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Canadian Drug Policy – Then and Now

Throughout history, on every continent and in every culture, human beings have taken substances into their bodies that inspire euphoria, relaxation, or hallucinations. Some of these substances, such as Cannabis, Psilocybin, and LSD do not present any danger to one's physical wellbeing. Others, such as Alcohol, Heroin, Cocaine, and Tobacco kill thousands of people every year. For as long as people have been taking drugs, there have always been people attempting to outlaw or restrict drug use. While governments and "anti-drug" special interest groups claim that drug prohibition is based on the harms associated with specific drugs, the history of drug policy as well as the medical data collected in the latter half of the 20th century paints a very different picture. Why are tobacco and alcohol perfectly legal when they kill hundreds of thousands of people each year? Why is cannabis illegal despite the fact that it has not resulted in a single death in over 10,000 years of recorded human use? Clearly there are other factors at work that determine whether a country adopts a prohibitionist policy. Those factors also affect the severity of punishment, as well as who the punishment is levied against: dealers, users, or both.

By comparing the history of drug policy to modern approaches, tracking usage and incarceration rates against law enforcement efforts, and analyzing the actors with vested interests in prohibition, the factors that truly influence drug policy can be assessed and the most effective policies can be defined. The one thing that is absolutely certain, however, is that prohibition is a failed policy.

It appears that one of the most significant factors in determining a nation's drug policy is the political culture of that country. In fact, drug policy appears to be almost exclusively based upon the political culture of a country with little relation to either the recommendation of health experts or the pharmacological information available. It is often said that the best indicator of future behaviour is past performance, and this holds true for drug policy. When studying the tendencies in personal drug use and government drug policy it is important to take into consideration the historical attitudes of a nation towards recreational drug use. It must be taken into account exactly when and how prohibition was brought in and how it has been tweaked and reformed over the past century.

The first drug law in Canada was a financially motivated one. In 1871, British Columbia realized that they could make money off of drug use and taxed each opium factory five-hundred dollars¹. Shortly thereafter as the economy began to falter, anti-immigrant attitudes spread throughout the province of British Columbia like wildfire. In 1885 the *Chinese Immigration Act* was passed, which placed a \$50 tax on each Chinese immigrant entering the country. This tax was raised to \$100 in 1900 and \$500 in 1903. These measures were coupled with the tax on Chinese opium factories to drive the Chinese out of the country and limit their upward social mobility.²

It is argued by those who advocate for the legalization of drugs that early Canadian drug law was entirely based on hatred of Asian immigrants³. This is a point that is hard to argue with

¹ Giselle Dias "Canada's Drug Laws: Prohibition is not the answer." P.5

² *Ibid*

³ John Akpata "The Medusa of Murphy"

when one examines closely the political culture of British Columbia as well as the federal culture.

It appears that one can trace the genesis of Canadian prohibition to a single event: the Vancouver riots of 1907.⁴ A hate-group called the “Asiatic Exclusion League” damaged a significant portion of Chinatown and Japantown after listening to speeches by members of the various labour unions that supported the group. The few immigrants who managed to pay the head taxes and successfully enter the country had brought over the cultural practice of smoking opium after a hard day’s work to their new home country. Some of the buildings that were damaged happened to be opium factories, and many Chinese shops had opium dens in them.

Prior to the riots there were virtually no problems associated with these places. However when deputy minister of labour William Lyon Mackenzie King visited to survey the damages he was informed that white women were now using opium, a claim that was never substantiated, and shortly after leaving Vancouver the federal government began crafting Canada’s earliest drug laws.⁵

One of the most ardent crusaders for prohibition was Emily Murphy, Canada’s first female magistrate, who later went on to play a key role in passing the 1928 *Sexual Sterilization Act of Alberta*.⁶ Activists who argue for drug legalization argue that the same sentiment that was behind Murphy’s belief in eugenics and forced sterilization, along with her beliefs about

⁴ David Malmo-Levine “A History of Vansterdam”

⁵ *Ibid*

⁶ John Akpata “The Medusa of Murphy”

the inferiority of non-white races, led to her emphatic and passionate support for drug legislation in the form of prohibition⁷.

Emily Murphy was given a tour of the opium dens that were destroyed in the 1907 riots, after which she began writing paranoid and baseless articles for the popular magazine *Macleans*. In 1922 these articles were compiled into a book called *The Black Candle*, in which she argued for the prohibition of drugs mainly in terms of racial stereotypes and prejudice, and *The Black Candle* is believed by activists to have been instrumental in passing the *Opium and Narcotic Drug Act* of 1929.⁸ The following excerpt is indicative of the tone of the book, and consequently the sentiment of early Canadian drug policy:

“A man or woman who becomes an addict seeks the company of those who use the drug, and avoids those of their own social status. This explains the amazing phenomenon of an educated gentlewoman, reared in a refined atmosphere, consorting with the lowest classes of yellow and black men. It explains, too, why sometimes a white woman deserts or 'farms out' a half-caste infant, or on rare occasions brings it to the juvenile court for adoption”⁹

It is interesting to note that this claim is still used to discourage drug use in Canada, although it has been taken out of the overtly racist terms that Murphy uses. The Health Canada “not4me” site claims that drug use will in and of itself cause users to “engage in unsafe sex that may lead to an unwanted pregnancy or sexually transmitted infection”(HC). “Not4me” is a project of the Stephen Harper government. Prime Minister Harper is currently trying to shut

⁷ *Ibid*

⁸ David Malmo-Levine “A History of Vansterdam”

⁹ Emily Murphy – The Black Candle Part 1

down Vancouver's safe injection site, a facility that is world renowned for saving the lives of addicts and reducing HIV/AIDS and Hepatitis. Another claim of Murphy's that is still in use by Prime Minister Harper is that marijuana use causes mental illness.¹⁰

The first prohibitive drug laws were enacted in 1908, when Wilfrid Laurier's government passed *The Opium Act of 1908*, and the *Proprietary and Patent Medicine Act 1908*, and finally the *Opium and Drugs Act of 1911* which established controls for medicine containing cocaine, heroin, opium, and morphine. While accurate statistics regarding drug use and addiction are not available for Canada at that time, it would be safe to assume that the drug problem was similar to the situation in the United States. In the United States opium, cocaine, and heroin addiction were hidden epidemics that cut across all class and race lines, although one wouldn't know that by enforcement. In 1922, two-thirds of those arrested for drug crimes were of Asian descent.¹¹

It is very important to note that absolutely no research or debate was conducted prior to the introduction of these laws.¹² Drug prohibition was born in an atmosphere of ignorance and hysteria, and was brought in primarily for reasons other than reducing drug abuse, so it is understandable that the policy would not work to reduce drug abuse. In other words, early drug policy was a "solution without a problem".¹³ The hysteria "originating largely from

¹⁰ Travis Erbacher "My Meeting With Chris Summerville"

¹¹ Giselle Dias "Canada's Drug Laws: Prohibition is Not the Answer" P.2

¹² The Report of the Canadian Government Commission of Inquiry into the Non-Medical Use of Drugs 1972 Part 1

¹³ Giffen et. al. "Panic and Indifference: The Politics of Canada's Drug Laws"

enforcement officials, but seized upon, exaggerated, and dramatized by a sensationalist press in the late 1930's, prevailed largely unchallenged for the next thirty years".¹⁴

Drug abuse spread throughout the general population because of a very curious and counterintuitive fact: prohibition *increases* the risks associated with drug use, and in some cases increases drug use itself.¹⁵ This is true of modern drug prohibition and partially true of alcohol prohibition. Harry G. Levine and Craig Reinerman contend that "Prohibitionism was not...a public health campaign to reduce cirrhosis of the liver or alcohol admissions to state hospitals...prohibitionists were utopian moralists; they believed that eliminating...alcoholic drink would solve the major social and economic problems of American society".¹⁶ While total alcohol consumption declined during alcohol prohibition, Levine and Reinerman note that prohibition "dramatically reduced beer drinking...however, prohibition increased consumption of hard liquor".¹⁷ They also note that per capita consumption of alcohol was greater under prohibition than during world war 1, save the first three years of the policy.¹⁸

This is also the case for modern illicit drug prohibition. When criminal penalties are placed on drug possession, soft drug use declines and hard drug use increases. For example, cannabis is far bulkier and harder to smuggle than heroin or cocaine, with the latter two being far more profitable.¹⁹ In addition to this the "blending" of hard and soft drug markets increase the availability of hard drugs and exposes soft drug users to substances that they may

¹⁴ *Ibid*

¹⁵ Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review

¹⁶ Harry G. Levine "From Prohibition to Regulation: Lessons from Alcohol Policy for Drug Policy" P.465

¹⁷ *Ibid* p.467

¹⁸ *Ibid* p.469

¹⁹ *Ibid* 467

otherwise not run into in their lifetime, if not for the black market that prohibition creates. When a substance is prohibited it doesn't just magically disappear. Rather, control of that trade simple becomes criminal. As prohibition advances and sentences are ramped up the price of prohibited substances rises as well due to increased risk, and this increases the profitability of the trade. In other words, the more money you throw at the drug problem, the worse it gets. This can be viewed by simply looking over the border to the United States, where the price of marijuana is as much as in Canada.

Drug use declined in the 1950's, but you wouldn't know it by the hysterical representations of drug use in the media.²⁰ Soon the idea of treating drug abuse as an illness rather than a crime, and addicts as sick people rather than criminals began to gain traction.

In the 1960's and 70's, in the wake of the anti-Vietnam war, student activism movement that celebrated drug use, the idea that drugs magically take control of good people and turn them into evil monsters began to be questioned.²¹ This, combined with growing medical and sociological literature regarding public health began to slowly change opinions. Thousands upon thousands of young people were smoking cannabis and experiencing no ill effects.²² Because of this widespread, uncontrolled experiment, people began to demand research into the efficacy of Canadian drug policy and the true dangers of various illicit substances.

In 1969, the Commission of Inquiry into the Non Medical Use of Drugs (also known as the Le Dain Commission) studied these issues. They issued four reports, the most famous of

²⁰ Giselle Dias "Canada's Drug Laws: Prohibition is not the answer." P.6

²¹ *Ibid*

²² "The Report of the Canadian Government Commission of Inquiry into the Non-Medical Use of Drugs 1972." Cannabis: Usage

which recommended that cannabis be legalized and taxed, and that criminal penalties be removed for drug use.²³ Richard Nixon launched a similar commission south of the border which was conducted by Republican governor Raymond Shafer of Pennsylvania, and the commission came to the same conclusions. Nixon, like the Canadian government of Pierre Trudeau, ignored the recommendations of these commissions. These reports are regarded as among the most thorough studies of drug policy in the twentieth century.

The Le Dain Commission established certainty where there previously was only doubt. According to the report, under the section titled "Patterns and extent of Cannabis use", a 1969 study at Sir George Williams University in Montreal found that two-thirds of non-users could obtain cannabis if they so desired, and thirty-five percent of non-users said that it would be "very easy" to obtain cannabis. The commission also states that cannabis is an acquired taste, like "oysters or dry martinis", and that "anyone can become a marijuana user and that no one has to". The report also dispelled the myths surrounding addiction and habituation, claiming that 46% of users are occasional users, with only 3% being every day smokers.

Perhaps the most passionate and definitive statements regarding the Le Dain Commissions report comes from Marie-Andree Bertrand, who argues in her conclusion that "The probable consequences of legalization seem to me to be less harmful than the evils of prohibition. Prohibition is very expensive economically socially and morally".²⁴ She also states that "use or trafficking...have become even more widespread than ever". Because of this she assesses that "prohibition with severe penal sanctions, engenders a certain kind of criminality.

²³ *Ibid*

²⁴ Marie-Andree Bertrand "Conclusions and Recommendations."

In fact, cannabis is in such great demand that many young Canadians have discovered they can easily earn large amounts of money selling it"²⁵. Prophetic as they may sound in today's context, she was in fact ignored.

The commission's report was ignored, and in the United States president Richard Nixon announced a "war on drugs" in 1972. It was in the 1970's, following the announcement of increased law enforcement and incarceration, that drug use increased dramatically.²⁶

In the 1980's Ronald Reagan declared a new "war on drugs", allegedly while simultaneously shipping cocaine into the United States using the CIA, in connection with Iran-Contra. Coincidentally, during the Reagan presidency the crack cocaine epidemic began, which journalist Gary Webb attributed directly to the Reagan government and the CIA. As with the sensational stories of Chinese opium dens a half-century earlier, stories of crack cocaine and law enforcement efforts in the 1980's and early 1990's resulted in *more* drug abuse.²⁷

Since Canada's drug policy was still closely related to US policy, it is useful to observe increases in drug use during the Bush and Clinton administrations.²⁸ From 1993-1994 drug use in Canada increased in almost every category. Cannabis use increased from 4.2% to 7.4%, cocaine increased from 0.3 % to 0.7% and use of LSD, speed or heroin increased from 0.3% in 1993 to just over 1% in 1994²⁹.

²⁵ *Ibid*

²⁶ Thomas M. Mieczkowski, "The Prevalence of Drug Use in the United States ." p.351

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ Diane Riley

Following the 1994 study a new drug policy was crafted. In 1996 the *Controlled Drugs and Substances Act* was implemented. The CDSA set schedules for drugs in a similar fashion to the US system but once again political culture comes into play. Canada has a more tolerant culture and generally places more emphasis on harm reduction. Instead of putting cannabis in schedule 1 alongside drugs like heroin and cocaine, it was given its own schedule with penalties that are far less than other illicit substances. Penalties for possessing small amounts of cannabis carry a maximum sentence of 6 months imprisonment and/or a 1,000 dollar fine.³⁰

Drug use continues to rise in Canada to this day, despite the continued efforts of law enforcement. Cannabis use almost doubled from 7.4% in 1994 to 14.1% in 2004.³¹ Cannabis use then fell back to 11.4% in 2008.³² Trends in drug use over the past decade appear to be completely independent of law enforcement efforts. According to Stats Canada, while overall crime rates have been falling virtually every year, drug use continues to inch upward, as do incarceration rates. In 2007, almost two-thirds of all drug offences reported by police were for cannabis, and three-quarters of those were for possession. This is in stark contrast to the usual claims of law enforcement and of the Conservative party of Canada, which is that the only people of interest are high-level traffickers. Only 11% of drug offenses in 2007 were for trafficking.³³

On October 4th, 2007, Prime Minister Stephen Harper announced a new \$63.8 million anti-drug strategy. This strategy includes the introduction of mandatory minimum sentences for

³⁰ "The Controlled Drugs and Substances Act". Department of Justice.

³¹ "Canadian Addiction Survey (CAS)." Canadian Centre on Substance Abuse.

³² "Major findings from the Canadian Alcohol and Drug Use Monitoring Survey (CADUMS) 2008."

³³ "Study: Trends in police-reported drug offences ." Statistics Canada

drug possession as well as the cultivation of marijuana. This strategy is similar to New York's infamous "Rockefeller Laws" that have resulted in over-crowding of prisons and increased gang violence. Former Reform Party and current Liberal MP Keith Martin responded to the announcement by stating that it "will be terrible for Canada because it will result in increased drug use, increased crime, increased incarceration rates and increased costs to the taxpayer. This is a failed approach that has had catastrophic consequences in the U.S." adding that "It would be utterly foolish for us to adopt this approach in Canada".³⁴

Canadian drug law was based on a foundation of racism and media-manufactured hysteria, and for the past century has been propped up by forces both within the country and without that benefit from the prohibition. Several books and articles have been written on the role that industries such as forestry, paper production, synthetic fibre manufacturing, and others played in outlawing cannabis in the first place. William Randolph Hearst was perhaps the American equivalent of Emily Murphy. Hearst owned more newspapers than any other man in the United States and also owned huge tracts of forest in the Pacific Northwest. His very good friend Lammont DuPont had patented nylon and other synthetics that were also going to be threatened by the incredibly versatile hemp. It is claimed by Jack Herer and other hemp advocates that DuPont and Hearst, along with Narcotics Commissioner Harry J. Anslinger conspired to outlaw marijuana.³⁵ It is also claimed by today's activists, including MD and pediatrician Claudia Jensen of the University of Southern California medical centre, that nearly 80% of pharmaceutical drugs could be replaced by marijuana, which would be more effective

³⁴ "PM wants mandatory sentences for 'serious' drug crimes" CBC.

³⁵ Doug Yurchey "The Marijuana Conspiracy"

and cause less side effects.³⁶ Hemp is also a great source of biofuel, and therefore is a large threat to the oil lobby as well.³⁷ And, perhaps most importantly, the RCMP receives massive budgets and job security to fight the cultivation of marijuana and the trafficking of other drugs. Prohibition is a never-ending bailout to the law enforcement and criminal justice industries.

Since a link has not been established between enforcement and the reduction of drug use, and positive correlations have been established between prohibition and overdose death, hard drug use, and violent crime³⁸, it appears that incarcerating drug users serves some purpose other than reducing drug use. Political and social culture has a great deal to do with it, which would explain why the United States, with its puritan roots, would be so scared of an act that seems hedonistic and immoral, like drug use. It is not required that a formal conspiracy take place when multiple interests converge.

No matter what form it takes, whether racially motivated and selectively enforced like the early 20th century, revamped all out prohibition like the mid 20th century, or the modern form with the CDSA and harm related schedules, prohibition is destined to fail. Until the average voter realizes that drug policy affects crime and violence, or more importantly, their wallet, lives will continue to be ruined, families will continue to be destroyed, and the drug cartels will laugh all the way to the bank.

³⁶ *Ibid*

³⁷ David Malmo-Levine "Hemp Ethanol Saves the World."

³⁸ "Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review." Urban Health Research Initiative of the British Columbia Centre for Excellence in HIV/AIDS.