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OPINION

Clarity and the Criminal Law

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In 1873, Baron Martin stated that ‘The criminal law ought to be reasonable and intelligible’ (*R v Middleton* (1873) LR 2 Crown Ca Res 57). That proposition is just as potent today as when it was made. As the branch of law incorporating the ultimate powers of control which the State exercises over citizens, criminal law should be consonant with common sense and be perfectly clear to the public. It is difficult to argue that current law on drugs is clear, coherent and understood by the public.

News reports indicate that many teenagers seem to be confused about the precise legal status of cannabis, and some adults have been reported as using of the drug in medical contexts. A defendant was recently shown leniency after explaining that the cannabis he had been caught growing was for him to use to soothe a chronic genital itch. Gregor Spalding, 30, admitted cultivating the drug at his home in Blairgowrie, Scotland. In a letter to Perth Sheriff Court, his doctor said: ‘He has penile pain associated with pruritus. The diagnosis is penodynia and scrotodynia. I can confirm he has had a chronic pain problem since 2004. It is quite reasonable he thought cannabis might help his condition as there have been reports in the press of cannabis relieving pain in multiple sclerosis and other conditions’. Sentence was deferred for six months for him to be of good behaviour. He was told that if he kept within the law for the duration he would be treated leniently. (*Daily Record*, 11 August 2007)

Earlier this year, as part of a review of the entire UK drugs strategy, the Prime Minister asked the Advisory Council on the Misuse of Drugs (ACMD) to reconsider the decision in 2004 to downgrade cannabis from a Class B to a Class C drug. This reconsideration is in the light of evidence that some current strains of cannabis can cause mental illness in some users. It is to be hoped that any new drug classification scheme recommended in the review’s report will bring the type of consistency and clarity needed in any code in order for it to command respect and social support.

This is not a call for any drug to be classified more seriously or less seriously than it is today, but it is the expression of hope that whatever decision is made will be posited on clear scientific evidence, and presented in a way that is convincing to the general public. The rationale of any new drugs taxonomy will need to be clearly articulated. Historically, such desiderata were not entirely met at earlier stages of the criminalisation of drugs in the UK and other jurisdictions.

* The views expressed in this article are those of the author and do not necessarily reflect the views of the Open University or *The Journal of Criminal Law*.

The Hague Convention of 1912 aimed to stop organised crime from getting into the business of drugs distribution. The use of drugs, though, was commonly seen only as a weakness or vice but not as criminal. In America, legislation in 1914 put a nominal tax on the supply of opium through pharmacies (one cent per ounce) but the aim of the law was simply to get drug distribution formally recorded and registered. It did not make consumption illegal.

In Britain, the Dangerous Drugs Act 1932 said that 'any extract or tincture of Indian hemp' was a substance whose manufacture, import and export was prohibited unless licensed.

The first major and dedicated legislation on cannabis (under the description of marijuana—the Mexican colloquial name for the substance) came in America in 1937. It only became federal law, though, after the legislature credulously accepted evidence such as the virulently racist contributions of Harry J. Anslinger, the head of the Federal Bureau of Narcotics. Mr Anslinger contended that most crime was being committed by 'coloureds' with big lips, luring white women with 'voodoo-Satanic' music (jazz) and marijuana.

The legislation was promoted by the Bureau of Narcotics, which was keen to expand its areas of operation. The law was passed without substantial debate. During the Congressional hearings in April and May 1937 (in a committee of the legislature), the representative of the American Medical Association, Dr William C. Woodward, challenged the Bureau's contentions that marijuana was harmful to health and in widespread use among children, and asked for the evidence behind such claims but he was given no answers.

Legally regulating conduct in this field is fraught with challenges. Our society is composed of people from many diverse cultures. For Muslims and members of the Temperance Society intoxicating substances are categorically objectionable, whereas, according to empirical research, there are hundreds of thousands of people from other backgrounds who consume illegal drugs like ecstasy every weekend. In a case in 1969, Lord Reid noted that drugs were consumed more widely than just within the 'beatnik fraternity' or by those 'of unusual appearance' (*Sweet v Parsley* [1969] 1 All ER 347 at 351). In 2005, one report cited in Parliament suggested that four million Britons had taken illegal drugs during the previous year. What, if any, will be the long-term effects of such social conduct is unknown.

According to one perspective, there is an inconsistency in the law's treatment of harmful drugs. During the last 10 years, one substance has been responsible for over 300,000 deaths and 4,000 homicides have been committed by people under its influence. It has fuelled thousands of wife-beating assaults, mayhem outside clubs, and 33 per cent of incidents of violent cruelty to children. Dealers in the substance last year made over £25 billion. That substance, of course, is alcohol and its production, possession and consumption are, in general, perfectly legal.

The way that the law divides legal and illegal substances is not based exclusively on pharmacological knowledge. Caffeine-high soft drinks

are heavily marketed at young consumers, and caffeine has been clinically recognised as a drug more addictive than morphine. Difficulties also exist with tranquilising drugs. One study puts the number of people in the UK today who are dependent on valium at 625,000. There are obvious dangers in regarding as iniquitous whatever is on the list of illegal substances at any given time (currently over 160 items), while being complacent about legal substances.

Moreover, ideas change across time. In the 17th century, coffee houses were seen as dens of iniquity whereas now they are where people go to escape dens of iniquity. For some time during the last century, the drug amphetamine sulphate was not seen as a degenerate or dangerous thing. It was taken as a pep by all sorts of people including military men, film stars, and housewives. Then policy changed and it became a controlled drug in 1964.

Much has changed socially, politically, and in the science and business of drug manufacture since the last major piece of drugs legislation was passed in 1971. A wide range of political views now exists in respect of drugs policy, from the opinion that the answer lies in a complete decriminalisation of all drugs, to the opinion that the answer lies in a zero-tolerance approach. The problems posed to legal policy makers are aggravated by the changing designs of some drugs, the international issues of the funding of organised crime, and transnational policing. This quagmire of issues is further complicated by an evidently enormous phenomenon of secondary, drug-related offending: theft by drug addicts, and money laundering by organised crime. The more thoroughly all such issues are digested in the current governmental review, the better will be the resultant law.