



Drug law reform, performativity and the politics of childhood

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ABSTRACT

Children are critical to debates about drug law reform. For both advocates of liberalisation and, especially, defenders of prohibition, the protection of children is an important rhetorical device in pressing for, or resisting, change. However, the privileged position of minors within such discussions, or talk about drugs in general, has rarely been explored in any depth in either drug and alcohol studies or legal research. Drawing on scholarship on performativity, and particularly John Law's work on 'collateral realities', this article will consider how constructs such as childhood and drugs are 'produced' and '(re)made' in such discourses. Through analysis of legal measures, policy documents/statements submitted to the UN General Assembly Special Session on Drugs (UNGASS) in 2016, and scientific discussion, it will be argued that such 'realities' include the constitution of the child as the logical victim of drugs (and the natural beneficiary or casualty of reform), and the enactment of drugs as an inherent threat to children. It is suggested that drug policy research needs to pay attention to age as a social construct and cultural category, and that a critical awareness of the relevance of age in policy discourse is as necessary as, for example, race, class or gender. Moreover, attendance to the ontological politics of constructs such as 'childhood' and 'drugs' is important if law and policy measures are to account for young people's agency.

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Introduction

In recent years, debates about reforming laws on drugs have, at least in some countries, edged from the margins of party conferences towards the centre of mainstream political debate. Various forms of decriminalised or regulated distribution or possession now exist in Uruguay, some states in the US, the Netherlands, Portugal, Australia and Mexico, among other countries. Candidates were asked to take positions on cannabis regulation during the US presidential primaries in 2015 (Waldman, 2015), whilst in the UK the Liberal Democrats have consistently revisited the question of drug law reform, setting up an expert panel on cannabis legalisation in October 2015 (Travis, 2015). In such debates, and in media reports, children¹ are often central. Indeed, while political battles are routinely fought on the 'backs of children' (Jenkins, 1998, 2), no other policy realm, perhaps aside from sex, has been quite so dominated by images of childhood and warnings about the threats posed to the young.

For those resistant to reform, arguments tend to be framed according to the inevitable damage that will result to 'innocent'

youth – the tragic victims of the drug scourge – with claims about the harm caused to adolescents by liberalisation,² in particular, often prominent despite equivocal evidential support (discussed below). The International Drug Control Board (IDCB), for example, released a press release condemning the legalisation of cannabis in Uruguay, with President Raymond Yans expressing "surprise" that the Uruguayan legislature "knowingly decided to break" the 1961 Single Convention on Narcotic Drugs (INCB, 2013). He went on:

[T]he decision of the Uruguayan legislature fails to consider its negative impacts on health . . . In particular, the use and abuse of cannabis by young people can seriously affect their development . . . [the decision] will not protect young people but rather have the perverse effect of encouraging early experimentation, lowering the age of first use, and thus contributing to developmental problems and earlier onset of addiction and other disorders.

Although images of childhood tend to support conservative social agendas (Gordon, 2008), the child also 'does a lot of work'

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¹ 'Children' refers to under-18s, as stipulated in the Convention on the Rights of the Child, Article 1, although age boundary distinctions are the subject of dispute, as discussed further in due course.

² Talking about law and drug control, especially 'prohibition' versus 'legalisation', is problematic since systems of regulation are variable and the effects of changes in legislation and policy will differ from country to country (Berridge, 2013). The term 'liberalised' will hereafter be used to describe attempts to relax or remove criminal sanctions for drug use, production and distribution within a given jurisdiction.

within campaigns that tacitly or explicitly support some form of drug law liberalisation. For example, the protection of children has been invoked as justification for ‘ending the drug war’, with advocates arguing that the imprisonment of parents who use drugs and militarised campaigns to end drug trafficking have displaced children and families and resulted in the widespread violation of children’s rights (Barrett, 2015; Carvoso, 2012). Drug policy organisation *Transform* has recently launched a project ‘Anyone’s Child: Families for Safer Drug Control’, endorsed by Sir Richard Branson, which campaigns against the criminalisation of drug use on the basis that it harms children and families.

The impulse to protect children seems obvious and incontrovertible. Why should law, policy and practice not centre on the seemingly weak, vulnerable and impressionable? Yet, as Foucault (2004, 24), among others, might implore, it is often the most self-evident of truths that demand the most focused critical attention. The discussion in this article relies on the premise that images of childhood do not simply affirm an existing, essential state, but in fact produce such representations ‘performatively’ (Austin, 1975; Butler, 1993; Law, 2011; Race, 2011), for example by distinguishing the pure and innocent, drug-free child from the corrupting adolescent or adult user-abuser. Moreover, focusing on legislative revisions, and documents submitted to the UN General Assembly Special Session on Drugs (UNGASS) in April 2016, as well as political statements made during the event, it suggests that the performance of childhood is also central to the enactment of ‘realities’ about drug use and law reform. The paper will begin with a problematisation of the link between children and drugs, and its pertinence for political debates, before turning to an examination of the ‘collateral realities’ (Law, 2011) that are ‘made’ during the emphasis on children within policy discussions and regulatory reforms. It should be emphasised at the outset that thinking about discourses, and placing concerns about drugs and children within a broader political and cultural context, does not ignore the possibility that drugs can be associated with harms. Indeed, it is argued that attendance to the ontological politics of ‘childhood’ and ‘drugs’ is necessary if policy is to address the depth and breadth of young people’s drug experiences (Mol, 1999).

Children, drugs and politics

Given the huge evidence that drug and alcohol use before the age of 18 can cause long lasting impairments in your cognitive and emotional ability, Global Drug Survey stresses that this site is strictly for those over 18 years of age . . . Kids don’t screw up your brains. “Grow your brain before you start expanding it!”

The above “disclaimer” is the first piece of information to confront a visitor to the Safer Use Limits website,³ run by the Global Drug Survey, (GDS),⁴ described as the “world’s first guidelines for safer drug use”. Leaving aside, for a moment, the question of whether (all) drugs do “screw up your brains”, it is instructive that under-18s, a significant proportion of whom may take drugs, are barred from reading advice on reducing the harms associated with their consumption. The link between age and drug use is clearly established and data has long found that under-18s comprise a significant proportion of global drug takers (UNODC, 2016). Studies have consistently shown that consumption is rare in the early teen years, but rises rapidly in the mid-teens and peaks in the late teens/early 20s. Use then usually tailors off by the mid to late 20s (Home Office, 2015; Shiner, 2009). In view of the

adolescent propensity towards risk-taking, pleasure-seeking and offending behaviour, it could be said that there is in fact something quite ‘normal’ about adolescent drug consumption (Collison, 1996; Farrington, 1986; Gottfredson & Hirschi, 1990). The ethics of harm reduction are, moreover, based on the premise that, whereas drug use is not condoned, neither is it considered morally objectionable and users need to be encouraged to access health advice to mitigate the risks (HRI, 2010). Given that the GDS is run by experts with a commitment to evidential precision, as well as humane drug policies, the disclaimer is presumably not about preventing young people from accessing harm reduction information (even if they did dutifully respond by switching webpages), but an example of the intensely *political* position of childhood within drug discourses. As explored further below, qualifying humane or liberal approaches to drug law and policy, which do not involve either a moralistic or prohibitionist stance, with assurances about child protection – emphasising the need to restrict access (of knowledge or substances themselves) to children – is a recurrent feature of drug discourses and legislative developments.

The role of childhood in discourses on health, morality and behaviour is in general well established. The drivers behind the disapproval of drug use are not confined to anxieties about childhood, of course, but children personify the perceived threats. They include concerns about health, social costs, sinful conduct, deviant groups, as well as the collective future (Courtwright, 2001).^{5,6} Since children are *the* marker for the health and wellbeing of the nation state, scientific discourses, particularly biomedical and, more recently, neuroscientific, have been important in determining how childhood should be governed (Rose, 1990). There is at least some element of social constructionism to the determination of ‘childhood’, and how it acts as a site onto which adults project their hopes for humanity, and themselves, as well as their fears about moral fragility and physical degradation (Archard, 2004; Jackson & Scott, 1999). For the developmental discourses, which have been so central to ‘bio-power’ and biopolitics, drugs epitomise the risk posed to the ‘normal’ biological progression of the child (Foucault, 1980; Wells, 1998).

As a result, in part, of the ways in which childhood is constructed, it occupies a privileged, often unassailable, position within political discourse. The child operates as a floating signifier, or an empty vessel, easily attached to a range of political and moral projects. Barbara Baird (2008) uses the term ‘child fundamentalism’ to explain the mobilisation of a fixed and absolute image of innocence in which there is “an insistence on the child as an impermeable category that must be defended and where the child often becomes iconised or fetishized” (Baird, 2008, 293). For Robin Bernstein (2011, 4), by the mid-nineteenth century ‘sentimental culture’ had enabled the fusion of childhood and innocence. To be innocent was to ‘achieve obliviousness’, which did not constitute the mere absence of knowledge, but “an active state of repelling knowledge” (Bernstein, 2011) The construction of some knowledge as ‘difficult’, as designated on the *Safer Use Limits* website, is part of this battle for supremacy between competing discourses that lay claim to specific objects (Foucault, 1980). As with information about other taboo subjects, such as sex, distinguishing difficult knowledge is also *productive*. It helps to maintain the adult/child binary and preserve constructions of innocent childhood. For Duschinsky (2013, 765), innocence, which is constitutive of the essence of universal childhood, has been important to processes of normalisation. He writes that: “[t]hrough practices that seem to

³ Global Drug Survey, Safer Use Limits website, available at: <http://saferuselimits.co/>

⁴ Global Drug Survey website, available at: <https://www.globaldrugsurvey.com/>

⁵ This historical association will be further explored in a book being prepared by the author.

⁶ See also Berridge (2013) for a historical discussion on the role of women and children in drug discourses.

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