On October 14, 2010 at the University of San Diego, the Trans-Border Institute organized a half-day conference on “Ending Prohibition? Proposition 19, Marijuana Legalization, and the Implications for Mexico.” The objective of the conference was not only to provide a forum for a balanced discussion of the pros and cons of Proposition 19, which would legalize marijuana in California if passed, but also to deliberate the potential effects of the initiative on the escalating Drug War in Mexico.

Proposition 19 is an initiative that will appear on the November 2, 2010 ballot in the state of California. If passed, the initiative would allow for the possession, cultivation, and transportation of marijuana for personal use for adults 21 years of age or older. The regulation, taxing, and control of marijuana production and distribution would fall under local jurisdictions and current laws that prohibit driving while impaired would be maintained.

Panel 1: Current Counter-Narcotics Efforts in the U.S.-Mexico Context

Panelist Kathleen Staudt, Professor of Political Science at the University of Texas, El Paso, began the discussion by reminding the audience of the tragic state of the War on Drugs currently unfolding in Mexico, and particularly in Ciudad Juárez. Drug-trafficking related homicides in Chihuahua, the state where Ciudad Juárez is found, have increased dramatically over the last few years with approximately 1600 in 2008, 2000 in 2009, and over 2500 to-date in 2010. This trend serves as an indication that the current approach – by both Mexico and the United States – to the War on Drugs is not succeeding. Despite the fact that an inordinate amount of resources have been spent on a prohibition approach through enforcement and interdiction efforts, consumption remains high. Alternatives may include a more concerted emphasis on drug education, prevention, and treatment or the regulation and control of drug consumption through legalization. Because marijuana constitutes the vast majority of drugs confiscated at our southwest border (99% by weight in 2009), legalizing marijuana, for example, would allow the US government to more efficiently use resources and focus its interdiction efforts on harder drugs such as cocaine, heroin, and methamphetamine.

As a former Torrance police officer, Kyle Kazan of Law Enforcement Against Prohibition (LEAP) provided a law enforcement perspective to the discussion. In his presentation, Mr. Kazan also asserted the benefits of marijuana legalization to resource efficiency. That is, legalizing marijuana would allow law
enforcement to focus on more serious and violent crimes, such as rape. Mr. Kazan also cited a few examples of failed prohibition strategies and their effects on law and order. Alcohol prohibition in the United States, for example, lead to a very serious increase in organized crime activity in the 1930s. And black market opium production and distribution has contributed significantly to a rule of law crisis in Afghanistan, whereas India has had a much more successful experience through the regulation and control of opium. Mr. Kazan also spoke about concerns that marijuana would get into the hands of children and adolescents in a legalized system. Under the current prohibition approach, it is in fact easier for children and adolescents to obtain marijuana precisely because of the lack of regulation. Legalizing marijuana would provide for more control and therefore make it more difficult for marijuana to reach underage consumers.

**Dante Haro**, Professor at the University of Guadalajara, concluded that, weighing the costs and benefits, it is clear what best serves the interests and potential of Mexico is not a continuation of criminalization, but legalization. To be sure, he says, talking about legalization is one thing, while what can be actually done is another. However, Mexico has an obligation to at least consider this option seriously and responsibly. It is about thinking freely and openly about what is the best drug policy that Mexico can accomplish for its own interests, society, and institutional weaknesses.

**Panel 2: Proposed Initiative to Legalize Use of Marijuana in California**

**Patrick Timmons**, International Liaison for Students for a Sensible Drug Policy, spoke about the harmful sociological effects that current marijuana prohibition policies have on youth. For example, when students apply for financial aid, they have to indicate whether they have ever been convicted of a drug crime. For those that are obligated to indicate that they have been convicted of marijuana possession, this may change their lives forever, as they become instantly ineligible for student aid and their pursuit of higher education is jeopardized. Mr. Timmons questions the wisdom of denying education to students who seek a productive and successful career, but who may never have that opportunity due to the current policy of marijuana prohibition. Mr. Timmons also suggested that the potential fiscal impact of marijuana legalization due to the relief on the prison system may also provide a compelling reason to rethink the current prohibition strategy.
Roger Morgan, Chairman and Executive Director of the Coalition for a Drug-Free California, provided a number of arguments against marijuana legalization in California. For example, because the regulation, control, and taxing of marijuana would fall under the jurisdiction of municipal governments, the state of California would not realize any financial or economic benefit from legalization. That is, the state of California would not find refuge from its current financial troubles through marijuana legalization. Furthermore, the system of municipal control might result in some incoherence in the application of the law across adjacent municipalities with different policies.

Public safety is also the source of much concern for Mr. Morgan, as marijuana legalization is likely to result in an increase in the number of motorists who drive while impaired. Furthermore, with marijuana legalization, drug consumption is likely to increase; and this is true for harder drugs as well, given that marijuana is known to be a “gateway drug”. This represents a worrisome public health concern due to the detrimental effects of marijuana on brain development and the known causal relationship between marijuana – and other drugs – on psychological disorders such as schizophrenia. To give some perspective on the potential public health effects of marijuana legalization, Mr. Morgan indicated that there are approximately 3,200 overdose deaths per year in the United States. Given the likely increase in drug consumption and marijuana’s status as a gateway drug, marijuana legalization in California is a particularly worrisome trend.

Lastly, Mr. Morgan stated that marijuana legalization in California is also not likely to have any meaningful effect on Mexican drug trafficking organization since California already supplies much of the state’s demand anyway.

Alex Kreit, Associate Professor of Law and Director of the Center for Law & Social Justice at the Thomas Jefferson School of Law, asserted that Proposition 19 represented an effort to “change course” from the current 40 year-old War on Drugs strategy. In fact, Proposition 19 recognizes the lack of experience in a regulatory approach by giving municipalities the authority to formulate their own regulatory framework, thereby allowing different jurisdictions to adopt policies that have proven successful in other areas. Mr. Kreit also emphasized the benefits of regulating marijuana under legalization, as quality controls will minimize public health risks and potential underage users will find it more difficult to obtain marijuana.
Additionally, Mr. Kreit spoke about the US Constitution’s Supremacy Clause, which asserts the federal government’s authority over state governments, and its implications for Proposition 19. According to Mr. Kreit, it is not clear that the federal government would challenge California in court under the Supremacy Clause given the uncertainties surrounding the anti-commandeering principle, which prohibits the federal government from “commandeering” state governments. However, the federal government can institute fiscal incentives as a coercive mechanism or it can take an approach similar to its response to medical marijuana, where individual proprietors are targeted for prosecution as a deterrent.

**Panel 3: Potential Implications for U.S. and Mexican Drug Policy**

*Kathleen Frydl*, Assistant Professor of History at the University of California, Berkeley, provided an historical overview of the US federal government’s management of licit and illicit trades. While the Harrison Narcotic Act of 1914 represented a more regulatory and rehabilitative approach to drugs, the period following World War II witnessed a shift towards a more prohibitive and punitive regime. Thus began a transition by the federal government from regulation through trade – including taxation – to regulation through criminal punishment, culminating in the Controlled Substances Act of 1970. Dr. Frydl suggested that because drugs are a trade and not a crime, any attempt to punish such a diverse and thriving market “out of existence” is futile. This was largely the experience of alcohol in the 20th Century. Judging by price, purity, and availability, marijuana prohibition has also failed. And given the failure of prohibition, the resurgence of budget deficits, and a prolonged deficit, a reconsideration of the approach to managing drug consumption toward commercial regulation has resurfaced.

*Rosalie Pacula*, a Senior Economist with the RAND Corporation, shared her insights into the recently released report on “Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?”, which was published in the days leading up to the conference. Dr. Pacula started by providing some estimates of revenues earned by Mexican drug trafficking organizations (DTOs). The RAND report estimates that total Mexican DTO revenues from all drugs is $5.9 to $7.6 billion; total Mexican DTO revenues from marijuana is $1.1 - $2.0 billion; and marijuana shipped to the United States represents about 20% of DTO drug revenue, not 60%, which is the figure from the Office of National Drug Control Policy that is most often cited. Legalizing marijuana in California might reduce
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DTO drug export revenues by 2 – 4%, which is likely to have a negligible impact on Mexican DTO operations and drug violence in Mexico, according to Dr. Pacula. However, that estimate assumes that Marijuana legalization does not have a domino-effect on other states or that California does not illegally export marijuana to other states, in which case the impact to Mexican DTOs might be more significant – on the order of a 13 - 23% gross decrease in drug export revenues among Mexican DTOs. Unfortunately, however, much uncertainty obscures the potential impact on Mexican DTOs and drug violence in Mexico due to data limitations, potential changes in consumption patterns, and the ability and inclination of Mexican DTOs to engage in alternative illicit activities.

Viridiana Rios, a Mexican Ph.D. Candidate in Government at Harvard University, indicated that while marijuana legalization in California is expected to cause a reduction in the profits of Mexican DTOs, it will not affect their capacity for violence and corruption unless profits are reduced significantly. A historical analysis of illegal marijuana prices in the United States demonstrates little correlation with levels of violence in Mexico, providing evidence that Mexican DTOs may not rely on the illicit marijuana market to finance their operations. More important are the impacts that marijuana legalization may have on other illicit drug markets. For example, legalization may increase the profits of Mexican DTOs if marijuana consumption increases the probability of consuming other drugs. However, legalization may also reduce profits if the availability of other drugs decreases due to a rupture in the relationships between dealers and consumers. If a significant change in the profits of Mexican DTOs ensues following legalization, a change in the balance of power may result in an increase in violence in the short-term but a decrease in violence in the long-term.