Prohibition has Failed, What Next?

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Introduction

During his recent successful campaign for President of the United States, Bill Clinton said many times that the definition of insanity is repeating something over and over that has never worked. An increasing number of thoughtful people in Australia and other countries have come to the conclusion in recent years that prohibition of heroin and similar drugs has failed. Indeed, if one looks at the increasing problems which our law enforcement colleagues have to face trying to control the supply of drugs, it is hard to believe that this policy could be sustained for yet another decade.

This paper will review the effectiveness of prohibition, consider the possible alternatives to prohibition, review support for drug policy reform in Australia and overseas and consider a recently developed Australian Charter for Drug Policy Reform. The conclusion of this paper is that drug policy reform is both desirable and inevitable. An informed national debate about this subject is required so that this community can carefully consider the various options. The present system leads inevitably to a situation where those who are determined to use drugs purchase unknown concentrations of unsterile and adulterated street drugs from unscrupulous criminals who will sell any drug to any person of any age provided that they have the required sum of money. An alternative option, which we will need to be consider, involves a system of controlled availability: those who are determined to obtain drugs will be able to attend a health professional, have an assessment of their general situation, and if approved, be provided with a quantity of uncontaminated drugs of known concentration and guaranteed purity. The black market will still exist, but it is likely to decrease in size. I accept that there is no likelihood of public support for a system of providing drugs like heroin without any restrictions like lollies in a lolly shop, even if this could be demonstrated to be a superior option.

Is prohibition effective?:

If we ask ourselves whether prohibition has succeeded or failed, we must first ask what the objectives of this policy
are. Prohibition has many objectives. Some would hope that prohibition, or any other policy developed in response to currently illicit drugs, would reduce the risk of death and disease among those who consume such substances. Others might hope that prohibition would reduce drug related crime. The hope is often expressed that prohibition reduces the number of persons who use illicit substances. Some, noting the parlous state of the nation's economy, might hope that our approach to psychoactive substances would be as cost-effective as possible. How good is the evidence that prohibition does some or all of these things?

**Death and disease**

Deaths associated with use of illicit drugs in Australia increased during the 1970s and continued to increase during the 1980s. Between 1981 and 1990, deaths from illicit drug use increased 33 per cent from 3.6 to 4.8 per 100,000 (Department of Health, Housing and Community Services, 1992). It is conceivable that some other approach might have been even more ineffective but if such an increase in deaths is evidence of the success of prohibition, just imagine what evidence of failure would look like! Most deaths from illicit drug use in Australia are associated with drug overdose. In the vast majority of such cases, overdose deaths are accidental and occur when injecting drug users underestimate the quantity of drugs that they have injected. This is turn is due to the fact that street drugs are of variable purity. If drugs of known concentration are to be injected, we are entitled to anticipate a dramatic reduction in the number of deaths from drug overdose.

In Australia, over three-quarters of all injecting drug users are infected with either Hepatitis B or Hepatitis C or both. Many will develop serious complications in coming decades, especially from Hepatitis C infection. These infections are contracted by injecting drug users when they share items of injection equipment - usually needles and syringes. This was a common practice world-wide until fairly recently and reflects the clandestine nature of injecting drug use. In many countries, including Australia, the availability of sterile injection equipment was restricted until just a few years ago because it was believed that this would limit the number of people who were prepared to inject drugs. We now know that few, if any, were deterred from injecting illicit substances by dirty equipment. When the potential seriousness of the HIV epidemic in Australia was appreciated in the early 1980s, an enormous effort was made to change these policies so that injecting drug users could readily get hold of sterile needles and syringes. Fortunately, commonsense prevailed in Australia fairly quickly. However, there can be no doubt that the introduction of sterile needle and syringe availability policies was delayed and implementation slowed by conflict
with prohibition. In other words, the task of preventing the spread of HIV infection among injecting drug users in Australia occurred in spite of, rather than because of, our policy of prohibition. Other countries which enforced prohibition more stringently than Australia, such as the United States, found that they could not reconcile the need to be flexible on account of HIV with their drug policy. Accordingly, HIV is now rampant among injecting drug users in many parts of the US.

Most of the deaths and diseases associated with the injection of illicit drugs are caused by uncertainties of dose or the presence of microbiological or chemical contaminants. Variations in street purity and adulteration of street drugs are inevitable consequence of our policies which classify the sale, possession and consumption of certain drugs as illegal. It must be emphasised that most of the drugs we have chosen to classify as illegal are relatively, but not entirely non-toxic. All of these drugs are much more dangerous if injected than taken orally or if smoked. Prohibition makes it more likely that drugs will be injected. Street drugs are expensive and often of low purity. Injecting these drugs rather than smoking or inhaling them maximises the pharmacological effects of these expensive commodities. Also, prohibition encourages a shift from high volume, low purity forms of illicit drugs to more concentrated forms which are easier to conceal because they occupy a smaller volume. As they are now more concentrated, they are more likely to be injected. In many South East Asian countries, the widespread practice of opium smoking was replaced by the very much more dangerous practice of heroin injecting during the last few decades. For this development, we can thank prohibition. Following the switch to heroin injecting has come an epidemic of HIV infection in injecting drug users which is now affecting Thailand, Burma, India and China.

Does prohibition reduce drug use?

Although it is assumed that liberalising drug policy will generally lead to an increase in use, there is very little evidence to support this assumption and some evidence which contradicts it. Cannabis policy has been liberalised in a number of states of the US, in Canada and more recently in South Australia and the ACT. Generally, cannabis consumption has remained at similar levels or decreased following liberalisation (Single, 1989). However, almost all states or countries which have liberalised policy on cannabis have experienced a substantial reduction in law enforcement costs. South Australia is a good example of this. Authorities in South Australia are reasonably confident that cannabis consumption has not increased but are equally certain that law enforcement costs have declined.
Has prohibition of heroin and similar drugs in Australia in the last decade reduced their consumption? It is generally agreed that cannabis has become less available during the last decade. However, cannabis is sufficiently available for 60 per cent of Australian men and 45 per cent of women aged between 25 and 39 to have consumed this drug in recent years (Department of Health, Housing and Community Services, 1992b). If this is evidence of the success of prohibition, just imagine what evidence of failure would look like! Even if cannabis availability had declined in recent years, can we be sure that this would have been a good thing? Cannabis is generally smoked or occasionally swallowed. It is never injected. If some people who inject heroin or other drugs were to switch to cannabis and avoid drug injecting and the consequent risk of HIV infection, this would surely be an advance for those individuals as well as the community. Yet the decreasing availability of cannabis makes such a transition less likely. There is now some evidence that people who inject drugs like heroin will switch to smoking cannabis if this drug becomes more available. There may also be some substitution between cannabis and alcohol.

The price and purity of heroin in Australia has remained relatively constant for the last ten years although in recent years the street price may have decreased and street purity increased. With fairly constant street price and purity, we might infer that the number of people using heroin has remained relatively constant. Strictly speaking, we can only really assume that the ratio between the number of heroin users and the supply of heroin has remained constant. Whether the national interest is best served by increasing prices and decreasing purity, constant price and constant purity, or decreasing price and increasing purity is arguable. What cannot be argued is that heroin is available in Australia in all states and territories and that it is apparently comparatively easy to purchase heroin at all times of day and night in most parts of the country. If this is evidence that prohibition has been successful, what would constitute failure?

Ten years ago, amphetamines were in little demand and short supply. During the last decade, demand and supply have both increased. Again, if this is evidence of the success of prohibition, what would constitute failure? We should also note that critics of drug policy reform often point to the possibility that liberalisation of drug policy would result in a smorgasbord of drugs becoming available. Has this not already happened in Australia where a policy of prohibition has prevailed?

Prohibition and crime:

Drug related crime in Australia increased exponentially in the early 1980s reaching a peak in the mid-1980s. It has slowly
declined since then. Which of these changes should we attribute to prohibition? Law enforcement activities which reduce the availability of street drugs increase their price. Many drug users respond to an increase in the price of street drugs by committing more crimes. Some argue that increased prices of street drugs deter potential users of these substances from ever starting. Despite the lack of evidence to support this assertion, it has become entrenched in our mythology. Furthermore, it has been argued that stringent law enforcement weeds out the incompetent and more peaceful criminals selecting out a remaining bunch of hardened, violent, and well organised types. Therefore, paradoxically, prohibition may well have an inverse effect on drug related crime. Surveillance tapes on a major New York drug dealer some years ago recorded a conversation where the dealer was asked by one of his colleagues how his day had been. "Prices are up! The cops made another bust!" was his pleased reply.

Is prohibition good for the national economy?

A study commissioned by the Commonwealth Department of Health a few years ago estimated conservatively that illicit drugs law enforcement in Australia cost $258 million per year (Collins, 1991). What value does a nation derive from this not inconsiderable expenditure? It does not seem to reduce deaths and disease. Australia may have achieved a reduction in the availability of relatively non-toxic and non-injectable cannabis in the last ten years. However, amphetamine availability has certainly increased and the availability of heroin may also have increased. There are also opportunity costs. The $258 million spent on illicit drugs law enforcement, or at least some part of it, might have been spent on more productive activities. Australia might have been better off if some part of this expenditure was switched to drug treatment or spent on other matters altogether such as increasing exports or decreasing long term unemployment. Some have estimated that expenditure on illicit drugs law enforcement was far higher than the assessment made by Collins and Lapsley. Whether we accept the lower estimates for the annual expenditure on illicit drugs law enforcement of Collins and Lapsley or the higher estimates which are close to a billion dollars a year, a country with a seriously troubled economy is spending large sums of money in activities which seem to bring little benefit. It is curious that the Expenditure Review Committee has not been more interested in this area of public expenditure.

The annual turnover of the illicit cannabis industry in Australia has been estimated at close to two billion dollars. The annual turnover of the heroin and amphetamine industries is considerably smaller. Very little taxation is paid on this industry. Even if Australia only obtained some government revenue of the two billion dollar per year cannabis industry,
substantial sums would be raised which could be used for the benefit of the community.

Costs and benefits

Prohibition also produces a number of other costs. The Fitzgerald Royal Commission in Queensland pointed out that corruption of the police, judiciary and politicians is a seemingly inevitable consequence of the policy of prohibition. This conclusion has not been contested. Few would derive any pleasure from this association. Prohibition also significantly reduces our civil liberties. Perhaps such infringements could be tolerated or even welcomed if there was evidence that restricting civil liberties in the cause of prohibition was worth it. How happy do we all feel about having our telephones tapped, our mail intercepted, our banking scrutinised, and the numerous other infringements of civil liberties which occur in the name of prohibition of heroin and other substances when there is so little evidence of any benefit? The more one considers the matter, the easier it is to think of the very real and very significant problems associated with prohibition: the harder it is to find any evidence of any benefit.

Prohibition has also been a failure on the international scale. Global production of opium and coca is increasing year by year. Some of the best data on this comes from the US State Department. Drug use is spreading to more and more countries. Injecting drug use is now known to occur in over 80 countries throughout the world. It is spreading most rapidly in developing countries. Does this suggest that prohibition is a roaring success? If so, what would constitute failure? The transport, distribution and financing of the illicit drugs trade is also increasing and the difficulties of trying to stop this trade are becoming more complicated with every passing year. The formation of trade blocks in Europe has made it easier to shift illicit drugs around that continent. Trading blocks have also been proposed in North America and more recently in Asia. As trading blocks make it easier for the business community to transport commodities from one country to another, so too do they make it easier for illicit drugs to be transported.

The collapse of Communism in the former Soviet Union and its allies has added a new dimension to this problem. A new family of nations have been launched on to the international stage in almost complete social, economic, and political disarray. New businesses are springing up in an environment where there is limited experience in the regulation of companies.

The increasing availability of cheap high technology is also tilting the balance towards the drug traffickers and away from the law enforcement authorities. Shipping containers, mobile
telephones, facsimile machines, paging devices and sundry other new pieces of technology are making it easier to transport drugs and money around the world undetected.

**Are there alternative to prohibition?**

Given the failure of the policy of prohibition, it is not surprising that real alternatives to prohibition are being considered. A group organised from Princeton University in America has been convened with more than 20 leading scholars considering alternatives to prohibition. In Europe, the lead has come from municipal authorities. Thirteen cities in Europe have signed a document known as the Frankfurt Declaration which commits these municipal authorities to a program of drug policy reform. Thirty-three other cities have signed an expression of interest and are considering their position. In November, this Declaration will be signed by the Mayor of Baltimore in the United States.

On April 8th, the people of Italy voted in a national referendum. Seven questions covered political reforms. The eighth question, supported by 55 per cent of voters, referred to the repeal of Law 309. This law had only been introduced in 1989 and defined the possession of any illicit drugs as an offence. Following the repeal of Law 309, legislation will now be introduced which will define an illegal offence in terms of possession of quantities of illicit drugs exceeding that considered for personal consumption. In the United Kingdom, more than half of the police constabulary areas have allowed police officers to not charge drug users found in possession of quantities of drugs consistent with personal use unless the individual has been cautioned on more than two occasions previously. Many countries are now moving slowly towards drug policy reform. The Netherlands embarked on this process more than ten years ago. The Swiss will be starting their new Heroin Distribution Trial this northern summer. These countries are, appropriately, trying different drug policies which vary according to their local conditions.

In the United States, support for prohibition is declining although support for drug policy reform has yet to materialise. Nevertheless, large cracks are now appearing in the system. Recently, 50 of the 680 Senior Federal judges announced that they would no longer hear drug cases as they found the sentencing guidelines unacceptable. The new US Attorney-General, Janet Reno, expressed her concerns about the policy of prohibition at a public meeting in Washington on May 7th reported in a recent *Economist*.

**Is drug policy reform a marginal issue?**

Advocates for drug policy reform are not too infrequently put in their place by more senior and more experienced figures for
"wasting their time on something that will never happen". But drug policy reform can no longer be dismissed as a marginal issue. Can we really consider dismissing a reform as marginal when it is supported by a Nobel Prize winning economist, the conservative English periodical "The Economist", editorial in "the Times", a former Australian Prime Minister, Mr John Gorton, a former New South Wales Labor Premier, Mr Neville Wran, a former Victorian Liberal Premier, Sir Rupert Hamer, a former Labor South Australian Premier, Mr Don Dunstan, and a former New South Wales Opposition Leader, Mr Nick Greiner? Many other distinguished members of this community have called for drug policy reform. These include Mr Justice Michael Kirby, President of the Supreme Court of Appeal, New South Wales, Mr John Marsden, former President of the Law Society and currently a serving member of the New South Wales Police Board, and Mr John Coombs, QC President of the NSW Bar Council. Drug policy reform has also been supported by former Labor Senator Dr Don Grimes, now Chairman of the Australian National Council on AIDS. The Deputy Chairman of this organisation, Professor Peter Baume, is a former New South Wales Liberal Senator and a medical practitioner like Dr Grimes. He has made no secret of his support for drug policy reform for many years. Sir Gus Nossal is yet another very distinguished member of the community who has supported drug policy reform. And so too, do many other distinguished citizens including many of the leaders of the medical profession.

Drug policy reform has also been supported by over twenty Members of Commonwealth and state Parliaments representing the Labor, Liberal, National and Australian Democrat parties and a number of Independents. A motion to permit the prescription of heroin by medical practitioners and the dispensing of this drug by pharmacists was put to the House of Representatives in Canberra on December 17th 1992. Drug policy reform can no longer be regarded as an impractical proposition supported by a tiny but vocal minority of obscure individuals out of contact with reality. By any criteria, drug policy reform must be taken as a serious option.

Is drug policy reform supported by the public?

There is little readily available information on this in Australia. However, public opinion surveys have been conducted in the ACT as part of a project to consider the feasibility of legally providing currently illicit substances to drug users. Two-thirds of the people polled as part of this project supported making heroin available to injecting drug users. Canberra may be atypical of the rest of Australia and there can be no question that these results are unlikely to apply in most parts of the country. However, the ACT community have been aware of the debates for and against this trial for some time before the poll was taken. This trial has also received
financial support from the Australian National University. The ANU would not be considered by many people as an organisation committed to radical reform.

The question of public opinion and support for drug policy reform also raises the question of whether political leaders should only follow the community or whether they should sometimes also lead public opinion. Some would argue that politicians who live by opinion polls die by opinion polls. But no political leader can afford to get too far ahead of public opinion. On the other hand, there are many issues where politicians of all parties feel quite comfortable in leading public opinion. Sometimes this involves major decisions. The Australian government did not initiate a debate about floating the Australian Dollar before making this momentous decision. The decision was made after due deliberation but not following a community debate and a testing of the waters with public opinion polls. Very often in controversial matters, public opinion is far more accepting of the need for change than politicians are ready to admit.

A Charter for drug policy reform

A new group of Commonwealth and state Parliamentarians was recently formed and has been called the Australian Parliamentary Group for Drug Policy Reform. A Charter has been prepared which emphasises the need to develop "least worst policies" recognising that optimal solutions do not exist. This Group also recognises the need for evolutionary rather than revolutionary changes. In other words, any policy reform Australia adopts in this area is likely to be tinkered with and changed following further experience. The Charter proposes that drugs would be prescribed by doctors and available through government clinics or pharmacies. It may well happen that after some experience with such a policy, initial procedures will need to be liberalised or perhaps made even more restrictive. The only firm conclusion we can come to in advance is that whatever policies are introduced are likely to be modified on the basis of further experience. This Charter also recognises the need to adopt policies which help us to contain HIV infection rather than the opposite. The Australian Parliamentary Group for Drug Policy Reform will be proceeding with extensive community consultation in taking this Charter further.

Drug policy reform and the public debate

Australia is currently debating whether or not this nation should become a Republic. This debate started, as is well known, when the Prime Minister suggested that the question was worthy of careful consideration. This statement followed a period where a small group had been raising this issue for some time. Some have already declared their positions for and
against a republic. Many are waiting to see what the detailed proposals might look like. The same procedure needs to be followed in relation to drug policy reform.

In the last few years, Australia has been gripped by the seriousness of the nation's economic problems. A million people are out of work. The number of long-term employed is steadily increasing. The government deficit will be between $16 and $18 billion this year. The current account deficit is worryingly high. The exchange rate almost reached an all-time low when the April Balance of Payment figures were released. The community is right to be concerned about these matters. The community and those who represent this community in Commonwealth and state Parliaments, are right to be concerned about public expenditure. We are, as a community, entitled to know whether spending at least $258 million a year on illicit drugs law enforcement is worth it. And where is the evidence of benefit? Where is the evidence to show that prohibition has reduced the amount of drugs produced in the world, stopped their transport or distribution, or reduced the ability of those involved in drug traffic on a major scale to shift money wherever they wish? Can we really justify spending $258 million a year on prohibition when there are a third more deaths from illicit drugs at the end of the decade than at the beginning? Can we really justify the fact that 50.9 per cent of the recorded drug offences in New South Wales in 1991 were for the possession or use of cannabis - a drug which has been used by the current President of the United States, the current Vice-President of the United States, the Prime Minister of Canada and grown by no less a person than George Washington?

The failure of prohibition is obvious to all who wish to examine the evidence. If prohibition is a success, where is the evidence of this magnificent success? There is now growing support for drug policy reform. This is coming from diverse field including politicians, economists, journalists, doctors, drug users, parents of drug users and ordinary members of the community. However, drug policy reform is still a very divisive issue. Not only is it divisive, we often seriously misunderstand each other when speaking about drug policy reform. The terms "decriminalisation" and "legalisation" are often used but unfortunately with a wide variability in meaning.

A group of courageous politicians representing all of the major parties have recently formulated a charter for drug policy reform which deserves to be debated seriously. Supporters of reform now include some of the most distinguished members of this community. It can no longer be laughed off as a cause for crackpots. It must be taken seriously. It must be thoroughly debated. Yet it remains elusively beyond reach because of the difficulty of attracting
sufficient political and community support. Working for drug policy reform under these circumstances must seem to many as a frivolous indulgence when so many other demands for limited time and energy appear more likely to succeed. However, a reform which is so desirable must be fought for to hasten its ultimate introduction.

References

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