FROM THE FIELD

Assessing the Ethical Issues in "Safe Injection" Sites

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Drug addiction in the U.S. has now reached crisis proportions. In 2014, 28,000 people died from overdose of illicit drugs such as heroin or prescription opioid painkilling drugs; by 2016 it had risen to 52,000.[1] Deaths from fentanyl have risen 540 percent in three years.[2] The price in ruined families and crime is beyond calculation.

While illegal drug use is by no means limited to cities, there are some urban areas that have high concentrations of illegal drug users which leads to problems in public

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safety. One such area is the Tenderloin district in San Francisco. In the spring of 2016, the Partnership for a Healthier Tenderloin was formed. It is a "multi-sector, community-driven collaboration comprised of leaders representing business, education, philanthropy, public health and other government, law enforcement and social service non-profit organizations." Its purpose is to further a spectrum of "harm reduction strategies to address environmental trauma and the health of persons who inject drugs (PWID)". It hopes to develop a clinically supervised safe injection site for PWID.[3] This site will be designed to:

- Reduce the number of drug-related deaths
- Reduce the number of non-fatal overdoses
- Reduce the number of emergency room visits for drug-related sequelae
- Reduce the number of improperly discarded drug paraphernalia
- Reduce the number of PWID who inject in public
- Reduce police interactions for low level crime
- Increase the number of clients who access primary care
- Increase the number of clients who test for HIV
- Increase the number of clients who receive treatment for HIV
- Increase the number of clients who test for Hepatitis C
- Increase the number who receive treatment for Hepatitis C
- Increase the number of safer injection supplies including Naloxone
- Increase the number of clients accessing substance use treatment

One person familiar with the Tenderloin project put it this way: "We had seen innovative clinical settings elsewhere in which people came voluntarily with their own drugs to inject under supervision. In these settings, persons who previously would inject in public under unseemly conditions were treated with respect and dignity. They were given proper, clean supplies and were observed by license professional staff who would intervene if coaching on technique was warranted or there was an unexpected reaction to the drug. This interaction with staff is key to success of these centers. The staff engagement with the drug user can lead to trust and referral for addiction services."

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Our purpose in this brief discussion is to analyze the various ethical questions that arise from the establishment of such a site, especially the risk of moral cooperation in illegal drug use. Harm reduction strategies are complex because they involve questions of intention and the difference between morality and public policy.[4] They also raise questions about how an act of cooperation on the part of an individual differs from organizational cooperation by a state or local government, or even a religious institution such as a Catholic hospital.

Assumptions

We will enter this discussion with some working assumptions. First, we assume that there are certain acts that are seriously immoral in themselves (intrinsically evil), apart from intention or circumstances. These are usually acts that are direct violations of justice or human dignity.

Second, we assume that intravenous drug use is objectively intrinsically evil because it is non-therapeutic and causes serious harm to the user. It also encourages illegal drug trade and is linked to the spread of infectious disease.

Third, we assume that it is never morally permissible to share the intention of another who is engaged in or about to undertake one of these intrinsically evil acts. To do so constitutes formal cooperation. However, certain types of *material* cooperation may be acceptable if they are far enough removed from the evil act and if there is a proportionate reason to cooperate with the act in a limited way.

Fourth, we assume that the drug user does not possess full moral freedom. Harmful addictive drug use is always objectively immoral, but there is limited subjective culpability because the addiction limits freedom. This does not let the user off the hook, but in terms of personal responsibility it creates a different situation than that of someone who is able to rationally assess various courses of action and make a free, informed decision.

Proponents argue that the safer injection sites cause a reduction in transmission of infectious disease and result in more addicts seeking treatment.[5] Opponents tend to disagree. For the sake of argument, and to limit our discussion to questions of

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cooperation and agency, let us assume that there is a significant drop in infectious disease transmission among addicts, say 35 percent, and let us also assume that treatment centers can document a 15 percent increase in clients who have been using an injection site for at least a month. This latter assumption indicates that users are returning, so that their habits of using are changing.

The "Leper Problem"

Apart from technical questions of moral cooperation which we will examine below, there is a more general problem of fear and repugnance. Drug addiction is a stigma. Addicts frighten us because their behavior is dangerous, risky and unfamiliar. We consider them untouchables as we did AIDS victims in the past. Our fear causes us to see them as geographically, socially, economically or morally distant from us. This is true even on a policy level. Most legislators keep their distance. They are wary of endorsing any program that might be perceived as helping drug abusers so they do not appear to be soft on drugs.

This is understandable on an emotional level, but it is difficult to reconcile with the Gospel call to solidarity. Pope Francis has been particularly outspoken on this by publicly associating with addicts and prisoners, even washing their feet on Holy Thursday. He did so in order to recognize their fundamental human dignity. When he introduced the image of the church as a field hospital, he said:

> The thing the church needs most today is the ability to heal wounds and to warm the hearts of the faithful; it needs nearness, proximity. I see the church as a field hospital after battle. It is useless to ask a seriously injured person if he has high cholesterol and about the level of his blood sugars! You have to heal his wounds. Then we can talk about everything else. Heal the wounds, heal the wounds. ... And you have to start from the ground up.

In June 2017, he spoke to a group of priests about the need to get our hands dirty. A good priest, he said, "stands apart from no one, but is always ready to dirty his hands. A good shepherd doesn't know what gloves

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are" (June 3). Later in June he returned to the same theme in his daily mass at Santa Marta, but extended it to the whole church as he said:

> We can't be a community, we can't make peace, and we can't do good without being close to people. Jesus could have just said to the leper, 'You are healed', but instead he reaches out his hand and touches him, becoming 'unclean' himself. This is the mystery of Jesus, the Pope continued, that he takes upon himself our uncleanliness, our sin, our exclusion to become close to us. (June 26)

These general exhortations cannot be taken as the solution to complex issues of cooperation, of course, but they do suggest that some situations are serious enough to risk dirty hands. This article will discuss one of those.

Levels of Agency

Central to the issue of harm reduction programs is the question of moral agency. It matters whether the actor is an individual, a public entity, or a church entity. The conscientious acts of an individual person always aim at virtue and moral perfection, so they must achieve the greatest good possible. Shortcuts are not allowed. To deliberately choose a lesser good when I am aware of and capable of a greater good is the definition of sin.

Organizational choices are different because they are one step removed from the moral choice of an individual. Organizations act not to achieve personal moral perfection but for the good of the organization or for the greater good of society. Organizations can act immorally, of course, but moral responsibility is often not clearly assigned to one person. This is especially relevant when it involves civil authority, as we shall show later.

In addition, acts based on an individual judgment of conscience involve subjective factors such as emotion, persuasion, coercion or mixed motives. For this reason, they are usually judged more leniently than corporate acts which involve legal compliance and public accountability. We expect more lenience and compassion from a confessor than from a judge.

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It may be helpful to start with the simplest case of individual cooperation with illicit drug use. Let's say that Ellen has a friend who is addicted to heroin. She is deeply concerned about him and has discussed at length the toll his drug use is taking on him and others. So she proposes a deal: if he agrees to use his drugs only in her house, she will provide a sterile environment and a clean needle. She will also dispose of that needle safely, which her friend has not been doing when he uses on the street. Ellen's intention is not to enable his drug use but to reduce the health hazard to him and others and to keep him in a relatively supervised environment where she might be able to influence him to stop using and seek treatment. Does this constitute illicit cooperation with evil? Or is she changing the circumstances of an action with which she does not agree to make it less dangerous to her friend and to others?

Ellen has involved herself in her friend's addiction, but we believe that her involvement constitutes only mediate material cooperation, which is morally acceptable. She did not add anything essential to the act, because her friend already had a needle. She merely substituted one instrument for another less dangerous one. It seems that the immediate danger provides proportionate reason for her to get as close as she did to an intrinsically evil act.

Morality and Public Policy

Let's take this simplest case of individual action a step further and apply it to a government or other public entity that wants to provide a safer environment for intravenous drugs users. The entity wants to offer a clean space and a clean needle for addicts who procure their own drugs. The agency's intent is to limit the risk of infection, prevent possible overdoses, eliminate hazardous street waste that may cause injury to others, and create an environment that may engender trust and a willingness to discuss rehab.

To analyze this situation, we must distinguish between *morality*, which may be religiously motivated or not, and which is oriented to virtue and personal perfection; and *public policy* (law) which is oriented to public order and the common good. Some actions (e.g., perjury, murder, theft) are both *illegal and immoral*. Other actions are *illegal*

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but not necessarily immoral (e.g., driving above the speed limit, conscientious objection to a particular war, civil disobedience). Still others are *immoral but not illegal* (e.g., abortion, adultery, drunkenness, charging unjust interest). These examples show that while morality and legality are similar in some ways, there is not a perfect correspondence. We cannot translate morality directly into public policy.

The purpose of public policy is more limited than the purpose of morality. Therefore, lawmakers may sometimes look beyond individual moral perfection to what will create the conditions for citizens to pursue moral perfection. The noted theologian of religious liberty, John Courtney Murray, said that if we confuse morality with legality, we make a wreckage of them both. This was famously illustrated in the case of prohibition in the United States. Begun as an attempt to instill the virtue of temperance, it failed because it tried to enforce moral goodness by legal interdiction. It not only failed to curb the use of alcohol, but also gave rise to organized crime, bootlegging, a black market for liquor, and health hazards from homemade liquor. The resulting situation was worse than the original problem. This is why we sometimes say "you can't legislate morality." We can create conditions conducive to morality, but in the end, moral perfection is an internal reality that cannot be achieved by coercion or interdiction. I cannot tolerate moral evil in my personal life, but a government can, since its purpose is not the pursuit of personal goodness, but public order. Governments must sometimes "tolerate" moral evil to ensure public order or public health.

Both St. Thomas Aquinas and St. Augustine invoked this distinction between public and private action. They did so with reference to prostitution, which they clearly saw as a moral evil; they also saw it as inevitable, given the human proclivity to sin.[6] So Aquinas asks whether it "belongs to civil law to repress all vice," or to put it another way, should everything that is immoral also be illegal? Even though he spoke in the context of medieval Christendom, where church and state were barely separate, he did recognize that the purpose of civil law was more limited than the purpose of morality and thus that some things we deem immoral could be allowed by law. He says this is true because laws

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must be enforceable if they are to be respected and they can only be enforceable if they are respectful of the reality of human weakness. We can't make laws based on the assumption that everyone has achieved virtue.[7] Therefore, he says laws only forbid "the most grievous vices from which the majority are able to abstain"[8] and concludes that civil leaders "rightly tolerate[9] certain evils, lest certain goods be lost or great evils be incurred."

These examples speak to governmental establishment of "safer injection sites." Proposals to do so recognize human frailty and the ways in which addiction impairs human freedom. They do not promote drug use, but they *tolerate* it and try to limit the circumstances under which it takes place to reduce its harmfulness and create circumstances that might generate more freedom for the drug abuser in the hope he or she will seek rehabilitation. The goal here is to protect both the person and the public good from harm by changing the circumstances of intravenous drug use.

A third instance of moral agency might involve a church organization, e.g., a diocesan social service agency or a Catholic hospital, that sets up a safer injection site[10] or establishes one in collaboration with a local or state government. The benefit of church involvement is that some addicts may be more willing to seek help from a church agency if they fear arrest or detainment by police. It might be part of a community benefit program if illegal drug use is identified as a serious community need. It would certainly be a way to demonstrate, as Pope Francis exhorts us and Jesus demonstrates in the Gospel, respect for the dignity of even the most marginalized person.

In principle, such a program would be within the church's mandate to serve the common good and the health and safety of a community. However, there is a significant risk of scandal because the principle of cooperation that might justify such a program is complex and difficult to explain to the public. It could, like programs designed to provide information on prophylactic measures that would prevent the spread of HIV or more recently the Zika virus, give the impression that we condone the acts that are spreading disease. So even though we believe the threat to public health may justify involvement of religious

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organizations in harm reduction, they should carefully assess physical proximity, branding (does the program use the Catholic entity's name?), funding and provision of supplies or personnel to avoid the appearance complicity in evil. Exactly what could constitute scandal in this case deserves further specification.

Conclusion

Human nature being what it is, programmatic attempts by civil authorities to address acts that are deeply rooted in human weakness and harmful to the common good appear to be generally acceptable if there is some solid evidence that they are achieving their purpose. We believe that the rapid growth of drug addiction and the spectacular failure of legal interdiction policy suggests that a different strategy is well worth the risk.

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[1] https://www.asam.org/docs/default-source/.../opioid-addiction-disease-facts-figures.pdf

[2]https://www.nytimes.com/interactive/2017/09/02/upshot/fentanyl-drug-overdose-deaths.html

[3] Information about the Partnership comes from a summary from the St. Francis Foundation Urban Solutions Summit held August 31 to September 2, 2016. Provided by Abbie Yant, vice president of mission, advocacy, and community benefit at Saint Francis Hospital in San Francisco. Saint Francis is part of Dignity Health.

[4] See John Kleining, "The Ethics of Harm Reduction: Substance Use & Misuse," Informa Healthcare USA, Inc. 1532-2491 (43:1–16 2008). DOI: 10.1080/10826080701690680. Some other examples of harm reduction as moral justification include arguments mounted in favor of needle exchange programs, nicotine patch use, HPV vaccination for girls, and "snowflake" adoption, i.e., the implantation of unused and unwanted fertilized embryos abandoned in fertility clinics. Seatbelt use is no longer morally or legally controversial, but it too began as a harm reduction strategy.

[5] See Leo Beletsky et al., "The Law and Politics of Safe Injection Facilities in the United States", *Amer Jour Pub Health* (Feb. 1, 2008): 231-237.

[6] Aquinas quotes Augustine who said that if prostitutes were prohibited, "the world would be convulsed with lust" (ST 2-2, q. 10, a 11).

[7] ST, I, q. 96, a.2. "Laws imposed on humans should be in keeping with their condition, for the possibility or faculty of action is due to an interior habit or disposition: since the same thing is not possible to one who has not a virtuous habit as to one who has…" This is an awkward way of saying that you can't get blood from a turnip. A person with very limited virtue or moral goodness cannot appropriate the good behind a particular law in the same way as someone who is wise and prudent.

[8] ST 2-2, q. 10, a 11. Here Aquinas is asking whether the liturgical rites of unbelievers, which were clearly understood to be sinful, should be suppressed by law. They should be tolerated (not approved), he

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says, "lest worse evils occur or we deny those who practice the rites the possibility of conversion."

[9] It is important to note that the term toleration here does not refer to the "live and let live", value free acceptance that the term connotes in modern usage. For Aquinas, it had a more specific technical meaning, related to the principle of double effect, of knowing the moral evil involved but stepping back from it for the sake of civil order. It may be the more libertarian understanding of toleration that some opponents of safe injection sites are reacting to.

[10]See for example the case of Bishop Howard Hubbard of the Diocese of Albany, New York. Reported on January 29, 2010. Catholic Charities in the Diocese of Albany set up a van to provide sterile injections to prevent the spread of the HIV virus (http://www.freerepublic.com/focus/f-religion/2440069/). Some found the bishop's decision to be unacceptable. See for example canonlawblog.wordpress.com/2010/02/02/arguments-against/bp-hubbards-authorization-of-needle-programs.

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