

CLASSICAL LIBERALISM AND INDIGENOUS POLICY

Alcohol restrictions and affirmative action are not completely incompatible with some of the principles of classical liberalism, argues **Sara Hudson**

In the ideal world of philosophical first principles, classical liberals generally espouse the benefits of limited government. In the real world of public policy, however, there are some occasions when more involvement by government is perhaps warranted. Two recent examples are the introduction of alcohol restrictions in some remote Indigenous communities and towns; and the federal government's Indigenous Procurement Policy. The latter is a textbook case of affirmative action while the former is an example of John Stuart Mill's Harm Principle in action.

Alcohol restrictions

There is a tension between liberal democracy's attempts to regulate alcohol supply and the classical liberal philosophy of individual freedom and responsibility. However, the problem is that not everyone behaves responsibly when consuming alcohol; not only do they harm themselves, they can also cause significant harm to others. In recent years, this has been the rationale behind the lockdown laws in Sydney as well as the alcohol restrictions in some remote Indigenous communities.

Limitations on individual freedom have long been justified to prevent harm to others and protect the social order. For example, John Stuart Mill in his seminal work *On Liberty*, argues that: 'The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.'¹ Under the Harm Principle, when a person's behaviour adversely affects others, society has the jurisdiction to restrict that behaviour. Society may do this directly by using law to regulate undesirable conduct, or indirectly by using public opinion and shaming methods to regulate conduct.²

Arguably, some restrictions on alcohol are necessary for a civil society to exist. People have the right to be able to feel safe in their towns and communities and not to have to witness or experience alcohol-related violence, so some controls on excessive alcohol consumption are necessary. Nor should we view alcohol restrictions as something imposed only on Aboriginal people because they cannot handle 'grog'. As a result of the harm caused by alcohol, governments throughout history have introduced regulations and restrictions to control the supply, availability and consumption of alcohol.³

All Australians are subject to alcohol restrictions in one form or another. Common regulatory controls on alcohol include alcohol taxes; limits on the numbers, types and trading hours of alcohol outlets; and general restrictions on the purchase and supply of alcohol, such as age limits and the responsible serving of alcohol.⁴ There are also laws prohibiting the consumption of alcohol in prescribed areas and at certain times of the year when drinking causes problems, such as over the New Year period. One of the reasons why draconian measures such as prohibition were considered necessary in some remote Aboriginal communities is because of the absence of most of these 'normal' restrictions.



Sara Hudson is a former Research Fellow in the Indigenous Affairs program at The Centre for Independent Studies (CIS). This is an edited version of a speech given at the CIS Liberty and Society Conference in Perth, 4-6 August 2017.

Central to any form of restriction or controls on alcohol use is enforcement. Policing of existing legislation and regulations must be the same for everyone. Although the cost of remote policing is higher than in urban areas, the cost of not enforcing appropriate standards of behaviour is even higher.

Australia has a long history of treating Aboriginal people differently. First they were subjected to discriminatory laws that prevented them from living where they chose, drinking legally, voting, and being paid a fair wage. When these inequitable laws were finally abolished, they were replaced by equally damaging separatist policies. This has resulted in the police in Australia applying different standards and excusing behaviour in Indigenous communities that they would not tolerate in any other area. Police working in remote communities say they have to ‘let fist fights play out on the streets . . . to prevent more widespread violence taking place’ but it is doubtful that they would let people punch each other in the main streets of Sydney.⁵

Alcohol canteens: a downward spiral

The lifting of alcohol restrictions for Indigenous people led to the introduction of alcohol canteens in Aboriginal communities. Canteens in Queensland were owned and operated by local councils. The revenue from the sale of alcohol in these canteens created perverse incentives for councils to increase the sale of alcohol rather than address the harm caused by excessive consumption. Few canteens practised responsible serving of alcohol and would serve people until they became severely intoxicated, with dire results. Prior to the introduction of a canteen in 1985, the remote Indigenous town of Aurukun in far north Queensland was described as a ‘liveable and vibrant community.’ However, following the introduction of a regular supply of alcohol with no controls on its use, levels of violence, abuse and neglect skyrocketed.⁶

An excellent episode of the ABC’s *Four Corners* program in 2011 called ‘Return to Aurukun’ re-aired previous episodes from 1978 and 1991 to show the downward spiral of many Aboriginal communities since the late 1970s.⁷ On the program, a Wik Elder said: ‘We don’t want the canteen to open because our children will be starving. People will be on

grog all the time. ‘Cause I seen this thing happen at Weipa. They was squealing for money, clothing for their children.’⁸

The Aurukun community managed to hold out against the introduction of a canteen for seven years, with the vast majority of people in the community opposed to the idea. However, in 1985 several drinkers were elected to the council and without any consultation with the community they had meetings with Carlton and United Breweries and opened an alcohol canteen.

Draconian measures such as prohibition were considered necessary in some remote Aboriginal communities because of the absence of most of these ‘normal’ restrictions.

When *Four Corners* returned in 1991 the grog was totally out of control. With no cultural tradition of alcohol use, drunkenness in the town was rife. According to *Four Corners*: ‘The community had plunged so deeply that people in Aurukun say the gates of hell had been opened.’⁹ Following the introduction of the canteen violent offences increased rapidly, with the murder rate becoming as bad as that in many American cities. *Four Corners* reported that:

The Wik fighting spirit had turned on itself and the worst brutality was dealt to loved ones or kin. Rape, child assaults and neglect were also endemic. What resulted was a complete breakdown in discipline, respect and authority. The old belief systems that kept it all in place collapsed. . . . *Four Corners* saw fist fights so violent that the crew was unable to film in safety. . . It’s so violent here the children often don’t know where they can safely sleep at night. We saw them roaming about looking for quiet houses, perhaps someone to feed them.

Not only was Aurukun much more violent than it had been previously, the people in the community seemed much poorer and sicker than they did in 1978. The problem was not the lack

of money, as *Four Corners* pointed out: ‘the town was awash with dole and pension cheques. It was the welfare payments, the sit-down money that was funding the drinking. The equal pay laws meant jobs for the men had disappeared. This loss of dignity and money for nothing was a deadly mix.’ By the time the canteen was closed down and alcohol management plans were introduced in the early 2000s, the town’s homicide rate was estimated to be 120 times the state average.

The situation in Aurukun is symptomatic of the broader social malaise affecting many remote Indigenous communities. It is what happens in the absence of a real economy and appropriate social controls. Welfare payments are spent on alcohol, and heavy drinking becomes endemic. Such circumstances are not unique to Australia—many First Nation communities in Canada also suffer similar fates: ‘. . . the problems American Indians face today [are due to] lack of economic opportunity, lack of education and lack of equal protection under the law.’¹⁰

The high levels of alcohol abuse in Aboriginal communities and subsequent harm to women and children have seen many Aboriginal leaders, especially females, advocate for alcohol restrictions. Since 1979, more than 100 Indigenous communities in the Northern Territory have used the restricted areas provisions under Part VIII of the NT Liquor Act 1978 to either ban or restrict the consumption and possession of alcohol in their communities. Community initiatives to introduce alcohol restrictions have been followed by territory, state and Commonwealth initiatives, including the Queensland government’s Alcohol Management Plans in Cape York in the early 2000s and the federal government’s Northern Territory Intervention in 2007 that introduced alcohol prohibitions in 73 ‘prescribed communities’.

One of the ridiculous aspects of the Intervention was that many of these ‘prescribed communities’ had already been declared ‘dry’ by their residents many years earlier.¹¹ A stereotype persists that Aboriginal people have a problem with alcohol. Yet many do not drink at all. The problem is that those who do often binge drink to excess. In Western Australia Aboriginal women from two towns in Western Australia (Fitzroy Crossing and

Halls Creek) petitioned the Director of Liquor Licensing in Western Australia to implement alcohol restrictions to control the strength of takeaway alcohol and limit the opening hours of the pubs/taverns in their towns. The biggest motivating factor for these women was the high rate of Foetal Alcohol Spectrum Disorder among children in their communities, with one in five children in Fitzroy Crossing having the disorder—the highest rate in the world.¹²

However, while community-led alcohol restrictions have contributed to a ‘modicum of calm’ in some communities and helped to reduce rates of alcohol-related violence and hospitalisations, they are a band-aid solution and do not address the underlying reasons why some Aboriginal people drink in the first place.¹³

Creating a sense of purpose: property rights and affirmative action for business

As I have written previously: ‘People need love, a sense of purpose, and something to look forward to. Unfortunately for many remote Indigenous people, their relationships are frequently fraught with violence, they don’t have jobs, and life has taught them not to hope for much or dream of a better future.’¹⁴

When it comes to improving Indigenous economic outcomes there is a ‘chicken and egg’ difference of opinion on what needs to come first—social or economic change. Ultimately this, like the chicken and egg causality dilemma, is a circular argument. For economic development to occur effectively in Indigenous communities there needs to be a focus on both the social context and the economic environment. The factors that support Indigenous economic development are the same as the factors that contribute to any economic development initiatives—human capital, an authorising environment, private property rights, and access to capital and markets.

Currently, Indigenous Australians living on communal land are unable to own their own house, or leverage their land to establish a business because of the lack of individual title. As a result the primary economic development model on Indigenous land is community-owned, not-for-profit organisations known as ‘Indigenous corporations’.

The absence of private enterprise on Indigenous land has led people to question whether remote Aboriginal Australia has much of a future. But how can we expect there to be an economy when Indigenous people living on communal land are unable to leverage their land to establish private enterprise?

International examples show the dramatic changes that can occur when there is land reform and leadership that recognises ‘there is only one way to do business and that is the business way’.¹⁵ The Osoyoos Indian Band is one of the most successful First Nations communities in Canada, with almost all of its 520 members employed in the Band’s businesses, because of land reforms and a chief who saw the value of joint venture partnerships as well as having strict financial accountability measures in place.

In Australia, instead of only focusing on community-wide economic development initiatives, we need to ensure land reforms, such as 99-year leases, are enacted to enable private businesses—such as a mechanic, café or hairdresser—on Indigenous land.

In recent years, the Australian government has begun to focus on Indigenous business as a way to alleviate Indigenous disadvantage. However, the emphasis has primarily been on businesses that can deliver on the government’s procurement requirements. The Indigenous Procurement Policy (IPP) introduced in July 2015, gives enterprises owned by Indigenous Australians preferential consideration in the awarding of Commonwealth government procurement contracts.¹⁶

Contracts are subject to the usual tendering processes and are awarded on the premise that a business provides value-for-money services. Procurement targets apply individually to each government department and were originally set to progressively increase from 0.5% of all contracts in 2015-16 to 3% in 2020. However, in February 2017 it was announced that, due to the overwhelming success of the policy in its first year, targets would be revised to 3% by the end of 2016-17.¹⁷ There is also a mandatory requirement that for contracts between \$80,000 and \$200,000 in value, Indigenous-owned firms are given ‘the chance to demonstrate value for money first, before the

procuring officer makes a general approach to the market’.¹⁸

The dilemma for classical liberals is that while the IPP has helped to promote Indigenous businesses it is a protectionist policy, which can impact negatively on concepts of non-discrimination and transparency. In other words it is a form of affirmative action, which has been shown to have adverse consequences.¹⁹

We need to ensure land reforms, such as 99-year leases, are enacted to enable private businesses on Indigenous land.

The establishment and maintenance of the IPP is considered a special measure under both the Racial Discrimination Act 1975 (Cth) and the International Convention for the Elimination of All Forms of Racial Discrimination (‘the Convention’). The Racial Discrimination Act gives domestic effect in Australia to Convention, as shown in the quote below.

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.²⁰

I believe supporting Indigenous businesses contributes to Indigenous empowerment. Unlike program delivery, which tends to be a more passive form of support, supporting Indigenous businesses is an active form of assistance. A multiplier effect occurs when people own a business that goes beyond the financial benefits to the local economy.

At the same time, while there may be an argument to support Indigenous businesses now—due to

the historical inequity and disadvantage they have experienced—in the future, because of preferential treatment, Indigenous businesses may develop a monopoly over certain government contracts and industries. This has occurred with minority procurement policies in the United States, where such policies have been in place since the 1960s. In some instances Native American corporations have become multimillion dollar businesses and some of the largest federal contractors in the country.²¹ Although these corporations no longer need the assistance of preferential procurement (or affirmation action policies) they continue to receive contracts under the legislation because they represent an easy way for the government to meet minority quotas.²²

The IPP is still in its early stages, but it has already shown itself to be the victim of gaming, as in the example of ‘black-cladding businesses’—that is, businesses that misrepresent themselves as Indigenous in order to win lucrative contracts. There are also early warning signs that similar monopoly businesses could develop in Australia if issues with the policy are not addressed.²³

Conclusion

As a classical liberal think tank, CIS generally espouses the benefits of limited government. However, as discussed, there are some occasions when more government support is perhaps warranted. When it comes to Indigenous businesses it is difficult to know what role the government should play and whether it should try and support Indigenous businesses—or get out of their way. Although supporting Indigenous businesses is preferable to sinking more money into yet another poorly designed program, there are always unintended consequences of any government action.

It is a difficult tightrope for government to walk. However, if we are to be true to classical liberal thinking the best thing governments can do to support Indigenous economic development is to help create an enabling environment for private enterprise to occur. This means ensuring the rule of law is upheld in remote communities whilst reducing the barriers to economic enterprise by removing some of the red tape surrounding land leasing arrangements.²⁴

Endnotes

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- 3 Sara Hudson, *Alcohol Restrictions in Indigenous Communities and Frontier Towns* (Sydney: The Centre for Independent Studies, 2011).
- 4 As above.
- 5 SBS News, ‘Police defend response to Aurukun fights’ (17 May 2016).
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- 7 ABC Four Corners, ‘Return to Aurukun—Four Corners’ (2011).
- 8 As above.
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- 11 Hudson, *Alcohol Restrictions*.
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- 16 Department of the Prime Minister and Cabinet, ‘Indigenous Procurement Policy’ (2017), <https://www.pmc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
- 17 As above.
- 18 As above.
- 19 Gabriel Moens, *Affirmative Action: The New Discrimination* (Sydney: The Centre for Independent Studies, 1985).
- 20 Australian Human Rights Commission, ‘Guidelines to understanding “Special measures” in the Racial Discrimination Act 1975 (Cth)’ (2011), <https://www.humanrights.gov.au/publications/guidelines-understanding-special-measures-racial-discrimination-act-1975-cth-2011>.
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- 22 As above.
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- 24 Sara Hudson, ‘Should government support Indigenous businesses or get out of their way?’, *Ideas@theCentre* (13 November 2015), <https://www.cis.org.au/commentary/articles/should-government-support-indigenous-businesses-or-get-out-of-their-way/>