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# The right side of the law

By Noel Pearson

*The Weekend Australian*



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It is now plainly obvious, 15 years after the recommendations and responses to the Royal Commission into Aboriginal Deaths in Custody, that imprisonment rates have increased rather than decreased.

Whatever excuses people might make for the failure to achieve the stated objective of the commission's recommendations – to decrease overrepresentation in prison – I think it is past time to wake up to the fact that the commission was a farce and a monumental failure. Whatever might be said about the insufficient implementation of the recommendations by governments, these excuses can no longer hide the incorrectness of the commission's analysis and the lack of cogency of its recommendations.

There was a basic criminological and intellectual failure on the part of the commission. As long as indigenous leaders and governments keep treating the commission's report as Holy Writ, we will continue to approach these issues in the wrong way, and overrepresentation will not abate.

There is one criminologist who is facing up to this criminological failure.

At this week's Australasian Professional Society on Alcohol and Other Drugs conference in Cairns, Don Weatherburn, director of the NSW Bureau of Crime Statistics and Research, made a speech about Aboriginal substance abuse and incarceration (see a report in *The Australian*, 7 November).

Weatherburn made two main points: first, he supported my view that it is an unsatisfactory explanation to view Aboriginal over representation in the criminal justice system as a symptom of Aboriginal disadvantage. Weatherburn referred to my argument that autocatalytic epidemics of substance abuse are important causes of overrepresentation, and he said that I have put the label "symptom theory" on the conventional thinking about Aboriginal crime being caused by disadvantage.

He also supported one of the cornerstones of the Cape York reform agenda, namely that control of supply of addictive substances and supply reduction are necessary. Weatherburn argued there has been too much emphasis on demand reduction, mainly treatment and education, in indigenous policy. He advocated more control of supply and more community-supported policing outside metropolitan areas.

Generally I am of course in agreement with Weatherburn. But I would like to add to Weatherburn's analysis on a few points.

First, Weatherburn is correct that I am influenced by the Swedish psychiatrist Nils Bejerot (1921-88). But Bejerot used symptom theory as a critical description of the widespread ideas that personal and societal problems drive the behaviour of advanced addicts. Bejerot argued that historical and personal circumstances and psychological characteristics of the individual may trigger the first use of a substance. But once an addiction is established, the addiction becomes the main reason for the continuation of the abuse.

Bejerot did not believe that the original causes that made the addict prone to experimentation with a substance continue to determine the addict's behaviour many years later. Disadvantage factors and other problems should be dealt with and removed if possible, but dealing with them will not remove the established addiction. On the contrary, there is a risk that supportive measures (such as night shelters in Aboriginal communities) will be used by an addict to facilitate the abusive lifestyle, if no simultaneous demand is made on the addict to reform.

Bejerot's point when he coined the term symptom theory was that there is a dialectical leap involved in the use of addictive substances: use of a substance may originally be a symptom of circumstances, but relatively quickly it becomes an expression of addiction.

The subtleties of Bejerot's idea are lost when the term is used to describe misattribution (or over-attribution) of the reasons for Aboriginal crime to Aboriginal disadvantage.

My second comment about Weatherburn's speech is that the problem in Aboriginal Australia is not simply that we have too little supply reduction and too much demand reduction. We have had supply control of alcohol. In Aboriginal communities in Queensland we have had alcohol management plans (AMPs) for several years. The Northern Territory has a much longer history of supply control.

The Beattie Government has made clear improvements in the lives of Aborigines with AMPs where AMPs have been sufficiently well designed and administered.

The main problem with the implementation of AMPs in Queensland is that there have not been any policies for building community support for the plans. Weatherburn is right about what would constitute effective law enforcement. He said: "Police need to build local community support for drug law enforcement by talking to local communities about the damage caused by alcohol, inhalants and illegal drugs. They need to work closely with local public health officials; you can't get good intelligence on drug traffickers without community co-operation. And you're not going to get that co-operation if police march in like storm-troopers, turning houses and people upside down."

Presently, there is a level of compliance with the laws that control supply of alcohol in Aboriginal communities in Queensland.

But the laws would lead to much greater social and economic benefit if the Queensland government agencies and community elders could achieve widespread internalisation of intolerance of abusive behaviour and the restoration of social norms.

In relation to demand, the main problem is not that we have too much of an emphasis on demand reduction in political and bureaucratic circles. The problem is the confusion among people in the public sector about what demand reduction should mean.

In Cape York Peninsula we have developed a substance abuse strategy with six components:

- Rebuild social, cultural and spiritual intolerance of abuse.
- Manage supply.
- Manage money.
- Manage time.
- Treatment and rehabilitation.
- Fix up home and community environments.

The thinking underpinning our Cape York Peninsula strategy is the theory that five factors (availability of an addictive substance, access to money, spare time, lax social norms and the bad example of norm-breakers) can lead to an epidemic of substance abuse.

Addiction is not necessarily a symptom of Aboriginal disadvantage. Evidence to support this theory is that in my home region many people who were not traumatised by dispossession and poverty got sucked into the alcohol epidemic, simply because the epidemic had gained momentum.

Five components of our strategy aim at reducing demand. But it is difficult to persuade government agencies to embrace our entire strategy. Treatment and rehabilitation is expensive and this explains why so little is done by government in this area.

But the reason why the public sector will not accept our suggestion to rebuild popular intolerance of substance abuse is ideological. The public sector is dominated by the mantra that "substance abuse is a health issue not a policing or law enforcement issue". The corollary of this mantra is an unreflecting belief in harm minimisation as the appropriate universal response to substance abuse.

In mainstream society, there are strong forces that stop the majority of people from going off the rails. It can be argued that addiction is a perpetual problem that can be managed because it affects a minority in the mainstream. I believe that harm minimisation will lead to a steady increase in problems with addiction, but the discussion about whether restrictive measures or harm minimisation is the better policy is not so clear-cut.

In our communities in Cape York Peninsula, however, too many people are already affected by the epidemics of alcohol and drug abuse. And because of the corrosive impact of passive welfare, the social and economic influences that encourage responsible behaviour in the mainstream are too weak to stop people from becoming dysfunctional. It should be obvious that harm minimisation and conceiving of the devastating substance abuse epidemics as health issues are inadequate policies to turn around such a disaster.

The Queensland Government must accept that some of the necessary demand-reduction policies will cost money, and the bureaucracy must give up its prejudice against law enforcement as a core component of demand reduction.

But there is a fine line between the right kind of law enforcement (police and community elders working together) and the wrong policy (alienating police harassment that Weatherburn warns against).

In the Cape York Peninsula community of Wujal Wujal, there are no police. Courageous elders have tried to restore order without police support. But earlier this year a long period free of lethal violence in Cape York Peninsula (no doubt an outcome of the alcohol restrictions) was punctuated by a murder in this community.

To prevent tragedies such as this, responsible community members and police need to support one another in a concerted and long-term effort to confront dysfunction, and we need new methods of policing that combine the moral resolve of elders with the enforcement powers of the police.

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