Synopsis:

Drug Treatment from a Criminal Justice Perspective

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The purpose of the session is to develop the perspective that a reasonably enlightened criminal justice policy maker might have toward drug abuse treatment programs. This may or may not have clinical importance for the treatment of individual drug users. I would argue that understanding this perspective is crucial to developing the overall enterprise of drug treatment in the society, however. My reasons for believing this are essentially three.

First, in the mind of the society, the "law enforcement" approach to drug abuse that sees the problem in the moral failings of the drug user, and seeks to deal with the problem through the apparatus of blame and punishment, is an important alternative to drug abuse treatment. It competes for funds and standing with drug abuse treatment. Consequently, to position the enterprise of drug abuse treatment properly in the social response to drugs one must understand the values and concerns that animate continuing public support for law enforcement, and either undermine or support the enterprise of drug treatment.

Second, it remains true that the population arrested by the criminal justice system for ordinary property and violent crimes, and for narcotics offenses, is an important treatment population. Many arrestees are drug users. They will need treatment whether they end up in prison, in jail, or are returned to the streets. Indeed, an important feature of our current drug treatment system is that the criminal justice system may represent the easiest point of access to treatment for the unemployed, poverty stricken drug users who end up in jail.

Third, it is possible that effective collaboration between the criminal justice system and the clinical care system would result in more drug treatment, more effective targeting of that drug treatment on those who need it the most, and more effective treatment of those people than can be achieved in a world in which drug abuse treatment sets itself apart from the criminal justice system.

In discussing this subject, I am acutely aware of the differences in perspective and moral stance of three different positions in the society. One is the stance of the clinician as care-giver whose responsibilities are to aid his client in every way possible. The moral strength of that position is the focus on the concrete welfare of individual clients or patients. In that role, the clinician defends the autonomy of clients as therapeutically valuable, and as an important social right. In

addition, the clinician may be constrained by financial considerations in providing treatment, but treats these financial issues as the hinderances created by improper political values, or arbitrary bureaucratic restrictions. The clinician's duty is to the patient - not to the broader society, and certainly not to the husbanding of the broader society's resources.

The second is the stance of the criminal justice administrator whose responsibilities are to minimize criminal victimization in the society, and to do so in ways that are fair to offenders and their victims. The strength of that moral position is the emphasis on the wrongness of one citizen attacking another citizen's life and property, and the strong assumption that, in a free society, individuals should be held accountable for their actions. They are reluctant to excuse criminal conduct on grounds of intoxication, addiction, or desperation. On the other hand, they might well be open to ways of controlling crime that are more effective, just, humane, and inexpensive than jails, probation or prison.

The third is the stance of a drug policy co-ordinator who is charged with the responsibility for dealing with the drug abuse problem. The strength of that moral position is that one must reflect in that position the variety of society's concerns about the problem - the worry that drug use is somehow exacerbating the crime problem and the degradation of inner city neighborhoods, the worry that drug use will trap children and prevent their development as responsible adults, and the concern for the individual degradation of drug users, including the enormous threat to their health represented by AIDS. The weakness is that from the vantage point of both docs and cops, the drug policy co-ordinator's values look hopelessly compromised. From the perspective of the docs, the policy co-ordinators concern for individual patients is always contaminated by his pre-occupation with crime and with aggregate costs of the system, and his willingness to consort with the dark forces of blame and punishment. From the cops' perspective, the drug policy co-ordinator is vulnerable because of his "softness" to crime committing drug users who should be held accountable for their crimes.

In offering my analysis of how one might see drug treatment from the perspective of criminal justice policy I am really trying to reflect the moral stance of a reasonably conscientious drug policy co-ordinator, and to draw clinicians into that moral world. I suspect, however, that I will sound like a cop. I ask

you in the interest of education and curiosity to see the issue of drug treatment from this particular vantage point - at least for a short time. My argument is that if you think about the issue of drug treatment from this vantage point, you come to somewhat different conclusions about three basic issues concerning drug treatment.

First, the conceptual basis for evaluating drug treatment programs is fundamentally changed. The goal of treatment is not just to alter drug taking behavior, and not just to improve the health and welfare of the client, but also to reduce his criminal conduct. In this sense, the goals and responsibilities of treatment are widened. An important reason to widen the goals in this way is that it makes the treatment more valuable - not just to the society, but also to the client. Because it is more valuable, it may be more widely supported.

Moreover, the goals of treatment can be seen as all improvements in social functioning regardless of how large and how durable, and regardless of whether they occur during or after treatment. From the perspective of drug abuse treatment evaluation, an important benefit occurs when drug use goes down even if drug users do not achieve complete abstinence and hold to it forever. Similarly, an important benefit is achieved if criminal conduct is suppressed or changed in seriousness even if not totally eliminated forever. And it makes no difference whether these beneficial effects occur while the person remains in treatment. In short, instead of thinking about the goal of treatment as a cure, it is better to think in terms of managing a chronic illness in which periodic interventions are required to restore functioning.

Second, by thinking about drug abuse treatment from the vantage point of criminal justice policy one might come to a different conclusion about the propriety and efficacy of legal coercion as an important element of treatment. Much of the concern about legal coercion arises in the context of either civil commitment laws or narcotics laws which allow the state to exercise legal power over drug users for no reason other than their drug use. Clinicians may properly have a principled objection to these activities. They used to also make a utilitarian or practical argument as well that such approaches were ineffective. The evidence that we have available on the efficacy of coerced treatment in these contexts is tending against this conclusion. It seems that legal coercion - even when used in the context of civil commitment or criminal prosecution

for narcotics offenses - is proving helpful to the rehabilitation of drug users. That doesn' undermine the principled objection, but it does undermine the practical assertion.

In the context of drug users arrested for robbery and burglary, of course, the situation is quite different. There is a less strong principled argument against the propriety of invoking the criminal law. And the practical alternatives are not freedom or voluntary commitment, but prison or jail. In that context, coerced treatment has appeal because it is a cheaper, more humane, more effective and more just response to crimes committed by drug users than jail or prison. Moreover, a variety of treatment programs prove to be effective in controlling drug use and crime among certain populations only when they are linked to legal coercion.

Third, thinking about drug abuse treatment from a criminal justice perspective leads to some plausibly different answers about the allocation of publically financed treatment slots. From a clinician's perspective, it seems appropriate that available treatment slots be allocated to those most in need of assistance, most able and motivated to use the opportunity for improved social functioning, and least able to pay. That leads clinicians to emphasize means tested voluntary treatment. From a social policy perspective, however, the worry about such a policy is that it winds up not being focused on the people who need the treatment the most, for volunteers differ from all drug users in important ways. Indeed, some of these people will improve their functioning without access to treatment. Moreover, this population is not necessarily the population that is frightening the society by committing crimes or dealing drugs. The badly motivated, scary and poor population is being picked up in the criminal justice system. Under a system that gives preference to volunteers, the response to these drug users will be jail and prison.

Obviously, this is a tough trade-off if the total supply of treatment slots is fixed. It is less difficult if it turns out that using treatment at least partially as a cost-effective, humane and just alternative to jail will increase the total supply of treatment. It is also less difficult if it turns out that it is the criminal justice system that reaches the drug using population that is most vulnerable to AIDS. In these cases, the arguments for linking drug abuse treatment to criminal justice operations become compelling for the benefit of both the broader society and the individual drug users.

I'm not insisting on these points. I'm asking you to consider them as you think about how clinicians should manage not only the individual patients in front of them, but should position the enterprise of drug treatment in the broader society.

Bibliography

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