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TEENAGE VIOLENCE AND DRUG USE

NORVAL MORRIS*

Professor Dan Polsby, of Northwestern University Law School, offered a direct challenge to me in most courteous terms. Why, he asked, in the light of what I had written and preached about our current drug policies, did I favor a policy of gradual decriminalization rather than favoring legalization? Let me try to reply.

My reasons are both principled and prudential. First, the prudential reasons. The citizenry of the United States has been engulfed for so long and so persistently by the strident advocacy of wars on drugs that it seems entirely unlikely that sufficient political force could be mobilized for a program of drug legalization. The rhetoric of the drug warriors, their promises of success in the task of making America drug free are so powerfully and regularly delivered, even at the very highest level of governments, federal and state, with presidential and gubernatorial force, that the drug addict has been demonized and the advocate of change rendered deeply suspect. The public discourse does not seem to have learned enough from eighty-two years of uninterrupted failure of our prohibitory drug policy to countenance radical reform. Prudentially, all that has a hope, in my view, is a steady move towards regulatory, much less punitive policies.

The other prudential reason is this: It is no easy task to move to an efficient and humane system of controlling the consumption and distribution of drugs that are at present absolutely prohibited. Drugs differ profoundly from one another; situations in which they are consumed and distributed differ profoundly from one another; users and distributors run the gamut of personal differences. There is no quick and obvious path leading to a working regulatory system backed up by the criminal law aiming at minimizing the harm done by drugs. Prudence dictates that we should move ahead gradually, rectifying our likely mistakes, building on our hope for successes.

For these prudential reasons, it seems to me that the only hope of exorcising the demon of drugs and eliminating our present unprincipled policy is a course of minor changes towards rationality. To name a few: no mandatory minimum sentences; no protracted imprisonment for drug distribution

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of anyone other than those elusive “drug king-pins” we rarely apprehend; no imprisonment for possessing drugs unless the amount possessed clearly indicates a substantial business investment directed towards sales; drug treatment available for all addicts, including residential treatment (and such treatment should certainly be compulsory in many cases, and backed by the threat and sometimes reality of imprisonment); no incarceration for a dirty urine when under treatment (only if repeated tests reveal rejection of treatment should this follow); and so on and so on. The prudential path is not one of a mindless liberality; rather it is one of a growing movement to treat drugs and addiction with less moral fervor and more rationality.

Most of my work nowadays relates to prisons and jails. Currently there are 2.1 million, mostly fellow citizens, in our prisons, jails and institutions for juvenile offenders; the figures being prison over 1.1 million; jail over half a million; and institutions for juveniles also more than half a million. These are enormously large numbers, grossly higher both absolutely and in terms of a percentage of population than any other country with which we would like to compare ourselves, particularly when it be remembered that our crime statistics are quite ordinary when compared with those of Western European countries, Canada, Australia and New Zealand. Only in homicides and crimes of serious personal violence do we lead the pack—and lead it far ahead we do—and those crimes produce, of course, only a small proportion of the incarcerated. Roughly a quarter of those in prison, in my view, should not be there—they are there for low level crimes of consumption or distribution of drugs. I have in mind, therefore, about half a million unfairly and unwisely incarcerated individuals. As George Bernard Shaw affirmed, it is one mark of a sensitive mind that it can be moved by statistics.

I recently worked as a Special Master for a federal court for three years in Stateville prison in Illinois, a maximum security institution mainly serving Chicago. Prisoners and guards agreed on the ready availability of drugs, and this reality was regularly demonstrated to me in a variety of ways. The same is true of all the larger state maximum security prisons. Our prisons are not “drug free”; it is likely, therefore, that prohibitory deterrent laws will not result in a drug free society at large.

I recently wrote a satirical piece in the op-ed pages of the Chicago Tribune urging the retention of our drug laws in their present form since they provide the only remunerative training in entrepreneurship for minority youth in our destroyed inner city. I further developed the theme that those who failed in this business received further entrepreneurial training in the only truly free market in Illinois, that operating in Stateville in which anything other than a gun is at a cost available. I added that our drug laws provide welfare for the Drug Enforcement Agency and a wide variety of police enforcers, and I should have

noted that they also serve as a useful cloak for much of our foreign policy, given the link we have established between certification of drug collaboration with us and a country's receipt of foreign aid funds.

Each year nicotine kills some 300,000; alcohol kills at least 30,000; the other drugs kill fewer than 3000. And nicotine and alcohol far outdistance the other drugs in the social suffering they inflict on others who do not use them. My epiphany on this matter came a few years ago at a three-day conference I chaired in Bellagio, beside Lake Como, in Northern Italy. (The character of academics is strengthened by this type of suffering). It was a well-planned conference drawing together fourteen countries to consider their domestic drug policies. Papers had been circulated by scholars in each country on their country's policies. Then the conference was convened of participants at subcabinet level from each country. The United States was represented by the deputy to our Drug Czar, and by the head of the White House Office of Drug Policy. One conclusion of the conference, published in its report, stays steady in my mind. It is at a level of policy that the United States stands apart from all the other industrialized countries: they favor a principle of harm reduction; they hope to minimize the injury that drugs do to the individual and to society; they do not, as we do, embrace a policy that hopes to make their county drug free; they do not rely on the criminal law as the first line of defense. And they certainly do not devote funds outside their borders seeking to influence policies and practices in other countries.

Putting these differences in practical terms reveals the key to what we should be doing. We should not, as we now do, incarcerate low-level drug dealers and users unless they repeatedly refuse or are unable to cease their pattern of distributing drugs. Drug treatment should be readily available and sometimes coerced. Prison as a first line of defense is an abomination. It has meant, in my view, that more harm is done to the inner city, largely minority, communities of our cities by the war on drugs than by the drugs themselves.

There is a word that encapsulates our policies concerning drugs, a word Dan Polsby used in his presentation: the word is "mumpsimus." You doubt its existence? Check with a decent dictionary. One who believes that heavier weights fall more rapidly than lighter weights is mumpsimus. Likewise, the French Academy was mumpsimus when they forbade Galton's teaching the circulation of the blood. And the medieval church was certainly mumpsimus when it excommunicated Gallileo. And English and Australia medicine was mumpsimus when it banished Sister Kenny suggesting that her "cure" of poliomyelitis proved that the patients she worked on did not have the disease. In relation to American drug policy, mumpsimus reaches its apogee.

Mumpsimus? The Oxford English Dictionary defines mumpsimus as “an obstinate adherent of old ways, in spite of clear evidence of their error.” It comes from the mid-sixteenth century when an illiterate priest, quoting the Eucharist, spoke of sumpsimus instead of mumpsimus, and being rebuked for his error, said “I will not change my old mumpsimus for your new sumpsimus.”

Well, Dan Polsby agrees with that. Where then the principled difference between us? Again, the Bellagio conference convinced me. None of the countries there participating legalized drugs. Not England; not Holland. Some have tried small areas of tolerance within their borders, but these have not worked well. Drugs are dangerous, frequently misused temptations. We must protect children from them as best we can. Children and adults need to be persuaded of their danger, weaned from them, treated for their misuse, but in every case guided by the basic principle of medical practice: *primum non nocere*—in the first place don’t make the disease worse. And only when all else fails is incarcerative punishment to be recommended. One drug needs to be distinguished from another: marijuana and cocaine are not fungible. One user from another, one distributor from another—reliance on deterrence to achieve everything is futile.

And I have a final point of disagreement with Dan Polsby on this whole issue. He expressed the view that most of those half million incarcerated for using or dealing drugs were rightfully there because of other behavior. If he is right, that other behavior should be proved.

Of recent years I have enjoyed writing fiction more than the traditional academic analysis that supports scholarship. At present I am writing about a prison, rather a prison settlement, in the period 1840 to 1844, on Norfolk Island, some thousand miles off the coast of Australia in the Pacific. The problems of that settlement then had a ring of modernity—there were gangs and drugs. It might as well be Stateville or Chicago, 1997. Punishment cannot remake man; it can to a degree influence his behavior but it is very easy to exaggerate its effect; man can be more easily led to decency than whipped to decency.