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Latin America's Legalization Push

As drug violence rages, Mexico takes the lead on policy reform.

CHRISTOPHER MORAFF | July 6, 2009

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A call for drug policy-reform is echoing across Latin America, where a decades-long, U.S.-sponsored battle against drug production and distribution has fostered a climate of fear, insecurity, and death. Throughout the region, former and current political leaders have allied with academics, medical professionals, and community activists to issue an appeal for a multinational dialogue on alternatives to the current drug war, including a possible end to drug prohibition.

In February, the multidisciplinary Latin American Commission on Drugs and Democracy (co-chaired by former Presidents Fernando Henrique Cardoso of Brazil, Cesar Gaviria of Colombia, and Ernesto Zedillo of Mexico) called the drug war a "failure" and issued a groundbreaking report urging other governments in the region--including the United States--to rethink prohibition policy. More recently, on a May 2009 trip to Atlanta, where he gave the commencement address at Emory University, former President Vicente Fox of Mexico told an interviewer that the time has come to "discuss and assess the possibility" of legalizing drugs.

Nowhere is the sense of urgency more acute than in Mexico, where President Felipe Calderon's ongoing battle against the drug cartels has left parts of the country in a near perpetual state of combat. According to Milenio, a Mexican media

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association, the campaign has claimed more than 10,000 lives since December 2006, when Calderon deployed the military to help federal police in their fight against the cartels.

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The death toll includes countless civilians, and Mexico's National Human Rights Commission says the drug war has led to an exponential surge in reported cases of official abuse. Increasingly, human-rights activists are drawing a direct link between drug prohibition and human-rights violations. "Without a doubt, rethinking the criminalization of drug use would be a very important long-term strategy to improving the serious human-rights situation that Mexico is facing today," says Ana Paula Hernandez, a Mexico City-based human-rights activist and political consultant. Mexico's opposition parties are hoping to capitalize on the country's mounting impatience with Calderon's struggle against narcotic trafficking and its bloody side effects to regain seats in the legislature from the president's party, the Partido Accion Nacional (PAN). As the *Prospect* went to press, midterm elections--scheduled for July 5--were gearing up to be, in part, a referendum on the president's drug policies. Up for grabs are all 500 seats in Mexico's lower House--the Chamber of Deputies--as well as governorships in six states and hundreds more positions in state legislatures and city halls. At least one party, the social democrat Partido Socialdemocrata (PSD) has placed legalization on its official platform, and members of one of the country's two main opposition parties--the center-left Partido de la Revolucion Democratica (PRD)--are floating their own legalization proposals. There are presently two active PRD bills to decriminalize marijuana: one at the federal level and one in Mexico City.

According to journalist Dan Feder, who covered the Mexican legalization movement extensively from 2002 until 2004, representatives of nearly every political party in Mexico have proposed legalizing drugs at one time or another. The country's first legalization bill was introduced in 1998 by PAN Senator Maria del Carmen Bolado del Real. But Feder says it wasn't until the 2000 presidential election--which saw the end of Partido Revolucionario Institucional (PRI) supremacy in Mexican politics and the election of PAN's Vicente Fox--that a dialogue on drug-policy reform entered mainstream political discourse. By the 2008 midterm elections, new parties like Mexico Posible--a forerunner of PSD--and progressive members of PRD were openly advocating the legalization of marijuana.

Today, reform advocates populate every level of Mexican society and have hosted forums on drug legalization for universities, city councils, and, recently, the federal legislature. Last October, President Calderon himself--a dedicated social conservative--sent a proposal to the Mexican Senate that would decriminalize the possession of small quantities of most drugs, giving users the option of seeking treatment to avoid criminal prosecution while tightening penalties for street dealing. The so-called Ley de Narcomenudo was passed by both houses of Congress in late April and at press time was awaiting the president's signature.

Advocates of legalization in Mexico greeted the measure with marked skepticism. Alejandro Madrazo Lajous, a Mexico City-based attorney who advises the reform community, says that while the current bill can theoretically be called decriminalization, in practice authorities maintain inordinate discretion over how it's applied. "It's not actually decriminalization insofar as the conduct is still considered a crime," he says. "Technically the crime still has to be reported and investigated, but it stops there and never reaches court." Instead, Lajous explains, after a first encounter with police, users are referred to public-health authorities who

are empowered to make a determination of addiction (farmacodependencia) and recommend treatment. After a third police encounter, addicts will be compelled to enter treatment; if they refuse or fail to complete the program they face prosecution. Though compelled treatment should apply only to addicts, Lajous says that since farmacodependencia will be predicated on the vague standard of "showing any symptoms of dependency," he suspects federal authorities will try to send everyone to treatment upon a third report.

Rather than representing an enlightened, treatment-oriented approach to drug use, critics say the new law is more akin to a similar proposal, floated by President Fox in 2004, to create a legal distinction between users and traffickers--not as a public-health initiative but as a necessary step to enforcing stricter penalties against low-level dealers.

"Basically, Fox said that it was important not only to prosecute the big drug barons but also to fight the petty traders who sell retail," explains Jorge Hernandez Tinajero, director of the drug-policy reform group Colectivo por una Politica Integral Hacia las Drogas (CUPIHD). "But they realized that to enable such a thing they needed to determine who is a small dealer and who is a consumer, [so] Fox proposed establishing quantities of certain drugs to be considered legal for personal possession while tightening, by far, the penalties for those who violate."

By 2006, Fox's proposal had passed both houses of the Mexican Congress before the president himself vetoed the bill, allegedly under U.S. pressure.

Like Fox's proposal, the Calderon bill includes strict mandatory minimums for street-level dealing, and for the first time allows undercover police to make street buys from dealers. The day after the measure passed the Chamber of Deputies, CUPHID released a statement calling the law a half measure that could potentially do more harm than good. "Nobody can say that Calderon's proposal is an initiative to decriminalize drug use," Tinajero says. "If a consumer is caught by the authorities he has two options: either declare himself an addict and be assigned to a rehabilitation center and be 'cured,' or be declared a drug trafficker and go through a legal process that can lead to imprisonment. In reality the Calderon proposal will strengthen the war on drugs, especially against consumers."

Elsa Conde, one of four representatives of the PSD in the Chamber of Deputies and the sponsor of a recent congressional forum on marijuana reform, voted against the bill and worries that the law will further criminalize the "poor and unprotected." Given the tiny "legal" quantities proposed--5 grams for marijuana, a half gram for cocaine, and even smaller amounts of heroin and methamphetamines--Conde says more users and addicts are likely to be labeled dealers and subjected to the harsher penalties that the law mandates. "We didn't support this [bill] because while we agree that consumers and traffickers must be adjudicated differently, this proposal will only serve to imprison more people and will not have any real impact on public safety or the supply of drugs," she explains. "This proposal is not about respecting the rights of consumers."

Her argument underscores a fundamental ideological split between Mexico's two main reform groups. Unlike PRD and others who take a

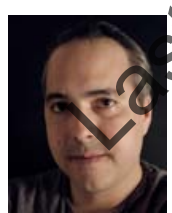
pragmatic approach to decriminalization, PSD and its supporters say reforming drug policy is as much about protecting the civil rights of consumers as it is about national security. "The PRD proposes the legalization of drugs only to combat drug trafficking, which I believe reveals, to a certain extent, its conceptual limitations [in thinking] about the problem; they have not yet understood the importance of defending consumers or of taking a civil-rights approach to this argument," Tinajero says.

Accepting the validity of a pragmatic argument for ending drug prohibition, one must still question how much of an impact even full legalization in Mexico would have on drug violence so long as drugs remain illegal in the U.S. Because American demand will continue to fuel a market for cross-border narcotics traffic, cartel wars over lucrative drug routes are likely to continue regardless of the legal status of drugs in Mexico.

Ricardo Sala, director of the reform group Convivencia y espacio publico, A.C., concedes that under a legalization scenario traffickers will still try their best to reach the U.S. market, but he says regulation will give Mexican authorities more control over how and where drugs are produced and distributed in the country. "Legalization should mean regulation: a better control of drugs and drug availability," he says. "If the Mexican state has a better control of drug production, transportation and commerce, then it will be more difficult for illegal trade to make it all the way from the fields or through Mexican territory up to the northern border."

In April, President Barack Obama tapped U.S. Attorney Alan Bersin to serve as the nation's first "border czar" and has pledged to send an additional 500 federal agents to the U.S.-Mexico border this year in response to drug violence. That's on top of the estimated \$700 million in aid, most of it to support law-enforcement efforts, earmarked for Mexico in 2009. But even with an end to prohibition now being discussed at the highest levels of government in Mexico, reform advocates on both sides of the border admit that any real progress on legalization will still require stronger support from one of the major parties. And that's unlikely to happen without a change of policy in the United States.

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