

## **Producing the market for alcohol: the Victorian example**

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### **Abstract**

This paper explores the way that the state of Victoria in the late 20<sup>th</sup> century, in common with other advanced liberal regimes, produced the space for a free market in alcohol to use Nikolas Rose's term. This was in a country which had traditionally regulated alcohol production, distribution and retail sales for the health and welfare of the society as a whole.

From the mid 1960s a series of Royal Commissions and inquiries recommended the progressive dismantling of regulations related to the availability of alcohol in the state. This culminated in the 1985 Nieuwenhuysen Inquiry into alcohol regulation which was given the specific mandate to produce the conditions for what has been termed the Night Time Economy. This paper will trace some of the historical, cultural and economic changes which have happened and how these changes can be understood as an example of providing the space for a market in alcohol.

### **Introduction: Producing the Night Time Economy**

Around the world cities have been transforming themselves from dormant and remnant leftovers of the 19<sup>th</sup> century industrial revolution to the invigorated post-industrial cities of the 21<sup>st</sup> century<sup>1</sup>. In Britain, cities like Manchester, in the US Baltimore, and in Australia Melbourne, Geelong and Newcastle, have been reborn by what is termed the Night Time Economy (NTE) [Hobbs et al, 2003; Hadfield, 2006]. The NTE came about as a result of the state combining with private industry to create an area where (mostly young) people can drink, gamble and dance most of the day and night. With the NTE there has been a retreat by the state from a close regulation of the sale and distribution of alcohol, and city centres have been turned over to private security coupled with extensive CCTV and other electronic surveillance. Hadfield (2006, p. 45) outlines how it was planned that the NTE would become the 'driver of this civic renewal, streets brought to life by large numbers of visitors, or – more accurately- *consumers*'. The consumer is central to this, and this emphasis on

the consumer undermines all efforts at public health and welfare attempts to come to grips with substances like alcohol and their detrimental effects, since within the neo-liberal free-market society, all citizens are by definition consumers, 'obliged to be free' as Rose (1999: 100) notes, and forced to make individual choices, unburdened by state rules and regulations. In the NTE risk is individualised, presented as a series of mathematical calculations within limited parameters. These are decisions in which individuals must weigh up the (known) benefits and risks of any particular behaviour. Individuals are considered rational, mature and able enough to carry through the education they have been given. Added to this individual interest, is the interest of business, and the NTE produces strong pressures in favour of business over the 'rational' citizen who may disagree with the conditions produced, or indeed the 'irrational' consumer and their health and welfare (Hobbs et al. 2003).

So-called 'binge-drinking' among young people has been the focus of public debates in the recent past, and politicians, industry spokespersons and academics have all become involved. Excessive drinking by young people has been a fear among middle-class people in Europe since at least the 18<sup>th</sup> century (Roberts 2004), but it has been a particular focus of the early 21<sup>st</sup> century. Much academic work has charted the 'moral panics' around young people since the 1950s (Cohen 2002), but the late 20<sup>th</sup> century saw the fear of young people and alcohol recede in the face of the terror of illicit drugs (Zajdow 2008). However, with the growth of the NTE in cities around the English-speaking world, and the determination of advanced liberal states to lower alcohol taxes and allow twenty-four hour alcohol consumption, the fear of young people and their consumption of alcohol has rebounded. This can be seen in media coverage of the violence and mayhem in some parts of cities like Melbourne and Newcastle (Rood 2007; Houston 2008; Moore 2008).

The NTE exists as part of the alcohol marketplace which has seen the global price of alcohol drop substantially, greater availability of on- and off-licensed premises and the treatment of alcohol as just another commodity, to be scrutinised perhaps a little, but not much more, than most other consumer goods. In Australia this has happened through the enforcement of the National Competition Policy (NCP) and the deregulation of many licensing provisions by state governments. This paper looks at one part of this process through the 1985 Victorian licensing inquiry by Nieuwenhuysen, as well as some of the others like the NCP.

### **The Nieuwenhuysen Report, 1985**

The Nieuwenhuysen report on liquor licensing in Victoria in 1985, which led to a dramatic change in the liquor licensing regime in 1986 had some very specific outcomes to pursue. The terms of review were

‘To Inquire into, review and report’ on the 1968 act.

(a) have particular regard to:

- (i) The interests of liquor consumers;
- (ii) The interests of both existing and potential employers and employees in the liquor and hospitality industries;
- (iii) Community attitudes towards the degree of restriction which should be placed upon the sale, distribution and consumption of liquor; and
- (iv) The significance of the hospitality and liquor industries in the development of the tourism industries in Victoria (Nieuwenhuysen, Vol. 1, p. xxv)

While Nieuwenhuysen did not set the terms and the language they were couched in (these were obviously set by the government of the day), the language itself has already taken on an economic dialect. The use of the term ‘consumers’, the setting out of the interests of employers and employees, and the importance of the tourism industry all point to the neoliberal bent of the state government at the time (even a Labor one, as it was). In the advanced liberal regime, the citizen becomes the consumer, and the role of the state is to get out of the way, as much as possible, of the

market and the consumer. Rose argues that the state, under conditions of advanced liberalism, does not just aid the existing market to operate as freely as possible, it functions to organize 'all features of one's national policy to enable a market to exist, and to provide what it needs to function' (Rose 1999: 141). Advanced liberalism forces government to revise the 'image of economic space and the means by which it can be acted upon' (Rose 1999: 144). The report and its consequences illustrates how this was done in Victoria.

What the report sought to do was to provide the conditions to produce NTE, that is, to produce the licensing conditions which would allow the creation of 'entertainment precincts' that would draw in people from outside the areas for drinking and gambling. Nieuwenhuysen was directed to produce the regulatory situation that would enhance the NTE in Victorian cities. What he was not asked to do was to inquire too deeply into the social and health consequences of differing alcohol licensing regimes, nor to consider non-economic knowledge in making his final recommendations. Nieuwenhuysen did not do any independent research into the known social and health consequences of alcohol, instead relying on what Davies, in particular had found. By specifying his goals in this way, the report shines light on the way that advanced liberal societies now consider the differing social and economic goals of a society to be oppositional or antagonistic (Rose 1999). It also illustrates the way that 'evidence' is contested and social policy is subverted by reference to the primacy of the economy and the various stakeholders.

It is worth looking at the two previous reports and their principal terms of reference.

The 1965 Phillips Royal Commission was required to:

inquire into, report upon, and make recommendations...with respect to the sale, supply, disposal or consumption of liquor, and in particular...the following matters, namely:-

1-social consequences-

- (a) To what extent is the consumption of liquor a significant factor in causing
- (i) accidents (both road and industrial);
  - (ii) crime;
  - (iii) divorce and broken homes;
  - (iv) child delinquency and neglect
  - (v) ill health
- (b) What is the incidence of alcoholism (habitual excessive consumption of liquor) in Victoria and what relationship, if any, exists between alcoholism and the sale, supply, disposal, or consumption of liquor? (Phillips, Report of the Royal Commission, 1964-5, p. 3)

The Royal Commission was then required to look at aspects of the hours and conditions, accommodation, economics, permits, entertainment on Licensed Premises, special areas, and administration of the Licensing Act.

In 1977, a review of the Liquor Control Act, 1968 by the QC J. D. Davies was asked to report upon and make recommendations with regard to the Act. The main terms were:

1. the present day interests, requirements and needs of the public generally in respect of the sale, supply, disposal and consumption of liquor;
2. the present day interests of those sections of the community engaged in the sale, supply and disposal of liquor; and
3. the experience of all concerned parties in the control of the sale, supply, disposal and consumption of liquor in accordance with the objectives and provisions of the *Liquor Control Act* 1968 (Davies, 1977, p. 1).

The primary aims of the various inquiries was transformed from a principal interest in the social consequences of the supply and disposal of alcohol, to the interests of the public generally in this, to the interest of *consumers* and then the employers and employees in the industry. By the time of Nieuwenhuysen in 1985, economic requirements and the requirements of the market were becoming increasingly important, and he needed to produce the space for the market in alcohol, rather than principally inquire into the social problems related to alcohol and how best to deal with them.

Nieuwenhuysen stated a number of times through the report that the licensing system in Victoria was too complex to administer and produced financial burdens on the industry, thus undermining profitability. The future of the industry, according to Nieuwenhuysen was to create a 'European-style' drinking culture, far from the spectre of prohibition. That prohibition had never existed in Victoria was not relevant to his narrative. However, the report must be seen in a historical view.

Since WW1 and until 1965, on-premises drinking was dominated by the hotels and what was termed the 6 o'clock swill. All hotels were compelled to shut by 6pm, and this produced particular problems with drunkenness as can be imagined. In 1965, a Royal Commission led by Justice Phillips recommended the relaxation of closing times to 10pm, although there was no wholesale movement away from hotels as the prime sites of public drinking. Off license premises were also limited in their hours of business. The review of the 1968 legislation by Davies (1977) basically endorsed the direction taken by Phillips with some marginal changes in licensing regulation. An interesting result of Phillips was the growth of what were termed BYO restaurants, that is, restaurants that were not allowed to sell alcohol, but which allowed patrons to bring their own bottles of wine to be consumed with dinner. Hotels were still required to provide accommodation and bottle shops attached to hotels were the main providers of take-away alcohol sales. There was also a limit placed on individual off-license holders of 8% of the market, that is, no individual license holder could own more than 8% of the market.

By 1985, the Victoria state government directed the economist John Nieuwenhuysen to inquire into the licensing system with the view to opening up the market in any way possible and produce the conditions for the NTE. He did this most effectively, directing the state to 'govern at a distance', giving control of liquor licenses to a

licensing commissioner based in government department<sup>2</sup>, rather than have a statutory independent position, and slashing the number of license types from over twenty to eleven (even though he would have liked even fewer license types). The number of on license premises grew from 4,000 in 1985, to over 19,000 in 2008 (Houston, Johnson and Austin 2008). Valverde points out that governing at a distance via licensing rather than direct government control 'is an assumption so thoroughly naturalized in contemporary common-law regulatory practice as to be completely invisible' (Valverde 2003: 237). This is apparent in the unstated assumptions in all the reports, but particularly Nieuwenhuysen.

Nieuwenhuysen was at pains to point out that ideology had been banished from his vocabulary. He wrote:

The report is not based on deference to some arbitrary doctrine, such as *laissez faire*. It does, however, assert that State intervention in a market needs to be justified by a logically related object. It also contends that the liquor Controls Act's countering of market forces is not logically related to a policy of reducing alcohol abuse in Victoria (Nieuwenhuysen, 1985, Main themes p. 3).

This theme was reiterated by an economic consultant to the inquiry who wrote:

In my view, the liquor industry is substantially overregulated particularly with respect to supply conditions. Yet there are I believe compelling reasons why some form of regulation of these liquor industry activities will continue to be necessary. This issue concerns the best form of these regulations' (Lloyd, 1985, p. 16).

This concern with regulation is tempered by a number of codicils for Lloyd (as for Nieuwenhuysen). These include the belief that excessive drinking is the problem and that only a small proportion of drinkers do indeed drink excessively (a view shared by many others), and that the costs of excessive drinking are generally borne by the drinker themselves or by others close to them, rather than there being wider social harms. What was important for alcohol policy was to identify the drinkers and where the harm was, rather than imposing costs upon all drinkers via alcohol taxes and

limited availability. Nieuwenhuysen and Lloyd both cast these as practical problems, rather than the epistemological problems that they really are. In particular Nieuwenhuysen does not accept the evidence produced by epidemiologists that show it is the average level of consumption across a whole population that indicates the likelihood of problems. The conflict between public health and welfare and market demands is highlighted in the 1985 report. The 1977 report by Davies did accept this the link between average consumption and the likelihood of problems, and thus Davies was reluctant to open up the market with just minimal restraint. The single distribution argument (or the Ledermann hypothesis) was not, as it still is not, universally accepted and because of this debate, Nieuwenhuysen dismissed its relevance. The most complete studies at the time (Moore and Gerstein 1981; Bruun et al. 1975) did however subscribe to the thesis and concluded that the single distribution was probably correct. ‘Our assessment of the distribution literature does suggest that overall trends in price and availability are likely to affect the entire distribution of consumption; there is no evidence that a large fraction of drinkers is entirely immune to such forces’ (Moore and Gerstein 1981: 66)<sup>3</sup>.

Another example of the economic assumption underlying Nieuwenhuysen and the job he was given to do was what was called the 8% rule. Until the law was changed in 2006 as a result of pressure from within the state and the National Competition Council<sup>4</sup>, no individual owner could hold more than an 8% share of the liquor licences for take-away alcohol. When the anti-monopoly provisions were finally lifted, both Coles and Woolworths (the grocery duopoly which was carving up the take-away market between them but were thwarted by the 8% rule) were in breach of this requirement. By the end of 2005, it was estimated that these two players held \$60m worth of liquor licences in Victoria (Jones 2005). Because of their size and

clout, the supermarkets could sell alcohol at far cheaper prices than small retailers. These are the efficiencies called for by Nieuwenhuysen that produced Australia's very cheap alcohol. By 2005, Australia was in the top third of countries in the price of alcohol, that is, the lowest real price of alcohol, and like many other countries, economic pressures were pushing the price down even further (Marsden Jacobs Associates 2005). Thus what Nieuwenhuysen helped produce were the conditions for the Night Time Economy.

### **Conclusion**

The report by Nieuwenhuysen displays some fundamental shifts in the way the state viewed alcohol and its place in the economic market and reinvention of Melbourne as a night-time city. While it was evident in the shifting terms of reference of the three inquiries from 1965 onwards that there was to be a freer market in alcohol in Victoria, it was not until 1985 that the citizen as consumer was given the front seat and there was an explicit demand that the inquiry produce the conditions necessary for the development of the NTE. Alcohol became a commodity like any other to be regulated only in terms of the very limited harms it might produce for the individual citizen-consumer. His enquiry's terms of reference, as well as his final recommendations (which have not been outlined in this paper), reflected the growing dominance of neoliberal ideas in the market and enabled narrowly defined economic interests to flourish through the establishment of the conditions for the NTE.

### **Notes:**

- 1 It will be interesting to see how cities like London and Dublin finish up after the GFC.
- 2 Currently the Liquor Licensing Commissioner is based in the Department of Consumer Affairs. The minister responsible currently oversees legislation that

includes the Prostitution Control Act, Landlords and Tenants Act, Consumer Credit Act, as well as the Liquor Control Reform Act 1998.

3 This debate is still ongoing, although most literature does support it (see Stockwell, Zhao & Thomas, 2009).

4 A consultant's report to the National Competition Council reiterated the findings of the scientific literature that 'a high alcohol price is one of the single most effective methods of reducing alcohol consumption and harms' (Marsden Jacobs Associates, 2005, p. 6) but this did not seem to make an impact on NCC decisions related to the regulation of the market for social rather than economic reasons.

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