

Erika Pierre

260174429

EAST 462

Prof. Adrienne Hurley

14 December 2009

Canada, Drugs, and Prisons: A Historical Overview

Despite its own claims to the contrary, the last 30 years of Canadian drug policy has overwhelmingly resulted in failure. Indeed, Canada's rate of imprisonment is fifth in the world (Patricia Erickson, "Recent Trends in Canadian Drug Policy," 241). Canada has defined itself and its drug policies against American-style, "War on Drugs" policies. However, though it describes itself, and indeed prides itself, on being more liberal and open than the United States, Canadian drug policy all too frequently strongly resembles it. Although Canada has appeared to be open to less punitive and less criminalizing methods of dealing with drug use and abuse, it has, thus far, been extraordinarily cautious about actually enacting them.

Cultural Attitudes Towards Prisons, Prohibitions, and Punishment in Canada and the United States

Contrary to commonly held misconceptions, imprisonment is not, and has never been, simply a fate for evildoers, except inasmuch as "evildoers and criminals" are imagined as people of colour (Angela Y. Davis, "Are Prisons Obsolete?", 16). Rather, it performs ideological work, acting as a deposit into which undesirables are deposited and freeing us from the responsibilities of thinking about these communities' problems in serious ways, especially inasmuch as they result from global capitalism and racism (ibid.). This is true in Canada as much as it is the United States, although these issues manifest themselves somewhat differently, if relatedly. The War on Drugs in the United States, then, and similarly related policies in Canada, thus perform a useful function towards this end: by aggressively criminalizing drugs and associating them with vulnerable populations, including predominantly poor communities and communities of colour, the state is able to relieve "us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism" (16).

In order to understand Canada's present attitudes and policies towards illicit drug use, it

is necessary to briefly discuss both its relationship to the United States and the history of Canadian prisons more generally. The history of Canadian drug policy and its relationship to the prison system must be considered in relation to those of the United States, and it must be considered in relation to both its cultural and political aspects. Canadian penitentiaries generally followed the European and American models of the penitentiary (Luc Gosselin, "Prisons in Canada," 70). The American model of the penitentiary, the role that it plays in the American imagination, and the growth of the prison-industrial complex have historically invoked a number of issues in order to justify their existence. Notably, we must consider the American "Southern Strategy" of racializing of crime and drugs as explicitly black and Latino problems, which then justifies the continued targeting of these populations for incarceration; the public's lack of confidence in the state following the weakness of social welfare programs and the state's subsequent need to prove its strength, including its ability to punish and kill (Gottschalk, 31-35). As will be discussed later, this tactic has been imported into Canada to justify its own increasing criminalization of drugs and intensified policing.

It is important to note not only the differences between Canadian and American crime rates and attitudes towards criminality in considering the history of the prison in each. Canadian drug policies and public opinions have been strongly influenced by these fear-mongering stories about racialized American drugs and crime, despite the fact that the Canadian crime rate and drug use rate has been, and continues to be, significantly lower than their American counterparts (Erickson, 241). Canada has maintained lower rates of drug use and crime, perhaps related to its broader social net, which may reduce poverty and thus may provide less fertile ground for crime (Patricia G. Erickson, "Recent Trends in Canadian Drug Policy," 243).

Contemporary drug policies are shaped by a racist and colonial history, both in Canada and in the United States. These policies have historically been used to demonize specific groups by their associations with certain drugs; in Canada, for example, the Indian Act of 1868 prohibited Aboriginal people from buying or possessing alcohol, and this legislation was not repealed until 1985 (Susan C. Boyd, "From Witches to Crack Moms," 35-36). This dynamic would become apparent again in the 1980s with the rise in popularity of crack cocaine and its association with black and Latino populations, particularly in the United States, although this association would carry over to Canada as well and influence its policies in distinctive ways (see Erickson, Cheung & Erickson).

The 1960s and 1970s: Drug Use Rises

In the 1960s, drug use began to increase dramatically in the United States, Canada, and Western Europe. However, the responses to this new development varied dramatically from country to country. From 1969 until the mid-1980s, Canada's drug policy was dominated by cannabis. The Canadian response to the new youthful habit of cannabis consumption included a fine-only sentencing option, in 1969, and a provision of absolute and conditional discharge alternatives, in 1972 (Erickson, 245-246). Furthermore, an

increasing recognition of individual rights led to “the abolition of writs of assistance, the removal of mandatory minimum sentencing for importing, and the elimination of the reverse onus clause in cases of possession for the purpose of trafficking” (246). Research at the time also showed that the law was not an effective legal deterrent; at the same time, there was a growing recognition of the exorbitant costs of suppressing trafficking and the limited effectiveness of supply-side measures (247). As a result, most agreed that drug policy could be improved upon, though no concrete conclusions were reached (247).

Canada was relatively similar to the United States in its drug policies at this time; the American War on Drugs had not yet begun. Prior to the second term of the Nixon administration, drug use was treated as relatively benign, unworthy of serious punishment; that was reserved for traffickers and large-scale dealers (Gottschalk, 32). This mirrored attitudes towards alcohol during Prohibition (*ibid.*). However, this tolerant attitude towards personal use of drugs was not to last.

The 1980s and 1990s: The War on Drugs and Canada’s Drug Strategy

The 1980s brought a new set of issues to drug use; the most important one, in the United States, was the appearance of crack cocaine and its subsequent association with racialized and poor communities, specifically, blacks and Latinos (*cite*). These associations of crack with poor communities and communities of colour extended to Canada as well, despite the fact that crack cocaine was never as significant a problem in Canada as it was in the United States (Yuet W. Cheung and Patricia G. Erickson, “Crack Use in Canada: A Distant American Cousin,” 175-177).

As mentioned earlier, this racialization of drugs was not a new one. However, by the 1980s, new set of associations had been developed, conflating law and order with the power of the government and drugs with crime rather than personal vice (Boyd, 48-50). This new set of stereotypes and associations also linked crime; inner cities; drug use, and specifically crack cocaine; black and Latino populations; and welfare (Gottschalk, 32-34). During this period, therefore, the disproportionateness of black and Latino populations in prisons increased due to not only the drug use that became endemic in these communities, but also due to harsher sentencing, heavier policing, and increased surveillance (32).

Canada’s drug problem played out rather differently than that of the United States, but the narrative was very similar to the American one, regardless. Crack cocaine was portrayed as a unidimensional “demon drug”, dangerous and highly addictive (Erickson, 254-255). Furthermore, the narrative of crack cocaine that had been imported from the United States ensured that it remained a racialized drug. Canadians overestimated and misconceived of the nature of crime and drug use in the United States while simultaneously understanding their perception of these things as predictors of crime and drug use in Canada (Cheung and Erickson, 175). The cocaine use rate was, in 1987, 3-4 times higher in the United States than in Canada, and it was extremely difficult to discern

how much of this cocaine was in the form of crack (175-177). Nevertheless, the panic generated by reports of widespread crack use allowed Canada to implement policies similar to American policies to deal with the issue of crack cocaine, although these policies were always conflicted and ambiguous in terms of both their priorities and objectives (Cheung and Erickson, 175-176; Erickson, 255). In short, these policies were unable to respond to the “epidemic” of crack cocaine, because this epidemic did not actually exist.

The policies introduced by the Canadian government, however, described by Cheung and Erickson in their 1997 study as “punitive [and] law enforcement-centred”, thus responded to a version of a “crack epidemic” that did not exist in Canada (175). Crack was characterized by the government as powerfully addictive, causing extreme health and financial difficulties, and its usage was described as having reached epidemic levels (186). Conversely, the number of those who used crack cocaine usage in fact increased only slightly, from 0.9% of the adult population in 1985 to 1.4% in 1989 (Erickson, 254); those who used it did not understand it as inherently addictive; and crack cocaine usage was not compulsive for the majority of users (Cheung and Erickson, 185-186). Given these facts, then, it is clear that although the punitive aspects of Canadian drug policy appeared to squelch drug use and the problems that manifested from them, they were responding to a problem that did not exist, or that existed very differently than how it had been presented. Erickson suggests that a “feeling of threat helped justify increasingly repressive measures against the ‘enemy’” (254). Thus, the reason for increased punitive measures, rather than seeking to control the issue of crack cocaine, instead acted as a smokescreen and an excuse for the state’s desire to increase its own power through the use of surveillance and increased policing of marginalized communities (Gottschalk, 32).

By 1987, Canada’s Drug Strategy had been implemented. The Strategy was initially to last five years, but was renewed for another five years after that (Erickson, 249). The Strategy initially dedicated 70% of its money to prevention and treatment and only 30% to prevention and control, thereby distancing itself from the American-style “War on Drugs” (248-249). However, the results were “contradictory”, both in the enforcement of existing laws and in the creation of new laws, such as Bill C-61, which gave police and courts more rights to seize and forfeit the assets of arrested drug offenders (249). The majority of drug offenses (64%) were for cannabis; most of these were for simple possession (249-250).

1997—the present: Drug Courts and Alternative Sentencing in Canada

After the dissolution of Canada’s Drug Strategy and subsequent absorption of Canada’s Drug Strategy into the umbrella of “population health”, new strategies to deal with drug use were developed by the government (Riley, 5). One of these strategies was that of the drug court, which operated in Toronto and Vancouver as of 2004 (Boyd, 191). The drug treatment court offers offenders the option of treatment over prison; however, failure to complete take responsibility results in a prison sentence (186). Drug courts are based on a

harm reduction model that recognizes relapse as an integral part of the process; abstinence is not mandatory (191-192). Users and even those convicted of trafficking in small amounts are eligible for this program; however, only federal prosecutors can determine eligibility (192). Nevertheless, despite this seemingly liberal attitude towards drug users, participants in drug courts are “easily the most supervised non-incarcerated offender[s] in Canada” (192), and eighteen months after the program began in 1998, only 46% of the participants had graduated or were retained (193).

In short, while Canada may have appeared to have avoided an all-out drug war, such as the American drug war, it nevertheless retains an overall policy of criminalization (Erickson, 257).

Drugs and Prisons: Zero-tolerance and its Contradictory Effects

It is important to note not only the devastating effects that drug prohibition has on prisoners in prison, but also the unintentional but equally horrific effects that drug prohibition has had the communities most affected by the prison industrial complex, i.e., communities that are already marginalized and disadvantaged financially, socially, and structurally. Some of these issues include the inability of addicted prisoners to manage their addictions in prison; the inability to acquire clean needles in prison and subsequent soaring rates of HIV and Hepatitis in prison; and the drug trade as a source of violence in prisons (Riley 45-47). Prisoners who enter prisons with no history of drug use “often become drug users in prison” (45), and frequently injection drug users, which is problematic in a context where clean needles are nearly impossible to acquire (45-46). Thus, as Riley tells us, the criminalization of drug use is again revealed to not be related to public health. The harm that comes out of drug use is not solely related to the drugs themselves; instead, it is also heavily related to measures taken to control drug use (49-50). According to Riley, too, it is necessary to remember that there is a “constant flow of people” between prisons and the outside world, and thus the problems that evolve within the prison, such as increased rates of HIV/AIDS and increased injection drug use, will eventually begin to make impacts outside of the prison context as well (49).

A Brief Note on the Effects of Prisons on Marginalized Communities

In addition to the detrimental effects mentioned above, including increased rates of HIV/AIDS and increased injection drug use, prisons have other detrimental effects on marginalized communities. More specifically, Canada’s Aboriginal population has been othered and subjected to racist treatment that dates back to the initial colonization of Canada (Yasmin Jawani, “The Criminalization of Race, the Racialization of Crime,” 68). In particular, Aboriginal people are overrepresented in prisons, more often denied bail than non-Aboriginals, more often subjected to pre-trial detention than non-Aboriginals, and are considered to be “less respectable and more prone to crime than their white

counterparts” (70-71).

Similarly, black people, especially black men, have been understood to be more prone to crime, especially drug-related crime, than whites (72). As a result, black men are more likely to be detained for these charges, and sentencing is harsher and discharges fewer than for whites (72-73). The fact that black men and Aboriginal men spend longer in prison does not only affect individuals in prison; rather, this fact affects everyone in these communities, and particularly women. The increasing criminalization of men of colour, combined with racism from state agencies, both render communities unsafe for women of colour and impede them from getting help if or when patriarchal violence is experienced (73-74).

Possible Alternatives: Inspiration from the Past, Present, and Imagined in North America, Europe, and Australia

Returning to Angela Davis, it is useful to remember that though the prison’s existence is taken for granted as the primary mode of punishment and reform, it has not always existed as such. Instead, it is instead specific to a particular time and place (18-20). Nor is the criminalization of drug use a foregone conclusion: the Netherlands, for example, has a liberal marijuana policy and a much lower rate of use than the United States does (Riley, 23). Other examples include the Legislative Assembly of Australia’s Capital Territory’s 1991 report on illegal drugs, which noted that the prohibition of illegal drugs has not diminished their use and suggested instead that opiates be available to addicts by prescription (35-37). Even Canada’s own Le Dain Commission, in 1973, concluded that drug prohibition resulted in high costs and few benefits, and recommended a withdrawal of criminal sanctions against users (5).

Conclusion

It is unfortunate that despite the overwhelming evidence against drug prohibition, the Canadian government has nevertheless overwhelmingly continued to enact prohibitionist and criminalizing policies that are both expensive and ineffective. Although small steps have been taken against these policies, Canadian policies can only be considered liberal, or liberatory, in comparison to the American war on drugs.

Works Cited

Boyd, Susan C. *From Witches to Crack Moms*. Durham, NC: Carolina Academic Press, 2006. Print.

Cheung, Yuet W. and Patricia G. Erickson. "Crack Use in Canada: A Distant American Cousin." *Crack in America: Demon Drugs and Social Justice*. Ed. Craig Reinerman and Harry Gene Levine. Berkeley: University of California Press, 1997. Print. 175-193.

Davis, Angela Y. "Introduction—Prison Reform or Prison Abolition?" *Are Prisons Obsolete?* Toronto: Publishers Group Canada, 2003. Print. 9-21.

Erickson, Patricia G. "Recent Trends in Canadian Drug Policy: The Decline and Resurgence of Prohibitionism." *Daedalus* 121.3 (Summer, 1992): 239-267. JSTOR. Web. 4 November 2009.

Gosselin, Luc. *Prisons in Canada*. Montreal: Black Rose Books Ltd, 1982. Print.

Gottschalk, Marie. "Law, Order, and Alternative Explanations." *The Prison and the Gallows: The Politics of Mass Incarceration in America*. Cambridge: Cambridge University Press, 2006. Print. 41-76.

Jiwani, Yasmin. "The Criminalization of 'Race,' the Racialization of Crime." *Crimes of Colour: Racialization and the Criminal Justice System*. Ed. Wendy Chan and Kiran Mirchandani. Toronto: Broadview Press, Ltd, 2002. Print. 67-86.

Riley, Diane. *Drugs and Drug Policy in Canada: A Brief Review and Commentary*. Toronto: Canadian Foundation for Drug Policy & International Harm Reduction Association, 1998. Committee Research Paper: Special Committee on Illegal Drugs. 24 July 2001. Web. 11 December 2009.
<<http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/ille-e/library-e/riley-e.pdf>>