THREE: THE DRUG PROBLEM

You do not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs it would do and the harms it would cause if improperly administered.

Lyndon B Johnson

Prescription heroin would save a heck of a lot of lives and would reduce other crime problems dramatically.

(Retired) Detective Chief Inspector John McKoy
Former head of the Victorian Drug Squad

The criminal justice system, obviously enough, is concerned with the problem of illegal drugs – a problem that the Australian Bureau of Criminal Intelligence reports may cost Australia as much as $18 billion a year. Other systems are left to deal with the consequences of our most dangerous but legal drug, tobacco, the second most harmful, alcohol, and legal therapeutic drugs, largely without the intervention of the criminal law. So do illegal drugs deserve the attention we give to them at the expense of efforts we should be making to discourage the use of legal drugs? And does that attention stem more from the fact that they have been officially demonised, than from any rational efforts to deal with them effectively?

Tobacco is the primary cause in Australia of premature and preventable death and disease. It is responsible for 80% of drug-related deaths - up to about 19,000 each year. That number, fortunately, is beginning to fall (but take-up rates are not falling among women and young people). In the early 1960s nearly 60% of Australian men smoked – now it is about 20%. But tobacco’s annual economic cost to Australia - including health care (800,000 hospital bed days per year) and loss of productivity in the workplace - is still about $13 billion (almost as much as the $15 billion brought in by international tourism). Governments gather only about $4 billion from taxes on tobacco. Alcohol is responsible for about 3,600 deaths each year and a high level of disease and social disruption. Its economic cost to Australia (including alcohol related accidents) is about $5 billion per annum. The abuse of therapeutic drugs (eg tranquillisers, analgesics) also brings a high social cost, much of which cannot be measured in dollar terms.

Illegal drugs - the ones the criminal law is required to deal with - account for only 3% of preventable drug-related deaths: about 700 in Australia in 1999. Their economic cost to Australia, including property crime and law enforcement, is less than $2 billion per annum.

Yes, illegal drugs are a problem. Their use is often unpleasant and usually destructive and it brings unattractive and unwanted behaviours. But let us keep them in perspective. Let us not encourage the witch-hunts conducted by talkback and tabloids with their vested interests in looking at the world in black and white. Stories about goodness do not sell, except in churches and at award ceremonies. Stories about evil are lapped up. They are easy sensational fodder for talkback. And nasty drug stories are open to the stroking of other latent prejudices and fears. Illegal drugs are sold by people of all ethnic backgrounds. There are some people
of Vietnamese origin doing it in Sydney’s Cabramatta – hardly surprising when people of Vietnamese origin make up a sizeable part of the population of that area. But this opens the door to demonising all people of Vietnamese origin as drug dealers.

The same applies to the linking of any other group to drugs. “Race” is largely irrelevant to meaningful discussion of the drug problem itself. Focusing attention on race only makes it more difficult to formulate effective policies to deal with drugs, which affect all ethnic groups indiscriminately.

THE PROBLEM

What is the drug problem? It is different things to different people, so there is not likely to be just one way to “fix” it - if that is possible at all.

Since man and woman first stood upright (and possibly even earlier) we have used drugs: things that grew or fermented in the first place, and then substances that were compounded. We have done so, at least to begin with, because we liked them. It is said that there is no accounting for taste - there is no controlling or legislating for it, either. Different people will go to different lengths to get things that they want. Some people become addicted to them. There will always be a demand for mood altering drugs, and there will always be a supply of them. So whether we like it or not, let us accept those as facts and work from there. We must be realistic. There is nothing wrong with wishful thinking and we should use it to set goals - but many goals will be unattainable in practice and we must accept that too. Life is about compromises and experience should guide us to acceptable ones in a rational manner.

Some members of communities, maybe even majorities, have taken the view from time to time that the consumption of a particular drug is a bad thing. They have attempted to prohibit people demanding drugs and people supplying them. A hundred years ago it was illegal to sell cigarettes in 14 of the United States of America, heroin was an ingredient in cough syrup and cocaine was in Coca-Cola. A couple of decades later alcohol was to be prohibited (along with heroin and cocaine – cigarettes were given a reprieve). Prohibition is the genesis of the modern drug problem, just as it has created problems, rather than solve them, in relation to other drugs in the past, as fashions have changed. The United States spends about $115 billion every year trying to enforce drug prohibition and it encourages its friends to follow the same line.

Prohibition of a marketable commodity for which there is a demand inevitably produces a black (or illicit) market. Black market commodities sell at inflated markups (consider Robin Williams’ “Cocaine is God’s way of saying you’re making too much money”. Large profits are generated by successful traders, the profits growing as one moves up the distribution tree. That is the nub of the drug problem, as I see it.

If expensive commodities are demanded by people unable to afford them from their own resources, they may use other people’s resources. In connection with drugs, private property is simply stolen and converted into criminal profits.

The buyers are desperate. For the most part (although not exclusively) they are undisciplined addicts whose only concern in life is the next dose. They will do whatever they can to get it. It becomes the sole and immediate focus of all their attention and energies until (usually after about ten years, if they are still alive) they make the decision to stop. They prostitute
themselves to finance it. They buy more to sell to finance their own use. They steal private property. Worldwide nearly $2 trillion a year is earned from the sale of heroin – that’s a lot of handbags, videorecorders and bank holdups. The illegal drug trade is the third largest international industry after oil and arms.

The sellers are also highly anxious. Apart from those who deal to finance their own addiction, many have outlaid funds or gone into debt to obtain their supply. They must sell in order to pass on the ever increasing profit margin further up the line where it is reinvested in further illegal activity.

Buyers and sellers need to be able to find each other, so centres become magnets for them - marketplaces. Why particular centres (Kings Cross and Cabramatta in Sydney, St Kilda and Footscray in Melbourne, Fortitude Valley in Brisbane and other centres in other places) develop in this way may be a matter for speculation, but it is known from experience that a crackdown on one merely displaces the market to somewhere else.

If people are required, because of legal prohibition, to introduce substances into their bodies in unhealthy conditions, disease will spread: blood-borne diseases such as hepatitis and HIV/AIDS. That is also a problem.

SCOPE OF THE PROBLEM IN AUSTRALIA

For the year 1999-2000, according to the Australian Bureau of Criminal Intelligence, Australian Customs seized in 39 border detections:

- 269 kilograms of heroin (down from 508 kilograms the previous year)
- 717.5 kilograms of cocaine (up from 229 kilograms the previous year)
- 144.1 kilograms of ecstasy (up from 89 kilograms)
- 21.5 kilograms of amphetamines (down from 100 kilograms); and
- 20.8 kilograms of cannabis (down from 47).

Let us consider heroin for a moment. It is estimated that there are over 100,000 (perhaps as many as 300,000) heroin users of all ages in Australia, spending over $10 billion dollars a year on about 10 tonnes of it (ie 10,000 kg). In one year less than 3% of the total was intercepted on entry to Australia. It sells for as little as $20 a hit. It is plentiful and it is pure. More and younger people are using it.

CAN WE FIX IT?

The approaches we have been adopting for decades are based on wishful thinking and wilful blindness. They are based on a policy of prohibition, peddled by the United States. There needs to be a solid injection of reality, a recognition of human nature and what is practically achievable - and desirable - in this area. Illicit drugs are prohibited, but they cannot be eliminated. We must acknowledge that basic fact.

Australia’s official strategy is directed at three Rs (reductions).
**Supply reduction**, that is disrupting the importation, growth, production and supply of illicit drugs. The measures adopted include patrols of our border by sea and air, searches of incoming vessels, cargo and passengers and postal items; the detection of cannabis plantations and amphetamine factories; and the investigation of drug suppliers at all levels.

**Demand reduction**, that is preventing and discouraging drug use, persuading and deterring people from seeking out supplies of drugs. Measures directed to these ends include education programs in schools and the community, deterrence through criminal penalties, treatment and rehabilitation programs for drug users (including abstinence-oriented strategies) and various support programs for those seeking to avoid or cease drug use.

**Harm reduction** (originally – 15 years ago – harm minimisation), that is reducing the impacts of drug-related harm on individuals and communities. Under this strategy come treatment and rehabilitation programs; needle and syringe programs; methadone maintenance programs; and, possibly, safe injecting premises).

The programs in place in each category are too numerous to detail here. Some are more effective than others. For example, saturation policing of one distribution centre as a supply reduction strategy has been tried. It may have worked for a time for that centre (satisfying the NIMBYs – “not in my backyard”) but it only displaced the problem somewhere else. Customs seizures of heroin have increased in recent times - but they have not affected price, supply or purity. The only rational inference is that more heroin is being seized because more heroin is being sent here. It is simply not possible to search the 7 million shipping containers and 2 million airline passengers that arrive here each year (or all the airfreight and postal items) or to patrol every kilometre of our huge coastline and investigate every suspicious craft. How can we keep drugs out of the country if we cannot even keep them out of maximum security prisons?

Our harm reduction strategies have certainly been successful in containing HIV and other blood-borne diseases.

In the criminal law it is often suggested that Parliament and the courts should get tough on drugs and crime generally. There are two things to be said about that: first, they are tough; and secondly, being tough is no answer, anyway.

In relation to the first of these responses, the NSW Bureau of Crime Statistics and Research has reported that since 1990 the average length of prison sentences has increased and more sentences (as opposed to non-custodial penalties) have been imposed in most categories of serious crime. The prison population has been rising steadily in New South Wales since 1990. It rose 11% in 1998 to over 7,000 and has continued to rise throughout 1999 and 2000. So any perception that the law generally is going soft is erroneous.

Research also shows that increasing penalties, particularly for drug-related crime, has no demonstrable effect on offending. Drug users do not stop to consider the possible criminal justice consequences of their acts. Indeed, to understand their motivation think about tobacco smokers. Tobacco contains nicotine. Nicotine is an addictive drug. Users want more of it. Their ability to choose not to use it is significantly impaired by that addiction. The tobacco companies know that; they seek to maintain and increase their profits by enlisting more addicts in new categories and at younger ages. Youth are also attracted to heroin - by the excitement and glamour popularly associated with it, by exposure, peer pressure,
experimentation and a curiosity often born of boredom and alienation. They may become addicts. Then they want more of it. Their ability to choose to say no is also significantly impaired by that addiction and by the social influences operating all around. (So much for the “just say no” idea.) A person acting without a free choice is unlikely to think much about the consequences of that action.

Drug suppliers do not expect to get caught. The ones high up the tree, for whom the possible penalties are greatest, do not even expect to be identified, let alone charged. They are career criminals, pursuing profit by involvement in a distant market – profit that can be recycled into further criminal ventures.

We can selectively lock away people for longer, as the figures seem to indicate. But imprisonment, generally speaking, just makes bad people worse. It opens up criminal opportunities for other bad people who have not been apprehended.

WHAT WE SHOULD DO

I do have a suggestion of what we should do, at least in relation to heroin. It is not a completely new idea. Many people have written and spoken on the issue from similar points of view. I do not say it is the answer, but I do say that it should be considered, discussed and evaluated. It might also contain the seeds of answers to the problems of other drugs as well as heroin. It is a combination of prohibition and strict regulation, but with an injection of reality.

The connection between heroin use and crime must be weakened, if not broken. The only effective way of doing that is to reduce, if not eliminate, the profits generated by the trade. In part, this is an economic argument; thirst for money motivates most criminals.

Make heroin available free to addicted users on prescription by licensed medical practitioners. This is not heroin on demand, available from the corner store. This measure addresses the needs of those who presently prostitute themselves, steal or find other buyers in order to buy unknown substances to inject into their veins in unsanitary conditions. It would be a safety valve, for use when earlier influences have failed.

This need not be an expensive solution. It costs less than $1 to make a dose of heroin. And Australia is in a good position to do this. Australia grows opium poppies under controlled conditions in Tasmania. We supply nearly half of the world’s legitimate opioids for medical use. There is certainly scope for the crop to be increased. Consideration is being given to growing it elsewhere in Australia. License growers, importers (if necessary to make up quantities), manufacturers and suppliers of heroin. Pharmaceutical drug companies, for example, could tender for the production work which would be carried out under strict controls.

Australia is an island and we should take advantage of that feature (as we presently do in a number of ways). Unlike most countries we can control to some extent the flow of goods and people across our border (although, as I have noted, there is a limit to what we can achieve against determined adversaries). It is rational, therefore, to maintain prohibition on the importation (and exportation) of heroin and to continue to enforce the criminal sanctions that apply to unauthorised activity. Possession and supply that is also unauthorised (ie not for the
purposes of addicted users) should also be criminal. Unauthorised activity will still occur; but if it is not so profitable it will diminish and be more easily policed.

Would there be a honeypot effect – the attraction of addicts from other places? That can be addressed by imposing a residential qualification on prescription and by enforcing the laws against the immigration of drug addicts.

Would it encourage a boom in heroin use? First time users would still obtain heroin from the black market. But the profit for the suppliers would have shrunk – their regular money comes from addicts, not from experimenters (indeed, first doses are sometimes given away with an eye to future profits). Amounts required for sale on the street would fall. Prices on the street may rise because the distributors would need to cover high costs from smaller sales - a further disincentive to the reduced number of buyers. Alternatively, if supplies are at a high level and demand is low, prices may fall. Either way it doesn’t matter, the illegal market would shrink because regular users would get their heroin free.

With the addicts being attended to in a medical environment, the perverse glamour of unregulated heroin use would diminish. Addicted users would be exposed to proper health and treatment programs, social support and other rehabilitative services (but should not be forced to undergo treatment as a condition of getting heroin). Educational programs directed at abstinence should be continued and expanded at all levels of society. The message would continue to be that drug use is undesirable and can be dangerous, but addicts would be kept alive, comparatively healthy and useful until they chose to take a different path.

A regime of this sort would make heroin use an unglamorous health and social issue. It would shrink the black market. It would ensure for addicts measured doses, purity and safe ingestion, reducing further the risk of blood-borne diseases like hepatitis and HIV/AIDS. It would clean up our streets, by and large, and substantially reduce criminal offending to support addiction.

The question is often asked in shrill desperation: “But what sort of message would this send to the community, particularly the young?” There are two answers to that.

First, the content of the message can be manipulated by those sending it. Politicians know that through the media action can be “sold” to the public in many different ways. Spin doctors abound. The message that is sent can be the message that is intended to be sent.

Secondly, the message intended to be sent should be that those in charge have recognised that we have a problem, that they want to fix it and that they want to do so in a responsible, sensible and effective way if they can, without empty posturing and the wasted expenditure of billions of dollars of public funds on ineffective action. The message can be that drug use is a health and social issue to be addressed in those quarters – that drug users are not demons but are people with all the weaknesses and strengths of other people who for the moment need help and support to change their habits. The message is that there is no glamour in drug use, that it is harmful and that steps can be taken to reduce and prevent that harm. Finally, the overall message that should be crafted and sent is that all drug use is undesirable and that there are very good reasons for not commencing: but that we want to keep alive those who have, so that they can stop.
Once a regime of this sort for heroin is found (through scientific trials) to produce benefits it might be possible to consider taking a final – bold – step. We have demonstrated a little success in turning around the harm caused by tobacco and alcohol. (A great deal more could be done if governments could reduce their dependence on the tax revenue the markets produce.) The prohibition of alcohol has been tried in western society and has failed. Regulation is preferable.

To eliminate the generation of criminal profits from all dealing in prohibited drugs the prohibitions themselves may be released to a practical level in a measured way, with strong controls being put in place at the same time to protect minors and maintain public health and order. While there might be a slight short-term increase in consumption, we might be able to achieve at least the modest measures of success as we have had in relation to tobacco and alcohol. This would be a policy of openness and confrontation: getting the problem out in the open and confronting it together. The market might then find its own level through regulation, which could be productive of much less harm than the present arrangements.

**WHAT ELSE SHOULD WE DO?**

In the meantime there are less radical measures over a broad range of options that should be adopted immediately. They also concern heroin use.

- Methadone programs should be continued. There is overwhelming scientific evidence that methadone maintenance programs enable users to return to useful and productive lives until they are in a position to discontinue drug use altogether. It keeps them alive, reasonably healthy and away from your property.

- Needle and syringe distribution programs should be continued and expanded. They have significantly contributed to Australia’s noted success in containing HIV/AIDS and other blood-borne diseases.

- Safe injecting premises should be established, as recommended by the Police Royal Commission after detailed study in May 1997 and, a little more tentatively, by the New South Wales Drug Summit in May 1999. What is preferable: clean, regulated facilities or disorder and danger in the streets?

- A trial of medically prescribed heroin should be held. Trials have yielded valuable lessons elsewhere and we need to know if the medical prescription of heroin would produce similar benefits in our social circumstances. It may not be a solution, but it may be part of one.

- Diversionary schemes (schemes that take the management of the problem out of the strict processes of the criminal courts and into other agencies in the community better able to deal with it) should be adopted to help break the nexus between addiction and repeat criminal offending. Drug-free treatment programs offered by non-government agencies should be publicly supported.

- Decriminalisation of cannabis, along the lines adopted in South Australia, the Australian Capital Territory and Victoria should be implemented.
It defies understanding that the self-administration of drugs should be a criminal offence. Isn’t the user doing enough self-harm without having a criminal penalty loaded on top?

I acknowledge that there may be unresolved practical problems associated with these proposals, but they need to be explored in a rational and constructive way and without the present level of ideological disputation.

DRUG SUMMIT

What we are doing is not working and we have to try to find a better way. I firmly believe that the government should try at least one safe injecting house and see how it goes.

(Retired) Detective Chief Inspector McKoy (again)

In May 1999 the NSW Government honoured an election promise (exceptionally) and held a Drug Summit over a period of one week. A national drug conference had been held by police and others earlier in the year in Adelaide, but this was the first serious effort by an Australian government to discover more about the problem from those affected by it and to apply that knowledge constructively. As such it was of great national significance and its outcomes are therefore important. On 21 May 1999 the government released a Communique of 20 principles and 172 recommendations endorsed by the Summit.

There was really only one “courageous” decision (as Sir Humphrey Appleby of “Yes, Minister” might have said) and that was to sanction a trial of a medically supervised injecting room. This was in recognition of the need to decrease overdose deaths, provide a gateway to treatment and reduce the problems of discarded needles and users injecting in public places. The trial was to be undertaken by a local council or a non-government organisation.

A safe injecting room is only one tentative step, but a step in the right direction giving some faint hope of more rational policies in the future. To that extent, and for the good it is capable of doing, it is to be welcomed and encouraged. But doubts must linger that the proposal merely enabled the politicians to look as if they were actually doing something constructive – and did it not also have the benefit of perhaps easing in a small way the pressures on our overcrowded gaols and under-resourced hospitals?

We can do things to reduce the demand for drugs; but not eliminate it. We can do things to reduce their supply; but alone, that inflates criminal profits and increases the risk of harm to all concerned. We can do much more to reduce harm, but only by some constructive thought about workable solutions that accommodate unalterable reality – and human nature.