



# ROBERT MORRIS

## YOUR WAR ON **DRUGS**

6,000 WORDS ON THE  
SHAME OF THE NATION

# Your War on Drugs

6,000 Words on the Shame of the Nation

By Robert Morris

*In my last year of law school I got to spend some time around the courts in Washington, DC. The Drug War had always been something that bothered me. The DC courthouse threw the contradictions in my face. I got to see kids face real jail time for “crimes” that I committed every day of my high school career. I felt like I had to do something. This essay was composed over the course of much of a year, while wrapping up law school in Washington, DC and after I moved to Istanbul in the fall of 2011. It launched at the same time as a series of videos on the topic.*

## **The War on Drugs is over**

We Lost. Despite the \$50 Billion we spend each year on the Drug War, global drug consumption has increased dramatically over the past 10 years. Cannabis use is up 8%, Cocaine use is up by 27.5% and use of Opiates is up by 34.5%.<sup>1</sup> US emergency room visits for illicit drug use nearly doubled from 1994 to 2009.<sup>2</sup> The Drug War has failed to have any negative impact on drug consumption. What it has managed to do is kill tens of thousands of people, ruin literally millions of lives, and imperil American freedoms. There has not been a nation-wide policy with effects this evil since the Alcohol prohibition of the 1920's. The Global Commission on Drug Policy, a panel including multiple former heads of state and a former head of the UN, has urged the United States to lead a revision of this global policy.

How will history look at this policy? When we look back at the founding of this Republic we are shocked by the crime of slavery. We recognize the great actions and thoughts of men like George Washington and Thomas Jefferson, but the fact that they owned human beings and treated them as pieces of property forever tarnishes their memories. As civilization develops, the goal posts of what is acceptable move. Do you want to get out ahead of this process? Would you rather be Frederick Douglass<sup>3</sup> or Bull Connor<sup>4</sup>? The drug war is our slavery.

Americans a century or two from now will look on this era and see its legacy as perpetually tarnished as well. These future Americans will ask: How could they talk of freedom with 2 million Americans in jail? How could they talk of hope and change, when they continued to take people's freedom for something as trivial as owning the wrong substance?

You may have a range of feelings about the moral worth and dangers of recreational drug use. Feelings are not facts. The fact is that blanket prohibition of drug use has failed on its own terms. When I was in high school it was a standard joke that it was a lot easier to get marijuana than it was to get alcohol. If a commodity can only be attained through illegal means, that commodity is more likely to find its way into the hands of children. Liquor stores make a lot of money from liquor licenses, and want to keep them. Larry the drug dealer doesn't care who he sells to. The more enterprising of my friends found plentiful supplies of acid, ecstasy and all manner of idiocy. Even back then, at the end of the last century, the drug war had been going on for decades. If people are interested in drugs they will find them.

If they cannot find them they will create them. Many of our most disgusting drugs can be directly attributed to drug prohibition. Would anybody be risking their lives making Crystal Meth if you could buy healthier forms of speed or cocaine legally? Necessity is the mother of invention, and the urge to escape is a powerful one. The pointlessness and failure of drug prohibition cannot be emphasized enough.

IT DOES NOT WORK. IT HAS NEVER WORKED. IT WILL NEVER WORK.<sup>5</sup> Yet we continue to spend money and time on it. This polemic you are reading now provides nothing new or clever. It is a collection of things we already know. Anybody who has actually thought about this problem, from William F. Buckley<sup>6</sup> to Noam Chomsky<sup>7</sup>, has been for dramatically changing the drug war. The continuation of the drug war in the United States of America is proof that reason has no place in policy. It is insanity defined. The only thing to be done is to continue shouting this fact, and shouting it LOUDLY. Only through broader awareness of this failure can we bring about change.

## **What is the Drug War?**

On June 17 1971, Richard Nixon declared a War on Drugs. Most charitably it can be seen as a response to the rising levels of drug abuse occurring in the US. More likely it was a dig at his perceived enemies in the counter-culture. Nixon's moves included the formation of the Drug Enforcement Administration (DEA), and signing the Comprehensive Drug Abuse Control and Prevention Act, and the Controlled Substances Act. Prior to Nixon's declaration cannabis, cocaine and opiates were regulated to some degree country-wide. Enforcement was spotty however and the laws were inconsistent.

One of many unsung virtues of our former criminal justice system was its localization. Individual communities could shape their own priorities and penalties and get what they wanted out of it. Some jurisdictions saw laws against marijuana trafficking as mere formalities.<sup>8</sup> While there were national laws against certain substances, it was the Controlled Substances Act that placed substances in a rigid framework. Substances are classified by schedules from I through V balancing their utility against their risks. Marijuana is placed on Schedule I, with Cocaine and Heroin, defined as highly addictive and of no medical use. Anyone who has been to high school can tell you that this classification is ridiculous, yet it has been the law of the land for over 40 years. The DEA was responsible for imposing this new rigid, national framework nation-wide.

The results of Nixon's reforms were almost immediate. The murder rate went through the roof. The prison population started to grow dramatically.<sup>9</sup> Drug use continued to boom. Like alcohol prohibition before it, nation-wide drug prohibition was a disaster from the start. With our usually laudable American tenacity, we opted to double down in the face of disaster. Reagan's "Just Say No" era's most notable innovation was mandatory minimums in sentencing for drug offenses. These took what little discretion a Judge had away from her. The laws prescribed sentences for specified amounts of possession. Judges were no longer allowed to consider the special circumstances of the accused, a right that they had had for over 500 years of American and British history.<sup>10</sup> The prison population, already growing dramatically, exploded.<sup>11</sup> These late 80's reforms, combined with the crack epidemic that cocaine's legislatively inflated cost created, drove the murder rate to heights it had not reached since the alcohol prohibition era.<sup>12</sup>

It is a mistake to look at the war on drugs as just a set of federal laws. The drug war as it is waged in this country is a collection of laws, institutions and government programs at the federal state and local levels. It is in fact an entire ecosystem. Laws and institutions interact in surprising ways. Even when laws are changed, the institutions can keep the facts on the ground from changing.<sup>13</sup> The Drug War is waged with laws, but it is also institutions, and it is an industry.

The people that run and are employed by these institutions are the main reason that the drug war continues. These institutions include prisons, police departments and corporations. Incarceration is a big business in 21<sup>st</sup> century America. Some prisons are run by private sector companies. These companies consider lobbying for more and longer incarceration a vital part of their business plan.<sup>14</sup> The prison industry is also a source of good solid government jobs. Corrections Officer Unions are a large force in state politics, especially in California. Just like any Union, the goal of these organizations is more members paying more dues. For more corrections officers, you need more prisons, and you need more prisoners. The corruption of the drug war goes deeper than these convenient targets however.

Every police department in the country has been corrupted by the drug war. Modern society requires a police force. Dense, urban, or even suburban, living presents a number of problems that only professionals can solve. Public order must be preserved, crimes need to be investigated, and bad guys need to be caught. We will always have problems that a police force can solve. The Drug War, however, has distorted the priorities of our nation's police departments. Their focus has shifted from worthwhile priorities to the never-

ending cycle of drug offenses. Drug enforcement is now the main business of our nation's police departments. Individual police officers treat it as a cash cow. The prosecution of junkies yields a great deal of overtime.

Constitutional scholars like to see the story of the 20<sup>th</sup> century as a reining in of police power. This is because they are ignorant.<sup>15</sup> We all know about Miranda rights. We all have the right to remain silent, and the right to a lawyer. Fourth and Fifth Amendment rights against self-incrimination and unlawful search and seizure were expanded and applied to state and local police forces by the Supreme Court under Earl Warren in the 1950's and 1960's. These developments are largely seen as a great victory for the accused, and lamented by some as "soft on crime". To take this view requires staggering historical ignorance. The Warren Court's actions were a small step against a cataclysmic change in American Life.

For most of American history, the idea that you could be stopped by a uniformed man, who could demand to see the contents of your bag or vehicle for any reason, would be seen as an abomination. Nation-wide professional police forces are a 20<sup>th</sup> century novelty. The Warren Court's rulings only served to give this gangsterism a more palatable form.

The drug war has allowed police forces to grow without check. On the federal level agencies like the Drug Enforcement Administration and the Board of Alcohol Tobacco and Firearms run their own foreign policy.<sup>16</sup> Most big city police departments operate their own paramilitary wings for the invasion of the homes of drug suspects or anyone else deemed to be unsavory. The assumption is that surely they are using these powers to focus on big-time dealers. This is not the case. A friend of mine at the US Attorney's office for DC estimates that 50% of the business she does is prosecution of non-violent marijuana offenses.

### **How Does the Drug War Hurt?**

OK, we have established what the drug war is, but what does it hurt? By keeping drugs illegal don't we send a valuable message? Despite the number of people killed every year, wouldn't things be worse if they were decriminalized?

Well, no.

The only message the Drug War sends is that the laws don't mean anything. Poor folks who do drugs risk their future and their lives. Rich folks who do drugs risk nothing. Laws that only apply to certain sections of the population are a bad thing. They reduce buy-in to the system. The oppressed are right in believing that they are getting screwed, and can be forgiven for thinking that they do not have a chance. The rest of society lives in a world where certain laws are not obeyed. A certain disrespect for the government is healthy for a country, but the laws should have some connection to reality. Our drug laws do not. At their worst they function as a perpetuation of Jim Crow, enforced along economic lines rather than racial ones.

2.3 Million Americans are locked up.<sup>17</sup> The United States currently locks up more people than China. That's not proportionally according to population. **That's more people than China in raw numbers. Let that sink in.** The United States, the leader of the free world, locks up more people than a totalitarian state, four times its size.<sup>18</sup> This particular figure is the one that convinced me that something has to be done. Hopefully it will convince you too.

A significant proportion of these felons are locked up for non-violent drug related offenses. Another significant proportion are there for drug-related violent offenses that would not exist if one could purchase controlled substances at the local CVS. The costs of imprisonment come in multiple generations. The first

is the raw cost of building and staffing a massive and growing prison complex. These costs are a major contributor to state insolvency.

The next generation of costs comes from the prisoners themselves. People whose freedom is taken away tend to regress. They are kept in often brutal conditions for long periods of time, and when they return to society they are frequently ill equipped to do anything other than continue a life of crime. Felons face a range of legal and social stigmas when they are released. Employers are reluctant to hire the recently released. In many states they cannot vote. The Felons, and any children they may have had, are more likely to end up living on state assistance. They and their progeny are unlikely to make much of a positive impact. They become part of our permanent under-class, benefitting nobody other than the government that gets to grow to deal with them.

Is it worth destroying these lives to make a dime bag slightly more expensive?

The fact that substance abuse is illegal multiplies the social costs of substance abuse. This is poorly understood. The hope is that the illegality of a drug will dissuade people. In my experience, illegality has served only to make some really ugly behaviors sexy. What illegality definitely does, however, is make it more likely that any given addict will become a junkie. Our perverse justice system excels at turning folks who get caught into socially costly sinkholes for our tax dollars. Let's make an example. We'll call him Johnny.

Johnny is a moron. He may have had a rough life, or he may just want to try something new, but somehow this moron has gotten to the point where trying heroin strikes him a good idea. Let's assume that Johnny gets hooked.

Now let's see what happens to two different Johnnys. Lucky Johnny lives under some sort of decriminalized regime, where the focus is on treatment, and he has access to clean needles, and a relatively safe source. Junkie Johnny lives in the US. Both Johnnys start out the same, with decent jobs, and a growing habit. Both of them start to devote more and more of their income and time to heroin, and start screwing up at work.

At this early point, Lucky Johnny already has it better. He has had access to needles, and has probably been able to procure and use his drugs in a safer neighborhood. He is less likely to have contracted HIV or Hepatitis, and is less likely to have run into traumatizing violence. He is also more likely to have been shooting safer heroin. Junkie Johnny is more likely to have OD'ed, or been poisoned and disabled. You do not start out hopeless when you become addicted to a substance. It takes a cocktail of experiences to force you further into your addiction. You don't give up on a civilized life immediately. Junkie Johnny is likely to have more of these experiences sooner.

Let's assume that they are now at the point where they lose their job. Under a decriminalized regime, Lucky Johnny has a range of options. Without the stigma of illegality, his employer is more likely to try to get him into a recovery program. Lucky Johnny already gets his needles from someone. He is likely to have access to recovery services through the same program. Junkie Johnny's only exposure to outside influence will come from the police. How will that outside influence come?

Junkie Johnny is likely to find himself in jail for a long time. A common practice in Washington, DC is for a police officer to approach an addict with \$40. "Hey Johnny" he'll say, "Why don't you go get me 20 dollars worth, and get 20 dollars worth for yourself." Johnny is likely to be excited by this, and will eagerly do as requested. He will return with the drugs, and be arrested for possession with intent to distribute. The

police officers pat themselves on the back for catching a drug dealer. They get a bump in their stats. Junkie Johnny goes to jail for a few years.

Is this really the best use of our resources? Leaving aside common humanity, why do we, as a society, want to pay to feed and clothe this junkie for the next ten years? It costs around \$42,000 a year to incarcerate someone.<sup>19</sup> It would be dramatically cheaper to provide Johnny with a free apartment, all the heroin he wants, and the phone number of the closest Narcotics Anonymous meeting. Johnny's stint in jail will likely make him worse. There is no shortage of Heroin behind bars, and he will probably be raped. Prison is the best place to become a hardened criminal. When he gets out, Johnny will be un-employable, and probably violent.

A common argument is that drug laws allow us to get "criminals" off the streets. "They" are likely bad guys, and it's good to catch them for something rather than leave them on the streets. The criminal records of serious felons would seem to support this argument. Many that I have perused start off with petty drug offenses. A man gets busted for smoking pot a couple times. Sooner or later he ends up doing some time. He then graduates to assault. More serious offenses follow. The obvious interpretation is that we should try to get this man off the streets as soon as possible. He's a criminal!

Allow me to suggest another interpretation. We've all heard of gateway drug. You start small, with marijuana, and soon you are making your way to harder drugs and a life of crime. How about a gateway drug offense? You get arrested for smoking pot. You do time. You have a terrible time in prison, and get a criminal record. You get out. You're unemployable. You've made some really terrible friends in prison, and they help you into a life of crime. The idea of a gateway drug offense strikes me as much more plausible than that of a gateway drug.

### **The Drug War as We Live It**

To get beyond the abstract story of the theoretical Junkie Johnny, this spring I spent some time in Washington, DC's Drug Court. Judge Weisberg presided. He is the longest serving judge on the Superior Court bench. He was a model of judicial intelligence, probity, and mercy. Nonetheless, I found the experience shocking. The world described in the courtroom, the laws followed, and the sentences handed down, did not describe reality as I know it.

The proceedings I witnessed apparently represent a reform. They all dealt with participants in diversion programs. These offenders were required to participate in drug rehabilitation programs in lieu of a jail sentence. They were all before the court because they had failed a drug test, either through absence or through renewed substance abuse. The standard sanction for a violation of this sort was a weekend in jail.

The first offender I saw was the most troubling. He was a young, African-American high school senior. The judge knew his case well, because he had seen him so many times. He was there to receive his official awarding of a **sixth** consecutive weekend in jail for failing a test for Marijuana. He spoke of his desire to finish high school, and his hope that he could finish with the sanctions and move on with his life. As a high school senior in Washington, DC, he was already a member of a select group. The judge recognized his achievement, and wished him success in completing his schooling. Nonetheless, he gave him another weekend in jail, and suggested that if there was another offense he was going to consider mandating a trip to long-term treatment.

The reason I found this case so troubling is the fact that there was no point in my high school career when I would have passed one of those drug tests. To get where he is, this kid has already surpassed a number of obstacles. Why should he be penalized for engaging in a harmless vice? Especially if his more privileged peers are free to engage in that vice? I do not know the details of his offense. My sense, though, is that the only difference between the two of us is that I had one of my parents' cars to smoke in, while he had to make do with the street, and got caught.

Because of this bad luck, he gets to spend every weekend of his senior spring in jail. It's conceivable that this will provide opportunities for study, but that doesn't match my sense of what goes on behind bars. It is more likely that he will make connections and develop habits that will get him into further trouble.

The United States is not alone in this disconnect between behavior and law. This past spring break I drove south from Michigan through Mexico. A Texas state trooper we met before crossing tried to warn us off. The border felt like a DMZ. The southern "Drug War" has lost its quotes, and taken on a truly military character. The highways were mostly empty. We went through three checkpoints manned by heavily armed Federales. Mexico's War with the drug traffickers has cost almost 35,000 lives over the past four years.<sup>20</sup> Ciudad Juarez has lost a quarter of its population to death and flight, and its business people no longer operate restaurants that are open to the public.

Despite all this, drugs flow freely and easily in Mexico City. At a nice bar, in a very safe and posh neighborhood, I was offered cocaine in the bathroom. I politely declined the offer and mentioned that my benefactor might want to clean up his nose a bit before heading back out. The circle of Mexicans that I met included a number of proud potheads. The disconnect between the suffering of the country, and the behavior of its elite was staggering, but very familiar.

A healthy disrespect for the law is not always a bad thing. Everybody speeds, and sometimes you get caught. People get from point A to point B at a speed they are comfortable with. The real fear of penalty keeps people somewhat in check, and the revenue from speeding tickets keeps some police departments afloat. The penalties for moving violations are small, however, and are mostly evenly applied. In the Drug War, only the poor suffer.

In my day in drug court, Judge Weisberg also saw a man who had failed a test for cocaine. He had no remorse. He was matter of fact about the offense, made a barely credible promise not to do it again, and wanted to sort out the details of his weekend away. He was worried that it would interfere with his job as a superintendent at a local building. He approached the proceeding with the same weariness that you or I might bring to the DMV. The judge marked this and admonished him with the severity of the proceeding. The cocaine user forced out a couple of half-hearted "I understand"s and scheduled his weekend vacation.

These sanctions are designed to have a discouraging effect. A weekend in jail should come with social stigma, be a great inconvenience, and make a person less likely to engage in the behavior in question. This works better the farther you move up the income distribution. DWI interventions can have a large effect.<sup>22</sup> Those who have a lot to lose are likely to change behavior to avoid stiffer DWI enforcement. More affluent people are also more likely to change their behavior if they run afoul of a particular law. The stakes are higher.

The problem is that the vast majority of drug enforcement prosecution and incarceration falls on the heads of the less fortunate. The types of intervention that work with the affluent don't work with these populations.

A class, or a required drug test is just one more thing keeping a person from graduating from high school, or showing up for a job.

Much like the death penalty, were our drug enforcement apparatus run by angels, I am not sure I would object so strenuously. Police officers use these laws to prey on the powerless. Drug prosecution is a great source of over-time. The actual judicial treatment of “offenders” strives to be free and fair. Judges’ hands are often tied, however. I watched Judge Weinberg deal with a situation where he clearly wanted to show clemency but felt that he couldn’t. A plumber had missed a drug test. He was working on a plumbing emergency. If he went to take his drug test, he would have to let a home flood. His client would lose her possessions, and he would be out of a job, and maybe a career. He made the right choice and fixed the leak. The Judge was torn. He clearly didn’t want to send a man who had never before missed a test to jail for three days. That was the mandated sanction, however. The Judge sent him to jail. As he did so, he remarked that he probably would have done the same in that situation.

If you pay attention it becomes pretty obvious that the poor are the only people who get locked up for drug offenses. Numbers are hard to come by, however. Most of my evidence is anecdotal. The affluent rarely brag about their use outside of rehab memoirs. Statistics are mostly self-reported. Even if questionnaire responses are kept anonymous, it is hard to see many leaders of tomorrow owning up to weekend coke binges. Nonetheless, Drug warriors are sensitive to this critique. Every now and then they stage an operation to address it.

“Operation Ivy League” is an excellent example.<sup>23</sup> In December of 2010 the NYPD arrested 5 Columbia University frat boys for dealing marijuana, cocaine, LSD, MDMA and sundry other party favors to their classmates. The NYPD conducted an exhaustive 5-month sting operation, involving 31 transactions totaling \$11,000 worth of substances. Police Commissioner Raymond Kelley delighted in pointing out that selling drugs was “no way to work your way through college”. The story was national news. A picture of a more egalitarian drug policy was successfully presented to the nation. At great cost, the NYPD conclusively showed that even the most privileged have to worry about our drug laws.

Or had they? Flaws in this narrative emerge with a little scrutiny. This was apparently “one of the biggest campus drug busts in recent memory”. The operation’s name shows that this operation was something out of the ordinary.<sup>24</sup> The culture described in the Daily Beast article suggests that consumption at Columbia was at best only disrupted temporarily. The kids probably had to go downtown to NYU to get their drugs for a couple months. Columbia is unlikely to be an outlier. Drug-dealing frat boys can be found in schools across the country, and they almost never get arrested.

With a little follow-up research the NYPD’s narrative is completely exploded. This gets a little technical, but bear with me, it’s worth it. The operation picked up five privileged Columbia frat boys, and three off-campus drug dealers. **All of the off-campus drug dealers are serving or have served time.**<sup>25</sup> Miron Sarzynski, the supplier, initially charged with 9 counts including attempted kidnapping and the sole count of first degree Criminal Sale of a Controlled Substance (CSCS) is now serving six years. He seems to be a legitimately bad guy, whose incarceration is hard to lament. Megan Asper, his girlfriend, got 45 days for possession. **Roberto Lagares, charged with a single count of 2<sup>nd</sup> degree CSCS is now serving a 6 year prison term.**

It is instructive to compare Lagares to Harrison David, the **only one of the Frat boys to have made it to sentencing at this point.** David was the most comprehensively charged of the frat boys. In addition to the same 2<sup>nd</sup> degree CSCS charge that Lagares was charged with, he was charged with an additional 11 counts

of drug distribution of varying levels and substances. This is the frat boy that the NYPD had the best case against. Undercover police purchased substances from him on multiple occasions. This is the guy that they spent 5 months trying to put away. This is the guy they were going to prove their point with. They proved a point. Despite being charged with dramatically more than Roberto Lagares, **Harrison David is now serving a 6 month prison term.** The injustice of our system could not be laid out more starkly. The rich kid, charged with dramatically more criminal activity, receives a sentence of 1/12<sup>th</sup> the length of the sentence given to the poor one.

The frat boys all have fantastic legal representation. The second most charged frat boy has now been offered a clear criminal record if he completes a year-long marijuana treatment program.<sup>26</sup> The other three frat boys, who are charged with less, will receive more lenient treatment. I bet the frat boys are having a really tough time. It may take them years to get back on the path to the investment-banking house or grad-school of their choice. It probably won't take as much time as Roberto Lagares' will spend in prison though.

### **Will Legalization lead to a Wasteland?**

Proponents of drug prohibition envision the country becoming some sort of skid row wasteland without the DEA and efforts at drug interdiction. Were that the case, I would still argue that drug prohibition has failed and the alternative is better than what we have today. Believing in the "skid row" future, however, requires a deep ignorance of history. Citizens looking at this issue are singularly lucky because there is a practically identical historical analogue. I refer of course to the alcohol prohibition era.<sup>27</sup>

It is common knowledge that it was illegal to drink alcohol in the United States from 1920 until 1933. 38 states approved an amendment to the constitution to do so. Drinking's illegality did nothing to prevent people from imbibing. Further, it led to widespread corruption and organized criminality. Al Capone's take-over of Chicago is just the most famous example. Prohibition failed in its aim, and was contributing to the break-down of society. After 13 years the nation had had enough and alcohol prohibition was done away with. The parallels with drug prohibition are obvious. Wikipedia holds that it was the St. Valentine's day massacre, involving the death of 7 gangsters, that turned the tide of popular opinion against prohibition. Nation-wide our drug laws kill that many people daily.

What is less well known is the history of the broader Temperance Movement. Temperance, the crusade against alcoholic beverages, has a history in the United States going back to the Revolution. It was part of the same 19<sup>th</sup> century mix of religiously-inspired activism as the abolition of slavery. The movement had a broad base, from the social elite to bible-beating activists. Kansas Carrie A. Nation attained notoriety in at the turn of the 20<sup>th</sup> century by attacking saloons with her hatchet. Temperance gained steam throughout the Progressive Era, and became more and more influential. It takes a lot to get the Constitution amended, but the Temperance Movement made it happen.

This movement might appear to have been a dismal failure. Prohibition failed, alcohol is available throughout the country, and still causes a myriad of social ills. When one looks deeper, however, one can see that society's attitude towards alcohol has changed dramatically. As of this writing, a show called Mad Men is popular. It features advertising executives in the early 1960's who imbibe on a scale that would raise questions in contemporary frat houses. Some of us can see this shift in our own families. Three-Martini Lunching Grandparents often have tee-totaling grandchildren.

As one goes further back in time, our drinking habits get more and more appalling. Winston Churchill was a famous drunk. During the Napoleonic era, sailors in the British and American Navies received a pint of

rum or whiskey as part of their daily rations. Temperance movements succeeded in ending this practice in the 1850s in the US and in the 1970s in Britain. Society as a whole used to be much more tolerant of booze. John Adams, the second President of the United States, an abstemious New Englander, usually started his day off with a shot of Brandy. The picture today in the US is very different. It depends on the industry, but the days of the three martini lunch are long over. Society is less of a boys club. If business folks are competing, they are running marathons rather than trying to win drinking bouts. Behavior that used to be tolerated or even encouraged gets one sent to a treatment center nowadays. Part of the credit for this can be given to drunken driving legislation, but a good deal can also go to the long term change in our society's attitudes. In losing, the temperance movement won.

Those who agitate against drug use should be heartened by the temperance movement's success. Despite the repeal of the legislation they agitated for for over a century, US culture is less alcohol dominated than it has been at any point in its history. Scholar Daniel Okrent points out that it actually became much more difficult to find alcohol in much of the country after the repeal of prohibition. Local enforcement allowed different communities to do what was right for them and the national black market was hobbled.<sup>28</sup> The same is clearly possible for drug use in this country. With a shift in local efforts from enforcement to education and treatment, real change in attitudes and behavior should be possible. Get the government out of it and stop killing people.

### **Stop Killing People? Isn't that a bit strong?**

Not really. When faced with the report of the Global commission on Drug Policy, the Office of National Drug Control Policy trotted out a number of statistics claiming that some progress had been made.<sup>29</sup> Giving them the benefit of the doubt, they may have statistics that show some lessening in the use of certain substances. These statistics are all self-reported anyway, and un-reliable. Let's look at some slightly more concrete statistics. How about the murder rate?<sup>30</sup>

“Roughly speaking, therefore, there have been two periods with high homicide rates in U.S. history, the 1920-1934 period and the 1970-1990 period (Friedman 1991). Both before the first episode and between these two episodes, homicide rates were relatively low or clearly declining. Prima facie, this pattern is consistent with the hypothesis that alcohol prohibition increased violent crime: homicide rates are high in the 1920-1933 period, when constitutional prohibition of alcohol was in effect; the homicide rate drops quickly after 1933, when Prohibition was repealed; and the homicide rate remains low for a substantial period thereafter. Further, the homicide rate is low during the 1950s and early 1960s, when drug prohibition was in existence but not vigorously enforced, but high in the 1970-1990 period, when drug prohibition was enforced to a relatively stringent degree (Miron 1999).<sup>31</sup>

In 1933 we changed the dumb law and halved the murder rate within a decade. 30 years after the last peak, we have finally attained the same result with \$50 Billion of annual policing, more people in jail than Communist China (not proportionally, in real terms!), entire neighborhoods in a permanent state of siege, and the creation of drugs like Meth that would never have occurred if people could get more traditional stimulants. All due respect to William Bratton and Eliot Ness, but I think changing the dumb law is the better approach.

### **Conclusion**

We will not legalize drugs tomorrow. When I argue for drug legalization I am often faced with maximalist arguments. “What about Crack?” “What about PCP?”<sup>32</sup> Healthy experimentation with the drug war will

not start with these substances. We do not even need to legalize substances nation-wide. We can try it state by state. Skepticism on the drug war does not mean a crack rock in every child's school lunch. Let's see what happens if we legalize marijuana. Small steps like these could have revolutionary effects. They could do nothing, but it won't hurt to try.

1 These figures are taken from the June 2011 report of the Global commission on Drug Policy, which you should all read. It can be found here: <http://www.globalcommissionondrugs.org/>

2 from 449,964 to 973,000 <http://www.theatlanticcities.com/jobs-and-economy/2011/11/cocaine-plummeting-price-nationwide-drop-violent-crime/474/>

3 Real American Hero. A self-educated man who escaped from slavery, and became a tireless advocate for Emancipation.

4 Real American Villain. A Racist Redneck who distinguished himself by turning firehoses on women and children during the civil rights era.

5 Well I suppose it could. We could control everything, and throw personal freedoms out the door entirely. The longer the drug war wears on unchallenged, the more attractive this idea becomes in government sectors. Police forces already take liberties that would horrify our founding fathers. If the drug war continues, that process will continue.

6 Father of modern American conservatism

7 Left wing MIT professor. Well respected in Europe.

8 This interview with George Jung, portrayed by Johnny Depp in Ted Demme's Blow, is an invaluable resource for those who seek to understand the drug trade. If we had not locked George Jung up with Carlos Lehder, for selling pot, America may not have had a coke

Problem. <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/jung.html>

9 Please download this PDF from the Justice Research and Statistics Association. It nicely illustrates, in one document, the absolute folly of our drug policy to date. <http://www.jrsa.org/programs/Historical.pdf>

10 Mandatory Minimums have since been declared unconstitutional by the supreme court, but the damage has most assuredly already been done.

11 The timeline provided by PBS's Front-line has been tremendously helpful for this whole historical section <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/index.html#18>

12 Seriously just download <http://www.jrsa.org/programs/Historical.pdf> I am going to keep referring to it.

13 The New York Police Department has manages to arrest upwards of 40,000 people a year for marijuana possession, despite the fact that the city decriminalized marijuana possession decades ago. <http://www.nyclu.org/node/1736>

14 <http://www.justicepolicy.org/research/2614>

15 The most famous Constitutional law professor, Barack Obama, apparently thinks its OK for the US government to kill its citizens without due process.

16 <http://www.nytimes.com/2010/12/26/world/26wikidrugs.html>

17 [www.sentencingproject.org](http://www.sentencingproject.org)

18 China has 1.6 million people behind bars. <http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all>

19 Specter, Michael, "Getting A Fix" The New Yorker, October 17, 2011 pps 36-45, p.44

20[http://topics.nytimes.com/top/news/international/countriesandterritories/mexico/drug\\_trafficking/index.html?scp=4&sq=Mexico&st=cse](http://topics.nytimes.com/top/news/international/countriesandterritories/mexico/drug_trafficking/index.html?scp=4&sq=Mexico&st=cse)

[22 http://www.ncbi.nlm.nih.gov/pubmed/2916713](http://www.ncbi.nlm.nih.gov/pubmed/2916713)

[23](http://www.nyc.gov/html/snp/downloads/pdf/pr_120711.pdf) The following is the press release from the Special Narcotics Prosecutor of the state of New York: [http://www.nyc.gov/html/snp/downloads/pdf/pr\\_120711.pdf](http://www.nyc.gov/html/snp/downloads/pdf/pr_120711.pdf) A more fun way to read about it is an amusingly cynical report from the Daily Beast, that provides some illuminating background on contemporary college drug use: <http://www.thedailybeast.com/articles/2010/12/08/columbia-university-student-drug-bust-stuns-prestigious-campus.html>

[24](http://www.thedailybeast.com/articles/2010/12/08/columbia-university-student-drug-bust-stuns-prestigious-campus.html) Ray Kelly's claim in the article that the media created the name is transparently false. A glance at the prosecutor's press release cited above will tell you that.

[25 http://www.bloomberg.com/news/2011-08-30/columbia-student-david-gets-six-months-for-drug-charges-1-.html](http://www.bloomberg.com/news/2011-08-30/columbia-student-david-gets-six-months-for-drug-charges-1-.html)

[26 http://www.dnainfo.com/2011/11/01/upper-west-side/accused-columbia-drug-dealer-offered-one-year-marijuana-rehab](http://www.dnainfo.com/2011/11/01/upper-west-side/accused-columbia-drug-dealer-offered-one-year-marijuana-rehab)

[27 http://en.wikipedia.org/wiki/Prohibition\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Prohibition_in_the_United_States)

[28](http://bnreview.barnesandnoble.com/t5/Interview/Daniel-Okrent/ba-p/2564) He wrote a book about this that I mean to read, but I got a lot out of this interview: <http://bnreview.barnesandnoble.com/t5/Interview/Daniel-Okrent/ba-p/2564>

[29](http://bnreview.barnesandnoble.com/t5/Interview/Daniel-Okrent/ba-p/2564) These responses are now hard to find on the internet. Most likely because they were garbage.

[30](http://www.jrsa.org/programs/Historical.pdf) Go back to the same PDF I asked you do download

earlier <http://www.jrsa.org/programs/Historical.pdf> The relevant graph is on pages 6 and 7 of the pdf, though numbered 38 and 39

[31 http://eh.net/encyclopedia/article/iron.prohibition.alcohol](http://eh.net/encyclopedia/article/iron.prohibition.alcohol)

[32](http://eh.net/encyclopedia/article/iron.prohibition.alcohol) BTW I am totally for legalizing those substances. I happen to believe that people should be incarcerated for harming others, not for what they do to themselves. This apparently makes me an extremist.