Drug Use and the Rights of the Person

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A drug may be broadly defined as "any chemical agent that affects living processes" that may be ingested through the mouth, the rectum, by injection, or by inhalation. Importantly, this standard definition is pharmacological: a substance is defined as a drug by its mechanism of chemical agency. Two significant conclusions follow. First, according to this definition, alcohol, caffeine, and nicotine are drugs, however ingested and in whatever circumstances, for they are chemical agents within its terms. The reluctance of social convention to regard these agents as drugs requires explanation and investigation. The popular definition of drugs certainly cannot be accepted uncritically without begging a most important moral question.

Second, the scientific definition implies nothing about the purposes of drug use, which include therapeutic cure, relief of symptoms, pain, or anxiety, regulations of mood (by way either of depressants or stimulants), stimulation and exploration of religious experience, release of hallucinatory fantasy for a range of purposes, and recreational pleasure. A political or moral analysis of drug use must go beyond the pharmacological focus on the chemical agency common to all drugs and assess the propriety of various purposes of drug use.

Contemporary drugs may be classified as: the narcotics (opium, morphine, heroin, methadone, and others), caffeine, nicotine, and depressants (alcohol, barbiturates, tranquilizers, and other sedatives and hypnotics), the stimulants (including coca leaves, cocaine, and amphetamine), and the hallucinogens or phantasticants (mescaline, LSD, LSD-like drugs, marijuana, and hashish). In order to understand the American practice of criminal prohibition of certain forms of drug use, we must take seriously the arguments offered in its defense: (1) criminogenesis; (2) the control of ancillary forms of physical illness and injury; (3) the intrinsically immoral and degrading nature of drug use, either in and of itself or in its effects on other individuals and society in general; and (4) cognate to (3), the self-destructive or debilitating nature of drug use. Of these arguments, the first and second do not justify the current absolute criminal prohibitions of many forms of drug use; therefore, the gravamen of the argument for criminalization turns, as we shall see, on the proper weight to be given to the third and fourth argument.

Criminogenesis

Criminal prohibition of the use of certain drugs, notably heroin and marijuana, has been justified as a means of suppressing other types of crime. It is said that drug users support their habits by theft and robbery; that drug use releases violence, induces illegal trafficking in drugs, and enlarges the scope of organized crime operations. None of these considerations in fact justifies the criminalization of drug use; indeed, criminalization itself fosters these evils. It forces drug users into illegal conduct to obtain money for drugs and brings them into contact with the criminal underground, the coverture of which breeds.

First, the association of drug use with illegal trafficking in drugs and the consequent enlarged scope of organized crime operations is a result of criminalization itself. Criminalization imposes a crime tariff* on drugs, inflating prices and creating high profit margins that make the drug trade attractive to organized crime. The organized crime argument begs the question, since it is criminalization, not drug use itself, that makes possible organized crime involvement.

Second, to the extent that drug use is related to increases in other criminal activity, or diversion of criminal activity into certain forms, that causal matrix depends on criminalization, not on drug use itself. In order to pay the crime tariff on drugs, users may engage in burglary, theft, or robbery, or in services with their own crime tariffs, such as prostitution, gambling, and drug trafficking itself. In addition, the criminal stigma and enforced covertness probably encourage, or at least reinforce, dependence on narcotics, and certainly make detection and possible control of addiction more difficult. Where heroin is made available to addicts in regulated contexts at low or minimal prices, as it is in Britain, no causal nexus with ancillary crime exists, and the level of drug addiction appears under control. In the United States, prior to the Harrison Act, there was no link between drug use and ancillary crime. Indeed, the composition of the drug-using population in the United States has probably been decisively shaped by criminalization. The population of heroin addicts which before criminalization included many middle-class women, now includes a disproportionate number of poor urban minorities. The moral implications of this shift, for which criminalization bears some responsibility, are themselves an appropriate subject for further analysis.

Third, at least with respect to most drugs now criminalized, there is simply no factual support for the argument that drug use itself releases inhibitions or criminal tendencies. To the contrary, heroin and marijuana appear to diminish the aggressiveness which often expresses itself in violent crime. No chapter of the history of American attitudes to drug use is more instructive than the dependence of advocates of criminalization on this argument. Often this argument was supported by selective citations from unreliable journalistic or law enforcement reports, self-serving confessions by criminals that their conduct was induced by drugs, or unsubstantiated surmises of enforcement officials wholly lacking any critical impartiality on the question.

This hystericalized social mythology may unwittingly aggravate the problem of violent crime that it ostensibly seeks to reduce. In deterring the use of the drugs that lessen violent propensities, criminalization may encourage the use of alcohol, which demonstrably heightens such violent tendencies. In addition, upon discovering that certain illegal drugs do not cause violent crime, persons who use these drugs may fail to regulate appropriately their use in certain contexts — for example, prior to driving. This discovery may also lead them to conclude that all distinctions between legal and illegal drugs are irrational and hypocritical, and may thereby encourage them to use other illegal drugs which might, in fact, stimulate illegal violence. Wholesale criminalization, in contrast to fine-tuned regulation of drug dosages and uses, apparently creates or compounds the problem it is supposed to solve.

Arguments of criminogenesis are generally circular and question-begging; they argue for criminalization of drug use on the basis of the evils that criminalization, not drug use fosters. If there are crimes associated with drug use, they are more
rationally attacked by decriminalization and by criminal statutes directed narrowly at the evils themselves (for example, drug use before driving), not by overbroad statutes that actually encourage what they purport to combat.

Control of Physical Injury and Other Harms

Another argument supporting criminalization is that drug use may cause physical injury and even death. The image usually invoked is that of the contemporary, urban, ghetto heroin addict, whose addiction may be accompanied by hepatitis, tetanus, and abscesses at the site of injection. His practice of sharing needles may result in the communication of disease – for example, malaria. His addiction may also conceal the early symptoms of diseases, such as pneumonia, or lead to malnutrition, which increases susceptibility to disease. The varying strengths of doses may also increase the possibility of an overdose and sometimes death.

This scenario fails to recognize that any drug that is used in sufficiently high dosages or in certain contexts (with other drugs, for example) will probably cause severe harm, including, sometimes, death. This is true of many drugs currently available without prescription. Harm usually occurs when, intentionally or not, the instructions for proper use are not observed. In general, the composition and purity of legal drugs are carefully regulated, and the potential for harm is kept to a reasonable minimum by regulations, appropriate instructions, and warnings.

Many of the harms cited as the basis for criminalization could be avoided by the same forms of regulation that are applied to presently legal drugs. For example, because the Food and Drug Administration does not regulate the sale of heroin, the buyer is never sure of what he is getting and may accidentally give himself a fatal overdose. The lack of appropriate medical supervision over the sterilization of hypodermic needles used to inject heroin accounts for the diseases found at the site of injection. In addition, the illegality of drug fuse discourages the addict from seeing a physician. A physician, if consulted, might detect symptoms of illness that are masked by the addiction. Malnutrition, for example, is common among addicts and is caused both by a lack of interest in food and by a lack of money due to the crime tariff. In short, the evils of heroin use that are alleged as grounds for criminalization are produced or fostered by such criminalization; all these dangers could be reduced appreciably if heroin use were legal and regulated, as it is in Britain.

Moral Arguments

It is disingenuous to suppose that the American criminal prohibition of drug use is based on the secular concerns of criminogenesis and control of drug-related injuries. Neither argument can justify such prohibition; indeed, serious concern with the evils adduced by both arguments would require the opposite conclusion. These arguments are, at best, post hoc empirical makeweights for justifications of a different order, namely, moralistic and paternalistic arguments of a peculiarly American provenance. In order to deal effectively with the justifications for criminal prohibitions, we must examine these arguments critically.

Drug Use and Degradation

To think of behavior as degraded is to assume that one’s self-esteem is invested in the competent exercise of certain personal abilities and that the behavior in question fails to be competent in the required way. The degraded one thus is the natural object of shame or self-disgust at his personal failure to live up to standards of conduct that are valued as essential to the integrity of the self. Accordingly, the application of the notion of degradation to drug use requires an analysis of the valued behavior from which such use is alleged to deviate. This behavior apparently embodies certain general conceptions of self-control and also includes specific perfectionist ideals of such conceptions as well as notions of moral personality which drug use, especially drug addiction, alienates or enslaves in some fundamentally immoral way. Although these conceptions are interrelated, we may profitably discuss them separately.

1. General Conceptions of Self-Control

One general conception of the person, which may underlie the claim that drug use is degrading, is the value of self-control.

Drug use does not produce a drunken anarchy inconsistent with the aims of rational will as such. Humans use drugs for diverse purposes – for therapeutic care and cure, for relief of pain or anxiety, for stimulation or depression of moods, for exploration of imaginative experience (for creative, aesthetic, religious, therapeutic, or other reasons), for recreative pleasure, and the like. Humans consciously choose among these purposes depending on the context and their individual aims. In so doing, they express self-respect by regulating the quality and versatility of their experiences in life to include greater control of mood and, sometimes, increased freedom and flexibility of imagination. For many, such drug use does not constitute fear-ridden anarchy, but promotes the rational self-control of those ingredients fundamental to the design of a fulfilled life. It is, of course, a banality of the literature of perceptive observers on drug experience that the quality of such experience varies according to the expectations, aims, and identity that the person brings to the experience. This should confirm that drug experience is neither satanic damnation nor divine redemption of the self, but merely one means by which the already existing interests of the person may be explored or realized.

2. Perfectionist Ideals of the Person

No argument supporting the moral condemnation of drug use has had a stronger and more pervasive hold on the American popular imagination than the argument for protecting the perfectionist ideal of the person.

The perfectionist ideal arose within the Radical Reformation and was carried to the United States by sects, such as the Quakers and Methodists, whose own moral conceptions appear to have decisively shaped the American conception of public morality.

This conception identifies virtue, including the virtues of citizenship, with personal imitation of Christ, and thus with a commitment to extraordinary self-sacrifice in the service of others, requiring the exercise of independent conscientiousness and self-control. Thus, Benjamin Rush, when analyzing liquor as a social problem, focused not only on its alleged physical harmfulness, but also particularly on the resultant loss of control which was inconsistent with the required character of a life in service to others. He strikingly defined the consumption of distilled liquor as a form of suicide, a self-destructive impulse which ignores the
constant call of service to others. The drug user, perceived through the lens of this moral conception, cultivates subjective experiences which lead to a similar self-indulgent loss of control. The use of drugs thus was naturally seen (in accordance with the Augustinian model of religious experience) as a radical evil, even as heresy or satanic possession, with which there could be no compromise. This, in short, is the moral philosophy underlying America’s unique experiment with prohibition of alcohol, its remarkable generalization of this approach to opium and marijuana, and its continuing prohibitions in other areas of drug use.

One may legitimately urge this moral conception upon other as a guide for their conduct, but not as a valid justification of criminal sanctions. First, the autonomy-based concept of treating persons as equals rests on respect for the individual’s ability to determine, evaluate, and revise the meaning of his or her own life. It was argued earlier that the Augustinian model of self-control should not be legally enforced precisely because it ignores this experience of responsible self-determination as an important aspect of moral personality. It thus deprives persons of autonomous choice regarding fundamental experiences. The invocation of the perfectionist ideal of self-control as a compulsory moral standard is open to similar objections. There is no reason to believe that it is the only legitimate model of responsible self-control, the only means of human fulfillment.

In any event, in such matters, the range of reasonable personal ideals is wide and acutely sensitive to personal context and individual idiosyncrasy. The law has no proper role in determining how these choices are to be made or in promoting the perfectionist ideal in particular.

3. The Alienation of Moral Personality and the Concept of Addiction

Even if the argument that all drug use is degrading cannot be sustained on the basis of perfectionist ideals, there remains the intuition that certain forms of drug use degrade because they enslave moral personality, depriving the user of certain fundamental capacities. Immanuel Kant, the father of modern deontology, sketched a form of this argument when, after arguing that the drunk person “is simply like a beast, not to be treated as a human being,” he observed:

The first of these debasements, which is even beneath the nature of an animal, is usually brought about by fermented liquors, but also by other stupefying agents such as opium and other products of the plant kingdom. These agents are misleading in that they produce for a while a dreamy euphoria and freedom from care, and even an imagined strength. But they are harmful in that afterwards depression and weakness follow and, worst of all, there results a need to take these stupefying agents again and again to increase the amount.

When the concept of addiction is associated with certain drugs, at least four different strands of meaning are conflated: (1) tolerance (the progressive need for higher doses to secure the same effect), (2) physical dependence (the incidence of withdrawal symptoms when drug use is stopped), (3) psychological centrality of the drug in one’s system of ends, and (4) a moral judgment of degradation (or, in the contemporary terminology, drug abuse). Tolerance and physical dependence are often assumed to be inextricably linked to each other and to psychological devotion and drug abuse. None of these assumptions is, however, valid. Physical dependence does not invariably occur in every situation where tolerance develops. Tolerance mid physical dependence, when linked, develop not only with narcotics, alcohol, and hypnotics, but also with medical administration of many other drugs in which neither psychological devotion nor drug abuse occurs. Most strikingly, it is now clear that, even with respect to narcotics, alcohol, and hypnotics, tolerance and physical dependence are not sufficient causal conditions of psychological devotion or drug abuse. Many, perhaps most, persons, who have developed tolerance for and physical dependence on a drug do not become psychologically devoted to it. Mere tolerance and physical dependence do not lead to psychological devotion or abuse unless the user is aware that the symptoms he may experience when the drug is stopped are symptoms of withdrawal, which resumption of the drug would relieve. Even with such knowledge, psychological devotion or abuse does not always result. Most Vietnam War veterans who satisfied the requirements of tolerance, dependence, and knowledge, did not on return exhibit psychological dependence. Conversely, it appears that neither psychological devotion nor abuse turns on tolerance or physical dependence in any direct way. Persons may become devoted to patterns of drug use even though their tolerance and physical dependence is low. Some assert that this is the condition of most American addicts. Moreover, patterns of devotion or abuse may arise for drugs, such as the stimulants, which do not cause physical dependence. Finally, psychological devotion and abuse do not appear to be permanent states: many persons give up drug use in a natural process of maturation.

If physical dependence is neither necessary nor sufficient for psychological devotion or abuse, the popular belief that the use of certain drugs in itself leads to the enslavement of the user must be doubted. In fact, careful empirical studies of the causes of drug devotion or abuse demonstrate the importance, not of physiological dependence, but of social and psychological factors.

This perspective naturally leads one to question the conflation, implicit in the concept of drug abuse, of psychological devotion to drugs with a moral judgment of degradation. This conflation cannot, as we have seen, be sustained on some ground that the drug, in itself, immediately enslaves. There remains, however, the objection to drug use in its psychologically organizing and central role in the user’s system of ends. The concept of addiction expresses, then, a form of moral criticism, couched in the obscuring language of “drug abuse,” of such psychological centrality.

The nature of this moral criticism may be clarified by extending it, by an analogy, to other kinds of human behavior. Consider, for example, addiction to love or to wealth. In both cases, the analogy is exact: the concept of addiction does not, as we have seen, turn on physiological factors like tolerance and dependence, but on a certain kind of psychological centrality and some form of moral criticism thereof. Love then can be an addiction when a certain attachment has psychological centrality among the person’s ends and when that centrality is subject to criticism. The lover may be said to have lost his capacity for “appreciation of and ability to deal with other things in his environment, or in himself, so that he had become increasingly dependent on that experience as his only source of gratification.” Wealth, correspondingly, is condemned as an addiction when the pursuit of it has such centrality at the inhumane cost of blinding the person to other fulfilling ends in his life and to ethical concern for the lives of others.

Both arguments are intended as enlightened social criticism, pointing up defects
in the rationality or humanity of the ways in which people structure their ends and lives. As long, however, as these defective life plans do not lead the agent directly to violate the moral rights of others - for example, by engaging in violence, robbery, or the like - no suggestion is made that these criticisms should be expressed through criminalization. In a constitutional democracy committed to equal concern and respect to autonomy, we honor the rights of persons to live their lives as they choose; we make our criticisms as part of a liberal culture offering pluralistic visions of the good life.

In similar fashion, the gravamen of the moral criticism implicit in the concept of drug abuse is the objection to the psychological centrality of drug use among a person’s ends. Sometimes, the objection is put in terms of the propensity of addicts to commit violent crime and thus violate the rights of others, but this rests on false factual assumptions or on causal connections that the criminalization of drug use, not drug use itself, fosters. We are left with the normative judgment that the psychological centrality of drugs in the user’s life is unreasonable, because of the enormous risks or “unbelievable sacrifices” that he undertakes or because of other values that he sacrifices. But it is difficult to see how this moral criticism can be given the normative weight that it is intended to bear, that is, to justify the criminalization of drug use, consistent with the autonomy based interpretation of treating persons as equals. From this perspective, persons are to be guaranteed, on fair terms to all, the capacity to define with dignity and take responsibility for the meaning of their own lives, evaluated and revised in terms of standards and evidence which express higher-order interests in freedom and rationality. As we have seen, the psychological centrality of drug use for many young addicts in the United States may, from the perspective of their own circumstances, not unreasonably organize their lives and ends. In contrast, the moral criticism implicit in the concept of drug abuse fails to take seriously the perspective and circumstances of the addict, often substituting competences and aspirations rooted in the critic’s own background and personal aspirations to organize a self-respecting social identity, which might only exceptionally require drug use. Accordingly, the moral content of the concept of drug abuse appears deeply controversial. Certainly, it can bear no more just normative weight than the criticism of love or wealth as addictions. Society is not prepared to apply criminal sanctions in those cases because of considerations that should apply to drug use as well: in a society committed to equal concern and respect to autonomy, persons are entitled to make their own trade-offs among basic personal and social values. We certainly can criticize these decisions, I’m we do not regard criminalization as an appropriate expression of our condemnation.

Voluntary use of drugs cannot reasonably be supposed to be a slavery that alienates the moral personality, because even psychological devotion to drugs may express not a physiological bondage, but critical interests of the person. Indeed, there is something morally perverse in condemning drug use as intrinsic moral slavery when the very prohibition of it seems to be an arbitrary abridgement of personal freedom.

Even if no other moral argument on behalf of criminalization can be sustained, it may still be argued that drug use is sufficiently irrational conduct that there is moral title to interfere with it on paternalistic grounds. This is, however, an argument that is radically inappropriate to the defense of prohibitions of many forms of drug use.

It is initially important to distinguish two kinds of paternalism: interference on the basis of facts unknown to the agent, in order to save the agent from harms that he would wish to avoid, and interference on the basis of values that the agent does not himself share. Paternalism of the first kind, as applied in such laws as those securing the purity of drugs, is unobjectionable. Paternalism of the second kind, which underlies many laws currently criminalizing drug use, is not only objectionable, it is a violation of human rights.

On this basis, no good argument call be made that paternalistic considerations justify the kind of interference in choices to use drugs that is involved in the current criminalization of many forms of drug use. Indeed, in many cases, such choices seem all too rational.

Drug use serves many disparate purposes: therapeutic care and cure, the relief of pain or anxiety, the stimulation or depression of mood or levels of arousal, the exploration of imaginative experience for creative, aesthetic, religious, therapeutic, recreational, or other purposes, and sheer recreative pleasure. These purposes are not irrational. To the contrary, the pursuit of them may enable the person better to achieve his ends in general, or to explore aspects of experience or attitudes to living which he may reasonably wish to incorporate into his theory of ends. There is almost no form of drug use which, in a suitably supportive context and setting, may not advance important human goods, including the capacity of some poor and deprived people to work more comfortably, to endure adverse climactic and environmental circumstances, and in general to meet more robustly and pleasurably the demands on their lives. Some religions, like some artists, have centered themselves on drug use, finding in drugs a matrix of religious and imaginative experience in which to explore and sometimes realize their higher-order interests in giving life intelligible meaning and coherence. Some persons today find in the triumph of technological society the reductio ad absurdum of certain dynamics of Western culture and identify drug use as one organon for cultivating a saner and more balanced metaphysical orientation that expresses their most authentic and reasonable interests. Some find even in “addictive” drugs a way of life with more interest, challenge, and self-respect than the available alternatives. It is dogmatic to assert that these and other people do not, through drug use, more rationally advance their ends.

Sometimes the paternalistic argument is made that certain forms of drug use, even if carefully regulated, may result in certain clear harms to the user. For example, heroin use may lead to addiction, to impotence, to certain organic disorders, and sometimes, despite all proper precautions, to death. As long as any such irreparable harm to the person is in prospect, it is argued, paternalistic interference is justified. Even if certain of these alleged harms, for example, addiction, are morally problematic and question-begging, others, such as death, are not. The first requirement of just paternalism, however, is that judgments of irrationality must rest on a neutral theory of the good consistent with the agent’s own higher-order interests in rationality and freedom. Even intentionally ending one’s own life cannot, in all circumstances, be supposed irrational under this criterion. If intentional killing is not always irrational, neither, a fortiori, is drug use, in which the user makes trade-offs between valued forms of activity and higher risks of death that reasonable persons
sometimes embrace. Certainly, the right of persons to engage in many high-risk occupations and activities is uncontroversial. Part of respect for human rights is the recognition of the right of persons, as free and rational beings, to determine the meanings of their own lives and projects, including the frame of such plans at the boundaries of life and death. The values that some persons place on drug use can be accorded no less respect. Certainly, drug use does not enable a person to realize more than is implicit in the interests and ambitions brought to the drug experience, but that indicates not the frivolity or pointlessness of the experience, but its potential seriousness for the kinds of spiritual exploration and risk-taking by independent-minded and rational persons that should be centrally protected in a free society.

At most, paternalistic concern for forms of irreparable harm might dictate appropriate forms of regulation to insure that drugs are available only to mature persons who understand, critically evaluate and voluntarily accept the risks. To minimize pointless risks, such regulations might insure that certain drugs, LSD, for example, are taken only under appropriate supervision. In general, however, there is no ground of just paternalism for an absolute prohibition of such drugs.

The radical vision of autonomy and mutual concern and respect is a vision of persons, as such, having human rights to create their own lives on terms fair to all. To view individuals in this way is to affirm basic intrinsic limits on the degree to which, even benevolently, one person may control the life of another. Within ethical constraints expressive of mutual concern and respect for autonomy, people are, in this conception, free to adopt a number of disparate and irreconcilable visions of the good life. Indeed, the adoption of different kinds of life plans, within these constraints, affords the moral good of different experiments in living by which people can more rationally assess such basic life choices. The invocation of inadequate moral and paternalistic arguments of the kind discussed violates these considerations of human rights, confusing unreflective personal ideology with the moral reasoning that alone can justify the deprivation of liberty by criminal penalty.