

reform

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drugs summit

Hits you like sleep —
sweet, illusory, fast, with a semblance of forever.
For a while the fires die down in you,
until you die down in the fires.

Michael Dransfield, *Fix*

treatment v punishment. A survey conducted for the *Sydney Morning Herald* and

Age (11 April) by Irving Saulwick and Associates and others has indicated that a majority of Australians favour a punitive rather than treatment-based approach to heroin traffickers and heroin addicts. However there was a strong minority support for a treatment-based approach. This was most favoured amongst young respondents (those aged between 18 and 24). Overall 39 per cent

favoured the provision of more treatment centres and more help for addicts and 8 per cent thought free heroin and methadone should be provided for registered addicts. Fifty-five per cent of people, according to the survey, said it was important to provide additional police resources and heavier penalties for those involved.

Earlier in the year, in February, Dr Grant Wardlaw a criminologist with the Australian Institute of Criminology told a conference that there was not one example of a Western democratic country which had achieved a major long term reduction in illicit drug trafficking or use by concentrating on enforcement (*Canberra Times*, 21 February). Dr Wardlaw said that drug abuse was continuing to grow at a time when more law enforcement resources than ever were being used to combat it. He noted that drug squads were increasing in size and that more money, time and expertise were being brought into drug enforcement. Harsher laws and stiffer penalties had been introduced. Despite this, 'the evidence is overwhelming that a law-enforcement approach to drug-use control has not succeeded in effectively diminishing the availability and use of illicit drugs', he said. He noted that Malaysia had a mandatory death penalty for major drug traffickers. Twenty-nine people had been executed with a further 35 awaiting execution. Yet drug abuse had increased dramatically over the same period and was now at an all-time high. He said that a result of present policies had been an increase in crime rates. These policies had not discouraged new users nor achieved diminished consumption nor increased the demand for treatment. He argued that drug enforcement was attacking the users and distributors of cannabis, not those involved in heroin. He said that only 2 per cent of drug arrests involved heroin. Dr Wardlaw argued that in view of the seemingly massive failure of enforcement approach to drug control, the question had to be asked whether any of the major enforcement strategies had any significant impact on illegal drug use. Dr Wardlaw said that a study being

planned by the Institute would, it was hoped, force drug enforcement agencies to analyse critically the effectiveness of their activities. He said that this might convince the authorities not to increase resources in the enforcement area, but rather devote them to rehabilitation and education.

The queensland approach. Prior to the April Premier's Conference on drugs — the so called drugs summit — the Queensland Government announced that it would bring in tough new laws against drug users and dealers. These included mandatory life sentences for people dealing in drugs. Given that one of the Conference decisions was 'in principle agreement' to uniform legislation governing drugs of dependence, consistency in classification and thrust of offences and penalties, it is unclear whether the Queensland Government's statement is 'still operative'.

On the morning of the summit (2 April) the *Canberra Times* editorial writers said it was unfortunate that the Queensland Government had taken an approach to drugs similar to its stand on industrial disputes: 'an uncompromising stance backed up by extremely tough legislation'.

A successful meeting requires more imagination than strengthening the arm of the law-enforcement agencies ... What the Queensland Government and other hardliners must try to understand is that tougher penalties for traffickers do not have any impact on demand. They are more likely to push up the cost of drugs and the profits that can be made from them. When criminals can make more money they have more available for corrupting law officials, from police to judges. To get the money to finance a drug habit, the user frequently turns to crime, and the higher the price of the fix the greater the number of household break-ins and armed hold-ups and the more prostitutes. Most Australians would be glad to see the drug bosses dealt with but experience overseas has shown that law enforcement is not enough. In the United States, drug addiction has been a problem for generations. However, the US system of hitting the drug trade with special police units has not stemmed the tide.

On the other hand the *Canberra Times* commended the British approach:

Confirmed addicts are guaranteed a supply of drugs through clinics, so they do not have to deal with criminals or commit crime to pay exorbitant prices while attempts are made at rehabilitation. The theory is that legitimate sources of supply reduce the illicit trade and the level of crime associated with drugs. A prescription service for Australia's drug addicts undergoing treatment is at least worth considering at today's meeting.

an economic analysis. A Paper delivered at the Fourteenth Conference of Economists at the University of New South Wales in mid-May also argued for a different approach to the drug problem. Dr Robert Marks, Senior Lecturer at the University of New South Wales, Australian Graduate School of Management, presented the Paper: A Freer Market for Heroin: or Alternatives to Subsidising Organized Crime. Dr Marks relied on estimates by Mr Paul Fitzwarren of Health Research Associates who calculates that:

- There are between 15 000 and 20 000 heavy narcotics users in Australia.
- Each of these typically spends 80 000 to 100 000 dollars per annum on drugs.
- A maximum gross profit of 1000 per cent is available on imported heroin.
- 376 million dollars will be used to purchase narcotics (mainly heroin) in 1984-85.
- This will be derived from:
 - property theft – 278 million dollars;
 - prostitution – 82 million dollars;
 - other illegal activities – 24 million dollars;
 - legal income – 2 million dollars.
- Theft to finance heroin purchases will be responsible for almost a third of the 1.8 billion dollars worth of stolen property in 1984-85.
- The narcotics industry employs 310 people full time and 1650 part time.
- There will be a profit in the industry of 295 million dollars after allowing for

costs including 8-10 million dollars for bribing officials, such as police and customs officers.

Dr Marks argued that the consumption of heroin imposes significant costs on the community, particularly through theft. As well, the community spends money in prevention of crime and apprehension, legal costs, punishment and rehabilitation. Other social costs include medical expenses, foregone productivity, and the premature deaths of addicts. There are also other costs which, according to Dr Marks, are unquantifiable – like fear and anxiety, and disruption of community life. He added:

Other social costs are more sinister ... the existence of a profitable black market which leads to the consolidation of organized crime, undesirable police practices including corruption, the regressive burden on the poor who live in areas of high addiction, and the pressures on doctors who might legitimately want to prescribe these drugs.

Dr Marks argued that the prohibition of heroin imports had been ineffective. Despite historically high volumes of heroin seized in 1983 there was little price rise, indicating that the volume seized was only a small proportion of total imports. Dr Marks argued that a greatly increased effort on prohibition would be needed to make any significant impact. One of the side effects, if that effort was successful, would be to raise the price of heroin dramatically, and lead to still more crime:

We might expect that increased enforcement of the prohibition would raise the price of street heroin by increasing the risks and operating costs, as well as by reducing the supply of heroin, but so long as the demand is price-inelastic a higher price will increase the social cost of heroin use.

Dr Marks argued that long prison terms and drug education campaigns would not be effective deterrents. Mr Ross Gittins in an article about Dr Marks' Paper in the *Sydney Morning Herald* (22 May 1985) concluded that much of the social cost of the heroin problem arose not from the effects of the drug

itself but from the effects of the prohibition measures we have chosen to attempt to solve the problem:

It is the prohibition which makes the price of heroin so high; it is the high cost which leads addicts into other crimes to support their habit; it is the prohibition which causes corruption among officials and fosters organized crime. Indeed, the prohibition produces an effective subsidy to organized crime from all Australians, as reflected in our home insurance premiums, via the benighted heroin users.

In his paper Dr Marks argued that the costs to society of prohibition far outweighed the costs of a policy of decriminalizing heroin to make it more freely available. He acknowledged that a policy of free heroin would carry the cost of its more widespread use.

alrc recommendations. The April drugs summit agreed to extend telephone interception powers to the States in relation to drug trafficking and to give the Australian Federal Police power to examine suspect mail. Amendment of the Customs Act to clarify powers to search people concealing drugs internally was also agreed (*Australian* 3/4 April 1985). The Australian Law Reform Commission had made recommendations about each of these matters in its Report on Privacy (ALRC22) at the end of 1983. The Law Reform Commission recommended:

- Opening of letters for customs purposes should not be permitted unless there is a reasonable suspicion that they contain dutiable or prohibited goods.
- Mail interception might, in appropriate circumstances and subject to appropriate restrictions, be available to police.
- Internal body searches should only be conducted by a medical practitioner, and only on the basis of judicial authority and where there is reasonable cause to suspect commission of a serious offence.

- Opening of the mail should require a warrant similar in nature to that for telephone tapping, supported by a written statement on oath as to the grounds on which the warrant was sought.

The Commission recommended that the police report to the federal Attorney-General on the use made of information obtained from communications interception, and also recommended that the Attorney-General be required to report on these matters to Parliament annually.

The drugs summit took place at a time of disclosure of widespread illegal telephone tapping operations conducted by the New South Wales police in relation to a range of offences. Perhaps partly to regulate this illegal activity the decision was taken to extend the power of interception to such police.

the nsw problem. Meanwhile the New South Wales Police Board in its first report to Parliament has declared that drug trafficking is out of hand in New South Wales. The report conceded that a 'dark shadow of corruption' still hung over minority elements in the New South Wales Police Force and that house robbery had reached epidemic proportions, while major crime associated with gambling went largely unchecked (*Sydney Morning Herald*, 24 April 1985).

other summit issues. The Premiers' Conference to discuss the drug problem made decisions not only as to law enforcement, but also on education and public health responses to the drug problem. Matters agreed at the Conference included:

- urgent review of controls on the barbiturates;
- maintenance of existing controls on cannabis;
- commitment of \$60 million over the next three years by the Federal Government for funding education, treat-

ment, rehabilitation, and research programs;

- increased resources to the Australian Federal Police for personnel and computers, totalling \$17 million;
- enhancing the Australian Bureau of Criminal Intelligence by an addition of \$1.5 million;
- upgrading the customs services at a cost of \$5.5 million;
- upgrading the National Drug Education Program and setting up other training programs and drug information services;
- expanding methadone maintenance programs;
- establishing treatment and rehabilitation services for drug abusers in major hospitals;
- establishing national and State drug data collection systems.

illicit fruits. The drugs summit proved to be a catalyst for toughening up the law on seizure of the 'fruits of the crime'. There are some provisions already on the statute book enabling the proceeds from drug dealing to be seized. For one reason or another these seem not to have been much used in Australia. Nevertheless, the Federal Government and at least the three eastern mainland States have announced initiatives to enable the seizure of the proceeds of drug sales. The meeting of the Standing Committee of Attorneys-General in early May decided that the proposal to seize assets of those convicted of serious criminal offences should be the subject of further discussion with the Police Minister's Council. The Victorian Attorney-General Mr Kennan said after the meeting:

Under the proposal a court would be able to deprive a convicted person of any property which was directly or indirectly derived from the commission of the offence. It will then ensure that crime did not pay and would provide greater deterrence to those types of criminal activities that generate profits that exceed the maximum penalty that can be imposed upon conviction.

Mr Kennan added:

Victoria already has legislation for confiscation of assets relating to drug offences. This proposal however is for the legislation to cover other serious criminal offences as well.

spiritual impoverishment. In a letter to the *National Times* (19-25 April 1985) Dr BC Birchall of the Philosophy Department of the New England University argued that the drug problem was an incidence of our 'spiritually impoverished society'. The drugs summit was marked by an unusual degree of cynicism from some sections of the public, reflected by headlines such as 'drugs and politics don't mix, say addicts' *Sydney Morning Herald* (2 April 1985) and 'Scepticism Over Drug Conference' (*Canberra Times*, March 31). The story accompanying the latter article opened this way:

Some of those who deal with drug-users in Canberra are sceptical about the special Premiers' Conference on drugs to be held in Canberra on Tuesday. They see it as a political stunt that could do little to solve a social and medical problem.

lack of consensus. One matter which struck some observers of the drugs debate is the lack of consensus even on the most fundamental and apparently verifiable matters. These include questions like: what are the physical and psychological effects of methadone treatment? What are the success rates of various methods of drug treatment? What is the impact on a person of long term heroin dependence? Hardly any of the enormous resources devoted to the drug fight seem to be directed to assessing the effectiveness of different methods of law enforcement and of counselling and treatment. The summit agreed that there is a need for more research into the prevention and treatment of drug abuse. It agreed in principle that one or more "centres of excellence" would be established. The States have been invited to bring forward proposals.

alcohol and tobacco. The Drugs Conference also agreed to refer World Health Organisation recommendations about restricting usage and promotion of alcohol and

tobacco to the Health Ministers' Conference. But this was done without endorsement by the summit. The States agreed to consider introducing zero or equivalent blood alcohol levels for novice drivers, stringent application of penalties, and more severe penalties for persistent driving offenders (*Australian* 3/4 April).

Moves are now afoot to increase the penalty for selling tobacco to children. In New South Wales the offence carries a maximum fine of \$10, and has done so since the Juvenile Suppression Act was first introduced in 1903. Mr Ken Gabb, the ALP Member for Earlwood, recommends:

- The maximum fine for selling tobacco to minors should be increased to \$1,000.
- The legal age for purchasing tobacco should be raised from 16 to 18.
- Tobacco should be sold only on specially licensed premises.

Sydney Morning Herald (8 May 1985)

Dr Tony Adams, Chief Health Officer of the New South Wales Health Department supported the proposals. Dr Adams is also a member of the New South Wales Drug and Alcohol Authority which released a survey recently which showed that almost four per cent of primary school children smoke weekly. According to recent estimates Australian children spend more than \$23 million per annum on cigarettes. The Tobacco Institute of Australia also supported the increased penalties.

Meanwhile in the United States tobacco manufacturers are facing law suits from people who have suffered health problems attributed to smoking. Last year there were at least 16 law suits filed. According to an article reprinted from the *New York Times* (the *Australian Financial Review*, 2 April 1985), damage claims against tobacco companies are not new. The first of them was filed nearly 30 years ago and without exception they have failed. But the article quotes law-

yers as predicting that for a variety of reasons — scientific, legal, attitudinal — that may change. Lawyers representing plaintiffs are arguing that, because smoking is not really a voluntary act, the tobacco industry can no longer assert that cigarette smokers assume all risks every time they light up. Mr Robert Rabin of Stanford Law School, an authority on product liability law, is quoted as saying:

It seems to me unlikely that the full burden of smoking will be put on smokers, since the cigarette companies have done everything they can to push their products.

Anti-smoking advocates argue that cigarette manufacturers, no less than the makers of drugs, chemicals or cars, must be held responsible for turning out defective and unreasonably dangerous products. In 1983 the US Surgeon-General reported that cigarette smoking was the largest preventable cause of death in the US, killing at least 350 000 Americans annually. The Australian figure is put by the NSW Cancer Council conservatively at 16 000.

Meanwhile the Full Bench of the Federal Court has upheld a decision by the Australian Broadcasting Tribunal against indirect advertising of cigarettes on television in conjunction with sporting and cultural events. The Broadcasting and Television Act contains a simple prohibition of cigarette and tobacco advertising. At the end of 1983 the Tribunal issued a policy statement indicating the following test would be applied: would a reasonable person regard the advertisement in all the circumstances as seeking to promote cigarettes or smoking. The Tribunal decided that Winfield's participation in a telecast of the 1982 Sydney Rugby League Grand Final, including a Winfield logo on the grass behind the goal posts and dancing girls in Winfield colours before the match, was such an advertisement although cigarettes were never mentioned (*Australian Financial Review*, 28 March 1985).

In the United States, however, the issue of the 'right to smoke' is 'hotting up'. Jenni Hewett (*Sydney Morning Herald*, 15 May 1985) reports that a US man was allegedly kicked in the groin by a woman who had asked him either to stop smoking or leave the room at a Toastmasters' Meeting. He had refused. The man, Allan Wickman, was reported as saying:

I don't see why people can't move if they don't like my pipe. I move if I don't like someone's body odour. The anti-smoking zealots have become worse and worse. Smokers are already treated like blacks were in the South — down the back of the bus. And they have acquiesced too easily. I want my constitutional rights, too.

Ms Hewett reports that tobacco companies, although concerned about substantial drops in the percentage of people who smoke, have given up questioning the evidence that smoking is bad for the smoker's health. But the new battle field concerns the effect smoking has on the health of those nearby — so called passive smoking. Philip Morris and another tobacco company accuse anti-smokers of being zealots who wish to abolish smoking altogether. They have entered the fray with advertisements including one questioning the bona fides of the anti-smoking lobby:

Obviously, one way to make smoking non-acceptable socially would be to suggest that second-hand smoke would cause disease. So it is not surprising that we are now seeing a flurry of research seeking scientific support for these suggestions.

Results of a study recently completed at the University of California in San Diego reports that in a study of American women the non-smoking wives of smoking husbands had a 2.5 times worse history of terminal heart disease than non-smoking wives of non-smoking husbands. Perhaps surprisingly in the heart disease stakes smokers themselves only have 1.5 times worse record than non-smokers. (*The Health Report*, ABC Radio, 3 June 1985) Ms Hewett reported a spate of incidents in which violence has flared over dis-

putes over a cigarette lit in a public place. The violence might come from either party. According to Ms Hewett, the United States is not quite Constantinople in the early 17th century where smokers were routinely executed. But in San Francisco smoking in an office is now illegal if one person objects, and Boeing now prohibits smoking on the job.

defamation

I can assure you that a badly-cut coat would be the means of closing more doors upon you than would a doubtful reputation.

Max O'Rell, *John Bull and Co*, 1894

a uniform approach? Uniform defamation law has been removed from the agenda of the Standing Committee of Attorneys-General (SCAG). The issue had been on the agenda since soon after the Australian Law Reform Commission presented its Report on *Unfair Publication: Defamation and Privacy* in 1979. The Federal and State Attorneys-General were unable to agree about a number of issues. The most notable was whether the defence of truth should defeat a defamation action, or whether it should be necessary to go further and show that the publication had not only been true but also for the public benefit, or some such.

After the SCAG decision in May the Victorian Attorney-General Mr Jim Kennan QC commented:

Everyone agrees that uniform defamation laws are desirable but we have been unable to agree in particular on the central issue of the defence of justification. In Victoria it is truth alone but in some other States it also includes public interest or benefit.

He said that in the meantime there was a need to consider the desirability of amendments to Victoria's defamation laws.

alrc recommendations. The Commission in its 1979 Report (ALRC11) examined possible methods of enacting its recommendations. It said that ideally, from a legal point of view, there ought to be a reference of power by