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## Rowe, James --- "Pure politics: a historical look at Australian drug policy" [2001] AltLawJI 47; (2001) 26(3) Alternative Law Journal 125

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### Pure Politics: A historical look at Australian drug policy

James Rowe

*This Bill provides that persons shall not be allowed to smoke opium, and shall not be allowed to cultivate opium. ... I believe the conditions of the Bill are so stringent that it would be impossible to continue opium smoking under the measure without detection.*

Premier Patterson, *Opium Bill 1893* (Vic),

Second Reading

*Owing to total prohibition, the price of opium has risen enormously, and as persons who have acquired the habit of using it will continue to use it at any risk, and at any cost, they are prepared to pay any cost that might be demanded.*

Report of the Comptroller-General of Customs, 1908

Drugs, in particular heroin, present a grave threat to the social fabric of Australia. Despite a firmly entrenched and punitively enforced prohibition of heroin, its availability is greater than ever before. It is of unprecedented purity and its price is at its lowest ever. Law enforcement agencies admit they are unable to contain the illicit drug trade. Blame does not lie with the officers of these agencies but with the laws they are empowered to enforce. This article examines the historical basis of our current drug laws, and the role played by simplistic prejudices and irrational fears. It explores the role of past politicians in strengthening the punitive nature of drug control and the criminality of use in Australia whilst ignoring the need for reform. Most importantly, it exposes the failure of prohibition as a drug control strategy at a time when alternatives are sorely needed.

#### 19th century: minimal regulation

In late 19th century Australia drug consumption might justifiably have been described as a national trait. Colonial authorities saw little reason to impose controls on the sale of drugs, the primary source of which was a thriving patent medicine industry. Medicinal preparations bearing appealing brandnames were advertised as miracle cures for every conceivable ailment. For example:

Bile beans are a prompt and permanent cure for BILIOUSNESS, HEADACHE, INDIGESTION, CONSTIPATION, PILES, DEBILITY, FEMALE WEAKNESS, NERVOUSNESS, BAD BLOOD, PIMPLES and ALL SKIN ERUPTIONS, BAD BREATH, ANAEMIA, INSOMNIA, LOSS OF APPETITE, RHEUMATISM, and, in fact, all ailments that owe their origin to defective bile flow.

[1].

In 1907, Octavius Beale's Royal Commission on Secret Drugs, Cures and Foods condemned the patent medicine industry for such fraudulent advertising, arguing, 'The practices above named ... are not partly right, they are entirely wrong, and rooted and grounded in greed'. [2]. Escalating rates of drug use were inevitably paralleled by an escalating incidence of addiction and overdose. Although research did not fully document the effects of narcotic addiction until the 1890s, reports of accidental overdose were causing considerable public concern. Despite public anxiety, manufacturers were not legally obligated to label a medicine's contents. Purchasers of 'Dr Collis Browne's Chlorodyne', for example, would have been unaware of the six grains of morphine and six grains of cannabis extract contained within. In 1898, the Bayer Pharmaceutical Company patented a product it subsequently launched as a new 'sedative for coughs'. Heroin had been introduced to the world.

While the 'therapeutic' use of opiates remained largely unregulated, recreational opiate use was becoming the focus of increasing attention. The primary reason was racial. Throughout the 19th century, smoking opium was imported into Australia for recreational use, primarily by Chinese immigrants. Until the 1880s this practice was widely accepted due to the revenue derived from taxation duties. In 1870, 27,769 kg of smoking opium was imported into Victoria, earning the colonial government £66,268 in taxation duties. [3]. Concerns about the practice of smoking opium were initially raised by a Rev. W. Young in 1868, in the *Report on the Condition of the Chinese Population in Victoria*. The report argued:

As this habit prevails, the public morals will be corrupted, trade and commerce lessened, character and influence degenerated, crime perpetuated, pauperism produced, wealth dissipated, happiness ruined, and population destroyed. [4].

The presence of European women in the overwhelmingly male Chinese communities only inflamed such sentiments. Victorian parliamentarian John Wood, declared that although he 'would not be inconsolable if through opium they [the Chinese] suffered the fate which fell on the first-born of Egypt', he was concerned at, 'the rapid increase of the use of opium amongst the white population, more especially among young girls who were systematically decoyed into dens occupied by filthy Chinese'. [5]. Despite growing hysteria, no colony was willing to 'go-it-alone' on opium prohibition. To do so would simply have turned a lucrative trade over to smugglers from neighbouring colonies.

## The 20th century: the beginning of serious drug control in Australia

The Federation of Australia in 1901 proved the beginning of serious drug control. Although States retained primary responsibility for drug policy, the Commonwealth exercised jurisdiction over customs and duties. The *Customs Act 1901* allowed for certain imports to be prohibited by Proclamation and in 1905, with fears of a colonial monopoly on opium no longer applicable, the *Opium Proclamation 1905* was passed to prohibit the importation of opium for non-medical purposes. Consequently, qualified practitioners in possession of import permits were allowed to continue to order opium for medicinal preparations. The racial basis of the prohibition was made explicit by *General Order 956* of the Department of Trade and Customs, which referred to 'illegal possession of opium by Chinese or others'. [6]. Victoria was among the first States to pass complementary legislation, outlawing the sale, manufacture, possession and use of smoking opium in 1905. It did so against objections, one Mr Gaunson arguing:

I am pointing out to the Labor Party what a terrible injustice they are doing to themselves by trying to prolong the existence of the Chinese ... it would be considered a devilish good job to let them all smoke opium until they were wiped out of existence. [7].

The reply? 'We want to protect white people'. [8].

Predictably, drug smuggling commenced immediately. In the first year of opium prohibition, 188 smugglers were arrested and £2863 worth of illegal opium was seized. [9]. Given the risks involved in opium importation, the price of the product soared. A tin of opium, which before prohibition cost £1 10s, was by

1910 fetching in excess of £5.<sup>[10]</sup> Facing only a £50 fine if caught, smugglers stood to make up to £3000 per consignment.<sup>[11]</sup> Such sums introduced drug corruption to the nation, newspapers reporting the increasing suspension of customs officers. In an effort to boost profits, smugglers adulterated opium, initially with molasses and flour.<sup>[12]</sup> In one step, the Commonwealth government had established an underground drug market characterised by massive profit, corruption and impure product. The Comptroller-General of Customs reported in 1908 that, 'while we have lost the duty, opium is still imported pretty freely'<sup>[13]</sup> Despite the consequences of prohibition, the Comptroller-General recommended its intensification as the solution. 'All that is practicable,' he noted, 'is to make our searches as rigorous and effective as possible ... and urge each State to enact such suppressive legislation as will strengthen the hands of the police.'<sup>[14]</sup> By March 1911, the federal parliament had legislated mandatory imprisonment for unlawful opium possession. Dwarfing domestic enforcement initiatives, however, were international events that would play a far greater role in Australian drug control.

## Early international attempts at control

Ironically, the use of opium by Chinese immigrants was, in large part, due to the actions of British colonial authorities. Throughout the 19th century, the colonial British government in India derived significant revenue through the sale of massive quantities of Indian opium to China. Facing mass addiction, the Chinese government sought to halt the trade. The British responded aggressively. Unwilling to relinquish its lucrative enterprise, British authorities fought China in the so-called 'Opium Wars' of 1839–1843, one consequence of which was the latter's forced acceptance of opium imports. Not until 1906 did a British government come to power sympathetic to China's attempts to reduce the growing social devastation wrought by opium. In 1909, the relevant nations met in Shanghai and signed a resolution which, in turn, led to the signing of the first multilateral drug control treaty at The Hague in 1912. From this point on, the drug policies of individual nations were linked to broader issues of international cooperation.

The Hague Convention committed signatories to prohibit the international trade of smoking opium and to suppress its domestic manufacture, use and trade. Less stringent restrictions were placed upon 'medicinal' opium, heroin, morphine and cocaine. Australia became party to the Convention when the British signed in 1913. In 1914, Australia passed the second *Opium Proclamation*. Thereafter, a legal obligation existed to ensure that imported opium, morphine, heroin and cocaine, in any quantity, was destined for strictly medical use. By 1915, uniform legislation had been enacted in all States, regulating how opiates were sold, in what quantities and to whom.

## The spread of drug use after World War I

The Great War prompted further domestic developments, the torment and pain of war prompting the overuse of opiate painkillers by medical corps. In addition, authorities were moved to warn civilians against sending morphine to soldiers at the battlefield.<sup>[15]</sup> Predictably, a number of servicemen returned addicted. Certain chemists maintained addicted ex-soldiers by supplying narcotics without prescription or by filling prescriptions without dating them, consequently allowing their reuse.<sup>[16]</sup> Faced with an escalating problem, Victorian police formed drug squads and mounted undercover operations resulting in the arrest of several chemists.

No longer able to confine drug addiction to 'deviant' Chinese, the mainstream press established a divide between medical and illegal drug use, associating the latter with immorality, criminality and danger. Throughout the 1920s, newspaper reports told of growing numbers of 'drug fiends', Inspector Robinson of the Victoria Police warning that, 'drug taking was so rampant that it was affecting the well-being of the state'.<sup>[17]</sup> A focus on female drug users was used to convey the immorality of drug use and its corruption of the perceived 'fairer sex'. In 1929, the *Argus*, reported hundreds of female cocaine addicts in Sydney, 'lying about in parks in a dazed and stupefied condition'.<sup>[18]</sup> In the same year, however, just 34 cocaine offenders were prosecuted throughout the whole of NSW.<sup>[19]</sup> Nonetheless, laws were enacted to combat the perceived drug 'menace'. In Victoria, the *Poisons Act 1925* imposed a penalty of £100 or 12 months imprisonment, or both, for those convicted of possession of a prohibited substance. The continued failure of such laws was seen as evidence of the extent of the drug evil and of the necessity for harsher penalties. Consequently, the *Poisons Act* (Vic) was amended in 1927, raising the penalty for illegal possession to £500 and/or three years imprisonment.

## More international efforts at control

In the wake of the Great War, a new international organisation, the League of Nations, was empowered to coordinate international drug control efforts. Conventions were soon being discussed. Lobbying by Egypt, Turkey and South Africa resulted in the *Geneva Convention on Opium and Other Drugs 1925*, the first convention to restrict marijuana to exclusively medical and scientific uses. Interestingly, Australia was one nation that expressed reservations, primarily because of a request for the inclusion of a blanket ban on heroin. Australia was steadfastly opposed to a ban on the medical use of heroin, having embraced it on a significant scale, particularly in childbirth procedures. Indeed, by the 1930s, Australia was consuming 7.5% of the world's legal heroin supply, three times as much as the British, per capita, and 50 times as much as the US. In 1935 Australia refused a request from the League of Nations to eliminate medical heroin use due to 'the permanent place which this drug has obtained in Australian medical practice'.<sup>[20]</sup> International pressure abated during the Second World War when Australia was forced to impose stringent drug controls, so as 'to conserve ... supplies needed for war purposes'.<sup>[21]</sup> However, following the war's end, heroin was again used extensively in medical procedures. Australia's heroin consumption doubled between 1946 and 1951, from 2.42 kilograms per million persons, to 5.25 kilograms.<sup>[22]</sup> The United Nations (UN), having assumed the responsibilities of the now defunct League of Nations, publicly criticised Australia's rapidly increasing heroin use. In response, the Commonwealth Minister for Health and Social Services acknowledged that, while large amounts of heroin were being used, addiction was rare, and Australia's control of illicit drug use compared favourably with that of other nations.<sup>[23]</sup> Such statements failed to deter the UN campaign for an outright ban on heroin. In 1952 the World Health Organisation (WHO) made a pointed inquiry as to Australia's attitude towards the continued medical use of heroin. Such negative international attention was a growing source of embarrassment for Australia's politicians. In an attempt to resolve the issue, the federal government sought the counsel of the National Health and Medical Research Council, the latter steadfastly advising against the abolition of medicinal heroin use. Despite further opposition from the Royal Australian College of Physicians and the Royal College of Obstetricians and Gynaecologists, the federal government placed an outright ban on heroin on 7 July 1953. Complementary legislation was subsequently enacted in each Australian State and Territory. In the same year, there was not one recorded heroin death in Australia.

With an absence of evidence of heroin addiction on any significant scale, parliamentarians justified their acquiescence to international pressure with alarmist rhetoric, a tactic that would have a lasting effect. In debating the passage of the *Poisons (Heroin) Act 1953* (Vic), the member for Banambra warned:

Of all the addiction drugs that lead to the damnation of mankind, heroin is the most dangerous. This sinful, wicked chemical can contribute towards wholesale national rot and demoralisation.<sup>[24]</sup>

Heavy emphasis was placed on the notion of addiction as a consequence of psychological disturbance and immorality. 'Heroin addicts', it was claimed, 'exhibited pronounced psychopathic tendencies ... most of them were weak, unhappy persons; and many were homosexuals'.<sup>[25]</sup> In 1956, the British Medical Association, after surveying State branches, recommended to the Commonwealth that the ban be lifted. Caught by its own rhetoric and international embarrassment, the government refused the recommendation.

In 1961, the defining moment in modern international drug control, the *Single Convention on Narcotic Drugs* was drafted to codify and update all existing international Conventions. Australia promptly signed and ratified the *Convention*. The *Single Convention* divided controlled substances into four schedules, each imposing mandatory obligations on signatories. Schedule I contained drugs to be most rigidly controlled, their use confined strictly to medical and scientific purposes and their manufacture to be under strict licensing regulations. Included were heroin, morphine, opium, pethidine and, largely due to lobbying by the United States, marijuana, the latter erroneously classified as a narcotic. Heroin was also included in Schedule IV, an additional category for drugs deemed to have, 'strong addiction-producing properties or a liability to abuse'. Consequently, heroin was recommended for, 'complete deletion from medical practice ... because of risk to public health'.<sup>[26]</sup> The *Single Convention* remains in force, its provisions updated by subsequent Conventions, such as the *Convention on Psychotropic Substances 1971*, passed to ensure that previously unknown drugs, such as hallucinogens, stimulants, barbiturates and tranquillisers are included within international drug control jurisdiction.

## The mid 60s onwards: increasing prohibition and increasing use

Ironically, the intensification of drug prohibition was paralleled by an intensification of drug use. Between the mid-1960s and the late 1970s, Australia experienced an alarming increase in heroin use. The escalation can be attributed to a number of factors. The presence of 280,000 US troops on leave in Kings Cross in the late 1960s can be seen as a decisive factor in the establishment of an illicit drug trade in Australia. Records from the US Department of Defence revealed that 45% of enlisted US servicemen in Vietnam had used narcotics during 1970-1971.<sup>[27]</sup> It could consequently be expected that a number of those servicemen on leave were users of opiates, bringing drugs into the country. Once supplies were depleted, a system of importation developed to provide for the US troops and numerous local hangers-on. Hong Kong heroin had replaced opium as the drug of choice amongst eastern Australia's Chinese community in the 1950s, and by the mid-1960s their distribution networks were able to simply divert supplies to Kings Cross and its growing clientele. In 1967, the NSW parliament noted: 'The incidence of drug taking ... [is] increasing and giving rise to fear and concern'.<sup>[28]</sup>

The timing of these events was unfortunate. The cultural revolution of the late 1960's had established drug use as a key element in counter-culture philosophy. By 1970, LSD was entering Australia in large quantities and marijuana seizures were increasing in frequency. The popular image of the drug user continued to evolve, retaining the theme of deviance but lowering the user's age. In 1971, the Senate Committee on Drug Trafficking described the popular image of the typical drug user as, 'a young, long-haired person, adopting an exaggerated style of dress, careless in his habit and probably a university student'.<sup>[29]</sup>

Far from ending Australia's flirtation with heroin, the loss of the war in Vietnam indirectly expanded the trade. The withdrawal of troops from South-East Asia deprived the illicit economies of the area of a major market, compelling heroin syndicates to seek out alternative markets. Australia was a prime target, a middle-class state with an emerging youth movement and little cultural resistance to heroin. It offered the added advantage of being close to production bases and of having a vast coastline, making effective policing virtually impossible. Until the 1970s, heroin importation had consisted primarily of traders making small-scale purchases of the drug in SE Asia and arranging its importation into Australia by 'enterprising' young users. However, such methods were soon superseded by organised large-scale operations, ironically because of a major drug enforcement effort in the late 1970s.

During the mid-1970s, the disappearance of Griffith-based Liberal candidate and anti-marijuana campaigner, Donald MacKay, resulted in intense media scrutiny of alleged Mafia controlled marijuana cultivation in Australia. A hastily convened Royal Commission found evidence of organised criminal involvement and, under the glare of the media spotlight, marijuana eradication became *the* police priority in Australia. By the end of 1977, drug enforcement efforts had produced a marijuana 'drought' reflected by a sudden drop in availability, and a subsequent, and substantial, price rise. Police efforts only intensified in the years following. In 1978, police issued 14,249 marijuana-related criminal charges. By 1981, this figure had risen to 26,506.<sup>[30]</sup> With the resources of law enforcement agencies fixed on and forcing the marijuana trade further underground, opportunistic importers ensured that supplies of heroin increased markedly.

According to the 1980 Williams Royal Commission, between 900 and 1300 kilograms of heroin would have been needed to supply Australia's addict population, estimated by the Commission to be between 14,200 and 20,300 in 1978. As the heroin market expanded, its dimensions attracted financially interested elements within organised crime. In 1980, a kilogram of heroin purchased in Bangkok for \$2000 was worth \$250,000 once adulterated and smuggled into Australia.<sup>[31]</sup> By the late 1970s, criminal syndicates were making regular runs between Thailand and Australia. Despite large scale seizures becoming commonplace throughout the 1980s, police made little impact on the expanding trade. Part of the problem was continued corruption. In June 1983, the Stewart Royal Commission found evidence of criminal conduct on the part of police, including falsifying evidence in return for payment, stealing drugs and money from offenders, supplying heroin in exchange for information, and selling confiscated drugs.

### **The 1980s: alarmist rhetoric**

Politicians again responded to the inevitable public outcry with political rhetoric. In 1983, the member for Doncaster warned the Victorian parliament:

Drug abuse is not an alternative lifestyle, it is a vehicle for organised crime to control this country. It possesses an addicted army of foot soldiers who obey, without question, and under penalty of death, the orders of their capos.<sup>[32]</sup>

Inflammatory statements further alarmed a public led to believe that illicit drugs were instruments of immorality and death. In 1985, opiates and barbituates accounted for less than 1% of all drug-related deaths. [33]. In the same year, the Senate Standing Committee on Social Welfare warned that, 'alcohol and tobacco are abused by a greater number of people at greater total social and economic cost'. [34]. Nonetheless, a poll in the *Age* found that 36% of respondents rated heroin as the greatest threat to society. [35]. So feared were illicit drugs that their control became a political crusade through which to win over an alarmed public. In 1981, Victoria introduced the *Drugs, Poisons and Controlled Substances Act 1981*, again boosting penalties. Those convicted of trafficking in a 'drug of dependence' faced a sentence of 25 years jail and/or a fine of up to \$250,000. This legislation prescribes a penalty of five years jail and/or up to a \$40,000 fine for drug possession (other than marijuana). It was difficult to fathom how penalties could be tougher. Still, when the then Victoria Police deputy commissioner, Paul Delianis, publicly considered drug law reform in 1988, Opposition Leader Kennett responded that prohibition had only failed because: 'not enough police had been provided to combat drug abuse, and penalties for trafficking were not strong enough'. [36].

## Penalties

Penalties for drug offences remained largely unchanged throughout the 1990s. Section 235 of the *Customs Act 1901* specifies Commonwealth penalties: life imprisonment is prescribed for the importation of a 'commercial quantity' [37]. of proscribed drugs; 25 years jail and/or a \$100,000 fine is prescribed for a 'trafficable quantity' an offender apprehended in possession of a quantity of drugs deemed to be for personal use faces two years imprisonment and/or a \$2000 fine. The punitive approach was further entrenched by the Commonwealth government's ratification of the *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*. Structured so as to reinforce and supplement the *Single Convention 1961*, the 1988 agreement obliges signatories to establish the possession, purchase and cultivation of illicit drugs as a criminal offence.

## New strategies

On 19 August 1997, Prime Minister John Howard vetoed the proposal of his own Ministerial Council on Drug Strategy (MCDS) to trial a heroin maintenance program for long-term addicts. A bold strategy with promising results internationally, the trial proposal was the result of years of feasibility studies by Australian experts. Instead, the Prime Minister launched the 'Tough on Drugs' National Illicit Drug Strategy, a reaffirmation of traditional 'zero tolerance' law enforcement. The rhetoric of war underscored the policy's launch. Law enforcement agencies were promised substantial resources to enable them to 'attack' drug barons and 'combat' the menace facing Australian families. [38]. The future influence of the reformist MCDS was diluted by the establishment of an Australian National Council on Drugs, a non-government organisation to advise the federal government's drug policies. Appointed to chair the Council was outspoken prohibitionist Major Brian Watters of the Salvation Army who immediately declared his intention to promote intolerance of drug use, later going so far as to describe drug addiction as a 'sin'. [39]. The Prime Minister made clear the fact that Watter's selection was motivated by a personal preference for absolute intolerance:

I deliberately hand-picked and chose Major Watters to chair the Australian National Council on Drugs ... It is no secret that Major Watters was a critic of the heroin trial in the ACT. It is no secret that Major Watters adopts the view, as do many others, including myself, that the policy of zero tolerance of drug taking in this country is a highly credible policy and a policy that ought to be pursued more vigorously. [40].

## Concluding comment

Public policy is policy for which a government must be accountable. Government should be expected to demonstrate that the overall costs of a given policy are outweighed by the benefits. This is not the case regarding prohibitive drug policies. Failure to effectively reform this policy is testament to a lack of leadership. There are few signs this is about to change. Another upsurge in the numbers of heroin users has prompted recent political discussion of more alternative strategies. However, such alternatives are still only on the agenda of a broad-minded few. Those who cling to the prohibitive agenda of the past would do well to take an honest look at the past to which they cling.

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