

“War on Drugs”: How Will Domestic Legalization Affect International Conflict?

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An Interview with Samantha Gay and Sabin Ray
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Brown Journal of World Affairs: From a legal perspective, what do you find interesting about the international drug conflict?

Paul Finkelman: In the United States, I think what is most interesting is the fact that it’s destroying much of the country. A program designed to enforce laws and create regulations is undermining law enforcement, undermining civil liberties, and undermining whole cultures within the society. About the only people benefitting from the War on Drugs are drug dealers, people who build prisons, and prison guards. We’ve incarcerated huge numbers of people and it has had no noticeable effect on drug importation and drug use. What the War on Drugs does is basically provide incredible profits for drug dealers. The War on Drugs has become an economic engine unto itself, and I’m interested in that because I’m watching it harm large portions of American society.

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Journal: How does this compare to international cases of drug conflict?

Finkelman: Internationally, it is similar. I became seriously interested in the War on Drugs when I was invited by the State Department to give a series of lectures in Bogota around 1990. Everywhere I looked, there was someone carrying a machine gun in uniform, protecting the city and country from itself. I watched this and I gave a lecture to the Colombian Supreme Court—about five years after about half (12 of 25) of the justices of the Supreme Court had been massacred by what they called the narcoterrorists. So I gave the lecture in front of these bust-like, larger-than-life-size photographs of the deceased justices. While there, I began to realize how devastating the War on Drugs was for a country like Colombia. My last day there, I had dinner with the U.S. head of the Drug Enforcement Administration for Colombia. He had said just that week they'd arrested a senior general of the Colombian army just as he was retiring with a jeep full of drugs he was trying to transport. So, one of the things about the War on Drugs is that it is devastating for countries that are drug producers. Mexico, the best example, is in enormous chaos, and whole parts of the country are completely lawless.

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Journal: Could you explain the actual legality of the United States' War on Drugs? Specifically, how does the United States have the right to intervene in these nations under international law?

Finkelman: Well, the foreign War on Drugs is very simple. We have relationships with various foreign nations that are the sources of drugs—Mexico and Colombia are two of them—based on treaties, a foreign aid program, and other bilateral negotiations. Most of these countries have invited the United States in to help. When I was in Colombia, the Colombian government accepted all of the aid the United States was willing to give in order to fight the War on Drugs. The drug syndicates are not just a threat to American users of drugs; the drug syndicates are a huge threat to all of the people in these countries. Drug syndicates undermine the stability of these governments. If there is a military strike in a place where drugs are either being grown or processed, and that military strike is led by the military of the nation involved, and they're using American-made helicopters or American-made weapons or have with them some American military personnel who they've invited to help them, then there is no international law issue. This is not an example of an imperialistic, unilateral intervention.

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The United States isn't invading Mexico or Colombia. In fact, the partnership between the United States and the Colombian government worked very well in undermining narcoterrorism. Colombia now, from what I understand, is an incredibly safe place, whereas while I was there, it was dangerous. So that piece of the international puzzle is easy, I think. Now, what would be more difficult is if hypothetically the United States were to invade Panama to seize Manuel Noriega.

There, I think the argument would be that he was “under-indicted” in the United States, and we used American law enforcement to resolve the issue. Obviously, though, there are problems doing this in a country that has a military that

could defend itself. In that sense, this would be an invasion. However, I think there's probably justification in international law in this scenario for going after an international criminal. The reasoning would be that Manuel Noriega would have been, in a sense, making war in the United States by facilitating the domestic importation of drugs. But I think the issue for people who are interested in international law and affairs is what the domestic war on drugs and the domestic consumption of drugs are doing to foreign countries. Far more devastating than the hypothetical invasion of Panama is the current destruction of large portions of the Mexican culture. And that cultural destruction is not caused by an American invasion—it's not caused by Americans going down there and shooting the place up. It's caused, in fact, by the United States buying huge amounts of drugs from Mexican cartels.

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Journal: To solve this problem, some scholars advocate partial or full drug legalization. Do you think legalization would be beneficial, or would it just exacerbate existing issues?

Finkelman: I would decriminalize either everything or virtually everything. However, one could make an argument that certain kinds of drugs are disproportionately harmful, so the one thing that I would have to know more about is the science. This is to be clearer in terms of the extent to which I would advocate decriminalization of particular drugs. I might not advocate decriminalizing methamphetamine, on the one hand, but imagine if we simply repealed the existing prohibitions on marijuana and replaced them with a regulatory scheme similar to that of alcohol. This would mean only adults could buy it, it would

have to be sold in a store that is licensed, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives would also regulate marijuana. It is true that marijuana is a dangerous commodity—I don't think anybody should be under the illusion that smoking pot is usually healthy for you although it does have some proven medicinal value in certain circumstances. But if you treat marijuana as alcohol, you can regulate it, you can control its content, purity, and strength. The taxes on marijuana would be spectacular. We'd collect a lot of tax revenue. We could add all kinds of laws to regulate where it could be used and when it could be used. Driving Under the Influence (DUI) would be for marijuana just like it is for alcohol. You would also then change the treatment of people who have a marijuana problem. This is an important bonus of legalizing it. Marijuana is primarily psychologically addictive. Whether it's physiologically addictive is a subject of great debate. I know people who deal with serious science who say it is, and I know other people who say no, it's not. Regardless, if it were no longer illegal, people who have a marijuana problem could seek help openly in a way they cannot today.

Journal: The recent legalization of marijuana in Colorado and Washington has clearly had domestic effects. Do you think this will have international effects as well?

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Finkelman: If the entire United States followed the Washington–Colorado model, the drug industry in Mexico would be dramatically changed. Instead of criminals running the drug industry, current liquor importers might become involved. There would be producers who could legally grow marijuana and legally sell it to American companies that would import it. There would be legal open markets—then all the guys with guns would be out of business, and since the guys with guns are out of business, they would no longer have the money

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to buy more guns. It would take a while, but the criminal dysfunction of Mexico would decrease because there would simply be less money flowing to criminals. Now, will Colorado and Washington by themselves affect this?

Not by a lot—Colorado and Washington will push some street dealers out of business who are probably not particularly violent people. The laws will also push the larger players who are gun toting and dangerous out of those states since sales are now open. So in that sense, if I were the head of the state police

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in Colorado or the head of the Sheriff’s Department, I would be delighted since the state has gotten rid of some really dangerous people at limited cost. And in fact, the state will receive a bonus because the state can now tax marijuana when it is sold. It is a win-win for law enforcement, safer streets, and taxpayers. The losers are drug dealers and drug cartels. This will not affect the huge syndicates in Mexico or elsewhere very much, but it is a start.

Journal: Given your research on slavery and drug conflicts, do you have any thoughts on the relationship between the two? In looking at eighteenth- and nineteenth-century slave trade routes, do you think there are any similarities between them and the geography of the War on Drugs today?

Finkelman: The vast majority of the Africans who came to the New World came from West Africa and a smaller group came from East Africa. There is a parallel in the oceanic interdiction of the slave trade and the oceanic interdiction of drugs. When the British ended the African slave trade in 1808, Great Britain created the Africa squadron, putting a significant number of British war ships off the coast of Africa to inspect ships that left the continent. These made sure that African ships were not bringing slaves into interdicted areas and illegally importing them into the New World. We can learn from this history, and I suppose we could have a “dope squadron,” but the parallels are not exact. The difference is that the mode of transportation today is much more complicated, and there is no single source of origin like the West African Coast for the slave trade. The creativity of drug smuggling is astounding. Smugglers have even built their own kind of mini submarines to transport commodities and are constantly coming up with new modes to avoid radar. The other tragedy, though, is the significant number of very poor people in Latin America and the Caribbean that are dragged into the trade as “mules.” Some are also the crews on ships or airplanes—they’re not simply carrying the drugs on their person. Lots of people hide cocaine on their body or even in their body—to the point of swallowing a bag of cocaine. These people can be dramatically harmed. Their lives are also put at risk—if they’re caught, they will end up with long-term jail sentences. Even worse, many of them die along the way. Just think about what happens if one of those swallowed cocaine bags bursts in their bodies. There’s an enormous amount of human tragedy caused by American consumption of drugs under a criminalized drug framework. And the more drugs we want, the more people will be dragged into the drug industry in Latin America, Asia, and elsewhere.

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Journal: In terms of terminology, is it most appropriate to call this a War on Drugs?

Finkelman: The War on Drugs is a political term. It's obviously not a war in the way you normally think of a war. There are not armies fighting each other or countries fighting each other. There is no way to negotiate an end to the war and no one to negotiate with. On another level I suppose it's similar to the war on terrorism. We are fighting very heavily armed bad guys who are shooting back—and so in that sense there is a war.

I would rather see a war on drug dealers. If we want to militarize this, we should militarize the piece of it that is subject to normal military response. The domestic tragedy is that we militarize it the other way. We have around a million people—disproportionately minorities—in prison for nonviolent drug crimes. Tied to that is a horrendously large homicide rate among

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minority men who are being killed in the drug wars. This is the domestic version of what the military calls collateral damage. Furthermore, if two gangs are fighting and someone walks by, a bystander is killed.

If we were to legalize all drugs tomorrow, that would not eliminate gangs in inner cities because they tend to be created by other sociological forces. What it would do is take a significant amount of cash and weapons out of the hands of those guys. If my choice is between gangs with machine guns and automatic weapons or gangs with baseball bats and knives, I prefer baseball bats and knives because they're less lethal. Fewer bystanders would be killed. So when you pull that money out of the criminal world, you cut the finances of criminality. These criminal organizations will simply cease to exist because there won't be any way for them to make as much money as they did in drug trafficking. In the end, as the criminal organizations shrink, fewer people will be excited about going into these organizations because there will no longer be the prospect of making big money.

Journal: Do you have any predictions for the next 10 years with this conflict, especially when it comes to the legalization discussion? How likely do you think it will be that more states will legalize marijuana, following the example of Colorado and Washington?

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Finkelman: I think we will see a half-dozen states follow the Colorado-Washington model for the next three or four years. We’re going to see an attempt by the Federal government to stop this. If a Republican president is elected in 2016, it will be a greater attempt. Democrats are not soft on drugs, but the Obama administration seems to be more practical and reasonable about how to deal with the problem. Either way, the federal attempt to stop it will fail. Very quickly, we will have a patchwork America where marijuana is decriminalized or legalized in maybe 15 states. If those states legalize—likely ones being New York, California, Illinois, Massachusetts, Connecticut, Vermont, New Hampshire, Minnesota, Oregon, Washington, and Colorado—the impact on the drug cartels will be huge. If you pull those major markets out, you’re looking at the three biggest cities in the United States—New York, Los Angeles, and Chicago. Add Michigan and Massachusetts to that and suddenly the market is shrinking for drug cartels. What that will lead to is perhaps more violence in drug cartels because they have to fight for the market. But at the same time, it will dramatically reduce crime in all those states. Throw in New Jersey and Pennsylvania and suddenly there is no point in dealing drugs in the Northeast because there is no market, at least for marijuana. The drug dealers would either have to push cocaine or methamphetamine or they would have to simply pull out of the market. The experience is that some drugs have a less elastic market than others. It is unlikely that there would be as big of a market for cocaine, methamphetamine, or heroin in states where marijuana is legal.

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With legalization we would have an increase in medical marijuana, which can actually improve society. There might be some negative increases in social dislocations caused by marijuana use, but it would be minor compared to the gains. Furthermore, if marijuana were legal, there would be much greater hope of providing rehabilitation and drug counseling. Today if someone has a “marijuana problem” that person cannot easily get help without admitting to criminal behavior. You can’t go to your boss and say, “I have a pot problem, where can I get help,” the way you can say I have a drinking problem, where can I get help. Legalization allows for better and more comprehensive medical care for those who need it.

Journal: If drugs were to become increasingly legalized in the United States, how would that affect the United States’ relationships with countries in Latin America that are currently receiving massive funds to combat the drug war?

Finkelman: Let’s start with marijuana. If the United States is no longer em-

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bargaining marijuana and criminalizing it, very quickly farmers in Mexico will be lining up at government offices to get licenses to grow marijuana. American importers will then get involved. Instead of having to send people with helicopters and machine guns to these areas of Mexico, we will see guys in three-piece suits with contracts negotiating with farmers. And then of course you are going to get things like “certified organic” marijuana as opposed to less expensive, generic marijuana.

Journal: It will be interesting to see the extent to which some of these changes might occur in our lifetime. Thank you, Professor Finkelman. 

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