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Law, Liquor and Love

Introduction

This article discusses attempts at alcohol law reform in New Zealand between 2008 and 2017. First, it describes a major review of alcohol by the New Zealand Law Commission, headed by Sir Geoffrey Palmer, who had overseen liberalisation of alcohol regulation 25 years earlier. The main recommendations of the commission's final report featured progressive reform of the alcohol laws regulating marketing, price, accessibility and age of purchase. Second, it outlines the response to the commission's report by the National-led government, including an Alcohol Reform Bill that ignored the key recommendations of the commission. This 'non-reform' bill was the outcome of a political process of obfuscation, delay and inaction led by then prime minister,

John Key. Third, the article describes the factors that have contributed to the lack of effective alcohol law reform, despite the review and high public support for change over the past decade. We conclude that 'the love of money' is at the heart of the barriers to change. Finally, we propose three main policies that would make a significant difference to reducing alcohol-related harm in New Zealand and suggest how these could be advanced.

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Background

Ethyl alcohol is not unlike water: it is a ubiquitous and colourless natural substance. However, unlike water, which is inert, alcohol has a compelling psychoactive effect on the majority of users and has been regularly consumed by humans for over 10,000 years for this effect. Alcohol is a drug, which when consumed heavily and frequently brings about changes in the brain that can lead to a habitual compulsion, referred to as addiction. Addiction to alcohol affects about 5% of people in New Zealand. However, the harms of alcohol are considerably more extensive across the population than addiction alone because the majority of the harms occur in people who are not addicted to alcohol. High quality research has revealed that at least 25% of drinkers in New Zealand are heavy drinkers, in that they score above the threshold for hazardous drinking on the World Health Organisation screening tool, the Alcohol Use Disorders Identification Test (AUDIT) (Wells, Baxter and Schaaf, 2006). This translates into a national muster of at least 700,000 heavy drinkers. The more alcohol consumed, the greater the risk of harms, which fall into two main domains. Acute harms relate to the consequences of intoxication, such as alcohol poisoning, injuries and violence, often involving harm to others. Chronic harms relate mainly to chronic diseases such as liver cirrhosis and various cancers. The cost of alcohol consumption in New Zealand has been estimated to be in the billions of dollars (\$4.4 billion per year) (Slack et al., 2009).

While alcohol is associated with considerable harm in New Zealand, it is a legal and highly commercialised product, which many citizens enjoy access to. Governments have been concerned from early in New Zealand's colonial history to strike a balance between providing this access, meeting the desire of the alcohol industry to make profit out of their alcohol businesses, and minimising the burden of harm from alcohol across the population. This article focuses on recent history and begins in the early 1980s.

Two contrasting liquor reviews

In 1984 the fourth Labour government came to power in a landslide victory, and quickly began enacting a set of economic

reforms, which have become known as neo-liberalism. Central to this new thinking, championed by Roger Douglas, Labour minister of finance at the time, was the idea that decreasing regulation in the economy would allow the free market to be more efficient and deliver the best solutions for society.

A review of the liquor laws was established by the new government, headed by Sir George Laking. A crucial decision of the review group was to ignore the established association between increased availability of alcohol and alcohol-related harm and argue for the liberalisation of the supply and sale of alcohol. New legislation, the Sale of Alcohol Act 1989, subsequently reflected this new deregulation philosophy,

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the most noticeable evidence of this being the presence of wine in supermarkets. The rationale was that by making alcohol more available and part of everyday life, New Zealand would become a sophisticated drinking nation like France, where a strong normalisation of alcohol was seen to exist. This thinking conveniently ignored the fact that France was among the countries with the highest rates of cirrhosis in the world at the time (Mokdad et al., 2014), and had a very different underlying pattern of drinking.

The outcome of this liberalisation experiment was not the advent of a sophisticated drinking nation, although the proportion of wine consumed by the population began to rise, as the domestic wine industry expanded. A further wave of liberalisation was ushered in by the National-led government in 1999, involving liquor sales in grocery stores in addition to supermarkets, adding beer to wine for these sales, and lowering the overall purchase age of alcohol from 20 to 18 years.

Over the next ten years the rate of consumption per head of population increased by about 10%, in contrast to it having been previously steadily falling from a peak in 1978 (New Zealand Law Commission, 2009b). New liquor outlets began to appear, which were particularly evident in poorer communities, and there was a growing sense of unease among the public as various harms, including violent assaults, were increasingly being publicised by the media.

A violent armed robbery resulted in the death of a liquor outlet owner in June 2008. Subsequent public protest triggered the Labour-led coalition government of the time to announce a comprehensive review of the liquor laws, a generation after

the Laking report. Geoffrey Palmer was appointed the head of this Law Commission review and Lecretia Seales was a key member of the review team. An issues paper outlined the review team's intention: 'The Law Commission project to review the law on the sale and supply of liquor aims to examine the whole scene from top-to-toe for the first time since Sir George Laking and his committee reported in 1986' (ibid., p.iii).

One of the team's first undertakings was questioning the value of the 'conscience vote' on liquor law in Parliament (New Zealand Law Commission, 2009a). The review team argued that the conscience vote can produce statutes that 'lack coherence and structural logic'. Public submissions were then invited on the extensive issues paper, and a record number (2,939) were received by October 2009. These were analysed and considered, along with substantial other information and evidence obtained by the review team, which, remarkably, submitted its monumental final report, *Alcohol in Our*

Lives: curbing the harm (New Zealand Law Commission, 2010), to the minister of justice, Simon Power, in April 2010.

The report emphasised the need for a 'suite of measures' to produce 'an integrated package, the various elements of which are mutually reinforcing'. Although drink-driving measures were not included in the initial terms of reference and not specifically referred to for public comment following the dissemination of the issues paper, the Law Commission nevertheless received over 1,240 transport-related submissions. The final report commented that the review team agreed with the majority of submitters that the blood alcohol limits for driving must come down.

plus: increase treatment opportunities for heavy drinkers. (Sellman, 2010)

The final report of the Law Commission strongly reflected the 5+ Solution, as seen in the main recommendations:

- increasing the price of alcohol through excise tax increases in order to reduce consumption;
- regulating promotions that encourage increased consumption or purchase of alcohol;
- moving, over time, to regulate alcohol advertising and sponsorship;
- increasing the purchase age of alcohol; and
- cutting back the hours licensed premises are open.

Law Commission report but conveniently ignoring the substantial ones that would be reformative; including the possibility of a raising of the purchase age in the Alcohol Reform Bill to deflect attention away from the lack of marketing and pricing reforms;

- establishing a very liberal default for on- and off-licence alcohol sales (7am–4am), while putting the responsibility for establishing more restricted hours onto local government, thereby setting up drawn-out, expensive processes involving communities, local councils and the alcohol industry;
- breaking an undertaking to introduce new legislation within six months by delaying by over a year and a half;
- timing public submissions on the new bill to coincide with the Christmas/ New Year holiday period;
- naming the new legislation the Alcohol Reform Bill while including only one potential reform in it: an untested change to the minimum legal age of purchase;
- introducing more delays by timing the second reading of the bill for the month before the general election in November 2011 and therefore leaving no time for it to be debated;
- withholding publication of the results of a Health Sponsorship Council survey showing that the majority of the public wanted strong reforms around alcohol;
- introducing further delays before the bill was finally debated and passed in August 2012;
- using the conscience vote and an unusual two-step voting strategy to see off the raising of the age of purchase of alcohol;
- using parliamentary processes to sweep away 22 supplementary order papers on the bill;
- falsely claiming the bill was a great success when the truth was that this so-called reform bill contained no reforms, the minister resorting to the well-known alcohol industry mantra of striking a balance reducing harm and not penalising responsible drinkers;

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At the beginning of 2009 a new medically-led alcohol law reform group, Alcohol Action NZ, was formed and began advocating for scientifically-based alcohol law reform. Its first aim was to provide scientific information to Sir Geoffrey's review team and encourage colleagues and interested members of the general public to put in submissions to the Law Commission's review.

A key publication available at the time was the World Health Organisation-sponsored *Alcohol: no ordinary commodity* (Babor et al., 2003). Alcohol Action NZ formulated an easy-to-remember summary of the most effective measures for reducing population-based alcohol harm from this publication, called the '5+ Solution', as follows:

1. raise alcohol prices;
2. raise the purchase age;
3. reduce alcohol accessibility;
4. reduce alcohol advertising and sponsorship;
5. increase drink-driving countermeasures;

Alcohol law reform, New Zealand style

The approach adopted by the National-led government to deal with the reforming spirit of the Law Commission's final report, and in particular the main recommendations listed above, was a model of political obfuscation, delay and inaction. The process has been described in detail in a paper titled 'Alcohol reform – New Zealand style' (Sellman et al., 2017). The main features of the process were as follows:

- setting the bar of expectations low at the outset by agreeing that New Zealand was in the mood for change but not a 'major overhaul';
- using the well-known industry assertion that major reform would be unfair to 'responsible drinkers';
- declaring early on that the government had no intention of raising alcohol taxes, and thus dismissing the single most effective and easily enacted measure advocated for in the Law Commission report;
- announcing that it would adopt 126 of the 153 recommendations in the

- continuing to use further alcohol industry neo-liberal mantra about the importance of individuals changing their heavy drinking behaviour, when the evidence had become even clearer by then (Babor et al., 2010) that stronger regulation of marketing, pricing and accessibility is required to change the heavy drinking culture.

To recap:

- New Zealand has an alcohol crisis, a normalised heavy drinking culture causing enormous damage to individuals, families and communities, and generally not recognised as a crisis;
- there is very good scientific evidence on how a society can reduce its alcohol-related problems, which amounts to alcohol law reforms in the areas of marketing, pricing, accessibility, age of purchase and drink-driving, in addition to providing more treatment opportunities for heavy drinkers;
- the Law Commission's outstanding review of the liquor laws provided detailed recommendations related to the five key areas of reform;
- a majority of the New Zealand public support these reforms;
- the National-led government ignored the science, the Law Commission and public opinion, and instead delivered an alcohol non-reform bill, which will maintain the heavy drinking culture.

The obvious question is, why did it do this?

What is driving the government's opposition to real alcohol law reform in New Zealand?

The reasons must be compelling if a government would be prepared to ignore scientific evidence, public opinion and the recommendations of a prestigious organisation such as the New Zealand Law Commission, and engage instead in a campaign of obfuscation and inaction. The driving force behind this may be found by examining the motivations of each of the three key actors: the government, the public and the alcohol industry.

The government

It can be assumed that people aspire to become members of Parliament because they want to influence society in the direction of their personal objectives and values. Being in government, rather than opposition, is by far the most effective way of achieving this. No politician craves being in opposition. As former MP Jim Anderton once said to an Alliance Party conference: 'One bad day in government is worth a thousand good days in opposition' (Eyley and Salmon, 2015, p.155).

MPs are no different from the people they represent in being prone to human

appears to have been inspired by alcohol's psychoactive effects:

Let's drink! Why are we waiting for the lamps? Only an inch of daylight left. Lift down the large cups, my friends, the painted ones; for wine was given to men by the son of Semele and Zeus to help them forget their troubles.

As the dose of alcohol increases, so do the harms, clumsiness, poor judgement and aggressiveness giving way to loss of consciousness and even death during one-

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vanity and grandiosity, and susceptible to flattery and subtle threats, which can add up to them being vulnerable to lobbying by private vested interests such as the alcohol industry. This lobbying can make them at least more timid about advancing progressive policies in the public interest, if not actively reinforce the status quo that favours those vested interests.

The public

Alcohol is a well-known, highly intoxicating recreational drug which induces a range of pleasant effects in the majority of users, depending on the dose and setting. A common pattern is an initial decrease in anxiety, along with an increasing sense of euphoria, disinhibition and a feeling of energy. As drinking progresses a feeling of numbness, dissociation and warmth ensues. Alcohol induces pleasure, while concurrently dissolving life's worries, troubles and pain. These positive effects have been noted for millennia, and even given divine status. Alcaeus of Mytilene, a lyric poet from the Greek island of Lesbos in the 6th century BC, regarded alcohol as a gift from the gods, and his poetry

off drinking sessions, while ongoing heavy weekly dosing is associated with a plethora of chronic diseases, including cancer. Further, when consumers engage in a pattern of frequent heavy drinking, changes in the brain occur which take habitual behaviour to another level. The person begins to crave alcohol even when they know drinking is going to result in problems: they become compulsive users of alcohol, the central feature of addiction (Sellman, 2010). The hedonic motivation that drives people to consume alcohol can develop into a craving that overrides rationality and results in ongoing use despite the harm.

The alcohol industry

The alcohol industry loves alcohol not for its psychoactive effect but for its financial effect. Alcohol is an excellent product for making money and yields for the alcohol industry enormous profits. Exactly how much profit is derived is unavailable for public scrutiny. However, the enormity of alcohol industry profit can be appreciated by considering that the industry pays around \$1 billion to the government annually as excise tax (Acohol Healthwatch, 2010).

The alcohol industry works hard to appear pro-social but it has been known for decades that this friendly public persona is a front for the serious business activity of making money out of a potentially dangerous substance. An influential editorial written 25 years ago (Wallack, 1992) warned that ‘the alcohol industry is not your friend’, and outlined four key tactics the industry utilises to maintain its influence and its respectable image and distance itself from the harm that alcohol creates in the societies the industry colonises. First, it markets alcohol as part of the ‘good life’, especially to young people, associating its use with a range of

With this enormous power, these corporations are able to scale up their influence on governments and public opinion. They use marketing strategies that utilise the best science informing human choice, decision making and consumer behaviour, but they also position themselves positively within society through ostentatious philanthropic giving and so-called ‘social responsibility’ activities. Corporate social responsibility includes such things as alcohol information websites and social marketing of ineffective harm-reduction campaigns, partnerships with government related to drink-driving, and funding scientific research. However,

the alcohol industry is a relentless pursuit of private profit.

The way forward

The key issue is how to regulate the alcohol marketplace in a way that will reduce harm to the population from alcohol. The industries that profit from maintaining and increasing alcohol consumption will not change their behaviour for the good of the population’s health and welfare, but this is a central aim of good governance and so it is the government’s business. And only the government is big enough to enact policy that could be effective. Controls on the tobacco industry, such as reforms of tobacco marketing, pricing and accessibility for the sake of the health of New Zealanders, provide an effective model from which to learn. However, the situation is rather more complex and there is no equivalent of ‘smoke free’, the rallying call for tobacco. ‘Drunk free’ might be more apt for alcohol, where reductions in heavy drinking and the acceptability of occasional drunkenness would lead to reductions in harm. However, although the overall goal is not complete public abstinence from alcohol, considerable harm is also caused by chronic drinking in a ‘low risk’ manner, and so non-drinking needs to become a socially acceptable option.

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human needs: having fun, having sex, being accepted and being independent. Second, it attempts to downplay the extent of heavy drinking by linking alcohol problems with an ‘irresponsible’ minority of losers who ‘can’t handle’ alcohol or have a genetic predisposition to experiencing alcohol-related problems. Third, it works strategically to be seen as part of the solution rather than central to the problem. The industry distances itself from being responsible for its harmful product by advocating personal responsibility for users and saying that it is simply helping people fulfil lifestyle choices. Finally, the industry attacks people who throw light on its questionable commercial activities by trying to marginalise them, portraying them as ‘neo-prohibitionists’ or in other denigrating terms.

In more recent years the alcohol industry has become a global phenomenon, with alcohol corporations possessing a combined wealth that is greater than the gross national product of many non-industrialised nations (Babor et al., 2010).

these activities do not comprise a social service focused on public health, but rather provide cover for maintaining a heavy drinking culture that yields enormous profits for private shareholders.

All of the major religions and life-guiding philosophies identify greed as one of the great vices of humanity. In the Christian tradition, ‘the love of money is the root of all evil’ (Timothy 6:10) is a popular way of expressing this human weakness exemplified by the insatiable quest for more private profit in spite of obvious harms borne by consumers and others, the costs of which are met by the public purse.

In conclusion, then, the answer to the question of why the National-led government was so limp in its response to the robust report of the Law Commission, the major recommendations of which have been shown to be supported by a majority of the public, must involve the alcohol industry and its successful lobbying of the government behind closed doors. Driving

The scientific evidence is clear: a substantial reduction in alcohol-related harm could be brought about through three main strategies – dismantling marketing, increasing pricing and decreasing accessibility (Babor et al., 2010); i.e. by direct intervention in the alcohol ‘free market’. The Law Commission provided a blueprint for dismantling marketing over a five-year period (New Zealand Law Commission, 2010). Further, it recommended both excise tax increases and consideration of minimum pricing as a combined approach to increasing the price of alcohol. Along with these marketing and pricing reforms, making alcohol less accessible goes against a liberal business mantra of ‘more is better’, but is necessary to reduce harm. The government has the power to set more stringent default hours for purchasing alcohol, such as those for wine and spirits in Finland – 9am–8pm Monday–Friday, 9am–6pm Saturday – rather than continuing with the expensive,

time-consuming battle between local government and the alcohol industry, as was set up by the previous National-led government's local alcohol policy innovation.

A distinct change has been signalled by the new Labour-led coalition government, a broadening of its focus from a narrow neo-liberal economic agenda to explicitly measuring and improving the well-being of all citizens. While improving the lives of people can be challenging to achieve politically, dealing to New Zealand's

'pathological relationship' with alcohol is an obvious area for a progressive government to work on because of the well-established damage that alcohol inflicts at a personal and social level (Connor, forthcoming). Drawing from the experience of tobacco, real change will probably require alcohol reform to become a special interest for the government, in the same way as tobacco reform became important to the fourth Labour government when Helen Clark was minister of health and introduced smoke-

free legislation. The Smoke-free Environments Act 1990 initiated observable improvements in the health of New Zealanders over the subsequent decades. A true alcohol reform bill, which includes reforms of marketing, pricing and accessibility, in contrast to the fake Alcohol Reform Bill introduced by the previous government in 2010, would significantly improve the health and well-being of New Zealanders in the years to come, as well as raise the quality of social life in this country.

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EVENTS

School of Government
Te Kura Kawanatanga

Title	Speaker	Date
<i>Pre-screening of Jeremy Rifkin's documentary 'The Third Industrial Revolution'</i>	Hosted by Resource Management Law Association, Sustainable Business Network, Generation Zero, & IGPS	Tuesday 13th February 5:30pm screening; refreshments after. Rutherford House lecture theatre 2, 23 Lambton Quay, Wellington– RSVP: Check IGPS website for details
<i>Book launch: 'Social Investment: A New Zealand Policy Experiment'</i>	Hon Carmel Sepuloni In association with Bridget Williams Books	Thursday 15th February 5:15pm VicBooks, Rutherford House, 23 Lambton Quay RSVP: igps@vuw.ac.nz

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