

BOOK REVIEWS

The Hardest Drug, Heroin and Public Policy, by JOHN KAPLAN, Jackson Eli Reynolds Professor of Law at the Stanford Law School, Stanford, California (The University of Chicago Press, Chicago and London, 1983), pp. i-ix, 1-247, with Index. Cloth recommended retail price \$54.50 (ISBN 0 226 42427 8).

In a recent survey conducted for the *Sydney Morning Herald* it was found that 36% of Australians think that heroin is the drug that causes the most serious problems to the community, whilst only 5% think that tobacco is the most harmful drug.¹ This is so even though in 1984 there were 16,350 tobacco related deaths in Australia and only 230 opiate related deaths.² In the same survey it was found that 43% of those surveyed feel that education is the best way for the government to deal with the problem, 10% think that rehabilitation is the best policy option and 44% think that harsher penalties are the solution. Although Australian governments have implemented policies based on all three of these strategies, what the survey suggests, and what an examination of Australian policy to date indicates, is the need for a greater understanding of the nature of the heroin problem and the drug itself, a need to define what we mean by harm, a need to better define the goals of our policy and most importantly an urgent need for detailed empirical studies that will show how to most effectively allocate the resources available for preventing drug abuse.

John Kaplan too sees heroin as the hardest drug, though not because it is the most innately dangerous, but rather because of the difficulties of knowing how to deal with the problems it creates. There are very great social costs associated with all of the major policy directions that can be taken by governments. Kaplan is not optimistic about the possibility of finding complete or easy solutions to the problem, yet his book *The Hardest Drug, Heroin and Public Policy* has many lessons in it for those responsible for formulating Australia's policy response to what is perceived to be our heroin problem.

In the book he examines in great detail the viability of, and the social costs attached to, five of the most commonly suggested policy approaches to dealing with the heroin problem. These are: prohibition backed up by law enforcement, free availability, outpatient and residential drug free treatment, heroin maintenance, and methadone maintenance. His book deals specifically with the United States' experience with heroin and thus his conclusions are not automatically applicable to the Australian situation. What is transferable, however, is the way in which he has approached his task of finding the best, or more realistically the least damaging, public policy response to the heroin problem.

Kaplan realises that before we can enter into a rational, informed and unemotive debate about policy options in respect of heroin we must first strip

the debate of much of the inaccurate folklore that surrounds the subject. He thus commences his work by looking at the factors that have constructed the social problem of heroin abuse in the United States and provides some basic pharmacological data about opiates. In doing this he shows that pure heroin would appear to be less harmful than many legally available drugs and that many of the harms associated with heroin, for both the user and the community, are in fact a product of its illegal status. For example, much of the heroin related property crime, diseases caused by using dirty needles, overdoses due to fluctuating levels of purity and the substances with which the drug is cut, police corruption, the development of a criminal drug subculture, and infringements of civil liberties.

In the early part of this work he also attempts to dispel five of the major myths that have been influential on both the American and Australian policy response to heroin. He shows that as a general rule people are not introduced to the drug by pushers, but rather by friends; that merely because a person has used heroin it does not mean that he or she will automatically become addicted, in fact there are many people who control their use and avoid addiction; that many addicts manage to get off and stay off heroin; that at the same time it must be recognised that so far we have no certain cure for addiction; and finally, whilst not disputing that there is a link between heroin use and crime, that it is not always clear which comes first.

Having objectively separated the myths from the reality, to the extent possible given the limits of our knowledge in the area, Kaplan then meticulously analyses the social costs of each of the policy options he considers, weighing the costs against the goals of each option and attempting to realistically assess the degree of success (in terms of goals) that can be hoped for. His treatment of the prohibition (law enforcement) and free availability options are illustrative.

In relation to the prohibition option, which is the mainstay of Australia's drug policy, he shows that American law enforcement efforts can never hope to completely eliminate supply of the drug and that attempts to do so, whilst possibly at times leading to shortages of supply, will cause many other harmful consequences to the user and the community. There are three levels to both the American and Australian law enforcement policies: those aimed at eliminating production at its source, preventing entry of the drug into the country and finally, preventing sale within the country. By analysing the way in which the heroin market is structured internationally and within America, Kaplan shows that no matter how great the resources invested in law enforcement are, the way in which the industry is structured and the financial rewards involved will ensure that there will always be supplies of the drug available. In the meantime he demonstrates how a law enforcement approach, while only ever being able to hope for a very limited deterrent effect and impact on supply, results in a large measure of harm to the criminal justice system, the addict and members of the community.

Kaplan then proceeds to balance the social costs and feasibility of a prohibitionist policy against the social costs of free availability. He does not

shy away from serious consideration of this latter policy option as many in the past have done, but rather, after considering the philosophical and pragmatic arguments for and against it, treats it as a viable option whose acceptability will depend upon how primary goals are defined. He shows how the free availability option would eliminate many of the social harms currently produced by the prohibitionist stance yet at the same time involve new and possibly unforeseen costs. He puts forward our limited knowledge of the long term dangers of heroin addiction, the fact that the young would inevitably have easier access to the drug under free availability, our lack of ability to predict how many people would become addicted to the drug, our lack of developed social controls to regulate use, and the possibility of widespread addiction lowering the national productivity as reasons to be cautious about adopting such a policy. He leaves it to the reader to decide which is the least harmful approach but emphasises that such a choice should be based upon an informed understanding of the advantages and costs of each option.

His approach to the treatment policy options is similar. He examines the logistical and philosophical arguments for and against each, the goals of the approach, the likelihood of meeting those goals and the social and financial costs of accepting or rejecting each option. In the end he tends towards favouring methadone maintenance as the best, though imperfect, form of treatment and comes down in favour of decriminalising heroin use, in all the guises that the use laws take. Instead of punishing users he feels that the only role for the criminal law in relation to users as opposed to sellers, should be coerced treatment for all addicts arrested for criminal offences.

What is important about Kaplan's book is not, however, the conclusions that he has reached, excellent as some of these may be, but his method of arriving at conclusions. For instance, his analysis of market forces to test the viability of the current prohibitionist approach, though not as detailed as might be hoped for, is one for which critics of the direction that the Australian debate has taken have long been crying out.

As Sandra Egger has pointed out,

Australian research and policy formulation in the drug area is unique in one major respect. We have consistently used Royal Commissions to conduct research and develop policies [and] ... unfortunately, the tools typically used by the Commissions are inadequate to the task. The cross-examination of experienced witnesses cannot substitute for empirical research.⁹

Our dependence upon Royal Commissions, with their high public profile and their judicial status, like our dependence upon the response of increased law enforcement in the forms of higher penalties and greater resources and powers for the police, are advantageous for governments in that governments are seen to be taking prompt, strong and direct action against the heroin problem. The difficulty is, however, that these high visibility measures may have little impact on the problem. Until detailed empirical studies are commissioned we will never know the true extent or nature of the problem and consequently we will be unable to formulate informed and effective policies. That is, our policies will continue to be the product of informed guesses, intuition and political expediency.

The current Federal and State Drug Offensive would seem to be an improvement in that its partial emphasis on education and rehabilitation is a move away from the traditional dependence upon law enforcement techniques. However, the fact that a large percentage of the one hundred million dollar funding for the initiative is still being spent on increased law enforcement leaves one with the impression that the Drug Offensive, no matter how well motivated, is still based more on intuition and political expediency, than the type of detailed feasibility studies advocated by Kaplan. As Grant Wardlaw points out, our law enforcement approach has to date had "little, if any, impact on drug markets and drug use"⁴ and this situation will not change until we develop "a theoretical understanding of drug markets ... and tailor enforcement efforts accordingly".⁵

There are, however, two major shortfalls in Kaplan's book. First, as he concedes himself, the book has for the most part failed to address the political obstacles to its various suggestions. Whilst this failure can be partially forgiven, in that it is often just such political considerations that prevent serious analysis of many options being carried out in the first place, it is still regrettable. Any serious attempt at formulating effective policies must confront the political difficulties involved in their implementation in order either to identify the obstacles that must be overcome, or where such obstacles appear immovable, to refine policy suggestions so that they will receive the serious consideration, at the government level, that they deserve.

His other omission is more crucial. Whilst he recognises that our best hopes for dealing with the heroin problem lie with treating the demand rather than the supply side of the equation he fails to adequately address why people use heroin and how we can prevent abuse of the drug. Given, as he and those who have studied the issue in Australia admit, that where there is a demand there will always be a supply, and given the very great difficulties involved in curing people of their addictions, it should surely be central to any study of possible heroin policy options to look for strategies that will stem demand before it arises.

This omission may be due to the fact that heroin addiction in the United States is believed to predominate amongst the lower socio-economic black and hispanic groups and the socio-economic disadvantage and alienation theories to explain usage have reached such a level of acceptance that it was felt that it was not necessary to delve into the question in any great detail. Similarly, given the acceptance of these theories, it may have been felt that any attempt to deal with policies designed to prevent initial usage would have been opening up a Pandora's box of how to solve many of the major social and economic ills facing the United States today, and thus beyond the scope of the study.

Any Australian attempt at a similar study to Kaplan's cannot, however, afford to avoid the question of who uses heroin and why. As the South Australian Royal Commission into the Non-Medical Use of Drugs⁶ has shown, these are not easy questions to answer, especially in Australia where it would appear that use occurs across class and racial barriers. If campaigns

such as the current Drug Offensive are to succeed we have to understand why people use drugs so that effective educational and preventative policies can be formulated.

That these questions cannot simply be placed in the 'too hard basket' is highlighted by Kaplan's recognition that simple technology is now available to produce synthetic opiates that are "about five hundred times as potent as heroin on a per weight basis"⁷. Therefore, it must be realised that even in the unlikely event that we succeed in stemming the supply of heroin, unless we also stem the demand we may be facing only the beginning of the problem. California's recent experience with synthetic 'designer drugs', that have had disastrous effects on the health of users, is a lesson in point.

Kaplan's conclusions are not optimistic. He feels that the best that can be hoped for is that "the cumulative effect of many small improvements may eventually lower greatly the cost of heroin in our society, [though] it looks very much as if no dramatic change will rescue us from the problem"⁸. With this dismal prediction in mind it becomes all the more imperative that we ensure that our legislative response to the problem is no longer the product of intuition measured by political considerations, but is instead based upon the type of informed reasoning exemplified by Kaplan's study.

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FOOTNOTES

1 *The Sydney Morning Herald*, 12 May 1986.

2 *The Drug Offensive* booklet, 1986.

3 S. Egger, "Drugs: High on Commissions", April 1985 *Australian Society*, 7, 8.

4 G. Wardlaw, *Organised Crime and Drug Enforcement*, (unpublished paper presented at the "Control of Organised Crime Seminar" Sydney Institute of Criminology, 12 March 1986), 11.

5 *Id.*, 20.

6 South Australian Royal Commission into the Non-Medical Use of Drugs, *Final Report* (1979) Chs 2 and 3.

7 J. Kaplan, *The Hardest Drug, Heroin and Public Policy*, (1983) 72.

8 *Id.*, 239-240.