

DRUGS AND THE LAW

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The Honorable Justice M D Kirby

Until my recent appointment, I was chairman of the ^{Australian} Federal Law Reform Commission for a period of ten years. One of the first tasks commissioned by the Attorney General of Australia related to the report, Alcohol, Drugs and Driving₁, which proposed changes in the law for the Australian Capital Territory--a Federal responsibility.

The Commission did not have a general mandate to suggest more wide-ranging changes of the law to respond to alcohol, tobacco and other drug dependency. A number of the proposed changes have also been adopted in the States of Australia.

As in many other countries, there have been numerous official and semi-official enquiries in Australia on drug dependency.₂ Most have related to narcotics and have put forward proposals for law reform to "combat" what is described as the "drug menace". Although there are some exceptions, many of these reports have proposed an ever-increasing crescendo of punitive, intrusive, even Draconian laws, especially aimed at trafficking in narcotic drugs.

However, just as physical and psychological intoxication by drugs is dangerous, so too is intoxication by sincere enthusiasm, leading to unrealistic demands on the legal system. Laws which are not respected by our citizens, poison our system of justice. They may save a few souls from drugs but in the process, if they undermine respect for the law, lead to oppression, result in corruption of officials and widespread cynicism, they achieve their success at too high a price.

I have received a letter from a young prisoner who had been convicted of various breaking and entering offences. He says that he has cost the Australian community hundreds of thousands of dollars by reason of his anti-social, unlawful acts. He says he's basically a decent person, so why has he done these things? He is a heroin addict and this has been his way of getting money to support his habit.

In his letter he said: "I am in the gaol, surrounded by degradation, with no friends or family. I am soon due to be released. But you and I both know that I will fall back into my old ways. Because of my physical and psychological addiction to heroin, I will have to find the means to provide the drug. This will put me back into breaking and entering, back into the hands of the police and I will end up back in prison.

"I can see nothing in my future except this cycle of criminality. What are you doing about it? I am trying to adhere to a methadone program. But methadone is a constant down, as if you're spending your whole life on seraphax. Methadone will give me relief while I am in prison but I have experienced the highs in life and it is unreasonable to expect me to be on a constant down. What is society doing about my addiction? If I was given my drug of addiction and treated as a public health problem, not a law and order problem, I would be a perfect citizen. My addiction is physical and psychological and if it was serviced I would not be a problem to you or society."

I believe the situation is not atypical for this country. Society punishes this person in order to prevent others coming into contact with drugs. And it is at least arguable as to whether this is morally justified.

Legislating for morality has never been very successful. In the area of drug abuse, the cost, as was demonstrated in Prohibition and in so many

modern laws, outweighs any advantages procured. You might save a few people from alcohol, tobacco and other drugs by banning them. But the black market would soon flourish. The big bosses would soon feed that market.

It is my conviction that in matters so personal to the individual, as decisions on drug intake, the law has only a limited and supportive role to play. Education, persuasion and public health measures are more likely to succeed in affecting the personal decisions that are involved.

Trying to make people moral or to save them from themselves by law is fraught with danger and usually promises failure. If we cannot persuade and educate people to a self-esteem which will divert them from alcohol, tobacco and other drug abuse, laws are not likely to be successful. Unless we win the minds of young people to the imperative desirability of guarding their health against the consequences of drug abuse--and provide a society and economy conducive to that end--we will not have the slightest prospect by laws and police powers to turn the tide.

More time and attention should be given into researching the kind of society we want to reach. This should include study of basic human nature, the reasons we turn to drugs, the profile of the drug taker, and the potential of technology, education, economic pressure and political change to influence decisions made.

Such an approach is more likely to bear fruit than the enactment of selective punitive laws on some drug merchants, whilst others are covered with civil honours and become millionaires. Our watchwords must be ~~and~~ end to hypocrisy. Our goals must be measures that will work, especially amongst the young.

We punish a person for a physical and psychological addiction, in the worst way we can--by taking away their liberty. In putting them into

"Victorian" prisons built in an earlier century, where not only are they placed into degradation and awful surroundings, but now there is the added problem of AIDS and exposure to the the risk of death. And this is done in the hope that we will inspire our society and deter others from coming into contact with drugs.

In the Netherlands they have reached the conclusion that this is morally unacceptable and ineffective. There, they are now endeavouring to tackle heroin addiction as a public health problem, not by the failing efforts of law and order. I suspect in due course we may come to that also.

The proportion of hard drug-related deaths tells me that we must not get our priorities wrong in the battle against drugs. The real priority remains the battle against legal drugs--those that you and I can go and purchase very easily, at any time.

Sadly, there are no simple answers. You only have to sit in court and see the terrible cases that come up. You only have to see the human face of those cases to realise the incapacity of the law, and the danger in putting too much faith in the law. You only have to see the corruption of officials that can occur, and the loss of confidence in the legal system, then you realise that we really must not build ^{his particular} ~~our~~ house on the "sand" of the law.

We live in an age of social and technological change. Law making institutions tend to move slowly. In times like ours, they need assistance from bodies established to design new legal rules and social policies.

The law has a part to play but as I have endeavoured to show, only quite a small part. The real role must be fought out in families, in the new extended families, in churches and in community groups.

There is more that one could say but this at least gives you a window into my world, hearing a parade of cases that are not atypical. These

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people are our fellow citizens and we have to reflect upon that fact before
we say, "Put them away."

Justice M D Kirby is President of the NSW Court of Appeal.