



The Other Unconstitutional War

On five different occasions, the United States had declared war on other countries: the War of 1812, the Mexican War (1848), the Spanish-American War (1898), World War I (1917), and World War II (1941 against Japan, Germany, and Italy; 1942 against Bulgaria, Hungary, and Romania).

That Congress issued these declarations of war doesn't necessarily mean that they *should* have been issued. It just means that it was recognized that a major military engagement called for a real declaration of war by the Congress according to Article I, Section 8, of the Constitution.



But not only did over 36,000 American soldiers needlessly die in the Korean War when we entered that conflict under the auspices of the UN, the results of this unconstitutional action are still with us today. Since the armistice was signed in 1953, a day has not gone by when the United States has not had thousands of troops stationed in South Korea. There are at least 25,000 U.S. soldiers still in Korea, some no doubt the grandchildren of the soldiers who fought in the Korean War.

But this Korean intervention also set a terrible precedent, as no declaration of war has ever been issued since World War II even though the United States has been involved in many military conflicts since then, with some of them being major wars like Vietnam, Iraq, and Afghanistan.

A War for Our Own Good

Aside from U.S. military operations in Iraq, Afghanistan, Pakistan, Yemen, Somalia, Libya, and now Uganda, there is currently raging another destructive and unconstitutional war at home. And this one has been going on for over forty years.

It was just over 40 years ago that President Richard Nixon began the federal war on drugs. Said Nixon: "In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive." The President declared drug abuse to be "America's public enemy number one" and "a national emergency." He continued his military rhetoric in a special message to Congress on drug abuse prevention and control, calling for a "full-scale attack" on drug abuse "on many fronts." To wage "an effective war against heroin addiction," he called for "a worldwide escalation in our existing programs for the control of narcotics traffic." Legislation then recently passed in Congress provided "a sound base for the attack on the problem of the availability of narcotics in America."

None of this means that the federal government didn't fight against drugs and drug abuse before Nixon. Although all drugs in the United States were legal up until the 20th century, the federal government began introducing anti-narcotics laws in 1905. It was Nixon, though, that formally declared war on drugs, appointed the first drug czar, and oversaw the establishment of the Drug Enforcement Agency (DEA) in 1973. The drug war escalated again under President Ronald Reagan in the 1980s with his wife's "Just Say No" campaign. Although 15 states and the District of Columbia have legalized



Written by [Laurence M. Vance](#) on October 26, 2011

marijuana for medical use, the federal war on drugs continues unabated and enjoys wide bipartisan support.

But what has the decades-long federal war on drugs actually accomplished? How much has it cost? Has it curtailed drug abuse? Has it, in fact, been any more successful at curtailing drug abuse than Prohibition was at curtailing alcohol abuse? Why, unlike Prohibition, was it imposed without a constitutional amendment granting the government the power to do what it is doing? And should the power even be granted through the amendment process, or should the federal war on drugs be ended?

Another Failure

Even though the federal war against alcohol known as Prohibition was constitutional owing to the 18th Amendment, most Americans would today undoubtedly agree that its repeal via the 21st Amendment was a good thing. But all of the *unconstitutional* wars the federal government is now waging — including its war on drugs — should be ended as well.

Like Prohibition, the war on drugs is a failure. It has failed to prevent drug abuse or reduce the demand for drugs. It has failed to keep drugs out of the hands of addicts and away from teenagers. It has failed to stop the flow of drugs into the United States. According to the latest National Survey on Drug Use and Health conducted by the Substance Abuse and Mental Health Services Administration: “Drug use in the United States increased in 2009, reversing downward trends since 2002.” There was even a spike in the number of Americans admitting to using ecstasy and methamphetamine. The government’s own Government Accountability Office has even said that the anti-drug D.A.R.E. program has had “no statistically significant long-term effect on preventing youth illicit drug use.”

But that’s not all.

The costs of the war on drugs exceed its benefits. According to a study released last year by the Cato Institute, spending on the drug war tops \$41 billion a year.

The war on drugs has clogged the federal court system. Chief Justice William Rehnquist made this point as far back as 1989. And in testimony before the Senate Judiciary Committee last month, Supreme Court Justice Antonin Scalia remarked that “it was a great mistake to put routine drug offenses into the federal courts.”

The war on drugs makes criminals out of too many otherwise law-abiding Americans. The DEA made almost 31,000 arrests last year. According to the FBI’s latest report on “Crime in the United States,” over 1.6 million Americans were arrested on drug charges in 2010, with almost half of those arrests just for marijuana possession. There is one drug arrest in the United States every 19 seconds.

The war on drugs unnecessarily swells prison populations. Over half of the federal prison population and about 20 percent of the state prison population are imprisoned due to the drug war.

The war on drugs hinders legitimate pain management. Physicians that specialize in pain treatment face the increasing danger of arrest by the DEA for prescribing their patients a dose of painkillers higher than some government-set maximum.

The war on drugs has resulted in gross absurdities. Due to the Combat Methamphetamine Epidemic Act, which is title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005, over-the-counter allergy-relief products like Sudafed have been rationed and their use criminalized because they contain pseudoephedrine, which *might* be used in the illegal manufacture of methamphetamine.

The war on drugs has destroyed financial privacy. Deposit more than \$10,000 in a bank account and



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you are a suspected drug trafficker. Travelers carrying what the government thinks is too large an amount of cash are subject to harassment and having their property confiscated.

The war on drugs has provided the rationale for militarizing local police forces. The Pentagon has transferred millions of pieces of surplus military gear to local police departments. The majority of the 130-150 raids per day conducted by SWAT teams are to serve search warrants on people suspected of drug crimes.

The war on drugs has resulted in outrageous behavior by police in their quest to arrest drug dealers. The city of Daytona Beach Shores was recently ordered to pay four dancers and two bartenders (and their attorneys) a total of \$195,000 to settle a federal lawsuit after they were illegally strip-searched during a raid on their club. The women were strip-searched in front of a group of male officers after police were told that some employees were selling prescription pills and other illegal narcotics to patrons. A federal judge found that “the search warrant did not authorize a strip search of anyone in the club.”

Picking Up New Powers

The war on drugs has eviscerated the Fourth Amendment’s prohibition against unreasonable searches and seizures. In the recent Supreme Court case of *Kentucky v. King*, police were exonerated for kicking in the door of the wrong apartment while they were making a “controlled buy” of crack cocaine after they supposedly “smelled marijuana,” “could hear people inside moving,” and believed that “drug related evidence was about to be destroyed.”

The war on drugs has increased the size and scope of government. The DEA has 10,000 employees in 226 offices organized in 21 divisions throughout the United States and 83 foreign offices in 63 countries around the world. There are even 300 chemists employed by the DEA. The DEA’s Office of Aviation Operations has 100 airplanes and 124 pilots.

The war on drugs has served as a pretext for a war on individual liberty and private property. According to Austrian economist Ludwig von Mises:

Opium and morphine are certainly dangerous, habit-forming drugs. But once the principle is admitted that it is the duty of government to protect the individual against his own foolishness, no serious objections can be advanced against further encroachments.

As soon as we surrender the principle that the state should not interfere in any questions touching on the individual’s mode of life, we end by regulating and restricting the latter down to the smallest detail.

Mises did not believe that government at any level should interject itself into “the individual’s mode of life.” America’s Founding Fathers did allow for some government involvement concerning the lives of the people in the federal system they created — but not at the national level. In *The Federalist*, No. 45, Madison summarized the division of powers between states and the federal government this way:

The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.



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Under the federal system devised by the Founding Fathers, the national government is quite libertarian, while state governments are less so. But the existence of multiple state governments, each operating under their own state constitution, provides an important check against enactment of “numerous and indefinite laws” — including drug laws — to the point where the “individual’s mode of life” is restricted “down to the smallest detail.” This is true not only because the actions of a single state could not destroy the liberties of the entire nation, but also because of the ability of individuals and businesses to move from one state to another if a state were to become too repressive, thereby encouraging states not to go too far in their taxation or regulation policies.

Of course, this system is not working as intended because the federal government has unconstitutionally usurped powers never intended for the federal level, and the states are acting as if they are mere regional subdivisions of the national government. The usurped powers include those being used to wage the war on drugs, which entails Soviet-style central planning by the federal government. Just as the government has a calculation problem when it comes to central planning of the economy, so also with drug regulation. The government can only arbitrarily decide which drugs should be legal and which drugs shouldn’t be, which drugs should be available to minors and which drugs shouldn’t be, which drugs should be regulated and which drugs shouldn’t be, which drugs should be sold by prescription and which drugs should be available over the counter, which drugs should be classified as Schedule I and which drugs should be classified as Schedule II, etc. The drug war fosters too much trust in government planners, regulators, and bureaucrats.

None of these things matter to drug warriors, however, because taking drugs is unhealthy and immoral. While I don’t deny the truth of those conclusions in regard to non-medicinal drug usage, advocating a federal war on drugs for these reasons teems with hypocrisy.

Facts Flying in the Face of Drug Laws

Figures vary, but tobacco use is supposed to cost the U.S. economy nearly \$200 billion annually in medical costs and lost productivity and causes over 440,000 premature deaths each year from heart disease, stroke, cancer, and chronic respiratory diseases. The number of annual deaths caused by all drugs — legal and illegal — pales in comparison to deaths caused by tobacco. It seems rather senseless for the federal government to wage war on drugs instead of on tobacco.

Every negative thing that could be said regarding drug abuse could also be said of alcohol abuse — and even more so. Alcohol abuse is one of the leading causes of premature death in the United States. Alcohol is a factor in many drownings, child abuse cases, sex crimes, violent crimes, divorces, suicides, fires, and home, boating, and car accidents. According to a study recently published in the prestigious medical journal *The Lancet*, alcohol ranks as the “most harmful drug,” beating out heroin, crack cocaine, and ecstasy. Yet, it is only the decriminalization of drugs that conservatives like Bill Bennett call “stupid and morally atrocious.”

And then there are the dangers of prescription drugs — that is, drugs the government says are safe and legal. According to various articles in the *Journal of the American Medical Association*, over 100,000 people die every year from drugs prescribed and administered by physicians. And over two million Americans a year have in-hospital adverse drug reactions. Thousands of people die every year from harmful reactions to aspirin.

One doesn’t have to be a libertarian to recognize that the federal war on drugs is a monstrous evil — incompatible with private property, individual liberty, personal responsibility, free markets, and limited



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government — and an illogical and hypocritical activity of the federal government.

One of the most powerful arguments against the federal war on drugs, and one that has the broadest possible appeal, is the fact that a federal drug war is blatantly unconstitutional. The powers delegated to the national government are, as Madison said, “few and defined.” Everything else is reserved to the states. And just to reinforce this federal arrangement, the 10th Amendment declares that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Constitution nowhere authorizes the national government to prohibit, regulate, or otherwise concern itself with the nature, quantity, or production of any substance Americans wish to inhale, inject, or otherwise ingest into their bodies.

When the federal government sought to limit the use of alcoholic beverages after World War I, it realized that it could only do so by amending the Constitution. That is why the 18th Amendment to the Constitution was adopted in 1919. If a constitutional amendment was needed to prohibit the “manufacture, sale, or transportation of intoxicating liquors,” then it should also be necessary in order for the federal government to prohibit other substances like hallucinogenic drugs.

Strong Stances

One of the few members of Congress who actually tries to follow the Constitution in this matter is Representative and Republican presidential candidate Ron Paul. Rep. Paul has cosponsored a bill, the Ending Federal Marijuana Prohibition Act of 2011 (H.R. 2306), to end the federal ban on marijuana, not because he is a supporter of drug use, wants more kids to try marijuana, or is indifferent to the dangers of illicit drugs, but because he is a strict constitutionalist, a believer in individual liberty and personal responsibility, and an advocate of restoring the limited government established by the Founders.

Most members of Congress just don't get it because they see themselves as nannies and overseers entrusted to use the power of the federal government to stamp out vice and keep Americans healthy and safe because they are too stupid to take care of themselves.

Typical is Lamar Smith (R-Texas), House Judiciary Committee Chairman, who vowed to block Paul's bill. “Instead of encouraging the use of marijuana,” said Smith, “we should strengthen enforcement of federal drug laws to protect Americans from the devastating effects of drug use.” There is, unfortunately, wide bipartisan support in Congress for continuing the federal war on drugs for another 40 years.

It is members of Congress like Smith that are more dangerous to Americans than illegal drugs. As C. S. Lewis has written:

Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience.

If any war on drugs is to be fought, it will have to be on the state level. Any laws or regulations relating to the production, sale, distribution, possession, or use of drugs — whether we agree with them or not — should be passed by state legislatures, not the U.S. Congress or its agents like the FDA, DEA, or the Office of National Drug Control Policy. No American who has any respect for the Constitution,



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federalism, and the limited government established by the Founders should endorse, support, or defend the federal war on drugs, regardless of his political persuasion, religion, or moral code.

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