people aged 12 or older (3.1 percent) were current users of illicit drugs other than marijuana in 2011, including cocaine (1.4 million or 0.5 percent) heroin (281,000 or 0.1 percent), methamphetamine (439,000 or 0.2 percent)."); see also KILMER ET AL., THE U.S. DRUG POLICY LANDSCAPE 5 (2012), available at [http://www.rand.org/content/dam/rand/pubs/occasional\\_papers/2012/RAND\\_OP393.pdf](http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP393.pdf) ("The combined number of people meeting clinical criteria for abuse and dependence on illicit drugs other than marijuana is only 2.6 million, as detected by NSDUH, and is probably no more than 6 million when factoring in populations underrepresented in a household survey.").

<sup>57</sup> KILMER ET AL., *supra* note 56, at 34.

<sup>58</sup> Other accounts have proposed different, criminal justice-centered approaches for dealing with this minority of "heavy users," such as the coerced abstinence or mandated desistance programs implemented in Hawaii (Hawaii Opportunity Probation with Enforcement, or HOPE), which Judge Steven Alm describes in this issue. See Honorable Steven S. Alm, *A New Continuum for Court Supervision*, 91 OR. L. REV. 1181 (2013); see also Mark Kleiman, *Surgical Strikes in the Drug Wars: Smarter Policies for Both Sides of the Border*, 90 FOREIGN AFFAIRS 88 (2011); REUTER, HELP MEXICO, *supra* note 30.

treatments is essential to reducing the harms of drug misuse for this group of people—but, as mentioned above, most existing drug treatment programs have not been successful in reducing population-level demand.<sup>59</sup>

### 1. Heroin

However, one form of treatment, narcotic replacement therapy, has proven consistently effective for dependence to heroin and other opioids. Also known as opioid-substitution or opioid agonist treatments, these pharmacotherapies decrease demand for illicit heroin and, by extension, shrink local heroin markets where they have been implemented.<sup>60</sup> Yet few opioid-dependent people in the United States have access to these treatments; only nine percent of substance abuse treatment facilities in the United States offer specialized treatment of opioid dependence with methadone or buprenorphine.<sup>61</sup> The United States should immediately expand existing narcotic replacement therapies like methadone and buprenorphine, which one commentator predicted could dry up the U.S. heroin market for Mexican DTOs, representing some twenty percent of their drug export revenues.<sup>62</sup>

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Although an evaluation of the HOPE program demonstrated reductions in drug use and recidivism, there is no evidence regarding the long-term outcomes of HOPE participants, their outcomes in other domains (e.g., health, employment, social reintegration, etc.) or the generalizability of such programs. *See* ANGELA HAWKEN & MARK KLEIMAN, *MANAGING DRUG INVOLVED PROBATIONERS WITH SWIFT AND CERTAIN SANCTIONS: EVALUATING HAWAII'S HOPE* 49–50 (2009) (acknowledging in federally funded evaluation of HOPE that “The external validity of these results is questionable . . . Whether this structural shift can be accomplished in other jurisdictions remains an issue. . . . What happens to HOPE probationers once they complete probation, in particular, their long-term drug use and criminality is an important remaining question”).

<sup>59</sup> *See, e.g.*, REUTER, *HELP MEXICO*, *supra* note 30. Some commentators hope that various legislative changes—notably the Affordable Care Act of 2010—will expand treatment availability and may have an impact on national demand. *See* KILMER ET AL., *supra* note 56, at 39 (“As heavy users represent a large share of total quantities consumed, this increase in treatment access could translate into a substantial reduction in demand for the illegal goods creating so much chaos in the United States and abroad.”).

<sup>60</sup> *See* M. CONNOCK ET AL., *METHADONE AND BUPRENORPHINE FOR THE MANAGEMENT OF OPIOID DEPENDENCE: A SYSTEMATIC REVIEW AND ECONOMIC EVALUATION* (2007); CTR. FOR SUBSTANCE ABUSE TREATMENT, U.S. DEP’T HEALTH & HUMAN SERVS., *MEDICATION-ASSISTED TREATMENT FOR OPIOID ADDICTION IN OPIOID TREATMENT PROGRAMS* (2005).

<sup>61</sup> *See* SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., DEP’T HEALTH & HUMAN SERVS., *NATIONAL SURVEY OF SUBSTANCE ABUSE TREATMENT SERVICES (N-SSATS)*: 2011, at 61 (2012).

<sup>62</sup> Kleiman, *supra* note 58, at 93 (“Treatment offers benefits for some drug abusers; it more than pays for itself by reducing crime and other social costs of drug use. But . . .

While currently the gold-standard treatment for opioid dependence, methadone and other conventional narcotic replacement therapies do not work for everyone; at least five to ten percent of seriously opioid dependent people do not respond to available treatments.<sup>63</sup> For this reason, several countries have gone beyond methadone and adopted pharmaceutical heroin-assisted treatment (HAT) programs,<sup>64</sup> which have proven enormously successful and now operate in Switzerland,<sup>65</sup> the Netherlands,<sup>66</sup> United Kingdom,<sup>67</sup> Germany,<sup>68</sup> Spain,<sup>69</sup> Denmark,<sup>70</sup> and Canada.<sup>71</sup> These programs allow for the provision of

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most people who need drug treatment . . . do not want it . . . The most common path out of substance abuse . . . [is] quitting without formal treatment. *The one exception is opiate substitution for heroin addicts—such programs work, and people stay with them. Expanding the availability of substitution could cut into the approximately one-fifth of the US-Mexican drug traffic constituted of heroin.*” (emphasis added).

<sup>63</sup> John Strang et al., *Supervised Injectable Heroin or Injectable Methadone Versus Optimised Oral Methadone as Treatment for Chronic Heroin Addicts in England After Persistent Failure in Orthodox Treatment (RIOTT): A Randomised Trial*, 375 THE LANCET 1885, 1885 (2010).

<sup>64</sup> This paper focuses mainly on one outcome of HAT: reductions in street heroin use. For an overview of HAT’s many other salutary benefits, see Dan Werb, *Heroin Prescription, HIV, and Drug Policy: Emerging Regulatory Frameworks*, 91 OR. L. REV. 1213 (2013).

<sup>65</sup> See, e.g., Ambros Uchtenhagen, *Heroin-Assisted Treatment in Switzerland: A Case Study in Policy Change*, 105 ADDICTION 29 (2009); Ambros A. Uchtenhagen, *Heroin Maintenance Treatment: From Idea to Research to Practice*, 30 DRUG AND ALCOHOL REV. 130 (2011) [hereinafter Uchtenhagen, *Heroin Maintenance Treatment*].

<sup>66</sup> See, e.g., Peter Blanken et al., *Heroin-Assisted Treatment in the Netherlands: History, Findings, and International Context*, 20 EUROPEAN NEUROPSYCHOPHARMACOLOGY S105 (2010).

<sup>67</sup> See, e.g., Strang et al., *supra* note 63, at 1886.

<sup>68</sup> See, e.g., Uwe Verthein et al., *Long-term Effects of Heroin-Assisted Treatment in Germany*, 103 ADDICTION 1 (2008) [hereinafter Verthein, *Long-term Effects*]; Uwe Verthein et al., *Switching from Methadone to Diamorphine: 2-Year Results of the German Heroin-Assisted Treatment Trial*, 46 SUBSTANCE USE & MISUSE 980 (2011) [hereinafter Verthein, *Switching from Methadone*]; Christian Haasen et al., *Heroin-Assisted Treatment for Opioid Dependence: Randomised Controlled Trial*, 191 BRIT. J. PSYCHIATRY 55 (2007).

<sup>69</sup> See, e.g., Eugenia Oviedo-Joekes et al., *The Andalusian Trial on Heroin-Assisted Treatment: A 2 Year Follow-up*, 29 DRUG AND ALCOHOL REV. 75 (2010); E. Perea-Milla et al., *Efficacy of Prescribed Injectable Diacetylmorphine in the Andalusian Trial: Bayesian Analysis of Responders and Non-Responders According to a Multi Domain Outcome Index*, 10 TRIALS 70 (2009). Spain allows HAT during research trials only.

<sup>70</sup> Convinced by the impressive results from other countries, Denmark moved ahead with implementing HAT programs without conducting its own randomized controlled trial. See, e.g., Uchtenhagen, *Heroin Maintenance Treatment*, *supra* note 65, at 132.

<sup>71</sup> See, e.g., Eugenia Oviedo-Joekes et al., *Diacetylmorphine Versus Methadone for the Treatment of Opioid Addiction*, 361 NEW ENG. J. MED. 777 (2009) [hereinafter Oviedo-Joekes et al., *Diacetylmorphine Versus Methadone*]. Canada allows HAT during research trials only.

pharmacological-grade heroin<sup>72</sup> by prescription to a select group of heroin-dependent people who have not previously responded to other forms of treatment. Typically, patients receive injectable or inhalable heroin two to three times per day from a doctor in a clinical setting.

Every published evaluation of HAT programs worldwide has found overwhelmingly positive outcomes in every index of importance: improved health, wellbeing, and social reintegration of people who use drugs, and reduced social costs like disease and crime.<sup>73</sup> Most important for diminishing drug markets, every HAT trial has shown a marked reduction in street heroin use. For example, a Canadian study reported a two-thirds (sixty-seven percent) reduction in illicit drug use or other illegal activity among those receiving HAT.<sup>74</sup> Similar reductions in illicit heroin use were reported from HAT trials in the United Kingdom (seventy-two percent)<sup>75</sup> and Germany (sixty-nine percent).<sup>76</sup> A recent, systematic review of HAT trials concluded, “Each study found a superior reduction in illicit drug use in the heroin arm rather than in the methadone arm . . . the measures of effect obtained are consistently statistically significant.”<sup>77</sup> HAT is not only more effective at reducing street heroin (and other drug) use than methadone,<sup>78</sup> but it has also proven to be more cost-effective.<sup>79</sup> While

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<sup>72</sup> The Canadian trial involved an arm of the study that received another opioid agonist, hydromorphone, instead of heroin; these subjects showed similarly impressive results. A second randomized trial in Canada currently underway is administering heroin as well as hydromorphone. See E. Oviedo-Joekes et al., *Double-Blind Injectable Hydromorphone Versus Diacetylmorphine for the Treatment of Opioid Dependence: A Pilot Study*, 38 J. SUBSTANCE ABUSE TREATMENT 408 (2010).

<sup>73</sup> See Benedikt Fischer et al., *Heroin-Assisted Treatment (HAT) a Decade Later: A Brief Update on Science and Politics*, 84 J. URBAN HEALTH 552, 557–59 (2007); Rebecca Löbmann & Uwe Verthein, *Explaining the Effectiveness of Heroin-Assisted Treatment on Crime Reductions*, 33 LAW & HUM. BEHAV. 83 (2009); see also Carlos Nordt & Rudolf Stohler, *Incidence of Heroin Use in Zurich, Switzerland: A Treatment Case Register Analysis*, 367 THE LANCET 1830, 1830–34 (2006) (finding that after high quality readily accessible drug treatment (including HAT) was provided, the number of new heroin users declined from 850 in 1990 to 150 in 2002 along with a reduction in HIV, crime and overdose deaths and a reduction in the quantity of heroin seizures).

<sup>74</sup> Oviedo-Joekes et al., *Diacetylmorphine Versus Methadone*, *supra* note 72, at 777.

<sup>75</sup> Strang et al., *supra* note 63, at 1891.

<sup>76</sup> Haasen et al., *supra* note 68, at 59.

<sup>77</sup> Marica Ferri et al., *Heroin Maintenance Treatment for Chronic Heroin-Dependent Individuals*, COCHRANE DATABASE OF SYSTEMATIC REVIEWS, Dec. 2011, at 10 (2011). The authors summarized their findings: “When accepted, this treatment may help them remain in treatment, limit use of street drugs, reduce illegal activities and possibly reduce mortality.” *Id.* at 2.

<sup>78</sup> See Verthein, *Switching from Methadone*, *supra* note 68, at 986.



HAT has been restricted to those who do not respond to methadone, evidence now shows it is effective even for people with no previous maintenance experience—suggesting it could be scaled up.<sup>80</sup> Many HAT participants freely choose to move on to another form of treatment (like methadone) or to abstinence,<sup>81</sup> while others continue to receive HAT treatment on a long-term basis, with lasting positive results.<sup>82</sup>

Agonist replacement therapies represent the most effective approaches to demand reduction because they acknowledge that many dependent or serious drug consumers simply cannot or will not cease using their preferred substance of choice (or a close substitute)—regardless of its legal status or the impact their consumption might have on other countries. HAT programs have been so successful precisely because they focus on reducing *illicit* demand—not demand *per se*—and channeling this demand towards a *licit*, regulated supply. HAT programs currently serve a subsection of the using population that is small, but which consumes a disproportionate amount of drugs. This approach has three fundamental goals: demand *redirection*, supply *regulation*, and harm *reduction*.

Moreover, available evidence indicates that HAT programs can help destabilize local heroin markets. The one published article on the subject concluded that HAT participants “accounted for a substantial proportion of consumption of illicit heroin, and that removing them

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<sup>79</sup> See Bohdan Nosyk et al., *Cost-Effectiveness of Diacetylmorphine Versus Methadone for Chronic Opioid Dependence Refractory to Treatment*, 184 CMAJ E317 (2012).

<sup>80</sup> See C. Haasen et al., *Is Heroin-Assisted Treatment Effective for Patients with No Previous Maintenance Treatment? Results from a German Randomised Controlled Trial*, 16 EUROPEAN ADDICTION RES. 124, 124 (2010).

<sup>81</sup> See Jürgen Rehm et al., *Feasibility, Safety, and Efficacy of Injectable Heroin Prescription for Refractory Opioid Addicts: A Follow-up Study*, 358 THE LANCET 1417, 1419 (2001); PETER REUTER, CAN HEROIN MAINTENANCE HELP BALTIMORE? WHAT BALTIMORE CAN LEARN FROM THE EXPERIENCE OF OTHER COUNTRIES 17 (2009) [hereinafter REUTER, HELP BALTIMORE].

<sup>82</sup> See Peter Blanken et al., *Outcome of Long-term Heroin-Assisted Treatment Offered to Chronic, Treatment-Resistant Heroin Addicts in the Netherlands*, 105 ADDICTION 300, 300 (2009) (“Long-term HAT is an effective treatment for chronic heroin addicts who have failed to benefit from methadone maintenance treatment. Four years of HAT is associated with stable physical, mental and social health and with absence of illicit heroin use and substantial reductions in cocaine use. HAT should be continued as long as there is no compelling reason to stop treatment.”); see also Verthein, *Long-term Effects*, *supra* note 69, at 1 (“Street heroin use declined rapidly . . . as did cocaine use . . . HAT is associated with improvements in mental and physical health in the long term.”).

from the illicit market has damaged the market's viability."<sup>83</sup> The authors further state that "by removing retail workers [who] no longer sold drugs to existing users, and . . . no longer recruited new users into the market . . . [t]he heroin prescription market may thus have had a significant impact on heroin markets in Switzerland."<sup>84</sup> An exploratory analysis of the benefits of implementing HAT in Baltimore, Maryland, concluded, "Enough evidence has emerged in the last 10 years to merit reconsideration of its potential for Baltimore, and the U.S. more generally."<sup>85</sup>

## 2. *Methamphetamine and Cocaine*

The United States and other consumer countries should also begin to treat people dependent on illegal stimulants like methamphetamine and cocaine with replacement therapies, at least on a pilot basis. Currently, there are no approved pharmacotherapies for cocaine and methamphetamine dependence that have demonstrated the same level of efficacy as treatments like methadone, buprenorphine, and HAT have for opioid dependence.<sup>86</sup> However, emerging research suggests that several medications already in use for the treatment of other conditions could serve as potential replacement therapies for illegal stimulant dependence, including dexamphetamine,<sup>87</sup> methylphenidate,<sup>88</sup> modafinil,<sup>89</sup> and other psychostimulants.<sup>90</sup> The

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<sup>83</sup> Martin Killias & Marcelo F. Aebi, *The Impact of Heroin Prescription on Heroin Markets in Switzerland*, 11 CRIME PREVENTION STUD. 83, 83 (2000).

<sup>84</sup> *Id.*

<sup>85</sup> REUTER, HELP BALTIMORE, *supra* note 81, at 32.

<sup>86</sup> See Kleiman, *supra* note 58, at 93 ("[T]reatment has little ability to reduce demand in the far larger markets for cocaine and methamphetamine.").

<sup>87</sup> See Marie Longo et al., *Randomized Controlled Trial of Dexamphetamine Maintenance for the Treatment of Methamphetamine Dependence*, 105 ADDICTION 146, 146 (2010) ("[D]aily sustained-release amphetamine dispensing under pharmacist supervision is both feasible and safe. The increased retention . . . together with general decreases in methamphetamine use, degree of dependence and withdrawal symptom severity, provide preliminary evidence that this may be an efficacious treatment option for methamphetamine dependence."); see also DAN HUNT ET AL., METHAMPHETAMINE USE: LESSONS LEARNED (2006) ("The replacement of . . . dextroamphetamine for methamphetamine would ideally reduce problems related to crime, injection practices, family and economic issues, and health problems related to escalating illegal use.").

<sup>88</sup> See John Grabowski et al., *Replacement Medication for Cocaine Dependence: Methylphenidate*, 17 J. CLINICAL PSYCHOPHARMACOLOGY (1997); Frances R. Levin et al., *Treatment of Cocaine Dependent Treatment Seekers with adult ADHD: Double-Blind Comparison of Methylphenidate and Placebo*, 87 DRUG AND ALCOHOL DEPENDENCE 20 (2007); Jari Tiihonen et al., *A Comparison of Aripiprazole, Methylphenidate, and Placebo for Amphetamine Dependence*, 164 AM. J. PSYCHIATRY 160, 160 (2007)

literature on these medications for treating dependence to both cocaine<sup>91</sup> and methamphetamine<sup>92</sup> is quite favorable and growing.<sup>93</sup>

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(“Methylphenidate is an effective treatment for reducing intravenous drug use in patients with severe amphetamine dependence.”).

<sup>89</sup> See Ann L. Anderson et al., *Modafinil for the Treatment of Cocaine Dependence*, 104 DRUG AND ALCOHOL DEPENDENCE 133 (2009) (“[M]odafinil, in combination with individual behavioral therapy, was effective for increasing cocaine non-use days in participants without co-morbid alcohol dependence, and in reducing cocaine craving.”); Charles A. Dackis et al., *A Double-Blind, Placebo-Controlled Trial of Modafinil for Cocaine Dependence*, 30 NEUROPSYCHOPHARMACOLOGY 205, 205, 209 (2009) (concluding that “modafinil improves clinical outcomes when combined with psychosocial treatment for cocaine dependence,” and showing one-third of modafinil group attained prolonged abstinence from cocaine versus thirteen percent in placebo); C.L. Hart, et al., *Smoked Cocaine Self-Administration is Decreased by Modafinil*, 33 NEUROPSYCHOPHARMACOLOGY 761 (2008); J. Martinez-Raga et al., *Modafinil: A Useful Medication for Cocaine Addiction? Review of the Evidence From Neuropharmacological, Experimental and Clinical Studies*, 1 CURRENT DRUG ABUSE REV. 213 (2008) (“[M]odafinil has been shown to decrease cocaine self-administration. In addition, modafinil treated patient are more likely to achieve protracted abstinence than placebo treated patients.”); James Shearer, *A Double-Blind, Placebo-Controlled Trial of Modafinil (200 mg/day) for Methamphetamine Dependence*, 104 ADDICTION 224, 224 (2009) (“Modafinil demonstrated promise in reducing methamphetamine use in selected methamphetamine-dependent patients.”).

<sup>90</sup> See Marc E. Mooney et al., *Effects of Oral Methamphetamine on Cocaine Use: A Randomized, Double-Blind, Placebo-Controlled Trial*, 101 DRUG AND ALCOHOL DEPENDENCE 31 (2009).

<sup>91</sup> See John Grabowski et al., *Dextroamphetamine for Cocaine-Dependence Treatment: A Double-Blind Randomized Clinical Trial*, 21 J. CLINICAL PSYCHOPHARMACOLOGY 522, 525 (2001) (“[T]he first randomly assigned, double blind study . . . results point to improved retention and reduction in illicit drug use.”); Andrea R. Vansickel et al., *Effects of Potential Agonist-Replacement Therapies for Stimulant Dependence on Inhibitory Control in Cocaine Abusers*, 34 AM. J. DRUG AND ALCOHOL ABUSE, 293, 303 (2008) (“[M]ethylphenidate and modafinil . . . appear to be safe and effective in reducing drug taking, they may attenuate some of the positive subjective effects of the drug of choice, and it appears that they do not impair inhibitory control.”).

<sup>92</sup> See Rupert White, *Dexamphetamine Substitution in the Treatment of Amphetamine Abuse: An Initial Investigation*, 95 ADDICTION 229, 229 (2000) (“Dexamphetamine prescribing appears to be reasonably safe, and is associated with improvements in drug-use.”); Ahmed Elkashef et al., *Pharmacotherapy of Methamphetamine Addiction: An Update*, 29 SUBSTANCE ABUSE 31, 31 (2008) (“Early pilot data are encouraging for administering D-amphetamine and methylphenidate as treatment for heavy amphetamine users.”).

<sup>93</sup> See, e.g., David V. Herin et al., *Agonist-like Pharmacotherapy for Stimulant Dependence: Preclinical, Human Laboratory, and Clinical Studies*, 1187 ANN N.Y. ACAD. SCI. 76 (2010); L. Karila et al., *Pharmacological Approaches to Methamphetamine Dependence: A Focused Review*, 69 BRIT. J. CLINICAL PHARMACOLOGY (2010). The literature to date is not uniformly positive, however; some studies have shown mixed results or no benefit of the three medicines. Yet even these studies suggest that the agents discussed above show the most promise of all candidates, that further research is warranted, and that higher dosages may be required for stimulant-tolerant subjects. See, e.g., X. Castells et al., *Efficacy of Central Nervous System Stimulant Treatment for*

Medical models like HAT and emerging stimulant maintenance treatments are but one possible (maximally restrictive)<sup>94</sup> approach to regulating illicit drugs other than marijuana—but they are by no means the only approach. Myriad options exist along a spectrum between total prohibition, on one pole, and an unregulated free market on the other.<sup>95</sup> Ultimately, the appropriate regulatory model for each substance should be based on the relative harms and benefits of each substance.<sup>96</sup>

### III

#### IMPLICATIONS OF REGULATION FOR RATES OF DRUG USE AND VIOLENCE

##### A. Drug Use

It is impossible to predict what effect various forms of drug regulation would have on levels of drug use. Empirical evidence from jurisdictions that have liberalized their drug laws demonstrates rather conclusively that policies which eliminate criminal penalties for drug possession or allow limited drug availability do not increase drug use to any appreciable degree.<sup>97</sup> Some analysts have predicted that

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*Cocaine Dependence: A Systematic Review and Meta-Analysis of Randomized Controlled Clinical Trials*, 102 ADDICTION 1871 (2007).

<sup>94</sup> Even then, these programs face legal and administrative—in addition to the obvious political—barriers to implementation. The importation and administration of a Schedule I substance, for example, would require approval of the federal government. See REUTER, HELP BALTIMORE, *supra* note 81, at 35.

<sup>95</sup> An emerging consensus is forming around several potential models for regulating drug production, distribution and consumption, including: (1) the medical prescription model, sketched out above; (2) supervised venues; (3) pharmacy sales; (4) licensed retailing; (5) licensed premises for sale and consumption; and (5) unlicensed sales. See Stephen Rolles, *An Alternative to the War on Drugs*, 341 BMJ 127 (2010).

<sup>96</sup> See, e.g., Jonathan P. Caulkins et al., *Basing Drug Scheduling Decisions on Scientific Ranking of Harmfulness: False Promise from False Premises*, 106 ADDICTION 1 (2011); David Nutt et al., *Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse*, 369 THE LANCET 1047 (2007).

<sup>97</sup> See Louisa Degenhardt et al., *Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings From the WHO World Mental Health Surveys*, 5 PLOS MED. 1053 (2008); Harper et al., *supra* note 47; Caitlin Elizabeth Hughes & Alex Stevens, *What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?*, 50 BRIT. J. CRIMINOLOGY 999 (2010); Robert J. MacCoun, *What Can We Learn from the Dutch Cannabis Coffeeshop System?*, 106 ADDICTION 1 (2011); MACCOUN & REUTER, *supra* note 27; Craig Reinerman et al., *The Limited Relevance of Drug Policy: Cannabis in Amsterdam and in San Francisco*, 94 AM. J. PUB. HEALTH 836 (2004); ROOM, *supra* note 38; Mike Vuolo, *National-Level Drug Policy and Young People's Illicit Drug Use: A Multilevel Analysis of the European Union*, DRUG & ALCOHOL DEPENDENCE

increased legal availability will not have a significant impact on use—at least not for marijuana, which seems less responsive to changes in price than other drugs.<sup>98</sup> Other studies have suggested that even legalizing a drug like cocaine would not lead to an “epidemic” of use.<sup>99</sup> RAND’s study of possible marijuana legalization predicted that use would increase if marijuana were legalized, perhaps even significantly,<sup>100</sup> but by how much is wildly uncertain and will depend on the regulations adopted and taxes imposed<sup>101</sup>—which should be high enough to disincentivize consumption but low enough to prevent a return to the black market.<sup>102</sup> If utilized appropriately, such regulatory tools could keep potential increases in consumption at bay.

In other words, an increase in use is possible but by no means inevitable. Given marijuana’s safety profile and relatively low abuse potential, the risks associated with an increase in consumption would be modest, but the benefits—at home and abroad—could be massive. The examples of alcohol and tobacco, despite their abundant harms and powerful lobbies, should provide some comfort to those who are apprehensive about regulation: adolescent use of alcohol—including current use, heavy drinking, and binge drinking—has decreased over the past decade, while tobacco use among youth as well as adults has been on a long-term decline.<sup>103</sup> These public health gains owe to a

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(forthcoming 2013), available at [http://ac.els-cdn.com/S0376871612004887/1-s2.0-S0376871612004887-main.pdf?\\_tid=11fccd32-a2d9-11e2-b265-00000aab0f01&acdnat=1365706576\\_d7d89d5253ae450a0f4d0e941554819e](http://ac.els-cdn.com/S0376871612004887/1-s2.0-S0376871612004887-main.pdf?_tid=11fccd32-a2d9-11e2-b265-00000aab0f01&acdnat=1365706576_d7d89d5253ae450a0f4d0e941554819e).

<sup>98</sup> See Craig A. Gallet, *Can Price Get the Monkey Off Our Back? A Meta-analysis of Illicit Drug Demand*, HEALTH ECON., Jan. 10, 2013 (“[B]ecause the price elasticity is smallest in absolute value for marijuana, advocates of legalizing marijuana could argue that the increase in supply resulting from decriminalizing the sale of marijuana would lead to a modest increase in consumption (absent demand shifts), compared with cocaine and heroin. Thus, the benefits of legalizing marijuana might outweigh the costs.”).

<sup>99</sup> See Norman V. Loayza & Naotaka Sugawara, *Would Liberalization Lead to Epidemic Cocaine Consumption?*, 19 APPLIED ECON. LETTERS 1405 (2012).

<sup>100</sup> See BEAU KILMER ET AL., ALTERED STATE? ASSESSING HOW MARIJUANA LEGALIZATION IN CALIFORNIA COULD INFLUENCE MARIJUANA CONSUMPTION AND PUBLIC MARKETS (2010).

<sup>101</sup> See, e.g., Jonathan P. Caulkins et al., *Design considerations for legalizing cannabis: lessons inspired by analysis of California’s Proposition 19*, 107 ADDICTION 865, 865 (2012).

<sup>102</sup> See Anne Line Bretteville-Jensen, *To legalize or Not to legalize? Economic Approaches to the Decriminalization of drugs*, 41 SUBSTANCE USE & MISUSE 555, 558 (2006).

<sup>103</sup> See SAMSHA CENTER FOR BEHAVIORAL HEALTH STATISTICS AND QUALITY, U.S. DEP’T HEALTH AND HUMAN SERVS., RESULTS FROM THE 2011 NATIONAL SURVEY ON DRUG USE AND HEALTH, at Tables 7.29B, 7.30A (2012); LLOYD D. JOHNSTON ET AL., MONITORING THE FUTURE: NATIONAL RESULTS ON DRUG USE 7–8 (2013).

combination of prevention, education, treatment, harm reduction, and (perhaps imperfect) regulation—not prohibition. Furthermore, even if marijuana use were to increase—which is, again, by no means a certainty—overall harm would not necessarily increase. Emerging research suggests that many marijuana consumers substitute marijuana for more dangerous drugs, including alcohol, other illicit drugs, and prescription medications.<sup>104</sup> If the increase in marijuana use was accompanied by a decrease in use of other, more harmful substances, it could actually result in net benefits—in addition to numerous other likely benefits of regulation.<sup>105</sup>

### B. Levels of Violence

It is also impossible to foresee how regulation would affect levels of violence. Some analysts believe a short-term increase in violence is possible (as competition over a smaller market could intensify), but that violence in the longer term will decline.<sup>106</sup> Some analysts point out that organized crime may further diversify into other activities, such as extortion and kidnapping, though these have been shown to be considerably less profitable than drug trafficking. As one scholar

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<sup>104</sup> See Philippe Lucas et al., *Cannabis as a Substitute for Alcohol and Other Drugs: A Dispensary-based Survey of Substitution Effect in Canadian Medical Cannabis Patients*, (Nov. 12, 2012) (early online) ADDICTION RESEARCH & THEORY 1–8; Amanda Reiman, *Cannabis as a Substitute for Alcohol and Other Drugs*, 6 HARM REDUCTION J. 35 (2009); Helen Nunberg et al., *An Analysis of Applicants Presenting to a Medical Marijuana Specialty Practice in California*, 4 J. DRUG POL'Y ANALYSIS 1 (2011); Craig Reinerman et al., *Who Are Medical Marijuana Patients? Population Characteristics from Nine California Assessment Clinics*, 43 J. PSYCHOACTIVE DRUGS 128 (2011).

<sup>105</sup> Not only is marijuana physically less harmful than alcohol, but it is socially less harmful as well. Marijuana shares none of alcohol's association with violence, and while acute marijuana intoxication clearly impairs one's ability to drive, evidence shows that marijuana-impaired drivers are much less of a threat to road safety than drunk drivers. CAULKINS ET AL., *supra* note 48, at 74–79, 133–37; Paul Armentano, *Cannabis and Psychomotor Performance: A Rational Review of the Evidence and Implications for Public Policy*, 5 DRUG TESTING & ANALYSIS 52, 53–56 (2013). In fact, a recent discussion paper found that traffic fatalities appear to have decreased in states with medical marijuana laws. D. Mark Anderson & Daniel I. Rees, *Medical Marijuana Laws, Traffic Fatalities, and Alcohol Consumption* 9–16 (IZA, Discussion Paper No. 6112, 2011).

<sup>106</sup> See CAULKINS ET AL., *supra* note 48, at 177 (“[T]here are many caveats about the effect of marijuana legalization in the United States on violence in Mexico. However, the basic point presumably holds that, at least in the long run, marijuana legalization would make a meaningful, but not decisive, contribution to reducing the flow of funds to violent Mexican DTOs.”); KILMER ET AL., *supra* note 17, at 39–41; REUTER, HELP MEXICO, *supra* note 30, at 123 (“[I]n the long run, smaller consumption in the United States is surely going to lower the corruption and violence associated with drug trafficking in Mexico.”).

notes, given the profitability of the drug trade, “it would take roughly 50,000 kidnappings to equal 10% of cocaine revenues from the U.S.”<sup>107</sup> While the American mafia certainly diversified into other criminal endeavors after the Repeal of alcohol Prohibition, homicide rates nevertheless declined dramatically.<sup>108</sup> Combining marijuana regulation with medical regulatory models for heroin, cocaine and methamphetamine could strike a major blow to the corrosive economic power of violent trafficking organizations, diminishing their ability to perpetrate murder, hire recruits, purchase weapons, corrupt officials, operate with impunity, and terrorize societies. Moreover, these approaches promise concrete results—potentially significant reductions in DTO revenues—unlike all other strategies that Mexico or the United States have tried to date.<sup>109</sup> Criminal organizations would still rely on other activities for their income, but they would be left weaker and less of a threat to security. Furthermore, the United States and Latin American governments would save resources currently wasted on prohibition enforcement and generate new revenues in taxes—resources which could be applied more effectively towards confronting violence and other crimes that directly threaten public safety.<sup>110</sup>

Some have suggested that Latin American countries should abandon efforts to stop the flow of drugs or apprehend cartel bosses

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<sup>107</sup> See, e.g., ERIC L. OLSON, CONSIDERING NEW STRATEGIES FOR CONFRONTING ORGANIZED CRIME IN MEXICO 5 (2012); see also JEREMY HAKEN, TRANSNATIONAL CRIME IN THE DEVELOPING WORLD v, 8 (2011) (comparing the international drug trade worth \$320 billion and counterfeiting worth \$250 billion, with the human trafficking trade worth \$31.6 billion—roughly one-tenth the value of the global drug trade); STEVEN DUDLEY, TRANSNATIONAL CRIME IN MEXICO AND CENTRAL AMERICA: ITS EVOLUTION AND ROLE IN INTERNATIONAL MIGRATION (2012) (“[F]or Mexican cartels total revenue from human smuggling is relatively small compared to the revenues from the international drug trade, which are probably in the range of \$15 billion-\$25 billion. The profit margins of the drug trade—estimated at 80 percent of the revenues—are also likely higher than for human smuggling.”).

<sup>108</sup> See KILMER ET AL., *supra* note 17, at 39–40.

<sup>109</sup> See SHIRK, *supra* note 18, at 18, 33–34 n.43 (reporting that a massive security buildup at the US-Mexico border, increased border interdiction and record levels of drug seizures likely reduced DTO revenues by only “a small fraction”).

<sup>110</sup> See MIRON & WALDOCK, *supra* note 7, at 1, 5, 6 (estimating that annual tax revenues from legalizing and taxing currently-prohibited drugs like alcohol and tobacco could total approximately \$46.7 billion in the United States alone (of which marijuana by itself would likely account for \$8.7 billion), while savings from expenditures on prohibition enforcement—in terms of police, courts and corrections—could total roughly \$41.3 billion annually). That estimate is likely on the conservative side, as it does not include savings that would accrue to the treatment system or result from technical violations of probation and parole.

and should rather focus on confronting those traffickers who most frequently or visibly engage in violence. Known as “focused deterrence,” this alternative calls for a more strategic deployment of law enforcement resources to credibly target those traffickers that are most violent or dangerous—rather than focusing on drug trafficking, per se—in the hope of shifting participation of market actors towards less violent behavior.<sup>111</sup> It would be reasonable and understandable if Mexico and other countries decided to change course and pursue their own security interests—which have little to do with drugs, and everything to do with violence—instead of subordinating their interests to those of the United States.<sup>112</sup> But focused deterrence strategies and the more fundamental reorienting of drug policy described above are not mutually exclusive. These strategies should be pursued simultaneously.

Regulating marijuana and other drugs will by no means be a panacea for the security crisis facing many Latin American countries today. Of course, there are a host of critical issues outside the scope of this Article that must be addressed, including vital institutional reforms (particularly of judicial and law enforcement institutions), as well as the consideration of new policies regarding firearms, migration, money laundering, and militarization.<sup>113</sup> But drug prohibition remains a central cause of organized crime and violence in the Americas, and prohibition-related violence and corruption continue to confound efforts at institutional reform in many countries.<sup>114</sup> Exploring regulatory alternatives to prohibition is thus essential to finding durable solutions.

## CONCLUSION

As the drug war continues destroying families and communities throughout the Americas, governments and regional and international bodies must urgently devise a new drug control strategy to replace

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<sup>111</sup> See, e.g., Jonathan P. Caulkins & Peter Reuter, *Towards a Harm-Reduction Approach to Enforcement*, 8 SAFER COMMUNITIES 9 (2009); VANDA FELBAB-BROWN, FOCUSED DETERRENCE, SELECTIVE TARGETING, DRUG TRAFFICKING AND ORGANIZED CRIME: CONCEPTS AND PRACTICALITIES (2013).

<sup>112</sup> Franklin E. Zimring, *Violence and Drugs: Divide, Then Conquer?*, BERKELEY REV. LATIN AM. STUD., Spring 2008, at 40–41.

<sup>113</sup> See generally INT’L CRISIS GRP., *supra* note 22.

<sup>114</sup> BAGLEY, *supra* note 14, at 12 (arguing that “reform efforts can be, and often have been, stymied or derailed entirely by institutional corruption and criminal violence . . . the consequence of ignoring organized crime and its corrosive effects may well be institutional decay or democratic de-institutionalization”).



nearly a century of failed prohibitions. A new paradigm of harm reduction, demand redirection, and supply regulation merits immediate exploration. Such a paradigm, involving the policy options mentioned above, will likely mitigate the individual and social harms of drug misuse—and minimize the harmful consequences of drug policies—far more effectively than the current prohibitionist regime. Given the scope and intensity of violence in the region, and the incalculable human costs for those affected, all options must be on the table to bring an end to the disastrous War on Drugs.

