



***ADVANCE SHEET– NOVEMBER 13, 2020***

## **President's Letter**

In this issue, we present two overlooked commission reports, both of great current pertinence.

The first is the Executive Summary and Legislative Annex of a Commission on Military, National and Public Service, which reported earlier this year. This is in some respects a disappointing document. The Commission was composed of both Presidential and Congressional appointees, most of them chosen for bureaucratic expertise not potential political leadership. The Report, particularly as it relates to youth employment programs is thus timid and incremental and has failed to capture the public's imagination.

The second is a 'man-bites-dog' report, that of the Latin American Commission on Drugs and Democracy of 2009, in which eminent Latin American figures, including three former conservative Presidents, Cardoso of Brazil, Zedillo of Mexico, and Gavrilairia of Colombia, tired of being lectured to by the United States, give voice to their views about American drug policy.

Our opinion for this issue is the most famous of Holmes opinions, his dissenting opinion in *Lochner v. New York*, 198 U.S. 45 (1905). The declaration that the Constitution "was made for people of fundamentally differing views" was said by Judge Richard Posner to be the most important sentence in American constitutional law.

George W. Liebmann



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## **TO OUR VETERANS: THANK YOU**

Did you know that the President of the Bar Library Board, Mr. George W. Liebmann is a veteran? You know that Library Board of Director, the Honorable Charles E. Moylan, Jr. is intelligent, but did you know that he was once in military intelligence?

As we celebrate Veterans' Day this week, the Bar Library would like to recognize the men and women who have served our country. Although there are many things in this life that I cannot fathom, one of the most elusive for me to comprehend is how so many are so willing to give so much.

My father spent three years in the Pacific during World War II. My grandfather, an immigrant from Germany, was in combat against Germany, in World War I. I could always appreciate what they did on an intellectual level, at least up to a point, but I don't think I could ever understand/feel the full scope of it until my daughter enlisted in the Army. She is presently a member of Judge Moylan's old outfit and proof that the apple can indeed fall fairly far from the tree.

Abraham Lincoln realized that words cannot do adequacy to what these men and women did, and continue to do, so, personally, and on behalf of the Library, to all our veterans and active duty military personnel, I say thank you.

Joe Bennett



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# INSPIRED

*to*

# SERVE

*Executive Summary*

## **The Final Report of the National Commission on Military, National, and Public Service**

**March 2020**

### LETTER FROM THE COMMISSIONERS

**A**s Commissioners of the National Commission on Military, National, and Public Service, we are pleased to present our recommendations to the Congress, the President, and the American people in this Final Report. In the National Defense Authorization Act for Fiscal Year 2017, the Congress charged this Commission with two primary tasks: (1) to “conduct a review of the military selective service process” and (2) to “consider methods to increase participation in military, national, and public service to address national security and other public service needs of the Nation.”

Because our broad mandate touches upon the life of every American, we traveled across the country, visiting urban centers, small towns, military bases, government facilities, schools, universities, community centers, faith-based congregations, and many more places across all nine census regions. We sought out views from experts, practitioners, Americans who serve as well as those who do not, and individuals with a diverse range of perspectives and experiences. We heard from passionate advocates on both sides of complex and controversial topics, such as expanding registration for the Selective Service System to all Americans, and deliberated those matters with civility and respect. Although the 11 of us come from varied backgrounds, experiences, and perspectives, we stand united behind this report as a consensus product of this Commission and an expression of our desire to serve our Nation and empower our fellow Americans to do the same.

Throughout the Commission's work, we saw firsthand how America's extraordinary and longstanding spirit of service continues to shape the life of our Nation. Americans repeatedly step up in support of each other, offering their sweat and ingenuity when needed—without being asked and without expectation of anything in return. We commend these selfless actions, as well as past and ongoing efforts by government at all levels and by the nonprofit, faith-based, philanthropic, academic, and private sectors to promote service and volunteerism. So much has been accomplished thanks to this spirit of service; yet as a Nation, the United States has not unlocked the full, transformational potential of service in all its forms. We believe that the current moment requires a collective effort to build upon America's spirit of service to cultivate a widespread *culture* of service—a culture in which individuals of all backgrounds both expect and aspire to serve their Nation or community and have meaningful opportunities to serve throughout their lifetime.

Taken together, our recommendations offer a revolutionary and inclusive approach to service for Americans, beginning with comprehensive civic education and service learning starting in kindergarten, service-year opportunities so ubiquitous that service becomes a rite of passage for millions of young adults, and new and revitalized service options for adults of any age, background, or experience. We envision a common expectation of service among the American people, so that no one is surprised by the questions “How have you served?” or “How will you serve?”

Many of our recommendations focus on efforts that the Federal Government can undertake. This is consistent with our congressional mandate and President Trump's guiding principles and reflects the Government's responsibility to provide for our common defense, ensure our national security, and maintain the general welfare of the United States. In partnership with State, local, and Tribal governments, the Federal Government has the ability to catalyze and empower the American people to address the needs of this Nation. These recommendations will, if acted upon, enhance the security of our Nation, elevate all forms of service, and strengthen American democracy.

We appreciate all those whose commitment to service has made this effort possible. We recognize and thank the many individuals and organizations that have contributed their time, energy, and talent to our work. Chairman Adam Smith and Ranking Member Mac Thornberry of the House Armed Services Committee along with the late Senator John McCain, Chairman Jim Inhofe, and Ranking Member Jack Reed of the Senate Armed Services Committee were instrumental in bringing service to the forefront of public debate. We believe that our findings and recommendations will provide key congressional committees and the President with the information and impetus necessary to strengthen America's military, national, and public service infrastructure and expand opportunities to serve.

We also believe the actions recommended in this report will empower Americans with broader knowledge of the fundamental principles of our Republic, increased awareness of service options, a greater number of service opportunities, and clear and supported pathways to military, national, and public service.

Incremental changes and small improvements are not sufficient to cultivate a culture of service. Bold action is required, and we call on the Congress and the President to invest in the

American people and place the Nation on a trajectory to achieve the vision: every American, inspired and eager to serve.

## EXECUTIVE SUMMARY

Congress and the President established the National Commission on Military, National, and Public Service as part of the National Defense Authorization Act for Fiscal Year 2017.<sup>1</sup> The Commission has two primary statutory charges: (1) to “conduct a review of the military selective service process” and (2) to “consider methods to increase participation in military, national, and public service in order to address national security and other public service needs of the Nation.”<sup>2</sup> With 11 Commissioners appointed by the President and bipartisan congressional leadership, this Commission represents the first time in history that the U.S. Government has sought a comprehensive and holistic review of all forms of service to the Nation.

The culmination of two and a half years of extensive research, *Inspired to Serve* presents the Commission’s conclusions, including findings and recommendations for legislative and administrative action. To identify and develop possible policy options, Commissioners traveled throughout the United States, visiting 22 States in all nine census regions, plus the District of Columbia; consulted hundreds of experts and stakeholders; spoke with Americans who have participated in military, national, and public service—as well as those who have not; and reviewed thousands of public comments from individuals and organizations on the topics before the Commission. After publishing an Interim Report in January 2019, the Commission held 14 public hearings to vet a range of specific policy options before deliberating and deciding upon the final recommendations presented here.<sup>3</sup> This executive summary highlights the major themes and desired policy goals across the Commission’s broad mandate.

### **Vision 2031: An Expectation of Service**

The United States has a strong spirit of service dating back more than 200 years. From the earliest days of the Republic, service has been a central part of what it means to be an American—and it remains so today. Civic engagement and service are critical to the health and well-being of the Nation; by bringing people together to tackle common problems, service makes communities stronger and strengthens American democracy. Today, nearly 24 million individuals participate in some form of military, national, or public service to meet critical national needs—security, disaster response, education, conservation, health care, housing, and more.<sup>4</sup> These efforts are formidable and have transformed lives, communities, and the Nation; but in a country of 329 million, imagine what more could be done if significantly more people were inspired and able to answer the call to serve.

The Commission envisions a bold and integrated new approach to service that builds on the strong tradition and unique spirit of service that is already alive in big cities and small towns, military bases and government offices, and schools and community organizations across America. In the Commission’s vision, every individual will be exposed to service opportunities throughout their lifetime, beginning with young people experiencing robust civic education and service learning during elementary, middle, and high school. With significant growth in the

number and kinds of service opportunities, a service year will become a new rite of passage to adulthood, intensive service opportunities for young adults and mid-career professionals will abound, and new and innovative ways to engage older Americans in service to their communities and Nation will be available for all those who want to serve. By igniting the extraordinary potential for service, this new approach will address critical national security and domestic needs of the Nation, expand economic and educational opportunities, strengthen the civic fabric of the Nation, and establish a robust culture of service characterized by an expectation that all Americans participate in service of some kind, at some point in their lifetime.

Achieving this vision is not as daunting as it might first seem—the Commission engaged firsthand with myriad Americans who serve their Nation and their communities each day without expectation of personal glory or fortune. In its travels, the Commission also observed that the desire of Americans to serve far exceeds their opportunity to do so. Among Americans there is a great demand for more opportunities to serve, more knowledge about existing opportunities, and fewer barriers to service. Meeting that demand will require bold action to ensure that every American can learn about and explore potential service opportunities and choose an informed path of service. All levels of government, along with nongovernmental organizations and the American people, must break down the many barriers that prevent many individuals from serving. In this way, the United States will commit to making service possible for every American who wants to respond to President John F. Kennedy’s call to the American people: “Ask not what your country can do for you—ask what you can do for your country.”<sup>5</sup>

As its work comes to an end, it is the sincere hope of this Commission that the Nation embrace the new and integrated approach to service set out in this report. Service—beginning at an early stage and continuing throughout one’s lifetime—develops skills and leadership among those who participate; maximizes Federal investments in pursuit of local, State, and national solutions; helps develop the Nation’s workforce; and brings people together to meet the critical needs of the Nation. Perhaps most importantly, enhancing the country’s culture of service holds the promise of invigorating civic life in America and strengthening the foundations of the Republic.

The Commission challenges the Nation to cultivate this culture of service. By 2031—the 70th anniversary of President Kennedy’s call for Americans to serve their Nation—the Commission envisions that 5 million Americans will begin participating in military, national, or public service each year. In addition, by 2031 more than enough qualified individuals will seek to serve in the Armed Forces, minimizing the need for traditional military recruiting; 1 million individuals will annually take up federally supported national service-year opportunities, a more than tenfold increase from today’s numbers; and modernized Government personnel systems will attract and enable Americans with critical skills and new generations to enter public service.

The actions recommended in this report are designed to place America on a path to realize this goal, which if achieved would be as transformative as the Nation’s efforts to put a man on the moon, establish a universal public education system, and create a network of national parks across the country. These recommendations will empower Americans with broader knowledge of service options, create a greater number of service opportunities, and improve pathways to connect Americans with military, national, and public service. In presenting these

recommendations, the Commission hopes to achieve its vision: every American inspired and eager to serve.

## **Elevate All Forms of Service**

The Commission believes that cultivating America's culture of service is a task that calls for action by all parts of American society—Congress and the President, State, local, and Tribal governments, nongovernmental organizations, and the American people. Below are detailed proposals that recognize and elevate the concept of service to a national imperative.

**Revitalize civic education and expand service learning.** In the course of its work, the Commission identified a major flaw in the American educational system: the lack of exposure to high-quality civic education for students throughout much of the Nation. Widespread and effective civic education is an essential requirement for fostering a culture of service in which Americans can identify how their own strengths, skills, and interests could contribute to the public good by addressing needs in their communities and Nation. When 22 percent of American adults cannot name any of the three branches of government, it is well past time for the country to take action.<sup>6</sup> Significantly greater Federal investment in civic education, widespread adoption of proven, State-based best practices, and incorporation of service learning within school curricula are critical to preparing young Americans to realize their obligations as citizens and expose them to opportunities to engage in military, national, and public service.

**Coordinate governmentwide service efforts through a dedicated service council in the White House.** While the Federal Government has effective systems of military, national, and public service—which are essential for implementing key public programs and missions—prior efforts to coordinate service initiatives across the Government and to promote all streams of service have fallen short. One reason is that there is no single entity within the U.S. Government responsible for advancing whole-of-government support for service. The establishment of a Council on Military, National, and Public Service within the Executive Office of the President—with a Senate-confirmed leader and representation from relevant agencies—will facilitate inter-agency coordination and provide the policy leadership necessary to cultivate a culture of service. It will also ensure that the U.S. Government maintains a framework for prioritizing and coordinating service across Presidential administrations.

**Promote cross-service marketing, recruitment, and retention.** The three streams of service—military, national, and public—share fundamental characteristics, yet the agencies responsible for them do not collaborate. Because current efforts to advertise service opportunities and encourage participation are siloed by service agency, their impact is weakened. Joint advertising campaigns, shared market research, and cross-service incentives—either initiated or facilitated by the governmentwide service lead—will promote awareness of opportunities, encourage participation, and unite these distinct streams of service under the common goal of enhancing the lives of all Americans.

**Create a platform to help Americans discover service opportunities.** Unless a family member or close friend has served, most Americans lack knowledge and awareness of military,

national, and public service opportunities. A new service platform will offer Americans a one-stop shop for exploring the wide range of opportunities in military, national, and public service. It will also help service organizations of all kinds find those Americans with the interests or skills they need to achieve their missions across the country and the world. The platform will provide young adults with the option to seamlessly transfer their information when they register with the Selective Service System, enabling them to immediately learn about ways to serve their communities and the Nation.

### **Advance Military, National, and Public Service**

Charged with considering methods to increase participation in military, national, and public service to address the needs of the Nation, the Commission identified three primary barriers that persist across all forms of service: awareness, aspiration, and access. Each of the following recommendations addresses one or more of these barriers.

#### ***Military Service***

Cultivating a culture of service is critical to ensuring the long-term sustainability of the All-Volunteer Force and to strengthening engagement between service members and Americans who are unfamiliar with military life. The following recommendations were crafted to increase participation in and engagement with the military by addressing identified barriers to uniformed service. By gaining greater awareness of the opportunities to serve in the military and uniformed services—in addition to accurate information about the realities of life as a service member—the American public can more effectively understand the duties and responsibilities of being an American as well as the many benefits of service.

**Improve military outreach around the country.** Expanded community-building efforts, including greater access to military bases and facilities via public tours, partnerships between National Guard and Reserve units and local schools, and enhanced promotion of military service by Members of Congress, will significantly increase engagement between the military and the broader American public, shatter myths, and provide a new generation of Americans with firsthand information about military life.

**Increase opportunities for youth to explore service.** Expanding Junior Reserve Officers' Training Corps (JROTC) and other youth programs, along with promoting administration of the Armed Services Vocational Aptitude Battery (ASVAB) Career Exploration Program—currently taken by less than 5 percent of U.S. secondary students—will enable more students to learn about citizenship and service, gain familiarity with the military, and understand how their own strengths could translate into military careers and other service options.<sup>7</sup>

**Strengthen military recruiting and marketing.** Greater investment of recruiting resources in underrepresented markets and hometown-recruiting programs, in combination with new funding mechanisms for marketing, will help the military in meeting its recruiting goals while improving the geographic and demographic balance of the Armed Forces to better reflect the diversity of the Nation.<sup>8</sup>



**Strengthen and expand educational pathways for military service.** Additional support for students pursuing certain degrees, certificates, and certifications through technical or vocational programs—such as those offered by two-year colleges and trade schools—in return for an enlisted service commitment will help the military services attract individuals with much-needed skillsets and enhance recruiting of Americans who seek to develop specific capabilities.

**Effectively manage military personnel.** Enabling greater movement between all components of military service and between military service and the private sector—facilitated by recently enacted personnel-management authorities and expanded use of warrant officers—will offer the services a more effective approach to continual access to individuals with key skills, such as digital talent or engineering.

### *National Service*

National service programs such as AmeriCorps, YouthBuild, Senior Corps, and the Peace Corps offer many benefits to the country and local communities, including disaster relief, conservation of natural resources, housing expansion for lower-income Americans, economic development, and educational opportunities for children. Participants also benefit by learning leadership, teamwork, and technical skills; gaining exposure to people of different backgrounds and cultures; and experiencing the personal fulfillment that accompanies contributing to a cause greater than themselves.

Yet despite these benefits, most Americans are unaware of national service and the opportunities to serve and unable to foresee how a term of service could support their future plans. The Edward M. Kennedy Serve America Act authorized expanding AmeriCorps to 250,000 annual participants; however, Congress did not appropriate funds to meet that goal, and AmeriCorps slots remain at 75,000 per year.<sup>9</sup> The following recommendations will increase awareness of national service, promote greater access to service opportunities, and create a service infrastructure that would facilitate 1 million federally supported national service-year opportunities by 2031.

**Improve awareness and recruitment.** Funding an awareness campaign and referring those who are interested in but ineligible for military service, as well as veterans, to national service programs will help more Americans learn about and explore national service opportunities and make fully informed decisions to serve.

**Monitor the accessibility and results of AmeriCorps programs.** Collecting more complete applicant and participant data will help policymakers better understand the demand for AmeriCorps programs and their accessibility to individuals across the socioeconomic spectrum, while enabling the Corporation for National and Community Service (CNCS) to send AmeriCorps alumni a record of completion of national service that includes information on training received and certifications or licenses earned.

**Increase the value, flexibility, and use of service incentives.** Increasing the AmeriCorps and Senior Corps living allowances and the Segal AmeriCorps Education Award, exempting the Segal Award from income taxes and allowing a cash-out option, and promoting in-state tuition

for national service alumni will help make a service year a viable option for those who do not have other means of financial support and will increase the value and usability of the benefits associated with AmeriCorps.

**Expand opportunities through national service.** Doubling the participation of opportunity youth—the 4.5 million Americans ages 16–24 who are neither working nor in school—and Tribal members in national service programs; expanding service opportunities that welcome diverse abilities, including individuals with intellectual and developmental disabilities; and leveraging national service to reintegrate ex-offenders will help share the benefits of national service more broadly.<sup>10</sup>

**Establish new models for national service.** Awarding national service fellowships to support individuals participating in a service year at any certified nonprofit organization will significantly expand the universe of opportunities for national service, especially in rural and underserved areas. Also, providing dedicated funding for demonstration projects will enable CNCS to test and expand other innovative approaches for national service.

### ***Public Service***

The Federal civil service personnel systems require urgent attention. The difficulties facing Government hiring are so severe that the Government Accountability Office identifies strategic human capital management as a “high risk” area in need of transformation if the Government is to work effectively and efficiently.<sup>11</sup> Existing practices block younger Americans and workers with critical skills from entering public service and jeopardize the ability of Federal agencies to replenish their workforce in the face of a looming wave of retirements.

Modernizing the civil service is politically and technically difficult. The public service recommendations below attempt to address near-term, urgent problems and long-term, structural issues: existing personnel processes should work better, so that agencies can function today, and the Federal personnel system should be replaced with a modern, talent-management approach to enable the Federal Government to be competitive with other employers in the future. With roughly one-third of Federal employees eligible to retire in the next five years, such changes are critical to ensure that the Federal workforce is stable, the United States retains its competitive edge, and governmental missions to serve the American public are not endangered.<sup>12</sup> Public officials and civic leaders should also recognize the work of public servants as vital to the security and well-being of the Nation and avoid negative and disparaging comments that undermine morale among the current public-sector workforce and discourage Americans from pursuing public service careers.

**Reform Federal hiring.** Updating application and hiring processes with accessible job descriptions, proactive recruiting, valid assessment methods, and greater flexibility for agencies to select candidates—including improved systems to connect hiring managers and applicants eligible to bypass the competitive hiring process—will improve the ability of agencies to hire much-needed, highly qualified candidates.

**Modernize veterans' preference.** Applying preference as a tiebreaker between equally qualified candidates, and focusing its use for veterans transitioning as new entrants to Federal civilian service, will be more effective in attracting highly qualified veterans to Federal jobs in which they will likely excel.

**Expand noncompetitive eligibility.** Extending noncompetitive eligibility to all national service alumni and Federal fellowship and scholarship participants— and expanding eligibility for the Veterans Recruitment Appointment to 10 years after separation from the military—will further enable Federal agencies to take advantage of the talent, skills, and taxpayer investments in national service alumni, Federal fellows and scholars, and military veterans.

**Revamp hiring systems for students and recent graduates.** Establishing a Public Service Corps, similar to the Reserve Officers' Training Corps (ROTC), in partnership with institutions of higher education; creating a new center to streamline and expand fellowship and scholarship programs across the Federal Government; and overhauling the Pathways Programs for student interns and recent graduates will help bring a new generation into public service and foster a pipeline of sustainable talent for Federal agencies.

**Promote a high-performing personnel culture.** Elevating and investing in the human resources function; developing agency workforce plans to hire, retain, and reskill qualified individuals; and empowering agencies to communicate with the public about their mission and to promote service will foster a culture in which agencies make full use of available personnel authorities to meet agency workforce needs.

**Address critical-skills challenges.** Streamlining and extending special personnel systems for Federal agency health care and cybersecurity professionals, establishing a civilian cybersecurity reserve corps, and investing in the technical skills of current employees will enable agencies to meet workforce needs amid stiff competition from private-sector employers.

**Increase the competitiveness of benefits.** Offering an option with fully portable retirement benefits, establishing a cafeteria plan for certain benefits, and improving communication about benefits will enhance Federal agencies' ability to compete for talented workers who do not seek career-long Government employment.

**Develop and implement a new personnel system.** Expanding demonstration-project authority for the Office of Personnel Management, launching a pilot project to test a new personnel system, and rigorously evaluating these projects will establish an evidence base to inform the development of a new, governmentwide personnel system that will be competitive for current and future workforce needs.

## **Strengthen Emergency National Mobilization**

Though the Commission aims primarily to cultivate a culture of voluntary service across the country, it also recognizes the Federal Government's vital need to organize the American people to provide for the common defense through mandatory military service in the case of a national emergency. The recommendations below offer steps to modernize, enhance, and

improve America's system to draw on the talents, skills, and abilities of all Americans if a national emergency requires lawmakers to do so.

**Maintain a military draft mechanism in the event of national emergencies.** To meet military personnel needs in the face of future threats and to demonstrate America's resolve to international allies and adversaries, the Nation needs the Selective Service System to remain a viable U.S. national security institution.

**Formalize a national call for volunteers prior to activating the draft.** While the United States should maintain the ability to conscript individuals into military service in response to a national emergency, the President and Congress should encourage Americans to voluntarily join the military through an official call for volunteers before resorting to the draft.

**Retain the Selective Service System's current registration posture.** Should the Nation be faced with a crisis so significant that it must activate conscription, the Government will benefit from an active system ready to induct personnel. After considering voluntary and mandatory registration systems, the Commission concluded that maintaining an active, mandatory registration system mitigates the level of potential risk to the Nation and protects the critical functions and procedures that safeguard a fair, equitable, and transparent draft process.

**Convey to registrants their potential obligation for military service.** The rise in prevalence of secondary registration methods—such as enabling applicants for driver's licenses or Federal student aid to simultaneously register with the Selective Service System—has generated high compliance rates; however, these systems have made the selective service process markedly less transparent to those registering. It is critical to ensure that registrants have a complete understanding of the potential obligations associated with draft registration.

**Ensure a fair, equitable, and transparent draft.** Common obligation shared generally through a lottery system is the foundation of a fair, equitable, and transparent draft. However, should an individual unknowingly or mistakenly fail to register, a mechanism to allow corrective registration is necessary to mitigate unduly harsh lifelong penalties to which they would otherwise be subject.

**Develop new voluntary models for accessing personnel with critical skills.** After exploring a range of options for identifying personnel with critical skills, the Commission concluded that only in the direst of circumstances should individuals be singled out for compulsory service because of their specific abilities. However, sustaining the most lethal and capable military in times of conflict requires the enhancement of voluntary mechanisms to engage such men and women, including the creation of a critical skills Individual Ready Reserve and a national roster of volunteers.

**Improve the readiness of the National Mobilization System.** The lack of institutionalized exercises of national mobilization processes, coupled with the low degree of public engagement with and awareness of the system, undercuts the effectiveness of the Nation's draft contingency. To hold appropriate government entities responsible for maintaining national mobilization requirements and exercising the national mobilization process, the President should

identify an official accountable for whole-of-government coordination. In addition, the Secretary of Defense should appoint an official to focus specifically on Department of Defense responsibilities.

## **Expand Selective Service Registration**

In reviewing the question of whether Selective Service registration should include women, the Commission seriously considered a wide range of deeply felt moral, legal, and practical arguments and explored the available empirical evidence.

**Extend Selective Service registration to women.** The Commission concluded that the time is right to extend Selective Service System registration to include men and women, between the ages of 18 and 26. This is a necessary and fair step, making it possible to draw on the talent of a unified Nation in a time of national emergency.

## **Endnotes**

1 National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, §§ 551–557, 130 Stat. 2130 (2016), as amended by the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 594, 132 Stat. 1636 (2018).

2 FY 2017 NDAA, 130 Stat. 2135 (2016).

3 For video and testimony from these hearings, see “Hearings,” National Commission on Military, National, and Public Service, <https://www.inspire2serve.gov/content/hearings>.

4 Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy, *2017 Demographics: Profile of the Military Community* (Washington, DC: Department of Defense, 2018), 3, <http://download.militaryonesource.mil/12038/MOS/Reports/2017-demographics-report.pdf>; “CNCS Fact Sheet,” Corporation for National and Community Service, July 2019, [https://www.nationalservice.gov/sites/default/files/documents/CNCS%20Fact%20Sheet%20July%202019%20FINAL\\_508.pdf](https://www.nationalservice.gov/sites/default/files/documents/CNCS%20Fact%20Sheet%20July%202019%20FINAL_508.pdf); “What Is Senior Corps?,” Corporation for National and Community Service, accessed November 19, 2018, <https://www.nationalservice.gov/programs/senior-corps/what-senior-corps>; “Fast Facts,” Peace Corps, September 30, 2018, <https://www.peacecorps.gov/news/fast-facts/>; “Federal Workforce Statistics Sources: OPM and OMB” (Washington, DC: Congressional Research Service, January 12, 2018; updated March 25, 2019), 1, <https://fas.org/sgp/crs/misc/R43590.pdf>; FRED [Federal Reserve Economic Database], “All Employees: Government: State Government,” U.S. Bureau of Labor Statistics, updated September 6, 2019, <https://fred.stlouisfed.org/series/CES9092000001>; FRED, “All Employees: Government: Local Government,” U.S. Bureau of Labor Statistics, updated September 6, 2019, <https://fred.stlouisfed.org/series/CES9093000001>.

5 “Historic Speeches: Inaugural Address,” John F. Kennedy Presidential Library and Museum, January 20, 1961, <https://www.jfklibrary.org/learn/about-jfk/historic-speeches/inaugural-address>.

6 “Americans’ Civics Knowledge Increases But Still Has a Long Way to Go,” Annenberg Public Policy Center, September 12, 2019, <https://www.annenbergpublicpolicycenter.org/americans-civics-knowledge-increases-2019-survey/>.

7 “The USMEPCOM Story,” USMEPCOM [United States Military Entrance Processing Command], accessed August 9, 2019, <http://www.mepcom.army.mil/About-Us/The-USMEPCOM-Story/>; “Digest of Education Statistics, 2017: Table 216.20. Number and Enrollment of Public Elementary and Secondary Schools, by School Level, Type, and Charter and Magnet Status: Selected Years, 1990–91 through 2015–16,” National Center for Education Statistics (NCES), U.S. Department of Education, December 2016, [https://nces.ed.gov/programs/digest/d17/tables/dt17\\_216.20.asp](https://nces.ed.gov/programs/digest/d17/tables/dt17_216.20.asp).

8 Office of the Under Secretary of Defense, Personnel and Readiness, *Population Representation in the Military Services: Fiscal Year 2016 Summary Report* (Washington, DC: Department of Defense, 2017), 21, <https://www.cna.org/pop-rep/2016/summary/summary.pdf>.

9 Edward M. Kennedy Serve America Act, Pub. L. No. 111-13, § 1301, 123 Stat. 1485 (2009); and “CNCS Fact Sheet.”

10 Kristen Lewis, *Making the Connection: Transportation and Youth Disconnection* (New York: Measure of America, Social Science Research Council, 2019), iii, <https://ssrc-static.s3.amazonaws.com/moa/Making%20the%20Connection.pdf>.

11 U.S. Government Accountability Office, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Washington, DC: GAO, March 2019), 75–77, <https://www.gao.gov/assets/700/697245.pdf>.

12 GAO, *High-Risk Series*, 75.

## **Commissioners**

The Honorable Dr. Joseph J. Heck, Chairman

The Honorable Mark Gearan, Vice Chair for National and Public Service

The Honorable Debra Wada, Vice Chair for Military Service

Mr. Edward Allard, III

Mr. Steven Barney

The Honorable Dr. Janine Davidson

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Mr. Thomas Kilgannon

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# LEGISLATIVE ANNEX

## Inspire to Serve Act of 2020 Summary - 1

### Inspire to Serve Act of 2020 Summary

The bill contains legislative proposals developed by the National Commission on Military, National, and Public Service as was required under section 555(e)(1) of the National Defense Authorization Act of Fiscal Year 2017 (Public Law 114-328). The proposals are presented in the form of a consolidated bill, and cover all of the issues under the Commission's mandate, including improvements to the military selective service process and methods to increase participation in military, national, and public service in order to address the needs of the Nation. The bill, along with section-by-section analysis and redlines against existing law, are available on the Commission's website, [www.inspire2serve.gov](http://www.inspire2serve.gov).

### Title I – Prioritization of Civic Education and Service Learning

The five proposals in this title will help to revitalize civic engagement and citizenship by prioritizing civic education and service learning as essential components of K-12 education to ensure young people have the knowledge, skills, and dispositions to participate in civic life and understand the importance of service. The proposals include placing civics on the same level as math and reading in the Nation's Report Card, creating an Excellence in Civics award for educators and students, and distributing educational materials from the Library of Congress and National Archives. Additionally, the title will:

- Establish a Civic Education Fund at the Department of Education to provide up to \$200 million of grants for teacher development and the development of civic education, applied civics, and service-learning programs; eligible entities include State and local educational agencies, institutions of higher education, community-based organizations, and nonprofit organizations.
- Establish a Service-Learning Fund within the Corporation for National and Community Service (CNCS) to issue \$250 million in grants annually, with 20% for K-college service-learning programs; 40% for grades 6-12 Summer of Service programs; and 40% for grades 9-12 Semester of Service programs.

### Title II – Elevation and Integration of All Forms of Service

Recognizing that service is vital to our nation's health and well-being, the bold steps in this title will unlock the full, transformational potential of service in all forms. Several proposals will expand interagency cooperation on recruiting efforts, market research, and information sharing, especially for individuals as they apply for or transition out of service opportunities. The title will also:

- Create a Council within the Executive Office of the President to coordinate initiatives across the federal government that will benefit recruiting and retention for military, national, and public service, spearheading initiatives to promote an ethos of service in the Nation, and preparing an overarching service strategy for the Federal government.
- Create a new online platform providing a one-stop shop for individuals to learn about and connect to service

organizations and potential opportunities and for service organizations to assist in recruiting individuals for permanent and temporary needs.

## Inspire to Serve Act of 2020 Summary - 2

### Title III – Advancement of Military, National, and Public Service

The proposals in this title will provide critical awareness of service opportunities to all Americans and ensure that they have the access and ability to serve the Nation and their communities in the military, in national service, or through civilian government service.

#### Subtitle A – Advancement of Military Service

The defense of the Nation depends on the continued success of the Nation's military. The proposals in this subtitle aim to ensure the military is strong, resilient, and capable of meeting new and emerging threats by narrowing the civil-military divide and building a more sustainable military. The subtitle will:

- Expand the Junior Reserve Officers' Training Corps to 6,000 programs by the end of 2031.
- Authorize DoD to provide tuition grants in exchange for enlisted service commitments to individuals so they can obtain civilian certifications and professional degrees in areas of critical need to the military.
- Create a pilot program for one military department to partner with up to three community colleges to help service members and military recruits to obtain professional certifications and technical degrees in areas of critical need to the military.
- Authorize multiyear appropriations for recruiting marketing campaigns.
- Create a new personnel management structure for critical skill sets—such as science, technology, cyber security, and engineering—by drawing on successful models for other specialties, such as medical workers and attorneys.

#### Subtitle B – Advancement of National Service

The subtitle significantly expands national service opportunities and makes those opportunities more accessible to Americans of all backgrounds. These proposals will:

- Authorize adjustments to the living allowance for AmeriCorps State and National members and to permit dedicated funding for wraparound support services.
- Increase the Senior Corps stipend, which has not been adjusted since 1973.
- Increase the size, transferability, and potential uses of the education award.
- Create a new CNCS service fellowships program that allows selected individual to choose where they will undertake a 1,700-hour fellowship with an initial cohort of 25,000 fellows and increasing annually until reaching a goal of 250,000 fellows per year. Positions will be split by 80% allocated on a formula basis within congressional districts; and 20% distributed to certified sponsor organizations, with a process that ensures representation by disadvantaged youth and tribal youth.
- Double the number of national service positions available at Youth Build, Youth Conservation Corps, and the National Guard ChalleNGe. Finally, the subtitle includes proposals to ensure more Americans know about the opportunities to serve. Proposals would:
- Mandate a public awareness campaign on national service;
- Create a non-momentary

award for private sector contributions; • Authorize demonstration projects; and • Provide national service alumni with non-competitive eligibility for Federal employment.

### Inspire to Serve Act of 2020 Summary - 3

#### Subtitle C – Advancement of Public Service: Modernizing Federal Personnel Systems

The subtitle offers a comprehensive approach to fix the broken hiring system in the Federal government, addressing outdated rules and practices that make it difficult for the Federal government to hire and keep the best talent. These proposals will: • Give agencies access to advanced assessment tools. • Streamline determinations about eligibility for special hiring options. • Extend noncompetitive eligibility to high-performing civilian employees. • Increase flexibility for temporary and term appointments. • Improve direct hire flexibility when there is a shortage of highly qualified candidates. One key step to fixing this system is a comprehensive enhancement of veterans' preference and noncompetitive hiring authorities for recently discharged veterans. The proposals will: • Make veterans' preference a tiebreaker between equally qualified candidates. • Focus on recently discharged veterans transitioning to civilian employment. • Expand Veterans Recruitment Authority (VRA) from three to ten years after discharge. The subtitle also authorizes programs that will empower agencies to attract and retain the most qualified applicants to public service, such as establishing a cafeteria plan for supplemental benefits, piloting a new benefits option of equal value at three agencies that focuses on fully portable retirement benefits, and increasing OPM's flexibility in its demonstration projects.

#### Subtitle D – Advancement of Public Service: Students, Recent Graduates, Critical Skills

Public servants are vital to the security and well-being of the nation. This subtitle focuses on bringing the next generation into public service and expanding the talent pipeline, by offering bold ideas to ensure that individuals consider public service as a career option. The subtitle will: • Create a Federal Fellowship and Scholarship Center to facilitate federal scholarship programs by hosting a single Internet platform and developing a standardized application. • Create a Public Service Corps, similar to ROTC, providing scholarships to university students in exchange for a 4-year commitment to work in civil service employment. • Create a new grant program to support the development of public service academies, programs at institutions of higher education that help train students to be public servants. • Improve existing internship and recent graduate programs by requiring compensation for Federal interns, expanding direct hire authority, and setting goals of 30,000 hires per year by 2026 and 50,000 by 2031. The subtitle also empowers agencies to recruit and retain individuals with critical skills—such as those in STEM fields or healthcare—through proposals that permit individuals that complete Federal reskilling programs to transfer to different jobs at the same grade, authorize all agencies to use DHS's Cyber Talent Management System, test a new personnel system for agencies with many STEM employees, and improve the portability of health care licenses for Federal employees. The

subtitle will also: • Pilot a civilian cyber security reserve program at DHS and NSA that would permit agencies to quickly expand the civilian workforce with needed technical expertise and appropriate clearances when facing a crisis. • Require development of a comprehensive personnel system for Veterans Health Administration employees.

#### Inspire to Serve Act of 2020 Summary - 4

##### Title IV – Strengthening of National Mobilization

The United States must ensure that its national mobilization framework is maintained and ready to meet future national security needs, including in the event of a national emergency. The proposals in this title are designed to achieve that objective by improving the current procedures and identifying new leadership and tools. The title will: • Require the National Security Council and the Department of Defense to have designated leads to coordinate national mobilization efforts. • Require regular, periodic exercises of military draft mobilization processes. • Ensure the U.S. military maintains up-to-date information on critical skill needs. • Create an Individual Ready Reserve of personnel with critical skills to augment military strength during a full mobilization. The title will also modernize the Selective Service System to ensure the military has access to the most qualified and capable people needed to maintain national security in an emergency. It will: • Require all Americans, regardless of sex or gender, to register for selective service, which will enhance the Nation's ability to respond to a national emergency requiring a draft, provide our national security efforts with a more diverse set of talents, and further American's collective obligation to provide for the common defense. • Amend the Military Selective Service Act to clarify the purpose of selective service. • Institute measures to ensure registrants understand the solemnity of the obligation they are undertaking. • Permit individuals who have been denied a Federal benefit due to nonregistration the opportunity to register belatedly. • Require the Executive Branch to conduct a comprehensive review of existing exemptions and deferments and report to Congress how they should be amended.

DRUGS &  
DEMOCRACY:  
TOWARD A  
PARADIGM SHIFT

the Latin American Commission  
on Drugs and Democracy

# Latin American Commission on Drugs and Democracy

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Sergio Ramírez // Nicaragua

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# DRUGS & DEMOCRACY: TOWARD A PARADIGM SHIFT

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# STATEMENT// A FAILED WAR

Violence and the organized crime associated with the narcotics trade are critical problems in Latin America today. Confronted with a situation that is growing worse by the day, it is imperative to rectify the “war on drugs” strategy pursued in the region over the past 30 years.

Prohibitionist policies based on the eradication of production and on the disruption of drug flows as well as on the criminalization of consumption have not yielded the expected results. We are farther than ever from the announced goal of eradicating drugs.

A realistic evaluation indicates that:

- Latin America remains the major global exporter of cocaine and cannabis, has become a growing producer of opium and heroin, and is developing the capacity to produce synthetic drugs;
- The levels of drug consumption continue to grow in Latin America while there is a tendency toward stabilization in North America and Europe.

The in-depth revision of current drug policies is even more urgent in Latin America in light of their enormous human and social costs and threats to democratic institutions.

Over the past decades we have witnessed:

- A rise in organized crime caused both by the international narcotics trade and by the growing control exercised by criminal groups over domestic markets and territories;
- A growth in unacceptable levels of drug-related violence affecting the whole of society and, in particular, the poor and the young;
- The criminalization of politics and the politicization of crime, as well as the proliferation of the linkages between them, as reflected in the infiltration of democratic institutions by organized crime;
- The corruption of public servants, the judicial system, governments, the political system and, especially the police forces in charge of enforcing law and order.

# BREAKING THE SILENCE, OPENING UP THE DEBATE

Current drug repression policies are firmly rooted in prejudices, fears and ideological visions. The whole issue has become taboo which inhibits public debate. The association of drugs with crime blocks the circulation of information and segregates drug users in closed circles where they become even more exposed to organized crime.

Hence, breaking the taboo and acknowledging the failure of current policies and their consequences is the inescapable prerequisite for opening up the discussion about a new paradigm leading to safer, more efficient and humane drug policies.

This does not mean the outright rejection of policies that combat the narcotics trade which have consumed over the years vast economic resources and implied the sacrifice of countless human lives. Nor does it detract in any way from the urgent priority to strengthen the struggle against cartels and drug traffickers. The way forward lies in acknowledging the insufficient results of current policies and, without dismissing the

immense efforts undertaken, launching a broad debate about alternative strategies. It is also high time to involve in this discussion sectors of society that so far have remained at a distance from the drug problem under the assumption that its solution is a matter for public authorities.

The challenge at hand is to drastically reduce the harm caused by illegal narcotics to people, societies and public institutions. To move in this direction, it is essential to differentiate between illicit substances according to the harm they inflict on people's health and the social fabric.

The search for more efficient policies, rooted in the respect for human rights, implies taking into account the diversity of national situations and emphasizing prevention and treatment. These policies do not deny the importance of repressive actions – including the participation of the Armed Forces in extreme situations, according to the decision of each country – to confront the threats posed by organized crime.

# LIMITS AND UNDESIRABLE EFFECTS OF REPRESSIVE STRATEGIES

It is imperative to review critically the deficiencies of the prohibitionist strategy adopted by the United States and the benefits and drawbacks of the harm reduction strategy followed by the European Union. It is also important to question the low priority given to the drug problem by both industrialized and developing countries in other parts of the world.

Colombia is a clear example of the shortcomings of the repressive policies promoted at the global level by the United States. For decades, Colombia implemented all conceivable measures to fight the drug trade in a massive effort whose benefits were not proportional to the vast amount of resources invested and the human costs involved. Despite the country's significant achievements in fighting the drug cartels and lowering the levels of violence and crime, the areas of illegal cultivation are again expanding as well as the flow of drugs coming out of Colombia and the Andean region.

Mexico has quickly become the other epicenter of the violent activities carried out by the criminal groups associated with the narcotics trade. This raises challenges for the Mexican government in its struggle against the drug cartels that have supplanted the Colombian traffickers as the main suppliers of illicit drugs to the United States market. Mexico is thus well positioned to ask the government and institutions of American society to engage in a dialogue about the policies currently pursued by the US as well as to call upon the countries of the European Union to undertake a greater effort aimed at reducing domestic drug consumption. The traumatic Colombian experience is a useful reference for countries not to make the mistake of adopting the US prohibitionist policies and to move forward in the search for innovative alternatives.

The European Union policy focusing on the reduction of the damages caused by drugs as a matter of public health, through the provision of treatment to drug users, has

proved more humane and efficient. However, by not giving appropriate emphasis to the reduction of domestic consumption in the belief that the focus on harm reduction minimizes the social dimension of the problem, the policy of the European Union fails to curb the demand for illicit drugs that stimulates its production and exportation from other parts of the world.

The long-term solution for the drug problem is to reduce drastically the demand for drugs in the main consumer countries. The question is not to find guilty countries and allocate blame for this or that action or inaction, but to reiterate that the United States and the European Union share responsibility for the problems faced by our countries, insofar as their domestic markets are the main consumers of the drugs produced in Latin America. It is, thus, pertinent for us, Latin Americans, to ask them as partners to design and implement policies leading to an effective reduction in their levels of drug consumption and, as a consequence, in the overall scope of the narcotics criminal activities.

# THE VISION OF LATIN AMERICA: TOWARD A NEW PARADIGM

Taking into account our continent's experience in the fight against the narcotics trade and the seriousness of the problem, the Latin American Commission on Drugs and Democracy addresses the present statement to our countries' governments and public opinion, to the United Nations and the international community, proposing a new paradigm based on three main directives:

- Treating drug users as a matter of public health.
- Reducing drug consumption through information, education and prevention.
- Focusing repression on organized crime.

Our approach does not imply any complacency in regard to the drug problem. We acknowledge that narcotics are harmful to people and societies. Treating drug users as a matter of public health and promoting the reduction of drug consumption are actually the inescapable preconditions for focusing repressive action on two critical points: reduction of production and dismantling the networks of drug trafficking.

To translate this paradigm shift into concrete action, we propose the adoption by Latin American countries of the following initiatives in the framework of a global process of reframing the policies for fighting the use of illicit drugs:

## **1. Change the status of addicts from drug buyers in the illegal market to that of patients cared for in the public health system.**

The enormous capacity of the narcotics trade for violence and corruption can only be effectively countered if its sources of income are substantially weakened. To accomplish this goal, the State must establish the laws, institutions and regulations enabling those who have become addicted to drugs to stop being buyers in an illegal market and to become patients of the health care system. This change of status, combined with informational and educational campaigns, might have a significant impact in terms of reducing the demand for illegal drugs, lowering its price and, as a consequence,



undermining the economic foundations of the drug business.

**2. Evaluate from a public health standpoint and on the basis of the most advanced medical science the convenience of decriminalizing the possession of cannabis for personal use.**

Cannabis is by far the most widely used drug in Latin America. Its consumption has an adverse impact on the user's health, including mental health. But the available empirical evidence shows that the harm caused by this drug is similar to the harm caused by alcohol or tobacco. More importantly, most of the damage associated with cannabis use - from the indiscriminate arrest and incarceration of consumers to the violence and corruption that affect all of society - is the result of the current prohibitionist policies.

It is also true that decriminalizing drugs as an isolated measure, disconnected from a strong investment in information and education to reduce consumption, could have the contrary effect of worsening the problems of drug addiction.

The United States is arguably the industrialized country that has invested the highest amount of resources in the fight against the narcotics trade. The problem lies in the effectiveness and consequences of its actions. Its policy of massive incarceration of drug users, questionable both in terms of respect for human rights and its efficiency, is hardly applicable to Latin America, given the penal system's overpopulation and material conditions. This repressive policy

also facilitates consumer extortion and police corruption. The United States allocates a much larger proportion of resources to eradication and interdiction as well as to maintaining its legal and penal system than to investments in health, prevention, treatment and the rehabilitation of drug users.

**3. Reduce consumption through campaigns of information and prevention that can be understood and accepted by young people, who account for the largest contingent of users.**

Drugs affect and undermine people's decision-making capacity. Statements by former addicts about these risks might have greater power to influence behavior than the threat of repression or virtuous exhortations against drug use. The far-reaching social and cultural changes that have led to profound reductions in tobacco consumption show the effectiveness of information and prevention campaigns based on clear language and arguments that are consistent with the experience of those they try to reach.

Educational campaigns also face the challenge of constantly alerting the population at large and the drug users in particular about each person's responsibility towards the problem, the dangers that come with "easy money" and the costs of the violence and corruption associated with the narcotics trade.

Most of the current prevention campaigns implemented all over the world have failed. There is much to be learned from the innovative experiences carried out by European countries, such as the United

Kingdom, the Netherlands and Switzerland. It is also important to share experiences and explore innovative approaches tested in other parts of the world.

#### **4. Redirect repressive strategies to the unrelenting fight against organized crime.**

Public policies should be targeted to fighting the most harmful effects of organized crime on society, such as violence, institutional corruption, money laundering, arms trafficking, and the control over territories and populations. Insofar as the drug trade is a transnational problem, it is important to articulate domestic policies with regional and global strategies.

#### **5. Reframe the strategies of repression against the cultivation of illicit drugs.**

Eradication efforts must be combined with the adoption of strongly financed alternative development programs adapted to local realities in terms of viable products and conditions for their competitive access to markets. It is important to speak not only of alternative cultivation but to envision a wide range of options, including the social development of alternative forms of work, democratic education and the search for solutions in a participatory context. Such initiatives must also take into account the legal uses of plants, such as the coca leaf, in countries with a long-standing tradition of ancestral use previous to the phenomenon of their exploitation as an input for drug production. Accordingly measures must be taken to strictly adjust production to this kind of ancestral use.

# ENGAGING CIVIL SOCIETY AND PUBLIC OPINION

A new paradigm to address the drug problem must be less centered on repressive measures and more respectful of national societies and cultures. Effective policies must be based on scientific knowledge and not on ideological biases. This effort must involve not only governments but all sectors of society.

The social perception of the drug problem and the legislation on illicit drugs are going through an accelerated process of change in Latin America. A growing number of political, civic and cultural leaders have publicly called for a drastic policy shift.

The deepening of the debate concerning the policies on drug consumption must be grounded on a rigorous evaluation of the impact of the diverse alternatives to the prohibitionist strategy that are being tested in different countries, focusing on the reduction of individual and social harm.

This construction of alternatives is a process that requires the participation of a plurality of social actors: law and order institutions, educators, health professionals, spiritual leaders, families, opinion makers, and media.

Each country must face the challenge of opening up a large public debate about the seriousness of the problem and the search for policies consistent with its history and culture.

At the Inter-American level, Latin America must establish a dialogue with the United States government, legislators and civil society to jointly develop workable alternatives to the current “war on drugs” strategy. The inauguration of the Barack Obama Administration offers a unique opportunity to reshape a failed strategy and engage in the common search for more efficient and humane policies.

Simultaneously, at the global level, we must move forward with the articulation of a voice and vision of Latin America to influence the international debate on illicit drugs, especially in the framework of the United Nations and the Inter-American Drug Abuse Control Commission. Latin America’s active participation in the global debate would mark its transition from a problem-region to a pioneering-region in the implementation of innovative solutions for the drug problem.

# BACKGROUND// THE INTERNATIONAL CONVENTIONS

The current international drug control regime is underpinned by three United Nations Conventions, the basis of International Law governing illicit drugs. These Conventions — the first was established in 1961 — were formulated with one underlying directive: all drugs determined to be illicit under the Conventions may exist only for medical and research purposes. This implies that production for any other objective constitutes a crime.

The policies derived from the Conventions envision the elimination of any recreational, ritual, experimental or self-medicating usage of coca, cocaine, opium, heroin, marijuana, and a variety of other drugs. The control system that emerges is based essentially on the politics of repression, sanction and punishment. The first Convention sets as a goal the elimination of opium consumption within 15 years and coca and marijuana consumption within 25.

As for drug consumption, the principles adopted leave room for initiatives in depenalization or decriminalization of users even while the drugs remain illegal. Convention signatory countries can, therefore, be flexible in their treatment of consumers but should combat the production and commercialization of illegal drugs.

The three United Nations Conventions on the subject of drugs are:

- Single Convention on Narcotic Drugs, 1961, created the infrastructure for an international drug control regime or, the practices, the institutions and the orienting criteria that countries should follow with regard to an international policy on drugs. This dictated:
  - Which substances and their consumption should be monitored (opium, cocaine, marijuana);

- How to add new drugs to the treaty's list of controlled substances;
  - The role of the United Nations in the system of international drug control.
- Convention on Psychotropic Substances, 1971, was created to respond to the growing variety of drugs that emerged in the 1960s and 70s, such as: stimulants, amphetamines, and LSD (Lysergic acid diethylamide). The Convention defined methods of control for the preparation, use and sale of these new substances.
  - Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, dealt with specific questions directly related to drug trafficking, such as: how to control precursors (substances that are not dangerous in and of themselves but are used in the production of illicit drugs) or, how to combat money laundering. The Convention exemplifies the heightened expectation that repression can bring about a "world free of drugs" or, at least, significantly reduce illicit drug production and consumption.

# RESULTS AND CONSEQUENCES OF "THE WAR ON DRUGS"

At present, 208 million people around the world use some kind of illicit drug at least once a year. Of this total, it is calculated that 15% suffer from chronic problems of dependency. Marijuana is the most consumed drug (160 million). Synthetic drugs, based on amphetamines, and ecstasy have already surpassed cocaine and heroin in their number of users<sup>1</sup>. The illicit drug trade, controlled by organized crime, is estimated to be in the hundreds of billions of dollars.

The latest *World Drug Report*<sup>2</sup> from UNODC (United Nations Office on Drugs and Crime) recognizes that implementation of United Nations Conventions on illicit drugs has produced various unexpected negative consequences:

- The creation of a black market controlled by crime.
- The fight against crime, linked to drug trafficking, demands ever increasing resources, often to the detriment of investments in public health, which was the rationale of prohibitionist politics.
- Repression of production in one locale resulted in its transfer to other regions, keeping global production levels stable.
- Displacement of the types of drugs used as a result of relative price changes associated with repression.
- Finally, prohibitionist policies have generated the stigmatization of drug addicts who are socially marginalized and struggle to find adequate treatment.

The main objective turned out to be unattainable, and the United Nations' own organizing bodies recognize that they have moved from the original objective to eliminate drugs to a policy of containment in regard to levels of production and commerce.

The costs of maintaining prohibition proved to be enormous. The UNODC report underestimates what it calls unexpected consequences. Narcotics trafficking produced enormous increases in levels of violence. It corrupts institutions and democracy. It transforms millions of people who live in poor districts into hostages of organized crime. It pushes drug addicts to use syringes transmitting HIV and other contagious diseases. The international Conventions do not recognize traditional forms of coca use, criminalizing cultures and peoples. In many countries, punishments are disproportionate resulting in mass incarcerations and, in some countries, executions.

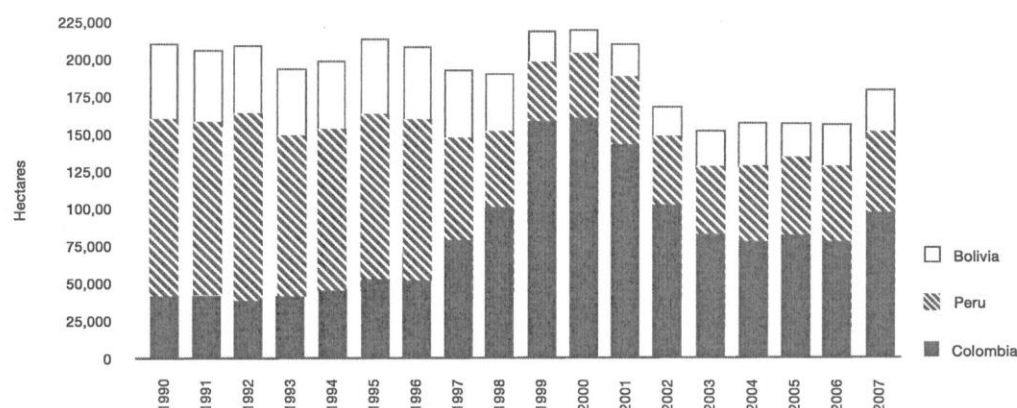
# THE POLITICS OF ERADICATION IN LATIN AMERICA

3// Published online: [www.unodc.org/documents/crop-monitoring/Andean\\_report\\_2008.pdf](http://www.unodc.org/documents/crop-monitoring/Andean_report_2008.pdf)

Three Latin American countries (Columbia, Peru and Bolivia) produce the sum total of the world's cocaine supply<sup>3</sup>. In the past few decades with support from the United States government, these countries initiated policies of crop eradication, seizure and repression of drug trafficking. The most important program was the Plan Colombia that proposed to put an end to armed conflict in that country, to prepare a confrontation strategy for narcotics trafficking, to eradicate coca production, to revitalize the country's economy and to offer alternatives to rural drug producers.

The principal goals of the Plan Colombia, and of other eradication programs, were not reached. Production, even though it has suffered fluctuations, continues to be sufficient to supply the global market:

**Figure 1: Coca Cultivation in the Andean Region (ha), 1997 to 2007**

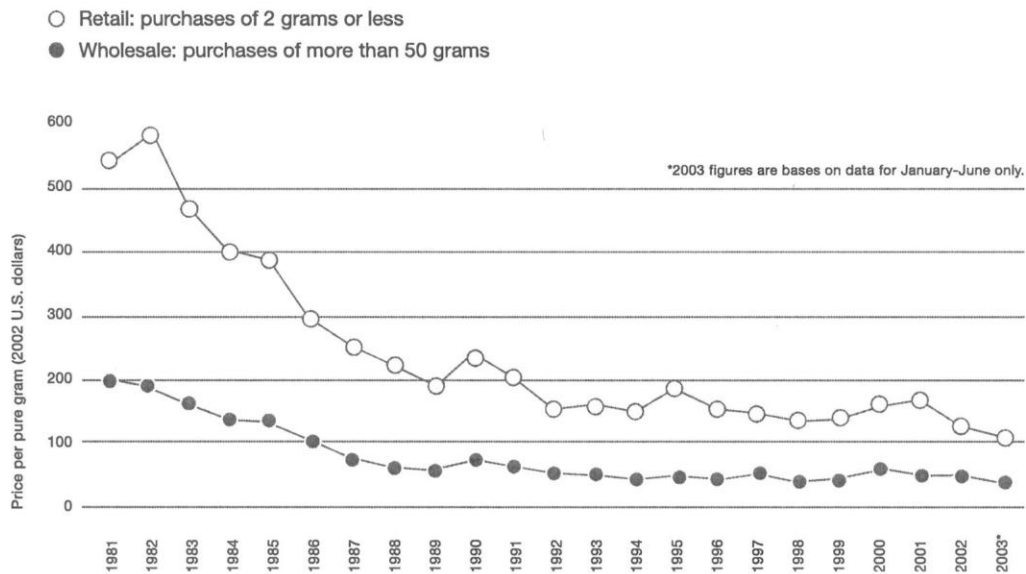


Source: *Coca Cultivation in the Andean Region: A survey of Bolivia, Colombia and Peru*, June 2008, United Nations Office on Drugs and Crime (Published online: [www.unodc.org/documents/crop-monitoring/Andean\\_report\\_2008.pdf](http://www.unodc.org/documents/crop-monitoring/Andean_report_2008.pdf))



Despite a considerable rise in the levels of seizures in exporting as well as importing countries, this has not affected final supply, or even market price, for consumers. On the contrary, the price of cocaine has shown a predominant tendency to fall while the average grade of purity of the product is on the rise.

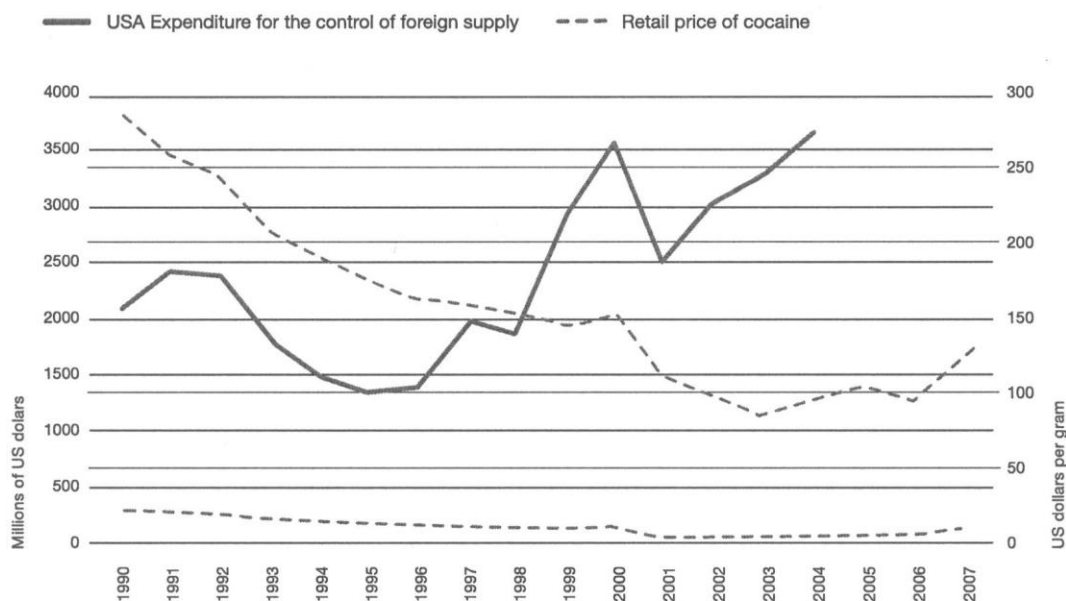
**Figure 2: U.S. Wholesale and Retail Prices of Cocaine**



Source: "U.S. Drug Policy: At What Cost? Moving Beyond the Self-Defeating Supply-Control Fixation," Statement of John M. Walsh, Senior Associate for the Andes and Drug Policy for the Washington Office on Latin America, to the Joint Economic Committee of the U.S. Congress, June 19, 2008. Published online: [http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore\\_id=745af217-b72f-4b0e-b596-30d171d03cbb](http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore_id=745af217-b72f-4b0e-b596-30d171d03cbb)

In conclusion, prohibitionist policy has shown itself to be ineffective. Not only have levels of supply remained stable, but also prices have fallen despite enormous expenditure on the part of the United States to repress exports from producing countries:

**Figure 3: USA foreign expenditure on War on Drugs and the Retail Price of Cocaine, 1990-2006**



Note: Data of expenditures in the control of foreign supplies is not available for the years 2005, 2006 and 2007.  
Source: Expenditures: Washington Office on Latin America, 2005; Retail Prices: United Nations, 2008.

This situation is the result, first, of the difference between the cost of primary material and the price paid by the final consumer. Prohibition produces a market that offers exorbitant rewards:

**Table 1: Cocaine Prices Through the Distribution System**

Product	Market Level	Effective Price/kg
Coca leaves	Farmgate/Colombia	\$300
Coca base	Farmgate/Colombia	\$900
Cocaine hydrochloride	Export/Colombia	\$1,500
Cocaine hydrochloride	Import/U.S.	\$15,000
Cocaine (67%) pure	Dealer/U.S.	\$40,000
Cocaine (67%) pure	Retail/U.S.	\$150,000

Source: Reuter, Peter. "Assessing U.S. drug policy and providing a base for future decisions," School of Public Policy and Department of Criminology, University of Maryland, 2008. Published online: [http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore\\_id=712e7919-aa4e-4ead-b770-c9b656e531d8](http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore_id=712e7919-aa4e-4ead-b770-c9b656e531d8)

Secondly, eradication programs have not succeeded, to any relevant degree, to diminish production, which moves to other locations. The effective result of repression was the constant movement of production sites and principal centers of commerce. Until the mid-1990s, coca leaves were cultivated primarily in Peru and Bolivia. These two countries contained 80% of the world's coca plantations and processed the leaves into paste. The paste was transported in small planes to Colombian territory in the Amazon rainforest where it was then mixed with chemical substances whereby it was converted, finally, into cocaine. It was subsequently sent to the United States — the country that consumes more than half of the world's cocaine.

The first substantial change in the geography of production occurred with the reduction of areas of cultivation in Peru and Bolivia. This was compensated by an increase in production in Columbia, which became the largest producer worldwide. In Columbia, some of the cultivated areas were located within territories under the control of FARC — Revolutionary Armed Forces of Columbia — who began themselves to organize producers and mediate product sales. Coca became an important ingredient in the recipe of the Colombian guerilla group. The paramilitary groups calling themselves United Self-defense Forces of Colombia (AUC), in turn, also began to participate in the coca trade<sup>4</sup>.

The cartels made up of Colombian traffickers controlled a major part of coca exportation to the United States until the 1990s, when these principal organizations were weakened. Death and imprisonment of Colombian narcotics traffickers resulted in the dismantling of the Medellín and Cali cartels. This produced fragmentation in narcotics trafficking and the dislocation, of part of the system of control over trade within the United States, to Mexico's organized crime.

Mexican traffickers expanded their domain of cocaine distribution in the United States gaining entry also into the European market. This has led to enormous growth of crime and violence linked to trafficking in Mexico with important ramifications for its public institutions.

# NARCOTICS TRAFFICKING: VIOLENCE, CORRUPTION AND DEMOCRACY

The global levels of illicit drug consumption have experienced, over decades, a constant and persistent growth, but in the past few years have relatively stabilized. That is not what has happened in Latin America where the use of illicit drugs continues growing. Thus, not only does Latin America have to deal with organized crime associated with the international drug trade, the region must also simultaneously confront trafficking for domestic consumption.

The production and commercialization of illicit drugs has promoted the appearance of parallel powers operating outside the law, left public institutions in a degraded or failed state and, consequently weakened democratic order. Illegal drug markets represent a significant proportion of the economy in producer countries.

The principal consequences of a war on drugs in Latin American societies can be summarized in five major points:

- The development of parallel powers in susceptible areas of national States (poor districts within large cities and their periphery; regions far within the interior; frontier areas; and Amazonian territories);
- The criminalization of political conflicts;
- The corruption of public life (above all police, justice and penitentiary systems);
- The alienation of youth and, especially, poor youth;
- The dislocation of farmers (more than two million are internally displaced, thousands more are refugees from drug combat in Columbia) and the stigmatization of traditional cultures (a stigma thrown on coca cultivation, a staple plantation of the Andean cultures in Bolivia and Peru).

According to United Nations and World Bank data, Latin America currently has

the largest homicide rate in the world. Among youth in several countries, the death rate surpasses even those of many countries in a state of war in other regions of the world (Published online: [www.ritla.net/index.php?option=com\\_docman&task=doc\\_download&gid=542](http://www.ritla.net/index.php?option=com_docman&task=doc_download&gid=542)). The five top ranked places in youth homicide per 100 thousand inhabitants worldwide are Latin American countries. El Salvador ranks first (with a rate of 92.3), second is Columbia (73.4), Venezuela (64.2), Guatemala (55.4) and Brazil (51.6):

**Table 2: Rate of Youth Homicide**

Country	Rate	Ranking	Country	Rate	Ranking
El Salvador	92,3	1 <sup>st</sup>	South Africa	16,6	15 <sup>th</sup>
Colombia	73,4	2 <sup>nd</sup>	Dominica	15,4	16 <sup>th</sup>
Venezuela	64,2	3 <sup>rd</sup>	USA	12,9	17 <sup>th</sup>
Guatemala	55,4	4 <sup>th</sup>	St.Vicente and the Grenadines	12,1	18 <sup>th</sup>
Brazil	51,6	5 <sup>th</sup>	Mexico	10,4	19 <sup>th</sup>
Porto Rico	46,6	6 <sup>th</sup>	French Guiana	9,7	20 <sup>th</sup>
Virgin Islands	27,1	7 <sup>th</sup>	Argentina	9,4	21 <sup>st</sup>
Santa Lucia	26,4	8 <sup>th</sup>	Costa Rica	9,2	22 <sup>nd</sup>
Ecuador	26,1	9 <sup>th</sup>	Dominican Republic	9,1	23 <sup>rd</sup>
Paraguay	22,3	10 <sup>th</sup>	Israel	8,0	24 <sup>th</sup>
Trinidad and Tobago	21,2	11 <sup>th</sup>	Chile	7,9	25 <sup>th</sup>
Guiana	21,2	12 <sup>th</sup>	Cuba	7,7	26 <sup>th</sup>
Panama	17,8	13 <sup>th</sup>	Uruguay	7,0	27 <sup>th</sup>
Nicaragua	16,6	14 <sup>th</sup>			

The relationship between homicide, firearm and drug commerce is central. Drugs finance the purchase of firearms, which sustain gang wars for control of territories and trafficking. The geography of drug and arms trafficking does not respect national sovereignties or borders.

In Brazil, arms and drug trafficking now dominate the criminal activity in metropolitan areas and reaches into the nexus of society and its institutions. Drugs finance the acquisition of firearms that are used in gang struggles for control over territories and in confrontations with police.

Drug traffickers control large urban areas, where the poorest sectors live, acting as de facto authorities. Some of their earnings are routed to corrupt authorities

within the police and the public safety system. In certain states and municipalities, the influence of trafficking reaches into the array of public institutions.

The illegal firearms market, generally linked with drug sales, is the major culprit in the high rate of homicides particularly among youth. Even though violence and lack of security affect all citizens, homicide rates are significantly higher in low-income districts and where city services are most deficient. The drug trade systematically uses infant-juvenile populations—often children of ten years of age, many of them armed.

According to studies by the Favela Observatory ([www.observatoriodefavelas.org](http://www.observatoriodefavelas.org)), minors under 18 years of age represent between 50% and 60% of the workforce employed in this criminal sector. Children and adolescents carry out functions armed or non-armed.

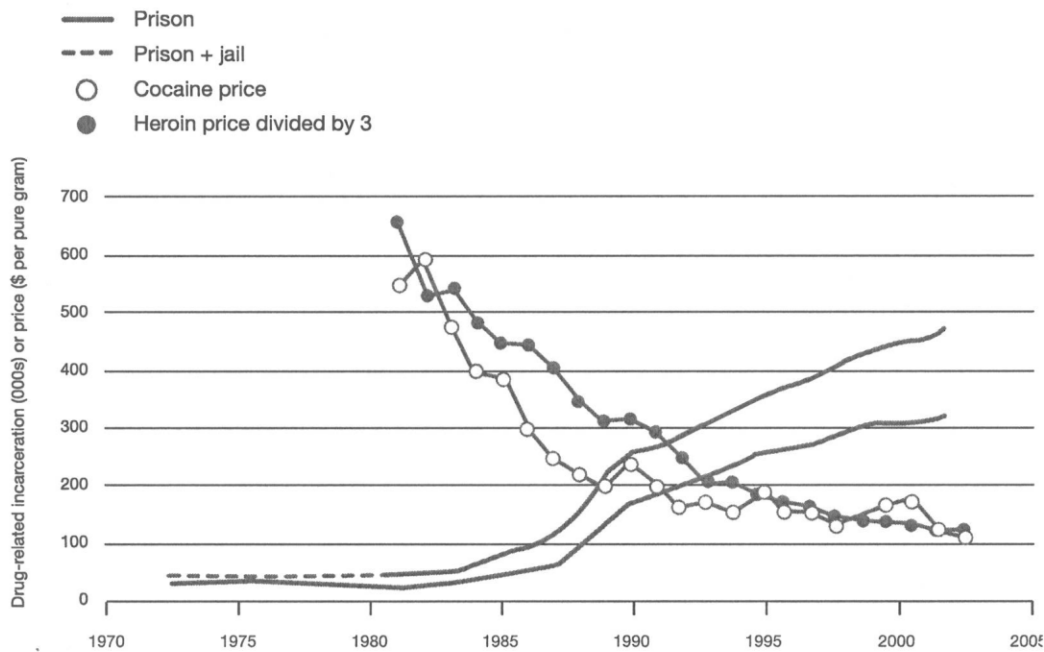
# THE LIMITS OF PROHIBITIONISM

In a document prepared for the Commission, Professor Peter Reuter, University of Maryland, argues that the most notable consequence of the United States' emphasis on methods of repression was the incarceration of an enormous number of people for crimes related to drugs:

Whereas in 1980 fewer than 50,000 individuals were incarcerated, that figure had risen to 500,000 by 2007. The estimated half million (which includes those in local jails as well as federal and state prisons) consists only of those who have been convicted of drug selling or possession, not those property or violent crimes that may have been related to their drug dependence. What is particularly astonishing is that the number has kept on rising even though there is good reason to believe that the scale of drug dealing has been declining modestly for the last fifteen years (Published online: [http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore\\_id=712e7919-ea4e-4ead-b770-c9b656e531d8](http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore_id=712e7919-ea4e-4ead-b770-c9b656e531d8) (p. 8)).

Today in the United States, around 500 thousand people are incarcerated for crimes associated with drugs — 12 times more than arrested in 1980 —, even though no study demonstrates a positive relationship between the number of mass imprisonments and the evolution pricing of drugs. Indeed, as you can see in the diagram below, in the last 25 years, while the number of prisoners has grown the price of drugs has systematically diminished:

**Diagram 4: Imprisonment related to drugs and the retail price of cocaine and heroin in the United States:**



Note: prices have been adjusted for inflation Source: Reuter, Peter. "Assessing U.S. drug policy and providing a base for future decisions," School of Public Policy and Department of Criminology, University of Maryland. 2008.

Prohibitionism helped convert the United States into the country with the largest incarcerated population in the world. The total cost of maintaining a drug trafficker in jail in the United States can reach \$450,000: arrest and trial costs are calculated to be \$150,000; the cost of providing an additional space in the prison system is approximately \$50,000 to \$150,000, depending on the jurisdiction; maintenance costs for a single prisoner are roughly \$30,000 per year — with the medium prison term of five years, that's \$150,000. With this same amount of \$450,000, approximately 200 people could be given medical treatment or education.

A New York Times editorial from July 2, 2008 entitled *Not Winning the War on Drugs* (Published online: <http://www.nytimes.com/2008/07/02/opinion/02wed1.html>), seemed to describe a fresh North American social consciousness when it affirmed that:



Above all, the next administration must put much more effort into curbing demand — spending more on treating drug addicts and less on putting them in jail. Drug courts, which sentence users to treatment, still deal only with a small minority of drug cases and should be vastly expanded. Drug-treatment programs for imprisoned drug abusers, especially juvenile offenders, must also be expanded.

Over all, drug abuse must be seen more as a public health concern and not primarily a law enforcement problem. Until demand is curbed at home, there is no chance of winning the war on drugs.

# HARM REDUCTION, DEPENALIZATION AND DECRIMINALIZATION

Over the last few decades, various countries developed innovative policies to confront the problem of illicit drug use, based on pillars of depenalization and/or decriminalization and the politics of harm reduction.

The policies of reducing damages constitute a strategy that treats drug consumption as a public health question in which the addict is seen as a person who needs auxiliary assistance rather than a criminal who should be punished. The initial objective of the countries which developed the policies of reducing damages was to regulate the distribution of syringes, needles and pipes to drug users with the end goal of reducing the number of cases of illness such as AIDS and hepatitis, of which there is very high risk when users share needles. In the past, this policy has included drug addiction support and treatment programs.

Depenalization is defined by Cervini<sup>5</sup> as “the act of diminishing punishment for an illicit (action) without decriminalizing it, meaning without removing from the act the illicit, penal (offense).” Or, if you will, legal prohibition of the use and possession of narcotics continues in force in penal law, but the criminal is no longer sanctioned with the privation of his liberty.

The problem put forth by depenalization of drug use while maintaining its criminality is the concession of discretionary power to a policy authority. In countries where corruption in the police force is endemic, criminalization can be used to blackmail the drug user, a practice that is common in Latin America.

The alternative to depenalization is decriminalization applied only to the consumer:

Decriminalization removes the status of criminal law from those acts to which it applies. This signifies that certain acts are no longer considered crimes.

In relation to drugs, generally this refers to the demand; acts of acquisition, possession and consumption. In accordance with decriminalization, it is still illegal to use, possess, acquire or, in some cases, import drugs but these acts are no longer considered crimes. However, it is still possible to apply administrative sanctions; these can be a fine, suspension of a driving license or the right to carry arms, or merely a warning. On the contrary, legalization is the process of bringing to the control of law a specific activity that was previously illegal or prohibited or strictly regulated<sup>6</sup>.

The drug-combat policy officially adopted by various countries, associates depenalization or decriminalization of consumption with a harm reduction policy. In contrast to the prohibitionist focus, this perspective is proving to be more effective and humane.

In the majority of European countries (the exceptions being, Sweden and Greece), Canada and Australia, possession of small amounts of marijuana will not constitute a criminal offense for the user. In both legal practice and the repression of commerce, a distinction between strong drugs and weak drugs is observed. In a majority of countries, traffickers, especially of heavy drugs, can be dealt heavy penalties.

Despite presenting many common features, national policies show variations:

- In Portugal, Spain and Italy, the possession of drugs for personal use was decriminalized. People can be subject only to administrative sanctions, such as fines (which in some cases can be removed if the user agrees to enter treatment). In Spain it is permitted to grow marijuana for personal use.
- The Swiss policy is based on “four pillars”: prevention, therapy, risk reduction and repression. In Switzerland, possession of any drug for personal use is treated as a violation (subject to administrative sanctions). In 2001, the Public Health Commission of the Council of States approved a law to legalize possession, cultivation and use of marijuana (for adults, 18 years or older). However, the measure was overturned by a few votes in the National Council and in a recent referendum. In spite of this, marijuana is tolerated by the police and can be practically bought openly. Switzerland also has a pioneer heroin prescription program, which was approved by national referendum.

- In Holland, the possession of small quantities of marijuana and small-scale harvests for personal use were depenalized and the selling and using in so-called coffeeshops — with an official license for the use and sale of marijuana in limited quantities — were decriminalized. The original objective was to permit access to marijuana for individual consumption, disassociating it from heavier drugs. Heroin is available with a medical prescription and safe injection rooms are available to drug addicts. The legal sale of marijuana has not produced a higher number of consumers compared to various European countries where commerce remains illegal. These coffeeshops have functioned regularly since 1976, although their continuation is being questioned because of the trouble caused by tourists who visit Holland exclusively to buy marijuana and, by the presence of small-time traffickers in search of tourists to whom they sell heavy drugs.
- In April 2001, Luxembourg decriminalized the use and transport of marijuana. Problems related to use, acquisition and planting of marijuana are treated as administrative sanctions rather than penalized crimes.
- Since 2002 in Belgium, the use of marijuana was decriminalized. Penal processes only develop, and arrests only happen, in grave cases of social disturbance or public disorder. Similar law is being adopted in the United Kingdom and, for a few years, has already been in force in Ireland.
- In Germany possession of limited quantities of any type of drug was depenalized (tolerance is in relation to weight and is determined by regional government). Since 1994 more than 50 medically supervised centers for safe heroin injection were opened. A sophisticated program that provides heroin to users with major addiction has functioned in major cities since 2002.
- In Denmark possession of small amounts of marijuana is treated with a police warning while the possession of small amounts of cocaine, or heroin, is treated with a legal reprimand and seizure. Fines are imposed on repeat offenders. Sometimes in certain cases of heavy drugs, users in possession of a single dose for their own use receive permission to keep the drug. In these cases, the reasoning given by police is that the effect of a seizure would be minimal and the consequences high since the user could commit a crime or offense to obtain money for another dose.

- In France, even though the use of narcotics has not been depenalized, inspectors decide, on a case-by-case basis, whether to give a warning for a first infraction, apply criminal penalties or direct the user to treatment. In 1999, a director of the Ministry of Justice recommended not to try cases of individual illegal drug use when there did not exist other aggravating infractions. She also determined that prison should only be used as a “last resort”.
- In May 2004, Russia introduced a new law that substituted user prison terms with administrative fines for possession of up to two doses of any type of drug for personal use. Even so, foreigners can be expelled from the country, or have future entry denied, if they are involved in cases of infraction for possession of drugs.

In North America the politics are also changing. In Canada the debate over war-on-drugs policy has been rapidly evolving in the past few years. A commission of the Canadian Senate proposed legalizing marijuana along with attaining important reforms in drug prevention and repression legislation.

Even in the United States various state and municipal legislatures guarantee differential treatment for light drug users. More than 35 years ago, in October 1973, the state of Oregon reduced the infraction of possessing less than 30 grams to a “civil violation,” the maximum penalty being a \$100 fine. Ten other American states (including Alaska which has decriminalized drug possession for personal use) have promulgated laws reducing the maximum penalty for possession of marijuana to a fine. In the state of California, marijuana is not only legally produced for “medical use,” it is also already taxed.

Medical and therapeutic usage of marijuana was decriminalized in the state of Michigan at the beginning of December 2008. Michigan became, in this way, the 13th state in the country to legalize marijuana for clinical and therapeutic use despite the law being unclear with regard to the means for obtaining the herb. Approved by voter referendum, the law allows patients with cancer, AIDS, glaucoma and a few other illnesses to use medically prescribed marijuana as a means of reducing symptoms of illness as well as their respective treatments. People who qualify can officially register with their state government to receive special identity cards. People in possession of an identity card, “will be able to acquire, possess, transport and cultivate a

limited quantity — not surpassing 2.5 ounces and 12 plants — of marijuana. Those given this right of possession, cultivation and consumption, can even nominate another person — on whom they are dependent or from whom they receive care — to receive the “marijuana card.”

Depending on whether issued by state or municipality, the law is applied very differently. In the city of San Francisco, for example, there is a proliferation of small establishments — almost always cafés or snack bars — that are set up to sell cigarettes, teas and limited quantities of marijuana. In spite of its being illegal, the police rarely intervene with this kind of commerce.

In addition to the changes in national legislation, mobilization has begun to modify the international Conventions, in particular in relation to the exclusion of marijuana as an illicit drug. The *Global Cannabis Commission Report*<sup>7</sup> prepared by The Beckley Foundation introduces various alternatives in this vein. The report argues that marijuana has fewer negative effects on health — whether direct or indirect — than alcohol or tobacco. The Cannabis decriminalization proposal is linked to public policies on control and information about its use, the same case with other legal drugs.

If we compare the impact of United States and European policies on consumption, the trends are generally the same. In other words, policies that are less repressive, more humane and carry lighter social cost do not result in raised consumption.

# NEW TRENDS IN LATIN AMERICA

In Latin America various countries have implemented — or are on their way to implementing — policies to depenalize possession of illicit drugs for personal use. Among them are Venezuela, Argentina, Colombia and Brazil. Additionally, among Andean region countries with ancestral traditions in the use of coca, the demands are growing for respect of local culture as well as for the search for alternative uses. Small cultivations of coca leaves in Bolivia are differentiated from the deposits of drug traffickers. The motto of president Evo Morales is “Zero cocaine, but not coca zero” — an objective still to be reached as long as Bolivia continues to be an important producer of coca for illicit usage. Since 1988 Bolivia has permitted up to 12 thousand hectares by law for cultivation of coca as chew or to make tea infusions. The parcel was increased in 2004. What extends beyond the area must be eradicated. While dissatisfied, and pressuring for lower limits on the fields of cultivation, the White House yielded to the format and continued sending aid to the government to carry out their antidrug campaign. The cooperation, however, was suspended when La Paz vetoed the forced eradications.

In Brazil, the first national drug control policy was created by president Fernando Henrique Cardoso’s government. The creation of the National Drug Secretariat was intended to develop a plan that reconciled methods of repression, plans of prevention and reduction of demand. In 2006, under the governance of president Luis Inácio Lula da Silva, the drug policy was realigned with Law nº. 11,343, strengthening prevention programs and guaranteeing educational measures instead of user penalties, and providing space for the cultivation of plants for confirmed personal use.

In March 2003 in Mexico, ex-president Vicente Fox made the following commentary: “My opinion is that, in Mexico, it is not a crime to possess or carry a small quantity of drugs in one’s pocket. [...] One day, humanity will see the legalization of drugs as the more sensible alternative.” Already

last October, in an attempt to keep his crusade against narcotic trafficking alive and to quell violence on the streets, president Felipe Calderón passed a bill into law that decriminalizes possession of drugs in small quantity. Calderón's initiative proposes that users found in possession of up to two grams of marijuana, 50 milligrams of heroin, 5000 milligrams of cocaine and 40 milligrams of methamphetamines, should not be punished

The measure is intended to legally differentiate between consumer, supplier and seller. "The goal here is not to treat the drug addict like a delinquent but, yes, like someone who is infirm and to provide them with psychological or medical treatment," said senator Alejandro González, president of the Justice Commission of the Mexican senate.

The Argentine government, in turn, promises to introduce a bill soon that decriminalizes drug consumption. The minister of justice, Aníbal Fernández, declared that the government seeks "a modern, intelligent standard that concedes responsibility to the judiciary to resolve the problem as it presents itself." The Argentine president, Cristina Fernández Kirchner, recently criticized those who "condemn the drug addict without understanding the personal and social problem," and, she insisted that, "those who sell narcotics should be punished, not those who use them."

In Medellín and Cali, Colombia, social reinstatement programs for drug users have had good results, with a considerable reduction in the rate of homicide.

Recently, the governments of Brazil and Bolivia signed an agreement that launches a regional anti-drug strategy. Argentina, Peru and Chile will likely also take part. The agreement foresees joint actions with police, locating and destroying laboratories and vestiges of clandestine runways, and support of the Armed Forces and sharing information about drug trafficking.

In conclusion, as these examples demonstrate, Latin American countries, with their diverse rhythms and characteristics, are heading in the same direction. They are seeking alternatives to the policies of indiscriminate repression while recognizing that the complexity of themes and variety of social players involved will require innovative responses that mobilize all of society's resources and a wide range of public policies.



# FACING THE FUTURE

The increase of violence in Latin America, which is in large part linked to drug trafficking, has become one of the principal problems for citizens and democratic institutions in the region in recent years. The orientation of battling drugs with prohibition, repression, sanctions and punishment not only does not resolve the problem, but generates new and more serious ones. The experience with legal drugs, such as nicotine addiction and alcoholism, indicate that highly positive results can be reached using information campaigns, education and consciousness building, and when necessary, therapeutic support.

Even with heavy military police repression, eradication of plantations, disruption to drug traffickers' physical infrastructure and the constant seizure of considerable drug supplies, organized crime maintains margins of profit that easily overcome its losses. The supply of coca was sufficient to meet market demands and even to lower prices.

As has already been said, the conflicts involving illegal production for export and for internal consumption have given the region the highest levels of homicide on the planet. Drug profit is the principle financier of the illegal arms trade. Thousands of youth die in internal wars for control of commerce or in battles with the police or military who are also fatal victims of this singular war. Some of the powers responsible for maintaining order and structure have been co-opted by organized crime, and the corrupting power of drug money penetrates all levels of public authority and corrodes the basis of democracy.

How to confront this problem? The strategy fundamentally centered on repression failed in Latin America. The wish for a world without drugs does not constitute a realistic vision and, therefore it cannot be the basis for public policies whose priority objectives should be prevention, treatment and reduction of harm for society, individuals, families and institutions.

Despite the importance and the seriousness of the theme presents to citizens in the region, it is dealt with marginally in electoral campaigns, in the media and in public debate in general. Advances in the region — many of them important — made by diverse countries in their laws or in practical means of dealing with the question, as well as public declarations by political leaders, while representing important steps are still insufficient. Governments and Latin American societies should deepen the debate about the drug phenomena. In the absence of ample and well-informed discussion, problems related to violence, corruption and the erosion of public power tend not only to become aggravated but, become more difficult to resolve.

The politics of war against drugs adopted officially by diverse countries, particularly in Europe, with a focus on depenalization or decriminalization of consumption, drug addiction treatment, prevention of extremely injurious secondary effects (like the use of contaminated syringes as vehicles of contagious disease such as HIV) have proven to be a more effective and humane model.

In Latin America, diverse countries have implemented or (or are on their way to adopting) policies of depenalization of possession of drugs for personal use, among them Uruguay, Venezuela, Colombia, Argentina and Brazil. Moreover, new ways of thinking and acting in the fight against drugs are growing in the region. They focus on human rights, respect of ancestral cultures and the search for new types of crops and alternative uses.

Part of the legislation and public policy, in the from different countries in the region prove themselves insufficient and/or ineffective in curbing drug use and drug trade. Changes in legislature, education campaigns, drug addiction treatment, information and consciousness building are central elements for dealing with the cited problems. Clear declarations in favor of depenalization or even decriminalization, regulation and treatment of the drug problem as a public health question, emerge today from personalities from diverse countries in the region and from different ideological perspectives and parties.

Leaders in communication, public opinion, education and from civil society organizations should participate in consciousness raising campaigns about the harmfulness of drugs using effective and realistic messages that reach

the public. Mobilizing recovering addicts who can transmit the drama of their lives is certainly more impacting than statements of principle.

The public health system should be prepared and endowed with resources to support drug addicts, just as it is necessary to support civil society organizations dedicated to drug addiction treatment.

Public security forces should focus their efforts and resources on the fight against organized crime and arms trafficking associated with it, seeking to dismantle the great web of drug and arms trade and money laundering. Excessive force to repress the user represents a waste of limited resources and it opens the door unnecessarily to corruption in the military and police forces.

A security policy should be guided by a solid intelligence system. Without it, repression is ineffective and its social effects can even be counterproductive. New policies should make use of expertise about the quality of illicit drugs used and studies about their health impact. Knowledge gained at a national level should be shared between countries in the region, which will permit identification of the drug's origin and route.

New policies and education campaigns should be accompanied by systemic research that supports decision making for effective action in prevention, information dissemination, education and treatment. Research centers should regularly study standards and changes of illicit drug use, according to type, age group, and social stratum of users. This requires constant surveillance of what is happening with consumers, including indirect consequences such as HIV transmission (whether by sexual transmission under the effect of drugs, whether by blood in the sharing of syringes.)

The search for alternatives to rural development that create viable markets and infrastructures for the actual producers of illicit drugs should not exclude the a priori possibility of lawful utilization of the same. New scientific research might valorize the use of cannabis and coca as ingredients for medicinal applications, culinary use, chewing gum, production of extremely resistant fibers for use in textiles and rope, hygiene products, bio-combustible fuels and vegetal plastics.

The construction of a common good requires courageous solutions that may only be developed through an open debate that strengthens the disposition

to experiment with new solutions. It is a complex theme that requires mobilization of the most diverse areas of knowledge and coordinated action of various institutes and public policies.

Parliamentarians, governments, judicial authorities, public security organizations, health sector specialists and civil society organizations should take part in an open and informed debate that transcends corporate interests. A complex problem demands mobilization of the most diverse experts and institutions that deal with the problem through integrated policies.

The problem of drugs should be debated straight on — through discussions, debates, studies and research — by each country and across the region. It does not only affect each respective society but creates spaces of criminality that do not recognize national borders. The subject demands, therefore, new forums of debate in each country and at the regional level that facilitate free and intense discussion and the exchange of local experiences that seek out cooperative solutions to a regional problem. As the region that has most suffered the negative effects of the “war on drugs”, Latin America can effectively contribute in the search for new paradigms to face the problems posed by the illicit drug trade and consumption.

## LOCHNER v. NEW YORK.

ERROR TO THE COUNTY COURT OF ONEIDA COUNTY, STATE OF  
NEW YORK.

No. 292. Argued February 23, 24, 1905.—Decided April 17, 1905.

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor.

There is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker. Nor can a law limiting such hours be justified as a health law to safeguard the public health, or the health of the individuals following that occupation.

Section 110 of the labor law of the State of New York, providing that no employés shall be required or permitted to work in bakeries more than sixty hours in a week, or ten hours a day, is not a legitimate exercise of the police power of the State, but an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract, in relation to labor, and as such it is in conflict with, and void under, the Federal Constitution.

MR. JUSTICE HOLMES dissenting.

I regret sincerely that I am unable to agree with the judg-

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HOLMES, J., dissenting.

ment in this case, and that I think it my duty to express my dissent.

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the Post Office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. The other day we sustained the Massachusetts vaccination law. *Jacobson v. Massachusetts*, 197 U. S. 11. United States and state statutes and decisions cutting down the liberty to contract by way of combination are familiar to this court. *Northern Securities Co. v. United States*, 193 U. S. 197. Two years ago we upheld the prohibition of sales of stock on margins or for future delivery in the constitution of California. *Otis v. Parker*, 187 U. S. 606. The decision sustaining an eight hour law for miners is still recent. *Holden v. Hardy*, 169 U. S. 366. Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez-faire*.

HOLMES, J., dissenting.

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It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

LEGAL  
SPECTATOR  
&  
MORE

Jacob A. Stein



# THE VISITING JUDGE

**S**everal weeks ago, I traveled to attend a court hearing cross country, out where the West begins. Local counsel directed me to the courtroom and gave me some background on the judge who would hear my motion. Then I was on my own.

I identified myself to the clerk, who told me and the other lawyers gathered around that a visiting judge would be taking the calendar. The assigned judge was engaged in a carry-over case and was unavailable. I questioned one of the local lawyers about the personality of this visiting judge. No one had heard of him. The corridor gossip was he had been sent in from a northern district.

As the judge took the bench, he requested that the clerk, because of her superior familiarity with the local practice, call the cases in any order she determined most efficient for the lawyers. Following the judge's direction, she divided the cases into a morn-

ing and afternoon calendar. The judge then announced that the lawyers on the afternoon calendar were excused until 2 o'clock. I was on the excused list but I had no place to go so I decided to remain and observe the proceedings.

The calling of the first case brought forward a young lawyer whose nervousness inhibited his flow of language.

"I don't know," he said, "whether to discuss the law or concentrate on the facts."

The judge leaned back comfortably and ran his hand through a full head of gray hair and said, "Would you like to know what I think?"

"I certainly would, Your Honor."

"Well, I think you ought to do what makes you feel comfortable and in that way you will be more helpful to me."

The lawyer's nervousness vanished. His voice became melodious. He found eloquence and spoke without repetition.

In another case, the lawyer for the defendant was incorrigible about arguing a subsidiary issue after the judge announced his ruling. Without a word of warning, the judge suddenly walked off the bench. He returned 10 minutes later and said to the lawyer who was still standing at the lectern: "You have so many good points I could not understand why you wanted to keep on arguing that bad one. I felt a few minutes would be helpful to you. Was I right?" Of course he was.

After each presentation, the judge discovered an opportunity to offer credible flattery to the lawyers. Good manners and attention to the small details that concerned others were all done effortlessly and without too much pedal, as the musicians say. Our visiting judge had taken Lincoln's maxim—with malice toward none—as his working principle. What an effect it had on the

proceedings. Even the losers (I was one) were impressed by the judge's demeanor.

When the calendar was completed, the judge thanked the court personnel for their help, wished everyone well and declared his great pleasure at being with us. He waved his hand towards the well of the court and then he vanished through a side door.

Since that day I have tried to find out more about the visiting judge. My efforts have led to nothing. Nobody seems to know where he came from or where our mysterious stranger went. I should have guessed he was too good to be true.

Jacob Stein took part in the Bar Library Lecture Series on January 21, 2009 with a presentation on "Perjury, False Statements & Obstruction of Justice." Generous with his time, Mr. Stein was generous in other ways as well as indicated by the language in the preface to the third volume of Legal Spectator from which the following was taken. Mr. Stein wrote "This book is not copyrighted. Its contents may be reproduced without the express permission of, but with acknowledgement to, the author. Take what you want and as much as you want." The works featured in the Legal Spectator, originally appeared in the Washington Lawyer, the American Scholar, the Times Literary Supplement, the Wilson Quarterly, and the ABA Litigation Section's publication. I want to thank former Bar Library Board of Director Henry R. Lord for his time and efforts in reviewing the writings of Mr. Stein for inclusion in the Advance Sheet.