

Canadian Narcotics Policy: A Relic of Settler Colonialism

By Michael Mytrunec

In this paper, I examine the formation and enforcement of Canadian narcotics policy through the lens of settler colonialism. By examining the rationale for Canadian policies towards opium, cannabis, and quat, I challenge the notion that public health and safety played a material role in the formation of Canadian narcotics policy. Rather, racialized targeting of minority groups was a key driver for creating laws to prohibit certain narcotics and incidentally target undesirable subcultures. Evidence that punitive and enforcement-oriented strategies for controlling narcotic drugs are ineffective have frequently been met by the continuation of these very strategies, further undermining the stated purposes for enacting strict drug laws. Language of “law and order” and the propensity to crack down on drug users, coupled with racial profiling and police biases, has continued the disproportionate racial impacts of drug laws, and the successes of narcotics policy in entrenching the status quo have outweighed their failures in reducing drug consumption. I conclude that, as it exists currently, Canadian narcotics policy is inseparable from Canada’s past as a settled, colonial nation-state.

Introduction

Under the guise of public health and safety, narcotics such as opium and marijuana have been made illegal in Canada (Cook 1969, 36). These policies, meant to reduce and discourage drug use, have achieved neither, yet have remained active and unchanged despite their ineffectiveness. Why continue to enforce such ineffective laws?

An implicit goal in settler colonial societies such as Canada is to root and reproduce the norms and power structure of the British mother culture. Settler colonialism, historically, “refers to the intentions of colonial administrators to build ... an ‘overseas extension’ or replica of British Society” (Stasiulus and Jhappan 1995, 97). The ineffectiveness of narcotics policy in reducing drug use has been masked by its effectiveness as a tool by which the government can reinforce the longstanding “racial/ethnic... hierarchies expressed through laws [and] political institutions” (Stasiulus and Jhappan 1995, 96). Racial profiling and an imbalance in power have exacerbated the perception of minority groups as drug users and the implementation of a punitive narcotics policy has inadvertently targeted

these groups and disproportionately tarnished their legal standing. I argue that the implementation and enforcement of our current narcotics legislation is a relic of our settler colonial history and a means of institutionalising white dominance in the Canadian status quo. I will do so by first demonstrating the failure of current narcotics laws in achieving their stated purpose of reducing drug use. I will then highlight the history of our drug laws in order to demonstrate how racialized fears and immigration anxiety were inherent in their formation and apparent in their enforcement. Finally, I will outline the ways in which biased enforcement of punitive narcotics legislation perpetuates the imbalance of power developed by the settler colonial status quo.

The Failure of Current Narcotics Policies

The assertion that narcotics policies are a tool to reduce drug use and increase public health does align with drug control strategy pursued by the Canadian government. Punitive enforcement of drug laws has exacerbated the health and usage problems that they are purported to solve. Paula Mallea's *The War on Drugs: A Failed Experiment* outlines some of the inconsistencies between the stated purpose of drug laws, their actual effects once implemented, and the enforcement strategies pursued by the federal government. Mallea outlines how the conservative government under Stephen Harper shifted the control of the national anti-drug strategy from the department of health to the department of justice (Mallea 2014, 111). This shift is emphasised when funding disparities are examined. 73% of the drug strategy budget is devoted to enforcement whereas a meagre 20% is devoted to treatment, prevention, and harm reduction (Mallea 2014, 111). The nearly four-fold difference in funding between enforcement and healthcare strategies undermines the notion that narcotics policy is primarily health focused and reinforces the assertion that there are other motives at play. Prohibition and the associated legal punishments appear to be the goal, whereas healthcare is simply a political justification for these harsh and ineffective policies.

The emphasis on enforcement is proven more counterproductive when usage rates and the prevalence of narcotics are taken into consideration. Health Canada reports that, despite political assertions to the contrary, drug use for nearly all illegal drugs has declined since 2004 (Mallea 2014, 113). This decline in the usage of drugs has been concurrent with an increased intensity of enforcement and condemnation of narcotic users. The Harper conservatives, once in power, implemented a regime of mandatory minimum sentences for drug offences at a time when drug use was in decline. The increasing and expanded intensity of enforcement pursued by the Harper government was in contrast to trends occurring in other western democracies where relaxation of drug laws had become prevalent. The failure of harsh enforcement measures at reducing drug use is not a revelation, but rather, a documented fact known to previous governments. The House of Commons Special Committee on the Non-Medical Use of Drugs, formed in 2001 to explore drug use, concluded that intensive “policies of repression had failed to reduce consumption and supply” of narcotics (Mallea 2014, 177). This information was available to the Harper government prior to the legislative crackdown on minor drug offences, which suggests that the committee's report was either ideologically ignored or unscientifically rejected.

The goal of drug prohibition to reduce drug use has failed by any metric that could indicate success (Mallea 2014, 177). The inability of a punitive narcotics policy to reduce drug use is less surprising when the context of prohibition is examined. The history of drug prohibition and the

racialized motivations of heavy enforcement are intrinsically tied to present day laws and practices. As recently as 1998, narcotics policy has been developed to criminalize and target minority groups (Mallea 2014, 27-28). These laws can be more accurately understood when reducing usage and public health are viewed as *justifications* rather than objectives.

The History of Canadian Narcotics Policy

The first targets of racially motivated narcotics policy were Asiatic immigrants to Canada in the early 1900's. In her book *Canadian Narcotics Legislation*, Shirley Cook analyzes the formation of narcotics legislation developed to combat opium, as well as the shift in public opinion that moved drug use from a medical issue to a criminal one. Cook recognises that "narcotics legislation developed as a political process and reflected current power differentials" between the dominant whites who ran most of society and the Asiatic immigrants who represented a distinct "other" (Cook 1969, 36). The issue was examined from a sociological perspective and emphasised the imbalance of power that permeated the resulting narcotics legislation. Although both whites and recent Chinese immigrants used opiates, it was only the latter group whose use was deemed to be deviant. White opiate users were typically middle class users with a prescription from a physician, or physicians themselves, who did not stray far from the image of an ideal Canadian settler. Recent immigrants could not separate their opiate use from their identity and this allowed them to be targeted. Opiate prohibition was originally manifested in the 1908 Opium Act which evolved into the Opium and Narcotic Control Act in 1922 (Mallea 2014, 25). The goals of this prohibition were twofold. Canadian authorities sought to "eliminate two evils simultaneously – the distribution of opiates and the presence of a despised racial group" (Cook 1969, 43). The legislative response to outlaw opium was coupled with the law enforcement response to only target the recent immigrants who were breaking these laws, largely ignoring the many white users who were not seen as deviant in their culture or appearance (Mallea 2014, 25). Opium legislation was developed to provide "law enforcement officials with a weapon to suppress an undesirable subculture. The precedent for using narcotics legislation in this manner was established half a century ago" and this practice of outlawing a habit to target its users has been revisited in multiple instances (Cook 1969, 45).

The history of marijuana and its criminalization has many parallels to that of opium. With opium, a decision was made to "label narcotic drug users as criminals, and to explain why a very punitive law was adopted to repress what was a relatively minor social problem" (Cook 1969, 36). The decision to ban marijuana shared many of these motivating factors. The first prominent anti-marijuana campaign was spearheaded by Judge Emily Murphy in the early 1920's. Murphy wrote articles in *Macleans* depicting marijuana as a "new menace" to Canadian society and these articles played prominently in the decision to outlaw marijuana (Erickson 1980, 1). Much like opium, "Cannabis use did not present as a problem in 1923 when it was first added to the schedule of prohibited "narcotics" (Erickson 1980, 1). The addition of marijuana to the Schedule of Narcotic drugs was not debated or undertook with much critical insight. It was simply stated that "there is a new drug in the schedule" (Mallea 2014, 25).

Patricia Erickson's *Cannabis Criminals: The Social Effects of Punishment on Drug Users* examines the effects of cannabis criminalization and also offers a history of marijuana laws and their relative staying power. Erickson notes that "originally, [cannabis] laws were directed at a racial and social minority" and it was both unexpected and unintended that they would eventually be applied to

mainstream whites (Erickson 1980, 2). The harshness and punitive nature of marijuana laws reflect this malicious intent. Task forces and commissions designed to study the effects of cannabis laws have reinforced the assertion that they are discriminatory and overly harsh. The Le Dain Commission, formed to study cannabis use, determined that “cannabis was not a “narcotic” in any pharmacological sense... and its use did not cause people to become criminals or moral degenerates” (Erickson 1980, 4). This undermines Murphy’s argument that marijuana leads to moral decay and highlights how race may have played a factor in her fervent opposition. The Senate Special Committee on the Traffic in Narcotics made a statement in 1955 concerning marijuana use that noted that “no problem exists in Canada in regard to this particular drug” (Erickson 1980, 18). This parallels the lack of a clear drug problem at the time of marijuana’s addition to the schedule of narcotic drugs and spurs questions about why laws were implemented and enforced to solve a problem that did not exist.

The most recent use of narcotics policy to indirectly target minority groups was the least newsworthy yet the most brazen example in recent history. Quat, an herb chewed traditionally in West Africa and the Middle East, was added to the Schedule of Narcotic Drugs in 1998 (Mallea 2014, 27-28). It is chewed for its effects as a stimulant and is used primarily by ethnic Somali immigrants. Quat use presented almost no problem to public health or safety but was it nonetheless prohibited “even though no science exists to justify the prohibition” (Mallea 2014, 27-28). This recent example of newly implemented drug prohibition echoes the process by which opium and cannabis were prohibited and clarifies how “hostility towards immigrants ... predated any public concern over drug abuse” (Cook 1969, 42). The intent, and real purpose, of the prohibitions is implied in the context of a clear target and a lack of a problem to the greater public.

The lack of an apparent problem to be solved by narcotic prohibition spurs questions about the true intent of these policies, and the racialized origins of drug laws suggest an answer. Canada’s desire to “preserve the British type in our population” required a mechanism to harass those that did not fit this image (Cook 1969, 42-43). Narcotics policy served this purpose. A strong tenet of settler colonialism is a “multi-layered and deeply rooted” hierarchy perpetuated by a nation’s laws and institutions (Stasiulus and Jhappan 1995, 116). Knowledge of the history and ineffectiveness of narcotics policy is prerequisite to examining how its existence, enforcement, and staying power in spite of scientific evidence perpetuates Canada’s legacy of settler colonialism.

The Biased Enforcement of Narcotics Legislation

The Fractious Politics of a Settler Society, by Daiva Stasiulis and Radha Jhappan, examines Canadian society and the historical roots from which modern settler colonialism grew. The authors demonstrate that modern “racial/ethnic and class relations grew out of specific historical, material, and ideological conditions” that are directly related to Canada’s history as a settled, colonial state (Stasiulus and Jhappan 1995, 96). This echoes the findings of Lorenzo Veracini in *Settler Colonialism: A Theoretical Overview*, where it is noted that the colonial relationships of subordination and subjugation are “exercised from *within* the bounds of a settler colonising political entity” (Veracini 2011, 6). In Canada, narcotics policy created an institutional capacity for law enforcement to reinforce these racial hierarchies at a time when they were overt and explicit.

Narcotics policy demonstrates the use of laws to target and harass those who did not fit the image of an ideal settler at a time when this was a legitimate goal of the government. Law enforcement and the justice system, two institutions heavily shaped by settler colonialism, have reinforced the racialized origins of drug policy through a lack of fair enforcement. The biased enforcement reinforces the settler colonial “politics of exclusion and segregation” where the whites in power are dominant and maintain the means to preserve this dominance (Veracini 2011, 10). The structural racism inherent in creating narcotics policy undercut the “imperial philosophy of race-blind justice and equality before the law” (Stasiulus and Jhappan 1995, 112). The enforcement of narcotics policy, as outlined below, further reinforces the settler-colonial power imbalance inherent the creation of these laws.

The impact of law enforcement between groups in Canada is not race-neutral. In *The Colour of Justice: Policing Race in Canada*, David Tanovich examines racial profiling as an underlying factor in the unequal impact of police enforcement. Tanovich examines statistics from policing in Toronto in order to make his case. Racial profiling is defined as more than just unconscious bias, but rather “as a current manifestation of the historical stigma of blackness as an indicator of criminal tendencies” (Tanovich 2006, 13). Canada’s settler colonial history has broadened this stigma to include all who depart from the image of a traditional, British settler. Tanovich notes that “racial profiling occurs when law enforcement or security officials, consciously or unconsciously, subject individuals at any locations to greater scrutiny based solely or in part on race, ethnicity..., or on other stereotypes associated with these factors” (Tanovich 2006, 13). With narcotics policy, a stereotype was not created to fit the criminal, but rather, the crime was created to target the stereotypical racialized minority. This stereotype was actively sought out by enforcement which resulted in disparities in arrests that do not correlate to disparities in crime rates. Tanovich notes how, in Toronto, black students were stopped and searched by police six times more often than their white counterparts of equal criminality (Tanovich 2006, 1). The increased incidence of enforcement stems from stereotypes that grew out of settler colonialism and undermines the race-neutral justice system that Canada claims. The fact that cannabis prohibition accounts for “one in every eight federal criminal charges” ensures that this disparate targeting by law enforcement will be reflected in drug arrests and prosecution (Erickson 1980, 143).

Michael Tonry’s, *The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System*, analyzes some of the reasons for the continuing popular support of discriminatory policies such as narcotics laws. Tonry’s research has noted that “whites support policies that maintain traditional racial hierarchies” and in Canada the traditional racial hierarchy was developed by a settler colonial past (Tonry 2010, 273). Canada’s acceptance of an imbalanced narcotics policy may not be driven by explicit racial hostility, but rather, apathy towards those with less societal power who disproportionately suffer at the hands of narcotics laws. White Canadians may also be persuaded by critics who suggest that increasing prevalence of drug arrests indicates increasing drug usages rates among minorities. These criticisms are unfounded, given that minorities are no more likely to use drugs or be involved in the drug trade when compared to whites, but persist because they are easy to accept (Tanovich 2005, 89). Attempting to reconcile laws shaped by a colonial past is unattractive since it requires the white political class to challenge institutions “that have maintained white dominance and protected the interests of whites as a class” (Tonry 2010, 280).

The tendency of whites to be apathetic to those who suffer disproportionately at the hands of law enforcement is a common trend in states with a colonial past. *Why Whites Favor Spending More Money to Fight Crime: The Role of Racial Prejudice*, examines how support for racially targeted laws persists even when the outright racism that created the laws has dwindled. Racial resentment is determined to be a heavy motivator in support for punitive policies, such as drug laws, that emphasize “deterrence, incapacitation, and retribution over the goal of rehabilitation” (Barkan and Cohn 2005, 300). This echoes the approach taken by the Harper conservatives who strongly emphasised enforcement and punishment over forms of prevention and healthcare in their national drug strategy (Mallea 2014, 111). Racial prejudice established by our settler colonial history has created a “disproportionate allocation of funds to crime-reduction spending at the expense of” effective narcotics policy (Barkan and Cohn 2005, 312). Enforcement of laws that were designed to target minorities has evolved into the modern-day desire to crack down and enforce the law without regard for the fact that racialized persons suffer disproportionately.

Nikhil Singh’s, *The Whiteness of Police*, examines the racial imbalance inherent in policing as an institution rather than a practice. Singh notes that “police power revolves around its ongoing links to ... settler colonial methods and relationships including extermination and population transfer” and this power is most often exerted over marginalised groups with little power (Singh 2014, 1096). The racialized motivations behind drug policy have actually increased police power in the Canadian context. The desire to punish narcotics users was what extended the power for police “to search unconditionally without a warrant” any dwelling that is not a residence if it is suspected that narcotics are present (Cook 1969, 44). This displays that the institution tasked with enforcing racially motivated laws has actually been empowered by them. “Enhancement of institutional capacities for policing” was a result of narcotics policy and demonstrates a lingering legacy of racially motivated legislation driven by a settler colonial history (Singh 2014, 1096).

Conclusion

The successes of narcotics policy in entrenching the status quo have outweighed their failures in reducing drug consumption. When history and the effectiveness of narcotics policy are examined, it becomes clear that these harsh laws are unfair and difficult to objectively justify. Restrictions on opium, cannabis, and quaaludes were implemented to deliberately target minority groups and continue to persist because they are enforced by institutions that do the same. Racial bias has been integrated into every aspect of law enforcement, both as a practice and an institution, as a result of Canada’s settler colonialist past. Although the outright racism that spurred narcotics policy may no longer exist, the colonial subjugation and subordination that these laws perpetuate can be disguised in the language of law and order in order to reinforce the power structures of Canada’s settled, colonial history.

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