

# *The War on Drugs*

Trevor Burrus

AUTHOR'S NOTE: This fictionalized account imagines how drugs could be legalized in America and what would happen after 15 years. The setting is the mid-21st century, but the account incorporates facts about the present-day situation.

It's been 15 years since all drugs were legalized in America. In the throes of an overdose crisis that claimed, at its peak, more than 100,000 lives per year, an increasingly angry public forced American policymakers to look for a solution.<sup>1</sup> Analyses of various drug policy regimes around the world clearly showed that the situation was markedly better in the few European countries that had responded to their own overdose crises by decriminalizing all drug use.

Portugal had been first to try it, and for many decades, the country has had one of the lowest overdose rates in all of Europe.<sup>2</sup> Before decriminalization, Portugal had one of the highest overdose death rates in Europe, nearly 80 deaths per million inhabitants.<sup>3</sup> After decriminalization, it had about three deaths per million inhabitants, far below the European average.<sup>4</sup>

And decriminalization did more than just save lives. To the surprise of many, drug use rates declined or remained steady in Portugal and other countries that decriminalized.<sup>5</sup> Many predicted that if potential drug users weren't dissuaded by the possibility of criminal sanctions, then drug decriminalization would lead to an epidemic of drug use. That didn't happen.<sup>6</sup> It seemed that the threat of criminal punishment was not the primary reason people stayed away from drugs, or even a significant factor.

For decades, America was gripped by an opioid crisis in which more and more people died every year.<sup>7</sup> In response, the government cracked down on how many opioid pills could be produced, monitored doctors' prescribing practices, surveilled opioid producers and distributors to ensure that drugs weren't being diverted to illicit users, and intensified efforts to disrupt the illegal trade in heroin and fentanyl.<sup>8</sup> Yet nothing seemed to stem the tide of opioid overdoses.

Opioid users began dying in ever-larger numbers from fentanyl overdoses, a medical opioid that can be 50–100 times more potent than typical black-market heroin. In response, lawmakers focused on intercepting fentanyl coming from China or Mexico.<sup>9</sup> The drug is so potent, however, that thousands of doses could be easily hidden in envelopes, in small shipping boxes, or in hiding spots in larger shipping containers. A lethal dose of fentanyl is about two to three milligrams, so one gram of fentanyl is enough to kill 300–500 people.<sup>10</sup> In some situations, people can even die from a lower dose of about 500 micrograms, or half a milligram.<sup>11</sup> In fact, fentanyl is significantly more lethal than traditional poisons like arsenic, which typically has a lethal dose of 70–180 milligrams.<sup>12</sup>

You might wonder why the opioid users were willing to take something so dangerous. Often, they didn't know they were taking it. Users of both heroin and cocaine would purchase their regular drugs from their regular dealer, unaware that perhaps 10 percent or more of the drug was fentanyl.<sup>13</sup> After injecting or snorting their usual amount, they'd overdose.<sup>14</sup> Overdoses began to resemble point-source outbreaks, with hospitals treating 15 to 20 users from the same neighborhood who had presumably received tainted drugs from the same supplier.<sup>15</sup>

Other users didn't have a choice if they wanted to avoid withdrawal. Fentanyl, with its high potency and small size, was increasingly crowding heroin out of the market. And with the government cracking down on how many prescription opioids could be produced, many addicts were left with fentanyl-tainted heroin as the only way to get their fix. When asked whether he was willing to use fentanyl-tainted heroin, one user said it would depend on "the availability of other batches and how sick I am. If I'm sick, I gotta do it, you know?" But he knew he had to be cautious: "I won't do half a gram. You know, I'll do a little pinch and I'll figure it out from there, but I won't start big."<sup>16</sup>

Many users were afraid of fentanyl, especially of taking fentanyl unwittingly, and strongly disliked the drug's effects. They tried to alter their drug use accordingly, whether that meant snorting heroin rather than shooting it, sticking to trusted dealers, or trying to find increasingly rare prescription opioids. But they were beholden to an unpredictable illicit market. Said one user: "I used to take just the pills, and then I started doing dope, the heroin, only when I could get it, when it was cheaper. But I don't prefer

it because you never know what you're getting. It's scary, so I'm more into pills."<sup>17</sup>

After years of increasing overdose deaths, it seemed that almost nothing could be done to stop them. Overdose deaths broke 140,000 during a presidential election year, and it became the most crucial issue of the campaign. By that point, almost everyone had been directly or indirectly affected by the opioid crisis in some way. Although America's gun-violence issues had long received substantial political attention, the opioid crisis claimed more than 10 times the number of victims annually as did gun homicides.<sup>18</sup>

\* \* \* \* \*

Drugs have now been legal for about 15 years, but how did such a shocking change happen? During the presidential campaign 16 years ago, a charismatic young senator emerged as the clear front-runner. His easygoing, charming nature endeared him to voters of both sides. During a debate among the party nominees, the question of how to deal with the opioid crisis was raised. To everyone's shock, the candidate revealed that, up until eight years before, he had been an opioid user for more than a decade. He had overdosed once and was clinically dead for a few minutes before being resuscitated. In his opinion, opioids—and in fact all drugs—should be legalized. It was the only effective way to save lives. “In case you haven't realized,” he said, “drugs won the drug war, and they're not going away.”

An audible gasp went through the audience. During the ensuing press coverage, the senator gave extended interviews, describing how he became a user, how he had overdosed from fentanyl-tainted

heroin, and how he had quit using before entering politics. “I grew out of it; that tends to happen,” he said.

The revelation had the opposite effect from what many expected: it humanized heroin users. If someone who had gone to Harvard Law School, had been attorney general of Ohio, and had become a senator could be a heroin user, then anyone could be a user. It also showed that drugs, even heroin, didn’t necessarily ruin your life, as everyone had been taught. The senator was clear on that point: he gave up heroin because he grew out of it, and it wasn’t fun anymore as his life became filled with more responsibilities. Yes, it was a little hard to quit, but quitting cigarettes can be even harder.<sup>19</sup> No, drugs didn’t almost ruin his life, prohibition did. In fact, it almost killed him.

For years, the prevailing narrative had been that heroin and other “hard” drugs—methamphetamine, PCP, crack, cocaine, and the like—were so dangerous that people could become addicted if they tried them even once. That perception has always been wrong, but relatively few people would come out and say it. Some ardent prohibitionists had admitted that most drug use is casual, but they regarded casual users as particularly pernicious. William J. Bennett, the drug czar under President George H. W. Bush, understood that nonaddicted users “still comprise the vast bulk of our drug-involved population,” but such users were more dangerous because each represented “a potential agent of infection for the non-users in his personal ambit.”<sup>20</sup>

The Drug Enforcement Administration had also pushed hard against the idea that drug users could be “normal”: “one of the basic contentions of advocates of legalization is that drug users are

essentially normal people,” said a manual published by the DEA that was originally entitled “How to Hold Your Own in a Drug Legalization Debate.”<sup>21</sup> But that’s not true, it argued, because drugs “undo the bounds that keep many seemingly normal people on an even keel.”

The senator’s story helped demonstrate that the prohibitionists had been overselling their case. Science confirmed it too. As Columbia University neuroscientist Carl Hart wrote, “Most people who use any drug do so without problems.”<sup>22</sup> People began to wonder, if alcohol wasn’t banned because of the relatively small percentage of users who cause problems, why were other drugs banned? The narrative slowly changed.

Then, drug users began outing themselves. The hashtag #OpiumDin began circulating, and famous actors, writers, television personalities, and venerated musicians came “out of the closet,” so to speak, as casual users of heroin, meth, or crack. The comparison to the gay rights movement is apt.

When gays were “in the closet,” the most visible type of homosexual activity was the least mainstream: ostentatious gay bars, bathhouses, and flamboyant gay-rights parades. Conservative Americans could believe that homosexuals were a uniquely strange and promiscuous subculture that was confined to small communities in coastal cities. But when your suburban neighbor comes out—the nice guy who snowblows your driveway and is a raging Dallas Cowboys fan—or your daughter does, suddenly you’re forced to reevaluate your image of homosexuals.

The image of drug users, especially heroin users, had long been dominated by the “junkie”: an emaciated, Sid Vicious–type

character with visible track marks and a thousand-yard stare, who is so consumed by addiction that it destroys his life and personal relations. That certainly happens, far too often. Yet judging heroin users by this image is like judging alcohol users by binge-drinking college students. According to one study, only 23.1 percent of heroin users ever experience dependence.<sup>23</sup> Although that amounts to nearly one in four users, it still paints a different picture of a drug many believed to be so seductive that anyone who tries it once will become an addict. Another study found that 4.4 percent of young adults had tried crack; however, only 1.1 percent had used it in the previous year, and only 0.3 percent had used it in the previous month.<sup>24</sup> That means that 93 percent of those who had tried a supposedly dangerous and highly addictive drug hadn't even used it once a month.

When the image of the drug user became familiar rather than foreign—your boss doing a shot at a workplace happy hour, a lawyer relaxing with a joint after a long day in the office—then a cornerstone for legalization had been laid. Marijuana legalization spread across the country in the 2010s. And although numerous advocacy organizations had spent decades writing papers on the general harmlessness of marijuana, academic essays did not cause marijuana legalization—rather, Cheech and Chong movies, Snoop Dogg's music, and other social and artistic influences helped humanize marijuana users so that people would no longer view that specific vice as a crime.

A movement to humanize opioid users began after the former opioid-using senator won the presidency. As the new government began working on the overdose crisis, the tone of the conversation

had changed. Now that addicts and users had come out of the closet, they traveled to Washington, DC, in a caravan, culminating in a rally on the National Mall of hundreds of thousands of drug users and their supporters. The theme of the rally was “drug addicts are human beings,” and signs were spotted saying, “Why do alcoholics get treatment and we get cages?” and “I became a drug addict in prison . . . think about that.”

After a year of hearings and legislative dealmaking, the full legalization bill was brought to the floor. It became a full legalization bill, rather than just an opioid legalization bill, because thinking had changed on heroin and other opioids—long considered the most destructive and addicting drugs. Consequently, it had become untenable to treat cocaine, LSD, methamphetamine, or other popular recreational drugs any differently.

The bill passed narrowly and was signed by the president. It was the beginning of a new era.

\* \* \* \* \*

Because of America’s constitutional structure, when drugs were fully legalized at the federal level, states had the option of treating drugs however they wished. A variety of regimes emerged. Some states maintained prohibition for a few years, only to realize that their citizens were simply going to legalization states to purchase their drugs. A few still have prohibition today.

Other states decided to decriminalize drug use, as Portugal did. Drug users who possess small quantities of drugs for personal use are not punished criminally, but drug dealers and manufacturers still are. In decriminalization states, drugs are not available in

stores, but some states have allowed drug users to acquire them from authorized medical services.

Finally, many states decided to simply legalize drugs, sales and all, but they chose different rules that dictate how drugs can be purchased and who can purchase them. After all, alcohol is not simply “legal.” Only people of a certain age can purchase it, and only from licensed bars or retailers. Manufacture is also limited in various ways, from restrictions on home production to licensing systems. Other laws also restrict alcohol, such as prohibitions on drunk driving and liability for servers who overserve intoxicated customers.

States put varying age restrictions on purchasing different drugs, from up to age 25 to purchase heroin to as low as age 16. For other drugs, age restrictions fell somewhere in between. Most states passed stricter penalties for any type of drugged driving, and some created liability for those who used drugs with someone who they knew or had reason to know would soon be getting behind the wheel. Finally, some states restricted some hard drugs to prescription only, particularly heroin and methamphetamine.

Legalization produced some anticipated and some unanticipated results. When the president signed the bill, he gave a passionate speech about what to expect, and he was careful not to promise too much:

Let me be clear, there will be more drug users after this law goes into effect, there will be more traffic accidents due to drug use, and there will be negative health effects. But all those things are true of alcohol legalization, and no one is seriously advocating banning alcohol because

of those effects, at least not anymore. We tried alcohol prohibition and it didn't work, and now we've learned the same about drug prohibition. Like alcohol, we will try to mitigate the negative consequences of drug use, but we won't punish everyone who likes to indulge occasionally. It's not possible for a society not to have a drug problem; rather, we must choose what kind of drug problem we have. We choose to have a drug problem where we treat our fellow citizens like human beings.

Fifteen years later, we can now assess how our "noble experiment" has fared.

### **The Nature and Form of Drug Use Changed Dramatically**

Prohibition makes drugs stronger and therefore more dangerous, even absent adulteration. America's experiment with alcohol prohibition in the 1920s changed not only the way alcohol was consumed but also what alcohol was consumed. The day before alcohol prohibition went into effect in 1920, the most popular drinks were beer and wine. The day after alcohol prohibition was lifted, the most popular drinks were again beer and wine.

During Prohibition, however, the most popular drinks were various forms of high-potency spirits, usually either smuggled in from countries like Canada or produced in the form of so-called bathtub gin, which could often be tainted. According to our best estimates, spirits accounted for about 40 percent of alcohol sales before Prohibition but rose to 90 percent of sales almost immediately after it was enacted.<sup>25</sup> The cost of beer increased an

estimated 700 percent over its pre-Prohibition price, whereas the cost of spirits increased 270 percent.<sup>26</sup>

This phenomenon is known as the “iron law of prohibition.” When prohibited, drugs with higher potencies are preferred over those with lower potencies because of the need for more efficient smuggling. Smuggling a small barrel of gin into a speakeasy is much easier than smuggling a cartload of beer.

That is one reason why fentanyl began to adulterate the country’s heroin supply before legalization.<sup>27</sup> The potency of fentanyl made it ideal for smuggling, even if it was less than ideal for drug users. As we have seen, although some users may demand fentanyl, many not only dislike the drug’s effects but also understandably fear its dangers. Nevertheless, with black markets, they are often left without a choice.

Prohibition changes drug markets so drastically that one cannot easily infer what a legal drug market would look like by examining a black market. Under alcohol prohibition, some bars essentially served only Everclear. After legalization, bars served a variety of alcoholic drinks to meet the tastes of customers, most of whom wished to moderate their alcohol use to meet both their desires and their responsibilities. The same has proved true of most heroin, meth, and cocaine users.

Consequently, since legalization, we have seen a significant change in the potency of the drugs that are being consumed. Many users, even longtime addicts, prefer less potent drugs much of the time, saving the hard stuff for special occasions—the opioid, cocaine, or meth equivalent of doing tequila shots only if you’re off work tomorrow.

Initially, the high-potency drugs that users were most familiar with were the hottest sellers, particularly heroin, meth, and cocaine. And the drugs on the shelves were extremely high-grade, given that they had been manufactured by pharmaceutical companies rather than diluted by black-market dealers or tainted with drugs like fentanyl. Companies that produced the drugs for retail outlets were understandably fearful that, in the initial weeks of legalization, users would go to the stores, purchase high-grade heroin or methamphetamine, and overdose from the unexpected potency.

In addition, various states passed consumer protection laws that allowed users and victims' families to sue pharmaceutical companies for selling drugs that created an "unreasonable and undisclosed" danger of overdose. The companies began selling high-potency drugs in very small quantities with strong warning labels. One company—hoping to prevent extremely intoxicated users from consuming more drugs and overdosing—sold high-potency heroin in a box that could be unlocked only by completing a puzzle on a smartphone app. The puzzle would be easy for those who were sober but quite difficult for those who were high. Another company sold high-grade heroin packaged with naloxone, an opioid antagonist that can reverse an overdose. And perhaps most inventively, one company offered a Fitbit-type bracelet that monitors a user's heart rate and respiration and signals emergency services if they drop too low.

But after the first few years, the demand for drug products radically changed. Heroin addicts like to get high, of course, but, like cigarette smokers, they also need to take some sort of opioid

consistently to avoid withdrawal. Many don't always want to be high but, under prohibition, they had few options to curb their cravings other than high-potency heroin. Soon, however, they had multiple options: opium lollipops and other candies, inhalers, vaporizers, slow-release patches, sodas, teas, and too many more to list. The same was true with cocaine and methamphetamine. New products hit the shelves with the speed of new potato chip flavors. And as the sales of those products rose, the proportion of revenue from high-potency drugs dropped.

These changes had some precedent. The first wave of opium use in the United States was in the form of smoked opium. Introduced by Chinese immigrants, smoking opium grew in popularity throughout the late 19th century, particularly in the West, and the fabled opium den became its symbol. Municipalities began cracking down on opium dens and opium smoking in the 1870s. San Francisco passed an ordinance in 1875, as did Virginia City, Nevada, in 1876.<sup>28</sup> Municipal and state laws were often weakly or selectively enforced, so it wasn't until 1909, with the passage of the federal Smoking Opium Exclusion Act, that the legal response to smoking opium began to significantly affect the market. By 1917, a small tin of smoking opium, which usually sold for \$20, averaged \$70. By 1924, it was \$200.<sup>29</sup>

But opium smokers had alternatives. Heroin was introduced by the pharmaceutical company Bayer in 1898, and morphine had long been available. Opium smokers began switching to heroin and morphine when smoking opium became too expensive or because they feared criminal consequences. One study recorded 78 addicts who had started as opium smokers, 68 of whom had

become morphine users by 1917.<sup>30</sup> In Philadelphia, a marked shift to heroin by opium smokers was reported; a study of addicts in New York City's Tombs prison found that 80–90 percent of white addicts had switched to heroin after 1916.<sup>31</sup> Some of this shift was due to longtime opium addicts increasing their tolerance for the drug; however, much of it was due to the lack of available alternatives.

Intravenous heroin use also emerged around 1915–1925.<sup>32</sup> That shift was partially a response to the damage that prolonged snorting can do to the nasal septum and partially a response to the decreasing purity of the drug.<sup>33</sup> Intravenous delivery gave users a more immediate high and was more efficient than snorting the drug, particularly if the drug was not pure. Said one addict, “You didn’t need no vein until they cut it.”<sup>34</sup>

The perhaps surprising conclusion is that, before legalization, we didn’t fully know what the demand for opioids would look like, because government policies had long distorted the market. When smoking opium began to become popular, municipal, state, and eventually federal laws pushed people toward morphine and heroin. Then the Harrison Narcotics Act of 1914 limited morphine and heroin to medical use only, and the Anti-Heroin Act of 1924 banned the drug entirely. The iron law of prohibition kicked in, and only high-potency drugs were available on the black market. If, before prohibition, users were addicted to lower-potency sources of opium such as laudanum—a tincture often containing about 10 percent opium—then, after prohibition, all that was available to them was heroin or morphine. This situation not only put them in greater danger of overdose but also made their addiction more severe.

After 15 years of legalization, the picture is becoming clearer. People are still addicted to heroin, methamphetamine, cocaine, and other drugs, of course, but addicts' numbers are dropping. Now, more people use or are addicted to low-potency drug products. But as long as the forces of prohibition are not pushing them toward higher-potency, more dangerous, and more addictive drugs, then that number seems to be stable.

### **Drug Use Increased, but Problematic Drug Use Decreased**

As the president said, and as most experts predicted, rates of drug use rose after prohibition, but not as dramatically as people had expected.<sup>35</sup> In countries where drug use was merely decriminalized, as in Portugal, drug use didn't tend to rise. But legalization increased access to drugs through retail stores, product innovation, and commercialization. By removing many of the barriers to drug use—primarily fear of criminal penalties, fear of tainted drugs, inability to find drugs, and price—legalization increased the number of people willing to take drugs.

But that's not necessarily a bad thing. Unless we regard all drug taking as a wrong per se, then increasing the use of drugs actually brought a social benefit. In the beginning, some had difficulty understanding this fact, because they still regarded using meth, heroin, cocaine, and other hard drugs as categorically different from drinking alcohol. They had difficulty believing that such drugs could be taken casually and responsibly.

But it soon became clear that most people could take a little opium to enliven a night out or a little cocaine to keep the night going and then get to work on time the next morning, perhaps

with the help of some amphetamines. If those drug users enjoy their experiences on drugs without causing problems for either their lives or society, it is difficult to argue that taking those drugs away produces a social benefit.

Most people understand this fact when it comes to alcohol. The primary cost of banning alcohol would be, and was, taking an enjoyable drug away from people who use it to augment their pleasure—from tailgating to wine-and-cheese parties, happy hours, and myriad other situations in which alcohol is used to increase amusement and pleasure. Dry weddings are less fun than open-bar weddings for a reason.

And people slowly came to understand that the same applied to the newly legalized drugs. Moreover, as described earlier, since the legal market created an explosion of less potent options for using drugs, drug use was integrated into various social situations. Psychedelics are used in art exhibits. There are “opium-cooking parties” and new-concept opium dens that resemble hookah bars.

All of this change represented a shift away from the more problematic use of heavy drugs, namely, the clandestine use of extremely potent drugs by addicts in unsavory locations, as was common under prohibition. The increasing social acceptability of drug use, combined with the varieties of available low-potency drugs, meant that addicts could come out of the shadows, so to speak, and not lose themselves in a hypodermic needle.

This transformation dramatically curbed many of the downsides of problematic drug abuse. As alcoholics have long known, the shame of being an alcoholic is one of the biggest barriers to seeking treatment. Attendees at Alcoholics Anonymous meetings are

encouraged to introduce themselves as alcoholics and to have no shame in their condition. When hard drugs were illegal, the shame that accompanied addiction was compounded by the illicit and often hidden nature of the habit. That factor created a vicious cycle.

Addiction is just as much a product of social disconnection as it is of the seductive nature of hard drugs.<sup>36</sup> Prohibition heightened that social disconnection and pushed users to hide their habits. Problematic drug use can certainly cause social disconnection by itself, but abusing a prohibited drug makes that disconnection even worse. Users lost jobs, alienated friends and family, and discarded meaningful connections to hobbies and personal passions. Top that off with a criminal conviction that dramatically harmed employment prospects, educational opportunities, and much more, and it's no wonder that, for many addicts, the drug became their only source of pleasure, and they spent their days searching for ways to secure the next fix.

There are still addicts now, just as there are still alcoholics. And many of them find themselves in similarly dire situations. But by removing the barriers to acquiring safe drugs, taking away the threat of criminal prosecution, allowing them access to low-potency drugs that can help them curb their withdrawal symptoms, and lowering the social opprobrium that accompanied illicit drug use, we offered a more accessible and positive path to overcoming their addiction.

## **Overdose Deaths Dropped Significantly and Continue to Drop Steadily**

We still have overdoses, quite a few actually, just as we still have significant medical problems from alcohol abuse. Although

fentanyl-tainted heroin can and did cause many overdoses, plain, untainted heroin can still kill, often unpredictably. That is especially true when drugs are mixed.<sup>37</sup>

Immediately after legalization, not surprisingly, overdoses from tainted heroin declined significantly. Other types of overdoses seemed to increase, however. The new accessibility of drugs and the low price, at least compared with prelegalization, meant that many people indulged too heavily and too often. Initially, the problem was bad enough that drugstores began tracking purchases and refused to sell to people who bought large amounts of drugs in a single day or a span of days. The businesses did so because dram shop laws—laws that impose liability on businesses and servers who provide alcohol to those who are obviously intoxicated—were expanded to include drugs.

Overdoses continued to fall as numerous forces combined to help mitigate dangerous drug use. One, as mentioned, was the availability of low-potency drugs that were unavailable during prohibition. Others, also previously mentioned, were the various factors that helped bring addicts out of the shadows and offer them paths to recovery. Also, naloxone, the opioid antagonist that can reverse an overdose, became widely available and is now prominently sold in drugstores, just like hangover pills are sold in liquor stores.

Legalization was never championed as a way to stop all overdoses, so they're still a problem and will continue to be. What we eliminated were overdoses that were directly caused by prohibition. And by slowly changing the nature of drug use, we're beginning to see other types of overdoses decline.

## **Effective Social Systems of Drug Control Emerged and a Variety of Innovative Products Came to the Market to Help Addicts Quit**

Prohibition is not the only way to influence how and whether people use drugs. Cigarettes have been legal for centuries; yet, despite their being highly addictive, levels of smoking have fallen precipitously since the mid-20th century. Some of that decrease was due to increased taxes and other forms of regulation; however, most was due to people seeking healthier behaviors and to an increase in the social condemnation of smoking.

Such social controls are more effective in a legal market, where users spend less time hiding their drug use and using drugs only with other drug users—that is, people who won't condemn their behavior or report them to law enforcement. The legalization law included funding for public health campaigns that inform users of the dangers of drugs, as well as warning labels similar to those on cigarette packs. But warning labels are not as effective as social forces—whether friends telling users that they've been taking too much or just the general opprobrium with which certain social circles treat some types of drug use.

Much like drinking soda became the target of social forces in the early 21st century, taking pure heroin, high-potency cocaine, or other strong intoxicants is viewed as uncouth in many social situations. Just as colleagues may be OK with someone ordering a glass of wine during an extended weekday lunch, calling for Jägermeister shots would be condemned.

Drunk driving is another example of how social forces helped mitigate a type of problematic drug use. Although criminal

penalties for drunk driving were increased and the legal blood alcohol limit was lowered, social norms and shaming were just as important in decreasing incidents of drunk driving. Since legalization, we have seen increased social pressure to avoid driving and other dangerous activities when under the influence. Incidents of drugged driving increased immediately after legalization but have been falling ever since.

Finally, whereas drug dealers under prohibition had little incentive to help their customers quit, businesses began producing cessation aids after legalization. Like smoking cessation aids, a big market exists for those who want to quit drugs. Methadone has long been the most prominent drug for helping curb opiate cravings and, hopefully, gradually cure addicts. The wider availability of methadone—which can help many addicts but was often hard to come by during prohibition—mitigates harmful drug use.

And more products were to come. Legalization created a large and visible market of addicts who wished to be cured, and many health insurance plans began covering cessation aids. Businesses, seeing a profit opportunity, began researching new drugs and methods and soon produced nasal sprays, patches, gum, a long-lasting injectable form of naloxone, and many more. Helping addicts quit had become good business.

## **Policing and Criminal Justice Radically Changed**

At the height of the drug war, hundreds of thousands of people were in prison for various drug offenses, and more than a million were under some type of supervision by the criminal justice system—such as parole or probation.<sup>38</sup> It is impossible to know

how many lives were unnecessarily ruined over the course of the drug war, but the number would be staggering.

Letting drug offenders out of prison was, of course, one of the most immediate benefits of ending prohibition. After legalization, a federal law was passed that released all federal prisoners whose most serious offense was drug possession or low-level dealing. The vast majority of incarcerated drug offenders were in state rather than federal prisons, however, and states had to individually pass laws dealing with their incarcerated drug offenders.<sup>39</sup> Some released almost all of them and even erased conviction records. Suddenly hundreds of thousands of people could see a brighter future for their lives, something better than a jail cell and the difficult task of trying to live, work, and thrive with a felony conviction.

The benefits of deincarceration were obvious, and many people supported legalization because they could no longer stomach seeing their fellow humans put in cages for indulging a mere vice. Incarceration not only cost the government billions of dollars but also destroyed human productivity and potential. Yet other, less obvious benefits for our criminal justice system soon emerged.

How much the drug war changed the nature of policing itself is often forgotten. Traditionally, crimes have victims. When investigating an assault, murder, or rape, police can speak to witnesses, take evidence, and pursue the perpetrator through traditional means. After a robbery, victims typically invite the police into their houses and ask them to search for evidence to solve the crime.

When crimes have no victims, however, policing completely changes. With drug use, the supposed victim is also the perpetrator, and he or she doesn't want the supposed "evidence" of the "crime"

to be discovered—that is, the drugs. Since no one is reporting the “crime” and no one is inviting the police into private places to discover evidence, the police need to “invite” themselves in somehow. Consequently, the drug war greatly eroded Americans’ civil liberties.

Because of the drug war, police could fly helicopters over houses to search for drugs in backyards without a warrant. Because of the drug war, police could execute no-knock warrants in which heavily armed SWAT teams carried out violent raids on people’s homes, often by breaking down the door with a battering ram and sometimes using explosives, such as flash grenades.<sup>40</sup> Because of the drug war, people could be detained at the border for significant periods, having their body cavities searched and other indignities forced upon them. Because of the drug war, police could claim to smell marijuana in a car and then seize the car under the theory of civil forfeiture.<sup>41</sup> Because of the drug war, police could shake down groups on the street—often young African American males—on the assumption that someone had drugs, and they would sometimes plant evidence if no one did.

Enforcing prohibition, particularly against something that is popular, inevitably makes the relationship between law enforcement and citizens antagonistic and fraught. Moreover, given the large sums of money that the illegal drug trade generated, corruption was inevitable. After all, who is going to know when a police officer slips a wad of bills into his pocket during a drug raid?

After prohibition ended, law enforcement officers around the country were unsure what to do. Law enforcement organizations and prison guard unions were some of the biggest opponents of legalization. For them, prohibition was a jobs program. Thousands of

officers walked into work the day after legalization to find that their main job had been eliminated. They were superfluous.

But they weren't. America's murder clearance rate—that is, the rate at which homicides are solved—dipped to 61.6 percent in 2017, and in some cities, such as Baltimore, Chicago, and Detroit, the clearance rate was under 30 percent.<sup>42</sup> And police were no better at solving other crimes: aggravated assault, 53.3 percent; rape, 34.5 percent; burglary, 13.5 percent.<sup>43</sup> Meanwhile, during the drug war, 62 percent of SWAT team raids were for drug searches.<sup>44</sup> Police officers who had spent their careers tracking down drug users and pursuing traffickers could focus on interpersonal crimes, and predictably the clearance rates began rising.

Of course, when drugs were illegal, many of those homicides were directly or indirectly related to prohibition, particularly in cities like Baltimore, Chicago, and Detroit. It is nearly impossible to guess how many other crimes were directly or indirectly related to prohibition; however, clearly the CEOs of Budweiser and Coors do not fight street wars over territory. After legalization, the crime rate in the inner city began dropping steadily. In some cities, it dropped precipitously. And although gangs still exist, as they always will, legalization has removed their biggest source of revenue and the biggest source of intergang violence. The drug war was one of the worst things to ever happen to the inner city, and, unfortunately, the effects of decades of prohibition have not been alleviated after a mere 15 years of legalization.

\* \* \* \* \*

But here, in the real world of 2020, drugs of course haven't been legalized. The wave of marijuana legalization that began sweeping

the country in 2012 has been a welcome development, but we need to do more.

Instead, in 2016, the last year for which we have data, 44,700 people were sitting in American state prisons for simple drug possession, and another approximately 152,500 were in state prison for other drug offenses, such as selling, trafficking, or manufacturing.<sup>45</sup> An additional 81,900 were in federal prison for drug offenses.<sup>46</sup> In 2017, there were 1,632,921 arrests for drug law violations, of which 1,394,514 (85.4 percent) were for possession only.<sup>47</sup> In 2016, more arrests were made for marijuana possession than were made for all violent crimes.<sup>48</sup> In fact, marijuana possession arrests account for 5 percent of all arrests in the United States, which works out to about one marijuana arrest every minute.<sup>49</sup>

The preceding has been an attempt to imagine both the costs and benefits of fully legalizing drugs. Americans need to reassess how we treat our fellow citizens who have unpopular vices. We must ask ourselves whether the symbolic crusade of prohibition is worth the money it costs and the lives it destroys. Drugs can destroy lives, certainly, but the drug war itself can and has destroyed lives, communities, civil liberties, and even countries. Drug addicts are human beings, and they don't deserve less care and treatment than alcoholics.

Drugs won the drug war. As our hypothetical president said, "It's not possible for a society not to have a drug problem; rather, we must choose what kind of drug problem we have."