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Drug Legalization:

The Issues, the Facts, and the Uncertainties

®FL¯ The drug problem, and what to do about it, has had a curious capacity to elude rational analysis. The main reason, of course, is that passions run high on the subject with some seeing drugs as a threat to western civilization and others seeing drugs not only as inevitable, but as something that is potentially valuable to the society. Indeed, many see the issue of drug usage as a moral issue not usefully informed by empirical discourse about the nature of drugs, their consequences, and the consequences of different legal regimes. Where passions are strong, politics will inevitably enter, and precision in describing the problem will disappear.

Another reason, however, is that the issues are difficult to analyze, and there are precious few facts to rely on in forming conclusions. At the core of the problem, for example, is that society cannot quite decide whether it is drug use per se, or whether it is the consequences of drug use that are the problem. Moreover, it is exceedingly difficult to disentangle the effects of drug consumpiton on a user's behavior and condition from the effects of personal or social circumstances, or the consequences of having made the drug illegal. Moreover, the important consequences and plausible causal mechanisms differ from drug to drug.

These difficulties are particularly apparent when we try to consider rationally whether it would be wise social policy to legalize drugs. (This runs directly into the moral question of whether drug use per se is good or bad.) In these discussions, the difficulties are compounded by the ambiguity of what is meant by legalization. Discussion is also hampered by the lack of useful social experience to rely on in making predictions. For such large structural changes that could be expected to change a great deal about the problem, the only relevant evidence is cross-national or historical.

Still, the purpose of this article is to facilitate a more rational discussion of this issue by developing an analytic framework for considering the question, and identifying key facts and uncertainties that one confronts in analyzing this basic policy question. I should confess at the outset that I think it would be wrong or imprudent to legalize cocaine or heroin at this particular moment. I believe that this conclusion can be justified. But I understand that that conclusion depends on a complex weighing of different values and attitudes toward risk. It may also depend on weighing different pieces of evidence more or less heavily in reaching conclusions.

I. The Principal Dimensions of Evaluation

In examining the question of whether legalization is an attractive policy option, one must begin with a list of criteria or dimensions of performance on which the legalization option will be compared to others.

Level and Distribution of Consumption

The most obvious dimension is what will happen to levels of drug consumption: all other things being equal, if consumption of drugs increases under legalization, that is worse than if drugs declined or remained constant. One can think first in terms of mean levels of conslumption, but one quickly comes to the conclusion that one woul also like to know about the distribution of consumption, for some of the worst consequences of drugs are associated with chronic, intensive uses of drugs. Drugs can produce bad conequences when they are used for only a short time and intermittently. But these are likely to be acute effects. Where the consequences become very large, and where drugs per se are most strongly implicated, are situtaitons where users are using drugs so often and over such a long period of time that it becomes plausible that they are affecting many aspects of a user's life. (Even, here, however, one must be careful to distinguish between the effects of illicitness, individual background, and social circumstance as well as the drugs themselves.)

One would also be interested in knowing how the drug consumption is distributed across relevant social groups. This interest is animated by a concern for justice and fairness. If the burden of drug use fell most heavily on the most disadvantaged, we would have a different view of the problem and the policy options than if the burdens fell on the well to do. If the bad consequences fell disproportionately on children, that would be a different situation than one in which the bad effects were concentrated among adults.

Adverse Consequences of Drug Use on Users and Others

To many, drug use itself is bad. It is morally worng to put oneself in a osition where one cannot control one's actions in the short run, and where one exposes oneself to the risk of becoming psychologically or physiologically dependent.

Most, however, see the drug problem not in drug use per se, but in what are assumed to be the adverse consequences of drug use: the crimes committed by dealers and users, the deaths from overdoses, the degradation of families, and s on on. Such effects are often seen to follow so inevitably from drug use that they can all be directly attributed to drug use alone. The reality, however, is that these things are caused by many things in addition to drug use. How consumption maps onto these dimensions varies as a function of individual personality, the socieal position of the user, and the legal regime governing the availability and use of drugs. It is quite possible to have consumption increase the the aggregate, adverse social consequences of drug use lessen; or, alternatively, to have less consumption and a worse problem, depending on who is using the drugs in what ways.

At any rate, the important (assumed) adverse consequences of drugs include: 1) crimes committed by dealers and users; 2) adverse health consequences; and 3) losses in social functioning (as parents, spouses, employees, or children). One might also incorportate a subjective element haveing to do with the freedom of the person to choose a different life-style , or make a different choice about their futures that were made at the outset while experimenting.

Effects of Drug Use and Policies on Institutions

Beyond the effects of a changed legal regime on the use and consequences of use for drug consumers are a set of effects on key social institutions that might plausibly be of concern. One must be interested in the impact of drug policies on the institutions of the criminal justice system. One must alse be interested in how drug policies affect the size and character of the illicit market in drugs. And, one must be interested in how legalization policies affect the supply and characteristics of drug treatment programs and other aspects of the health care establishment.

Effects on Political Ideologies

Finally, going back to the beginning of the paper, one can be concerned about the extent to which any particular legal regime fits any particular ideology about the proper role of the state in a liberal society. Some think it improper to regulate conduct. Others think proper when it affects others. [But affects others is a very large loophole given: 1) institutional arrangements that connect us to one another financially; 2) natural sympathy; 3) the possibility that we are all affected by one another's examples.] Still others think it is appropriate for the state to promote virtue among its citizens.

These different attributes might serve as a simple framework for evaluating alternative legal regimes for regulating drugs. Note that some of these evaluative criteria do not really depend on empirical estimates (e.g. whether a policy is or is not consistent with one's preferred view of the proper role of the state). Others depend on empirical estimates, but their sign and significance comes from moral judgements (e.g. viewing drug use per se as good or bad, and increases as good or bad). Most of the important questions, however, are empirical ones. Faced with the question of whether legalization was a good idea or not, most people would want to know what was likely to happen to:

1) levels and distribution of use

2) health and social functioning of users

3) criminal conduct of users

4) the size and character of the illicit market

5) the effects on governmental and social institutions