

I am mindful of the fact that many of the people in the audience here today are from Families and Friends for Drug Law Reform - and I want to thank that organisation which has been really wonderful over a long period of time. They have kept the pressure up on these issues and continue to talk about them in an open, honest, and informed way. It has been enormously important and I can't thank enough the people who have been involved in it.

But I am mindful of the fact that many of you will have heard me talk about drug history before and for reasons I will mention in a moment I am getting a little bit bored of talking about it. I keep saying these things and nobody listens.

I think the story of heroin is probably familiar to most of you here today. It was a minor drug, a very useful drug in some circumstances that over a period of 50 years has been converted into a serious social problem. The reason for that change was largely as a result of US pressure at a time when anti communist hysteria in the United States was at its height. Since then we have had increasingly severe laws, hysteria, and a fanaticism that has served only to exacerbate the problems. And there clearly are problems associated with its use. So the question really is why hasn't anything changed? Why do these laws still continue on the books? Why do they still have such an enormous amount of support?

Alcohol prohibition of course was tried in America too. In 1918 there was an amendment that made prohibition the law of the United States but it was repealed in 1933 so that particular change only lasted 15 years. Drug prohibition has been in place for the best part of a century. And yet as I say there is still considerable resistance to any suggestions of change. You can't even talk about a heroin trial, you can't even talk about looking at thinking about changing anything.

Of course this is not true amongst experts. Experts have really been, I won't say unanimous, but as about close as unanimous as you can get amongst academics. In 1975, Senator Peter Baume stood up in the Senate and said - this approach doesn't work. Since then we have probably had 15 Royal Commissions and enquiries. They have all said the same thing and yet there is no change. So as an expert of some kind the question for me really is - why doesn't anyone listen to me? That's really what bothers me. So you may look at this talk as something of a therapy for me. I am not really worried about you at all.

These laws have survived despite their failure, despite the corruption, despite their ineptitude and so they must serve some kind of social function, some social meaning. And thinking back on it I think I went wrong when I first read the debates on the prohibition of opium in 1905. The only person to speak against the new opium laws in the Commonwealth parliament said, "we think that we only have to pass this legislation and hey presto all the problems of the world will disappear." Of course, as we know, all the problems of the world far from disappearing just got worse and worse. But I think in retrospect it was a mistake for me to focus on that idea. My mistake was, perhaps naively, to assume that laws that prohibit the use of cannabis and laws that prohibit the use of heroin are intended to eliminate their use, a goal in which they have clearly failed. But what if that's not what the laws are for at all?

If a person behaves dysfunctionally over a long period of time and doesn't listen to the evidence and doesn't listen to the facts I think we'd start to think psycho-analytically. We would say, "you know you really ought to go and seek some help about that." We would put them on a couch, we would get a therapist to listen to them and we wouldn't necessarily

believe them if they said that they really didn't want to behave in a certain way. "I really *do* want to give up smoking. I know I have smoked for the 40 years but trust me tomorrow will be different." Rational analysis and rational arguments do not always work. We need to treat the problem therapeutically. My difficulty is that being a rationalist of a kind and being a historian too I have focussed on the history and I have shown, I think, the irrationality involved in these laws and the dysfunctional nature of these laws but I have not got any closer to answering the questions which still bothers me. It is: what is the *irrational* basis of these laws? Why don't people listen to reason? So what I would like to do today is to put the laws on the couch, so to speak. I want to behave rather as a therapist. I want to think psycho-analytically rather than historically today and I want to do it as many therapists would - through the use of a metaphor. By thinking of another situation and seeing what lessons it can give to us.

Another legal practice that has to be understood psycho-analytically rather than rationally is the practice of witchcraft laws. I want to spend more of my time here today talking about witchcraft rather than drugs because you have probably heard a lot about drugs and not so much about witchcraft. In doing that I want to connect two different kinds of possession - spirit possession and drug possession.

The crime of possession is as you know the central feature of drug laws in our society. That crime makes just touching something a crime, just holding it; it doesn't matter what you did with it, nor even what you intended to do with it. It goes against our principles of justice. It goes against our principles of fair evidence and fair proof. What is it about these drugs that makes them so magic that just touching them is seen to corrupt and sexually excite the person who is doing the touching?

To answer that we have to go back to another type of possession. The crime of possession is just the fear of being possessed. Now I don't want to say here that witchcraft is the same thing as drug laws. I don't want to do that at all. Apart from anything else witchcraft laws lasted for about 200 or 300 years and in the process they lead to the execution, mainly by burning but also by hanging, of upwards of 60 thousand people, mainly women in Europe. Some of the figures go as high as half a million. So we are not talking about something trivial. Witchcraft was taken very, very seriously for a long period of time in our rational Western history, and that raises the same question. How did this happen? And I also want to draw attention to the fact that witchcraft wasn't just a belief. It wasn't just hysteria. It was a legal structure and it was a legal structure that actually has a lot in common with our drug structures today. So I want to think of witchcraft as a kind of a legal system, a way of prosecuting certain kinds of behaviour, and I want to connect them together.

Of course they were connected by the early witchcraft theorists themselves. The most famous book of witchcraft theory is called *Malleus Maleficarum* or the *Hammer of Witches*, first published in 1487 by Sprenger and Kramer. In it they say that the Devil has an exact knowledge of herbs. In fact one of the many explanations for the witchcraft hysteria in Western Europe was the battle between old modes of medical knowledge and new modes of medical knowledge, and in the process a battle between women and men. Clearly there was a very strong misogynistic element in this but, in addition, women were associated with herbalism, with midwifery, with mysterious drug practices, and this was all part of the perceived social problem at the time. So too, the *Malleus Maleficarum* speaks precisely the language of addiction. Witchcraft occurs when women, particularly women, are tricked into an association with devils or with demons. They are then magically and instantly converted to the cause. They cannot give up their compulsive devil-worshipping behavior even if they want to, and even though it is degrading to them. They *enjoy* the pleasures of degradation

and refuse to give them up. Does this not sound a little bit like the stories that are told about heroin -- indeed the stories which are told about cannabis and other drugs, too? In witchcraft as in drugs, sexual excitement, addiction, and moral degeneration do go together.

The witchcraft laws of the fifteenth and sixteenth century were a response to dramatic social change and the anxiety which that changing society generated. This anxiety was then displaced onto a supernatural agency that could be blamed for it. We could then say it was not society's doing, it was not society that had changed; it was just that the Devil made people do these things. And in the process the effect of social change, this anxiety, became turned into a cause. That's basically the same thing as has happened in relation to drugs. Widespread anxiety about social change displaced onto some magical or supernatural agency, to which is then attributed causal power.

Let me talk a little bit about the key features of witchcraft. Witchcraft like drugs ties the concept of possession and addiction together. There is an idea of a loss of agency: the drug-addict or the demon-possessed are not to blame, are not responsible, and have no choice. And on the other hand, because they are possessed or addicted, when we oppress these people we are simply curing them. Sometimes we have to burn witches in order to cure them but that is for the good of their soul. Sometimes we have to execute drug users but that is for the good of their soul too. The loss of agency means that it is not a human being that we are doing things to: it is the demons that inhabit them or the drugs that contaminate them.

The victim is not responsible for their actions because the drug or the Devil made them do it. At the same time society is not responsible for their repression because they are not doing it to people. They are only doing it to these objects, these demons or these drugs. It is what I would therefore call a metaphysically perfect form of social control. It is metaphysically perfect because it takes an abnormal or unacceptable behaviour and it brands it as evil and invisible. Evil therefore intolerable, invisible therefore indisputable. We can't provide evidence for it because it is by its nature secret, done behind closed doors, not to be proved, mysterious, unaccountable, inexplicable. These are the things that allow the social control, and the repression, to flourish without ever being tested by the standards of empirical proof or evidence that we expect from any other legal regime.

At the same time, witchcraft laws, like drug laws, fail to solve the very problem they identify. I don't think anyone really seriously believes that the *Witchcraft Act* passed, for example, in England in 1542, led to a dramatic decrease in the number of flying witches. I don't think anyone really believes that there was a significant downturn in the number of witches drinking babies' blood at black Sabbaths, as a result of these laws. Perhaps - and we will get in a moment to this idea - these laws are not *there* to lead to a decrease in these activities. Perhaps, deep down, these laws are about the perpetuation of these activities.

One example of this constellation of factors, this anxiety and this displacement, this shift from effect to cause, this refusal of agency or of responsibility on both sides, occurred in the very early drug laws enacted around the turn of the century. The opium laws (and of course I said this at great lengths in my book) were anti-Chinese. They identified Chinese as using specific kinds of opium and that was the kind of drugs that were banned; not, for example, laudanum, the prohibition of which came much later.

But it doesn't really answer the question: why *drug* laws. There were many other ways in which the Chinese were oppressed in Australia at the turn of the century. Poll taxes for

example, where you could only have a certain number of Chinese per tonnage of ship. Chinese had to pay a certain amount just to get into the country which no other immigrants did. Or specific 'white Australia' laws - the *Immigration Act 1901* for example - that constituted a direct attack on the Chinese. So what was it about *opium* that was so important as to require specific legislation? Well the answer is I think that the Opium Laws satisfied a very particular anxiety. At the turn of the century there was a lot of debate about Australian identity. The *Bulletin*, that well known icon of Australian-ness, adopted as its slogan "Australia for the White Man" and of course Chinese immigration threatened that. They particularly threatened it by their sexual relationships with white women, so we get back to that nice little knot of sex and drugs. Sexual contamination was really the fear that underlay this and opium served a very useful purpose here. It wasn't just a *symbol* of or an association with the Chinese. It was something Australians could use to *blame* these sexual relationships with European women.

Here's the *Bulletin*, in 1886, talking about how a girl becomes a Chinese man's 'sex slave':

One of the girls now kept in a den in the rock says I went to his place when I was only sixteen because he gave me presents. He wanted me to smoke opium but I never would because the pipes looked so dirty but one day he put a new pipe before me and made it ready and after the first whiff from it he or any other man -----... I was completely at their mercy but so help me God I was a good girl before that.

Opium was not just associated with the Chinese. It was the active agent in the sexual relations that threatened to consummate those fears, threatened to undermine the racial purity of Australian society. In this respect the drug was a highly convenient scapegoat. It relieved 'good girls' of responsibility. And furthermore it relieved society as a whole from having to look and ask, 'why were there Australian white women engaged in sexual relations with Chinese men?' They might have found they preferred it. They might have found that the Chinese men treated them rather better than Europeans. They might have found that most of these women had come from abusive upbringings and were prostitutes or had been raped or had otherwise been outcast from Australian society and, looking for some place that would actually treat them reasonably well, found shelter - not exploitation - in the Chinese communities of our cities. How much better if we did not have to know that. How much better if we could go on in our ignorance. But to do that we needed an explanation. An explanation of why these awful things happen, why these people are having sex with these so-called 'Chinese Devils,' a phrase which is often used in the literature, and the answer was simple. The opium *made* them do it; it tricked and trapped, seduced and destroyed them.

So the first drug laws arose out of a specific fear and they were not intended to eliminate the fear but to *justify* it. The opium laws were not there to get rid of opium smoking. They were there to provide us with an answer to a problem which we did not want to think too deeply about.

Now the question that I have today is somewhat similar: what is the fear that contemporary drug laws respond to and are needed for, in order to placate us? Can witchcraft laws again provide us with some assistance? In witchcraft laws, too, nobody believed the experts. There were lots of experts in the 15th and 16th Century saying, hang on a minute we don't really have proof of any of this. We don't know that these things are happening. These people say it is happening but they are saying it under torture and it's perhaps not surprising.

The witchcraft laws were enacted largely in the 16th century in response to something new - just like twentieth century drug laws were new. What was new of course was not the practices of witchcraft, was not women flying through the air on broomsticks (Good Lord that's the third one this week; someone really ought to pass a law against that.) What was new was the *fear* and it is the fear that leads to the response of the law and not the activity. The same thing is true with drug laws. Heroin laws, opium laws, did not respond to an increase in drug use; they responded to an increase in the fear of drug use and that's what we have to think about.

Possession is a very important point here too. I have already insisted that possession, like addiction, provides a causal explanation for unacceptable behavior without attributing responsibility. At the same time, possession in drug laws is something tangible. It's an evidential point. The law of possession and all the reverse onus provisions, the easy ways of establishing the crime -- just having a little bit of dust in the bottom of your suitcase counts as possession even if you don't know its there -- are justified precisely because drug use is otherwise (and I quote now from the 2nd reading speech from an amendment to the *Customs Act* in the 1980s) "a kind of secret crime that will be unlikely to produce adequate proof." So possession is taken as the manifest evidence for kinds of criminal behavior that we cannot otherwise discover. What this means is that drug laws are the main 20th century example of a long standing legal tradition called *crimen exceptum*. Interestingly, the previously best known example of *crimen exceptum* in English law were the witchcraft laws which allowed, specifically, for torture as an exceptional method of proof-gathering. The Inquisitors themselves in the 15-16th century were obsessed with physical proof. They extracted detailed information under torture and they insisted that the people that they were thus interrogating gave them details about their flying, about their black masses, about drinking the blood of babies, about blaspheming the sacraments, and particularly, and here we get back to sex again, of having sexual relations with demons. This was the moment at which a witch became a witch. She was tricked into having sexual relations with the Devil and then she was so seduced by the pleasure of it that she wouldn't give it up. The Devil is obviously far better at this than you and I. Physical proof was needed, physical proof of sexual interaction. Sexual interaction provided the inquisitors with incontrovertible proof of physical contact between the demon world and ours, between the other side and this one.

What has made me rethink this whole question and think a little bit more deeply about the idea of witchcraft has been some new research which has come out which has taken very seriously the motives of the witchcraft theorist or the inquisitors themselves. Rather than just looking at them as being villains or misogynists - which no doubt many of them were -- they have seriously asked, why *did* they believe these things? What was going on such that they *genuinely* thought that this was important? Here I am referring particularly to Walter Stephens new book, *Demon Lovers*, which I am drawing on very heavily here.

The 16th Century: the Reformation was fundamentally undermining the structure of belief in the West. Rejecting for example the literal truth of the eucharist, of its actually being Christ's blood and Christ's body, and replacing it with a Protestant symbolic reading. Rejecting the physical presence of God and replacing it with a theoretical, a metaphorical and a textual presence. All this profoundly undermined the structure of belief throughout the West in the 16th century. And at the same time we find an enormous upsurge in empiricism, in the need for proof as a scientific principle. These proto-scientists trusted their eyes and not their faith. Now we know some of the ways in which the extremists within the Catholic Church responded to this enormous challenge. Galileo for example was forced to recant the evidence of his own eyes, though he did say quietly to himself, 'and yet -- the earth does move.'

But that was not the only way the established religion responded to these threats. The witchcraft theorists were proto-scientists themselves. They were doubting Thomases. In the spirit of the age, they *believed* in empiricism, they believed in proof, and they no longer then had the same stable framework that had been upheld by faith alone for hundreds or thousand of years. What they wanted, like doubting Thomas, was empirical proof in order to justify the continued existence and relevance of God. You can see what a big challenge that was. The witchcraft theorists did not *fear* witches. They hoped for, they desperately needed them to sustain and to provide proof to shore up their faith. Yet their anxiety in the face of an increasing skepticism about the truth of something which was invisible, like the presence of God in the eucharist, was a spot that could not be washed away. Ultimately it drove them to seek ever more lurid and specific confessions from their victims. The torture by which witches' confessions to these real events were extracted were acts of the utmost desperation. They manifested the inquisitors frantic desire for evidence. Men like Sprenger or Kramer needed to touch and feel the wounds in Christ's side... even if they had first to put them there themselves.

The results were an exercise in bad faith. Unable to *believe* in God they required proof and that's where faith (trust in your very heart) stops and magic (before your very eyes!) starts. The witchcraft laws were a drama that proved what was at stake in the belief in a real and physical God. It did so by dramatising the existence of its opposite, by showing what it was like if only there was a Devil. That was the first thing. It was a drama that showed what was at stake.

The second thing this is this. Witchcraft offered a much needed argument for the existence of evil in the world. This was an essential problem for theology in the Reformation. It was called theodicy. Where did evil come from if we have a good and benign God? It is still a problem which puzzles theologians. For if the Devil did not really exist and if the demons which some of these people did, under torture or not, claim to have seen and copulated with—if all this was just an hallucination, if this was sheer madness, then might not *angels* also be hallucinations? And if there is no Devil in the world then who exactly are we to hold responsible for evil in the world? God? And if this is not logically possible, might not God be an hallucination too? That was the dangerous problem that the theorists had to confront and they did so by rejecting incorporeal faith and instead trying to make the Devil tangible, physical and real, and thereby providing an argument for the continuing incapacity of God to remove all evil from the world.

So I just want to connect that now to drug laws because I think we exist in a similar state of intense social anxiety in our own society, incredible change and instability that we are again displacing onto supernatural agencies. The age of God perhaps has gone. The age of Man and the age of Reason came in the 18th century, and with it a belief in *humanity's* power to change the world, and to get rid of evil. The age of belief was replaced in the 19th century by the age of science, and by the apotheosis of the culture of proof.

I am going to make a very broad claim here that over the last 100 years the foundation of these beliefs in rationality and science have been undermined from a variety of different sources. Objectivity has come under challenge from all sorts of disciplines and philosophies. Relativism has become more and more the word of the moment. We no longer have so much clarity even in distinguishing truth from fiction. Anyone who has read a recent historical biography will realise how blurred those boundaries have become. The blurring of those boundaries is an extremely anxious moment. Our idea of our identity and our autonomy -

our very selfhood – is also being undermined by what we might call arguments about structures or structuralism. Sociology and psychology suggests the power of nurture to change and to mould us throughout our lives. Genetics, biotechnology, artificial intelligence, each in their own ways, all make us all seem less like secure individuals with choices to make in our own lives, and more like the plaything of forces beyond our control. Similarly our belief in progress and the solubility of social problems has become undermined throughout the twentieth century. We see ourselves, in our theories and our philosophies, as being more vulnerable to change, more unstable and less in control of our own existence and our own destiny than at any time in the last four or five hundred years. We have lost the idea of an autonomous identity. At the same time our political structures, like democracy, our economic structures, like capitalism, and our legal structures, like liberalism, remain entirely committed to an 18th century view of the world. So I am suggesting here that there is a new crisis of belief. A crisis of belief in man and not in God. And drug laws respond to that fear in the same way as witchcraft laws did.

Firstly, drug laws enact a drama that proves our responsibility, our agency, our freedom and our individual identity by dramatising the opposite – by dramatising what it is to lose our choice, what it is to lose our freedom and no longer to have responsibility over our actions. Drug use, as it is popularly understood, shows us what it is like to be possessed and therefore to lose one's identity and one's capacity for agency. We can all be confident, by way of contrast, in our own autonomy. It is this dichotomy between autonomy and possession that is insisted upon by drug legislation. The standard portrayal of a drug addict, stultified, paralyzed, and immured in incapacity, reassures us of their absolute *otherness*. The solidity, and the certainty of our identity is shored up by vivid contrast with theirs. The possessed addict inhabits a world, we are led to believe, in which day and night are clearly marked. We are awake and they are asleep. The fears of twilight and insomnia, to which all the intellectual trends of the past hundred years might lead us, are thereby alleviated.

The second point is that drugs too are a way of providing a much needed explanation for the existence of evil in the world. We have a problem here too. If you have seen recent television, books or movies you will see that the struggles to define the character that can be justly portrayed as 'evil' has become more and more extreme. This too is a result of our growing structuralism and relativism. We can no longer just present foreigners as being evil as we used to. We can no longer present communists as being evil in the world. We can't even present murderers as being evil anymore, because after all they had bad childhoods too. Sociology, psychology, and genetics all undermine our ability to blame people in a way that makes us feel comfortable and confident in our own innocence. So instead we have movie after movie that focuses on increasingly extreme people that we can be confident are not like us. Evil still exists. Serial killers for example. There is now any number of movies and TV programs all about serial killers, a genre as yet unmuddied by any moral complexity. Terrorists and drug traffickers, these are the new evils in the world. It is an important question, for if there really is no such thing as an "axis of evil", if evil is instead on a *continuum* with the rest of us, and if relativism takes away the idea of evil altogether, then evil becomes a product of *our* society, rather than an anomaly. Who then is responsible for its existence? Us?

Well that would be a very dangerous conclusion, which would force us to think about our responsibility for the things that we call evil in the world, and frankly a lot of us would rather not go there. So drug laws, like witchcraft laws, form the same functions of dramatising, of comforting and of creating a division between good and bad. That might even suggest that witchcraft and drug laws are mirror images of each other. The former sought to preserve some sense of supernatural agency or will in a world that was becoming gradually

disenchanted *by* the force of human reason. The latter seeks to preserve some sense of human agency or will in a world becoming gradually disenchanted *with* the force of human reason.

I am not at all saying that heroin is harmless or that there are no drug problems. Nevertheless, the law as we know has made these problems worse from the point of view of every conceivable indicator. The question then is what do these laws accomplish *regardless* of their efficacy, regardless of what good or harm they do. They are a legal structure, like witchcraft, that presents a passion play of identity. They are a story for our benefit. They have symbolic and not functional meaning. The Inquisition did not want to outlaw the Devil: it needed to prove the continuing existence of the Devil. So too drug laws are not meant to outlaw drugs: their continuing existence and threat must be constantly reinforced.

This makes sense of a number of aspects of current drug policy that I think would otherwise remain opaque. There is a connection between the anti-Chinese laws that responded to an anxiety about racial identity, the anti-communist heroin laws of the 1950s that responded to an anxiety about political identity, and the contemporary drug laws that respond to an anxiety about our identity and our agency, full stop. These are the anxieties that we have seen constantly displaced and circulated throughout the last 100 years.

Such an argument also makes sense of perhaps the most bizarre elements of the current drug laws: the ritual police display of drug seizures. Nothing could be more pointless, nothing could be more futile, than the parade of a boatload of cannabis or a few kilograms of heroin secreted in condoms. But what if the point of these displays was not to destroy but to heighten our anxiety? The televised police drug haul, though utterly pointless in terms of actual enforcement, offers us continuing physical proof of the existence of this fear, and of its continuing evil power in the world. When law sets out to prohibit witchcraft or drugs it is not attempting to stamp anything out but *only* to make it more public, more theatrical, more dramatic.

Well as a therapist I would have to say times up, wake up, hop off the couch, and I will see you next week at the same time. But before you go I would like, as a therapist, to ask the law to think about its irrational behaviour and to reflect on the costs of keeping open this long-running theatre of the absurd. The therapist asks: do you want to keep playing out this drama in a way which is guaranteed to be, indeed *meant* to be, never ending? Or do you want to address the anxiety, rather than to perform it over and over and over again? The doctor notes: the name we give to such a compulsive and unstoppable pattern of self-destructive behavior, is addiction. So who is addicted? – the drug user or the drug legislator?

And the lawyer concludes: there are significant costs in terms of lives and in terms of legal legitimacy, if we reduce law to a symbolic piece of mummery. In the middle ages thousands of women were burned in order to save them from the demons which had possessed them. The lucky ones were only exorcised. In the modern world thousands of men and women have been incarcerated and indeed executed in order to save them from the demons and desires that inhabit them. The lucky ones are only detoxified. At the same time, the law uses this drama to articulate and to quarantine an underlying fear that goes to the heart of the question of identity. In terms of psycho-analysis no less than through the lens of a medical or a legal one, the crime of possession is still nothing but the fear of being possessed.