

# The Risks and Costs of Decriminalising Drugs:

## A Response to Robert Marks

David Hawks\*

*In his article 'The Case for a Regulated Drugs Market' (Policy, Autumn 1991), Dr Robert Marks argued that the costs of prohibiting drugs exceeded the benefits. David Hawks, Professor of Addiction Studies and Director of the National Centre for Research into the Prevention of Drug Abuse at Perth's Curtin University of Technology, challenges this assessment.*

For an economist of utilitarian persuasion, Robert Marks (1991) is curiously circumspect in his consideration of the implications of his recommendations. While he acknowledges that the lack of relevant data (even the number of heroin addicts and the cost of their habit are not known) makes present government policy difficult to assess, he nonetheless confidently asserts that present policies have failed when all that can be confidently concluded is that they have not succeeded in eliminating heroin addiction. Whether heroin addiction would be worse or better if other policies were, or had been, enacted can only be a matter of conjecture in the present circumstances. While there can be little doubt that the illegality of heroin has not prevented all Australians from using it (though the number estimated to be currently using heroin by the Cleeland Report [1989] is surprisingly low) there also can be little doubt that its illegality has deterred many more from doing so.

While, clearly, present prohibitionist policies with respect to certain drugs have contributed to their high cost and the criminal involvement of their users, the implications of Dr Marks's preferred alternative of regulated supply are far from clear. As I have argued elsewhere (Hawks, 1990), unless all drugs were legally supplied it is difficult to see how the black market would dry up. While Dr Marks states that the regular supply of heroin would render the illegal supply of other drugs 'second best', he does not provide any evidence as to why this should be so. Indeed, the increasing use of amphetamines by intravenous users would suggest that this drug at least would attract the attentions of the black market.

Nor, despite his preference for cost-benefit analysis, does Dr Marks cost the provision of the regular supply of heroin, perhaps to an increasing number of users, and for long periods of time. If the drug is to be supplied at a nominal cost in order to undercut the

black market, its use will presumably need to be subsidised, though Dr Marks elsewhere suggests that the government might raise revenue from its sale. If the sale of heroin is to meet some of the costs of rehabilitation, etc., is it not possible that governments would be tempted to increase its cost to the point where again the black market will become competitive? The example of states that operate alcohol monopolies suggests that they do not necessarily do so less commercially than those in which the sale of alcohol is in private hands.

Moreover, if the demand for heroin is inelastic, as Dr Marks assumes, what is to prevent addicts demanding larger and larger doses, reflecting their increasing tolerance, at increasing cost to the community?

If heroin were to be legally supplied to users, and particularly if access to its regular supply were to be as easy as Dr Marks recommends, it is highly probable that the number of occasional users would greatly increase. For this to be of no consequence (and Marks implies that it is of no consequence) requires that this expanded, though occasional, use be safe. Present indications are that not all of this occasional use is safe, precisely because occasional users do not perceive themselves to be at risk. It must also be questioned whether occasional users would be willing to identify themselves in the way required by a regulated market.

It is frequently assumed by proponents of legalisation, or of the regulated supply of heroin, that there is 'out there' a vast number of occasional users, in this case of heroin, whose use is not associated with any problems and does not constitute a charge on the taxpayer. It is further assumed that given their ability to control their drug use, their increase is no occasion for concern (Mugford, 1989). In fact, we know very little about the occasional users of drugs, precisely because they do not present (at least when occasionally using) to treatment agencies, as a result of which it is perhaps premature to argue that their drug use is without

\* The author has benefited from discussing the issues raised in this paper with his colleagues in the National Centre for Research into the Prevention of Drug Abuse. The views expressed, however, should be attributed to him.

problems. At least some of these occasional users go on to become more dependent users, while others are on their way back from dependent use. We do not know whether occasional use is a stable stage of drug use or a transient station on the way to, or the way back from, dependent use. At least some occasional use is likely to reflect the present unavailability and high price of illicit drugs which, if removed, may lead to greatly increased use. To adopt policies that anticipate an increase in the number of occasional users without ascertaining the nature of occasional use might be thought somewhat risky.

Quite aside from whether occasional use can be assumed to be safe use, it at least needs to be questioned (however moralistic Dr Marks may regard such a question) whether it is a good thing that an increasing number of people have recourse to a drug, even if their use is recreational. The widespread recreational use of alcohol suggests that even the social use of an intoxicant is attended by widespread problems. Indeed, it is the so-called recreational users of alcohol who contribute the greater proportion of the harm associated with alcohol (Kreitman, 1986). Would the same not be true of an enhanced number of occasional users of heroin?

Dr Marks observes that those who advocate legalisation 'believe that legalisation will not change other objectives of society' (1991:30). This may be so, but it has to be a controversial view when it is remembered that increasingly we are being advised to seek other than drug solutions to our problems, whether they be our need to relieve pain or anxiety, or our need for relaxation and excitement. One of the least commented-on side effects of the proposal to legalise is the tacit support afforded the view that the use of drugs is an inevitable and recreational component of life.

While Dr Marks does not particularly emphasise this, much of the pressure to reform Australia's policies in regard to heroin derives, rightly, from a concern that the injection of illicit heroin runs the risk of transmitting the AIDS virus. While this is a real danger, it has to be acknowledged that the rate of HIV infection among Australian intravenous users is exceedingly low, almost certainly as a result of the access to needles and syringes and the explicit advice provided to users about the dangers of sharing needles and syringes and of unsafe sex. While it would be premature to conclude that 'the second epidemic of AIDS' (Drew & Taylor, 1988) has thus been avoided, we should at least question the prudence of adopting the more radical proposals recommended by Dr Marks if one of the principal reasons for doing so is to minimise the risk of AIDS.

While, as Dr Marks observes, a number of indices of heroin-related harm have increased of late (though this is particularly true of New South Wales), these indices started from a very low base and even now do not compare, for example, to the harm associated with alcohol and tobacco. It must be questioned whether the harm associated with heroin has yet reached the intolerable levels requiring a major restructuring of

Australia's drug policies, particularly if this restructuring is itself attended by all manner of risks.

Dr Marks's unfamiliarity with the practicalities of what he proposes is illustrated by his statement that 'The most significant distinction between heroin and methadone is that one is legally available and the other is absolutely prohibited' (1991:31). Surely the most significant distinction between heroin and methadone, from the point of view of the practicality of what Dr Marks is proposing, is that heroin is a short-acting drug that requires frequent and therefore unsupervised injection, while methadone is long-acting, can be taken by mouth and is therefore capable of supervised administration. Except that it is assumed that heroin

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would be provided to registered users in large quantities for their self-injection, the need to establish 24-hour clinics at which their injection can be supervised would be one of the costs associated with Dr Marks's proposals, as would any complication of their frequent injection.

Together with the risk of AIDS, the public's subsidy of the crime associated with our current policies is usually given as one of the principal reasons for reforming Australia's drug laws. While undoubtedly the high price of illegal heroin does encourage criminality among its users, to conclude that all of the crime committed by heroin users is drug-related is naive. Several studies demonstrate that a significant

naive. Several studies demonstrate that a significant proportion of heroin users were engaging in criminal behaviour before they became dependent on heroin and a significant number continue to engage in criminal activities even after their regular (legal) supply of heroin is assured (Dobinson & Ward, 1985; Wardlaw, 1981; Stimson & Oppenheimer, 1982). The use of heroin in the present circumstances is a risky business likely to engage people who have a propensity to take risks. Its legal supply is unlikely to entirely circumvent such a propensity.

Finally, the notion that one of the reasons we should review our drug laws is the proscription presently placed on physicians who might otherwise want to prescribe these drugs misconstrues the source of such reformist tendencies. In the main, physicians involved in the treatment of heroin addiction have not been prominent in agitating to have heroin legalised, nor have those involved in the treatment of the terminally ill. In the main, the pressure to reform our drug laws has come from people who are not involved in the rehabilitation of those dependent on drugs, but rather have a legal or criminological orientation.

#### References

- Cleeland Report (1989), *Drugs, Crime, and Society*, Report by the Parliamentary Joint Committee on the National Crime Authority, AGPS, Canberra.
- Dobinson, I. & P. Ward (1985), *Drugs and Crime: a Survey of the New South Wales Prison Property Offenders 1984*, Bureau of Crime Statistics & Research, Sydney.
- Drew, L. & V. Taylor (1988), *The Second AIDS Epidemic Spread via Needle Sharing to the General Community: a Review*, Department of Community Services & Health, Canberra.
- Hawks, D. (1990), 'Heroin: the implications of legalisation', *Modern Medicine of Australia* (February): 34-9.
- Kreitman, N. (1986), 'Alcohol Consumption and the Preventive Paradox', *British Journal of Addiction* 81: 353-63.
- Marks, R. (1991), 'The Case for a Regulated Drugs Market', *Policy* 7 (Autumn): 28-33.
- Mugford, S. (1989), 'Least worse solutions to the "drugs problems"', paper presented to 'Lifestyles, culture and drugs' conference, Winter School in the Sun, Brisbane.
- Stimson, G. & Oppenheimer, E. (1982), *Heroin Addiction: Treatment and Control in Britain*, Tavistock, London.
- Wardlaw, G. (1981), 'Drug use and crime in Australia', *Australian Journal of Social Issues* 16(1): 37-46.

# Rejoinder

Robert E. Marks

In arguing for a reform of our laws against drug use, I have asserted that a concern with numbers of drug users or with amounts of drug used above all else has resulted in a costly, misguided and ineffective prohibitionist policy. I argue that we should rather be concerned to minimise social costs (costs to all Australians, including drug users), and that strictly-controlled drug availability is far preferable to the present costly and ineffective prohibition. David Hawks, in contrast, appears to want to reduce the numbers of drug users and the amount of drugs used, no matter what the costs to all of us.

As Professor Hawks acknowledges, all indicators of drug use in Australia and especially in New South Wales suggest that illicit drug use has continued to increase, despite the laws against drug use and the expenditure of millions of dollars of taxpayers' money in a vain attempt to enforce these laws. Whatever the exact number of users in any year, the numbers have grown over the past twelve years at least, as have the costs associated with the existing policy (Marks, 1991).

The large-scale importers and their financiers are drawn to heroin importation because of its profitability. Eliminate the profits, and they will direct their attentions elsewhere. Even if a residual demand remains, so long as the bulk of the users are supplied with legal, pharmaceutical heroin at low price, the residual demand for black-market heroin will be insufficient to sustain the criminal organisation underlying the existing patterns of supply. Non-economists appear to believe that any remaining demand will allow the black market to survive, but this is mistaken. The unscrupulous entrepreneurs will have turned their attentions to pastures new, second-best because they only become attractive after the end of prohibition breaks the profitability of existing black markets.

As discussed by Marks (1991), the cost of provision will depend on the level of support provided with the doses. Based on figures for methadone maintenance programs in Sydney, the weekly cost per user could be as low as \$79 for a bare-bones facility, up to a maximum of \$308 for a full-support scheme, in 1990 dollars (Baldwin, 1987).

Governments are always tempted to increase taxes for revenue-raising purposes or to sell off government monopolies to a private enterprise at a profit. (Economists call it rent-seeking behaviour.) But even if a future administration succumbed, and the price of legal heroin rose, say to the level of present-day black-market heroin, users would still be better off with pharmaceutical heroin of known dosage. The issue is