From ‘Indian Hemp’ to the ‘New Cannabis’ in Canada: the Racial Contract and Cannabis Criminalization and Licensing in a British Settler State

by

Amanda Vance

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The following individuals certify that they have read, and recommend to the Faculty of Graduate and Postdoctoral Studies for acceptance, the dissertation entitled:

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submitted by Amanda Vance in partial fulfillment of the requirements for the degree of Master of Arts in Political Science

Examinining Committee:

Bruce Baum
Supervisor

Paul Quirk
Supervisory Committee Member

Supervisory Committee Member

University Examiner

University Examiner

Additional Supervisory Committee Members:

Supervisory Committee Member

Supervisory Committee Member
Abstract

As recreational cannabis drug legalization approaches in Canada with *The Cannabis Act*, the question of why marijuana cultivation, production, use and trade was criminalized in the first place looms large. Leading up to reform in Canada, observers in Canada and the United States argued racism was central to cannabis drug criminalization in North America. Using critical race theory including Charles Mills’ *The Racial Contract*, Edward Said’s *Orientalism*, and passages on ‘White Technicians’ from Jean-Paul Sartre’s *Black Orpheus*; secondary sources by historians, sociologists, criminologists, and other scholars; as well as my own primary historical and contemporary source analysis, including archived Canadian and American media and recent *Cannabis Act* hearings in the Standing Senate Committee on Aboriginal Peoples, I argue that racism was fundamental to cannabis criminalization in Canada as it was a European colonial policy which has disproportionately impacted racialized non-white Canadians in recent years. The *Cannabis Act* disregards Indigenous claims to sovereignty and imposes criminal penalties for unlicensed cannabis market activity. As such, the legislation could perpetuate racism in practice. Arguably, the net effect of the criminalization of unlicensed cannabis use and trade, combined with restrictive licensing practices, has been to co-opt cannabis for settler government and select entities with limited inclusion of Indigenous peoples so far, suggesting the need for further reform.
Lay Summary

The coming legalization of cannabis (Bill C-45, the *Cannabis Act*) is a landmark moment in Canada. However, a history of racism associated with the policy threatens to re-assert itself with the ongoing criminalization of unlicensed cannabis market activity. Using critical race theory, archived media in Canada and the United States, historical and current testimony from governmental debates, as well as other historical and scholarly sources, I argue that racism was and is associated with the criminalization of unlicensed cannabis use and trade, suggesting the need for further reform. Given developments in the Standing Senate Committee on Aboriginal Peoples during Cannabis Act hearings, where representatives of First Nations expressed concerns about the effect of the law on Indigenous sovereignty and on First Nations in other respects, the effect of this legislation on Indigenous communities in Canada in particular requires further consideration.
Preface

This thesis is original, unpublished, independent work by the author, Amanda Vance.
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Chapter 1: Introduction

Cannabis, a highly politicized plant with narcotic, fiber, and other economic potential, will soon be legal in Canada for recreational and medical drug purposes. The Canadian Senate’s passage of the Liberal Government’s Cannabis Act, Bill-C45, is a landmark moment in a “saga of promise, hesitation and retreat” to reform the legal framework for the Cannabis drug trade in Canada.\(^1\) The modern regime of Cannabis regulation was inaugurated in 1923 and 1938 with amendments to the Opium and Narcotic Drugs Act. Inserting Cannabis into existing opium legislation without debate in 1923, the Canadian state first assumed the power to control by license the import, export, manufacture and distribution of “cannabis indica (Indian hemp) or hasheesh and its preparations” for use by “analysts” for proscribed purposes only.\(^2\) This action was followed in 1938 with an amendment to the Opium and Narcotic Drugs Act empowering the Minister of Health and National Pensions to control by license the cultivation of the plant, prohibiting such activity by discretion.\(^3\) Bill-C45 represents a huge shift in mentality, newly creating a licensed legal Cannabis drug market for adults without a medical prescription. However, like the 1923 and 1938 acts before it, this new legislation criminalizes the unlicensed trade in Cannabis, controlling the legal trade by license and criminal penalty.

\(^1\) Giffen, Endicott, and Lambert, *Panic and Indifference—The Politics of Canada's Drug Laws* (Canadian Centre on Substance Abuse, 1991)


\(^3\) Senate Debates 18th Parliament 3rd Session Volume 1, pp. 78. [http://parl.canadiana.ca/view/oop.debates_SOC1803_01/89?r=0&s=2](http://parl.canadiana.ca/view/oop.debates_SOC1803_01/89?r=0&s=2)
My goal with this thesis is to identify the popular discourses specific to early Cannabis criminalization and licensing in Canada and to connect these discourses to British and American colonial power dynamics to show that racism fundamentally shaped early cannabis policy in Canada and continues to shape legalization in this country. I will show how Cannabis laws in Canada are rooted in racist concerns about new immigrant populations or existing marginalized racial groups, research which is particularly relevant in light of recent developments in the Standing Senate Committee on Aboriginal Peoples, where representatives of several First Nations tried but failed to delay Bill C45. In Cannabis Act hearings, multiple Indigenous representatives argued that ongoing criminalization of the unlicensed trade could serve to further exacerbate imbalances between the dominant settler population and marginalized Indigenous populations, as Bill C-45 serves to foster legitimate trade by the elite in Canada without rectifying how Indigenous communities have recently been over-incarcerated for Cannabis crimes and blocked from partaking in the legal medical marijuana trade due to formal and informal barriers. Additionally, the legislation is problematic as it overrides Indigenous self-determination, applying across reserves regardless of whether it works for each distinct community.

To show how cannabis licensing and criminalization has historically been rooted in racial discrimination and associated with colonialism, warranting these concerns, I chart the drug’s transition in popular discourses from ‘Indian hemp’ to the ‘New Cannabis’ in Canada. I compare Canadian media narratives around early

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4 The Standing Senate Committee on Aboriginal Peoples, Subject Matter of Bill C-45: An act respecting cannabis and to amend the Controlled Drugs and Sentences Act, the Criminal Code and other Acts, pp. 16.
criminalization of the Cannabis drug, known then as ‘Indian hemp,’ and modern
terpretations of the ‘New Cannabis’ industry and Licensed Producers in Canada,
which are arguably white-washed of explicitly racist discourses around the
criminalization of Cannabis even though First Nations claim to be largely excluded
from the legal market so far. Employing critical race theory, analysis of colonial
Cannabis policies in the British Empire by scholars like James Mills and Michael
Angrosino, as well as my own research into primary sources on Cannabis (including
archived media articles gathered from different online collections in Canada and the
U.S., Canadian government debates in 1923, 1938, and 2017-2018, and public
reports from Canada, the League of Nations and the British Empire), I highlight
racist power dynamics and narratives surrounding the drug during early prohibition
and legalization.

My survey of media focuses on two periods, 1878-1938 and 1990-2018,
using a range of Canadian and American (or mixed) archives: the Library of
Congress, Newspapers.com, Early Canadiana Online, the Toronto Star, ProQuest
Historical Newspapers (with a focus therein on the Globe and Mail and the New
York Times), B.C. Historical Newspapers, Peel University Library, and the
University of Manitoba.⁵ I have attached a description of this research in Appendix
B. Throughout my paper, I quote media from this survey to make concrete the
popular racialized discourses that continuously underlie policy. I will connect these
media narratives to policy discussions in Canadian Parliament, public reports from

⁵ The articles cited in this thesis are drawn from a sample of 2,000 media articles I have downloaded
and saved from this time period. Of these articles, I will only reference media articles which
reappeared in whole, in part, or in substance in Canada and/or the United States.
the British Empire and League of Nations, and secondary sources to show that while racism alone may not motivate Cannabis policy, it is a key explanatory factor.

My thesis is divided into three parts. In the second chapter, I review studies from multiple fields to show how racism shaped early drug policy, namely anti-opium legislation, in Canada. I also provide statistics on the disproportionate policing of various racialized ‘colored’ communities, including Indigenous and African-American populations, for narcotics in Canada and the United States.

In the third chapter, I outline critical race theory that I argue explains the racist origins of Cannabis criminalization beyond the racism of opium policy, namely Charles Mills’s theory of the Racial Contract alongside Jean-Paul Sartre’s description of White Technicians and Edward Said’s articulation of Orientalism. These concepts connect Canadian racism to white supremacy and the legacy of European colonialism to show how early Cannabis policy was under-written by the Racial Contract. Arguably, this theory, particularly when contextualized with other evidence, explains the continued over-criminalization of visible minorities.

In the fourth chapter, I review Canadian and American media sources relating to the policing of Cannabis markets in the British Empire and situate them within the terms of the Racial Contract to show how racist narratives of Cannabis criminalization in the first part of the twentieth century were connected to European orientalism. I also outline how ‘white technicians’ institutionalized their supremacy through licensing laws governing Canadian Cannabis markets not only for drugs but for fiber after the Canadian government tried to establish a Western hemp industry.
In the penultimate chapter, I show how the new regime of Cannabis drug enforcement has been white-washed of openly racist associations yet still so far diminishes Indigenous participation in the legal market as well as Indigenous rights to self-determination. In order to make this argument, I consult Cannabis Act hearings, namely in the Standing Senate Committee on Aboriginal Peoples, as well as some of many Indigenous perspectives on the bill, and various representations of Licensed Producers.

In my conclusion, I argue that although my findings are preliminary, critical race theory, public reports, media and secondary historical sources highlight how early criminalization of the Cannabis drug targeted and repressed non-white markets in the British Empire, while media on Licensed Producers highlights how the new industry has been legitimized according to the values of the ‘White Technician.’ By connecting these popular discourses to wider historical dynamics, I argue that Cannabis has been co-opted by the settler establishment as its popularity as a powerful narcotic and social lubricant has spread, whether this process was conscious or not.
Chapter 2: Background on Cannabis Prohibition in North America

i. Cannabis Legislation and Enforcement in Canada

The 2003 Senate Committee on Illegal Drugs determined that criminalization of marijuana impacts less than one percent of Canadian Cannabis consumers but constitutes between 50 to 77 percent of all drug charges.\(^6\) One effect of Cannabis criminalization has been the disproportionate policing of socially vulnerable populations, including racialized minorities. Comprehensive, accessible data on current racialized enforcement of Cannabis laws is lacking in Canada, but the 1995 Commission on Systemic Racism in Ontario acknowledged “it is clear from our findings that in Ontario, as in many parts of the United States, one effect of the ‘war on drugs,’ intended or not, has been the increase in imprisonment of black people.”\(^7\) New research by criminologists Akwasi Owusu-Bempah and Alex Luscombe found that between 2015 and 2017, African-Canadians were five times more likely than whites to be arrested for marijuana possession in Halifax while Indigenous people in Regina were nine times more likely than whites to be arrested for marijuana possession.\(^8\) In hearings on the *Cannabis Act*, Senator Tony Dean


\(^8\) Rachel Browne, “Black and Indigenous People over-represented in Canada’s weed arrests,” Vice News, April 18, 2018
recognized that criminalization “can disproportionately affect Indigenous and other racialized Canadians—groups already overrepresented in our prisons.”

The over-criminalization of racialized minorities for narcotic offences is a policy that goes back to Canada’s earliest days. Clayton Mosher and John Hagan analyzed the nature of drug crime in Upper Canada between 1908-1953, noting opium offences targeted “almost exclusively Chinese” offenders and that in general for narcotic offences, “two thirds of sentenced offenders were Chinese or black” between 1908-1920. They also determined that while penalties for opium possession were often lenient for Chinese with an addiction problem, “it is apparent that if Chinese were apprehended selling narcotics to whites, they were treated much more severely.” Criminologist Neil Boyd suggested a historical reason for this, noting that the first in a series of laws in Canada directed against opium-smoking in 1908 was prompted by then-federal Minister of Labour, William Lyon Mackenzie King, in response to anti-Asian riots by white workers in Vancouver in 1907. Boyd showed that these riots were largely directed at a Chinese immigrant community which a 1908 Royal Commission acknowledged was induced by West Coast industrialists to work in British Columbia for particularly low wages.

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9 1st Session, 42nd Parliament Vol. 150, Issue 164, Cannabis Act Hearings, November 30 2017


11 Ibid.


13 The Report of the Royal Commission Appointed to Inquire into the Methods by which Oriental Labourers have Been Induced to Come to Canada
Following the riots, politicians like Mackenzie King were alarmed to learn these immigrants were profiting from selling opium to white people. Boyd concluded “narcotics legislation is most appropriately viewed as the product of a multiplicity of complex power relations,” including race and class.14

Political scientist Todd Gordon theorized that in general, the war on drugs is “bound up with a deep-seated racist fear of the non-British immigrant Other, whose cheap labor Canadian capitalism has historically been very dependent on,” even though some immigrants have historically been portrayed as a “potential infection of the white bourgeois moral order.”15 In Repertoires of Racism: Reactions to Jamaicans in the Okanagan Valley, sociologist Luis Aguiar demonstrated such a case in British Columbia, where black Jamaican immigrants were systematically associated with deviant marijuana smoking and crime by public officials in the media.16 Beyond the Okanagan, sociologists Susan Boyd and Connie Carter argued, based on a study of media in British Columbia, that the press in that province has played a role in perpetuating racist stereotypes about drug markets.17

Historian Catherine Carstairs claims the 1923 anti-cannabis legislation, which was initiated with other amendments to the Narcotics Act expressly designed


17 Susan Boyd and Connie Carter, Killer Weed: Marijuana Grow Ops, Media and Justice (University of Toronto Press, 2014)
to “rid our Canadian soil of Oriental filth,” is best understood as anticipating cannabis policy-making by governments in the League of Nations.\textsuperscript{18} Likewise, historian Ernest Abel connected cannabis policy with racism in \textit{Marihuana: The First 12,000 Years}, arguing that the anti-Chinese opium legislation, magistrate Emily Murphy’s infamous prohibitionist publication \textit{The Black Candle}, and policy in the League of Nations influenced Canadian marijuana policy.\textsuperscript{19}

Criminologist Benedikt Fischer also noted early Canadian Cannabis laws were written into the framework of the Opium and Narcotic Drug Acts, anti-opium legislation which accompanied overt racism against Chinese immigrants in British Columbia.\textsuperscript{20} Fischer did not pursue the association of racism with Canadian drug policy beyond the historical connection between anti-opium laws and prejudice against the Chinese, arguing pressure from the United States at the time explains the origins of Canadian Cannabis policy.

\textit{ii. Cannabis Legislation and Enforcement in the U.S.}

The argument that racism was, and is, integral to Cannabis criminalization is well-documented in the United States.\textsuperscript{21} Multiple studies have shown racist

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{18} Catherine Carstairs, \textit{Hop Heads and Hypes: Drug Use, Regulation and Resistance in Canada, 1920-1961} (Department of History, University of Toronto), pp. 35
\item \textsuperscript{19} Ernest Abel, \textit{Marihuana: The First 12,000 Years} (Library of Congress Cataloguing in Publication Data, 1943) pp. 235
\item \textsuperscript{21} Examples include John Hudack, “How racism and bias criminalized marijuana” (Washington Post, April 28, 2016); Jeremy Daw, “The racist roots of America’s medical marijuana policy” (Salon, January 14, 2014); “Race and the Drug War” (Drug Policy Alliance, Undated/unattributed); Andrew Abramson, “Pot prohibition’s shadowy past” (Sun Sentinel, Editorial, October 27, 2016). The use of anti-racism by marijuana activists was noted by W.W. Houston “Leveraging Racism” (The Economist, June 11 2013).
\end{itemize}
\end{footnotesize}
enforcement of various marijuana prohibition laws against African-Americans particularly: for instance, the American Civil Liberties Union found that African-Americans were arrested at a national average of 3.73 times the rate of whites for marijuana possession between 2001-2010, even though use rates were roughly equal between those populations.\textsuperscript{22} The Brookings Institute published similar findings.\textsuperscript{23} Katharine Beckett et al. found “quite pronounced” racial disparities in marijuana arrests of “Blacks” and “Whites” in Seattle in 2005, with whites making up 70 percent of the general population and 50.8 percent of the marijuana possession arrestees, compared to African-Americans who made up 8.4 percent of the population and 36.4 percent of the possession arrestees.\textsuperscript{24}

Likewise, Bernard Harcourt and Jens Ludwig found that in New York City, marijuana misdemeanor arrests “disproportionately targeted African-Americans and Hispanics in relation to their representation in the resident population” to the degree that these populations together made up 84 percent of those arrested for smoking marijuana in public view in this study.\textsuperscript{25} In \textit{Marijuana Prohibition in California: Racial Prejudice and Selective Arrests}, Kenneth White and Mirya Holman traced such discrimination to express racial animus underlying early cannabis prohibition

\textsuperscript{22} The American Civil Liberties Union, \textit{War on Marihuana in Black and White} (ACLU Foundation, June 2013)

\textsuperscript{23} Jonathon Rothwell, “\textit{How the War on Drugs Damages Black Mobility}” (Brookings Institute, September 30, 2014)


in that state in order to explain how African-Americans made up only six percent of the general population but 21 percent of those charged with cannabis offences between 2000-2008 in California.²⁶

Despite awareness of the long-standing racism associated with cannabis law enforcement in the United States, legalization of the drug in some states while maintaining criminal penalties for selling outside the regulatory framework has been associated with ongoing racial disparities in the enforcement of cannabis laws with fewer overall arrests. In Colorado, for instance, a *Report on Early Findings in Marijuana Legalization* by the Department of Public Safety noted that since legalization, arrests have decreased by only 25 percent for African-Americans versus 51 for whites, leaving three times as many African-Americans compared to whites prosecuted for cannabis offences; for youth, the racial disparities in arrest statistics were even more striking, as marijuana-related arrests increased by 58 percent for African-American youths while arrests for whites decreased by 8 percent.²⁷ Mike Males of the Center on Juvenile and Criminal Justice found that racial disparities also endured in Washington state, though to a lesser extent.²⁸ Males also found that in California, racial disparities have declined since medical marijuana legalization as well, though African-Americans are still twice as likely as

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²⁸ Keith Humphreys, “Pot legalization hasn’t done anything to shrink the racial gap in drug arrests,” Washington Post, March 21 2016
whites to be incarcerated for marijuana offences.\textsuperscript{29} Persistent racial disparities in marijuana arrest rates in parts of the United States where marijuana has been legalized inspired news sources like \textit{The Atlantic} to write about the “Failed Promise of Legal Pot” to improve racial justice.\textsuperscript{30}

\textit{iii. Recognition of the Racial Roots of Cannabis Legislation}

In Canada and the U.S., media outlets now claim that marijuana laws were “racist from the start.”\textsuperscript{31} Such news stories address how anti-Chinese sentiment was used to justify opium criminalization, often noting anti-Mexican attitudes shaped cannabis prohibition in the U.S, but frequently lack information on the specifics of the discourses and dynamics that link cannabis with racism during early laws in Canada preceding the 1937 federal act in the U.S. The Canadian Broadcasting Corporation (C.B.C), for instance, described the rationale for the federal suppression of the cannabis trade in Canada in 1923 as a “mystery.”\textsuperscript{32} This news article referenced historian Catherine Carstairs, who suggested criminalization was rooted in international discourses and policy in the League of Nations, but these circumstances were not detailed beyond the criminalization of Chinese immigrants alongside opium in Canada. Without a narrative to show how racism specifically

\textsuperscript{29} Mike Males, “Reform cuts marijuana possession rates by 86 percent in 2011,” Center on Jovenile and Criminal Justice 2012

\textsuperscript{30} Tom James, “Failed Promise of Legal Pot,” The Atlantic, May 9 2016

\textsuperscript{31} Nick Wing, “Marijuana Prohibition was Racist from the Start. Not Much has Changed,” The Huffington Post, January 25, 2014

\textsuperscript{32} Daniel Schwartz, “Marijuana was criminalized in 1923, but why?” The CBC, May 3, 2014
influenced marijuana (and not opium) prohibition in this country, the argument that marijuana laws were “racist from the start” seems hypothetical.

However, it is not. Historian James Mills outlined how British colonial officials tried to tax and control cannabis markets in India, resulting in criminalization, suggesting the possibility that modern cannabis control originated in colonial policy. Using critical race theory and evidence from public reports, including primary sources like media and secondary historical accounts, I argue cannabis control in Canada was likely dictated by the same considerations, with implications for Canadian Indigenous peoples that require further consideration.

Chapter 3: The Racial Contract, the White Technicians, and the Orient

Three concepts from critical studies of modern racism illuminate the racialized contours of Canadian drug policy from prohibition to legalization: the ‘Racial Contract,’ ‘white technicians,’ and ‘orientalism.’

i. The Racial Contract

One way of theorizing racism in the context of European settler states like Canada is with Charles Mills’s Racial Contract theory, which is a modification of the European Enlightenment theory of Social Contract. While Social Contract theorists argue that the Western liberal democratic state was formed by the “consent of the governed” (“we the people”) Mills claims that the contract founding the Western liberal democratic state was “not a contract between everybody (“we the people”) but between just the people who count, the people who are really [understood as] people (“we the white people”). It is a Racial Contract.”

The Racial Contract, according to Mills, has many historical and localized “variants,” but in essence it is an exploitation contract that:

determin[es], economically, ‘who gets what’… a set of formal or informal agreements or meta-agreements… between the members of one subset of humans, henceforth designated by (shifting) ‘racial’ (phenotypical/genealogical/cultural) criteria C1, C2, and C3 as ‘white,’ and coextensive (making due allowance for gender differentiation) with the class of full persons, to categorize the remaining subset of humans as “non-white” and of a different and inferior moral status, subpersons, so that they have a subordinate civil standing in the white or white-rulled polities...


35 Mills, The Racial Contract, pp. 9-11
Although ‘white’ and ‘nonwhite’ are not fixed categories, as they are socially constructed and the populations they denote are re-shaped through power dynamics that fluctuate depending on intersections with other power relations, the “basic distinction” between ‘full citizens’ and ‘subordinate citizens’ in European settler states is ‘white’ and ‘non-white’—the civilized ‘European’ versus the wild ‘Native’ in “spaces that need taming.”

Therefore, the “purpose of the Contract [in its variant forms] is always the differential privileging of whites as a group with respect to nonwhites as a group.” Although this system, developed through European colonization, has been dismantled to some extent with decolonization, Mills argues that the Racial Contract still “underwrites the Social Contract. It is a visible or hidden operator that restricts and modifies the scope of [the Social Contract’s] prescriptions” along racialized lines, and is “continually being re-written” so that “discrimination is latent” when it is no longer formally written into law.

While the Social Contract is normative and “explains how a just society would be formed,” the Racial Contract theory claims to be descriptive “of the actual non-ideal polity” in European and Euro-settler states—evidence of white rule over non-whites is “historically locatable” in texts related to European colonialism, and the theory can be used “to explain and expose the inequities of the actual polity.”

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36 Mills, Ibid, pp. 43.


38 Mills, Ibid, pp. 72.

39 Mills, Ibid, pp. 5.
use the concept of the Racial Contract to explain why the Cannabis trade was
criminalized and has recently disproportionately targeted visible minorities.

Mills argues that institutionalized white supremacy is an international
phenomenon. It “is the unnamed political system… that has developed over
centuries of European conquest” to create a “transnational white polity” across the
Western world — “a virtual community of [European] people… constituted in
opposition to their indigenous subjects.”

As a settler state for the British Empire
and ally of the United States, Canada arguably belongs to the transnational white
polity created through the Racial Contract. Canada’s policies of Multiculturalism
and of Truth and Reconciliation suggest the state is largely “raceless.”

However, Canada has a long history of white supremacy as expressed through practices,
including: the legal protection in courts of Jim Crow-like racial segregation as a
‘freedom of commerce’; the establishment of immigration policies which
preferred Anglo-Saxon and Western European populations over African and

40 Mills, Ibid, pp. 1, 29.

41 Elizabeth Comack, *Racialized Policing*, (Fernwood Publishing, March 2012) pp. 22; Constance
Backhouse, *The Historical Construction of Racial Identity and Implications for Reconciliation*,
(Department of Canadian Heritage for the Ethnocultural, Racial, Religious, and Linguistic Diversity
and Identity Seminar, 2001) pp. 1; John Price, “Canada, White Supremacy and Twinning of
Empire,” (International Journal Vol. 68 No. 4, Sage Publications 2013), pp. 629

42 Constance Backhouse has covered these topics, especially legal racial segregation but also
racialized slavery, in *Colour-Coded: A Legal History of Racism in Canada 1900-1950* (University of
Toronto Press, Scholarly Publishing Division; First Edition edition, November 20 1999); *The
Historical Construction of Racial Identity and Implications for Reconciliation*, and *Carrie M. Best’s
Struggle Against Racial Segregation in Canada in Nova Scotia, 1942* (Atlantis Vol. 22.2
Spring/Summer 1998).
Chinese through Head Taxes and other measures; the exploitation of immigrant Chinese labour to build the first cross-country railroad; and the ‘cultural genocide’ of Indigenous peoples through Indian Residential Schools. Despite reform, policy still results in unequal outcomes for ‘white’ and ‘non-white’ Canadians.

Arguably, these policies are not merely anomalous examples of Canadian political action, but speak to what was a fundamental aspect of a state founded by the British through the colonization of the unceded land it now rules—a state which was created with “a particular power structure of formal and/or informal rule, socioeconomic privilege, and procedures and norms for the differential distribution of material wealth and opportunities, and benefits and burdens” for preferred settler populations, other immigrants, and Indigenous peoples.

43 George Elliott Clarke in “White Like Canada” (Transition no. 73, Indian University Press, 1997), and John Price in “Canada, White Supremacy and the Twinning of Empires,” cover immigration policies that preferred ‘whites’ to ‘others.’

44 This history is now generally accepted to the degree that it is taught to children in Canadian schools. See The Kids Site of Canadian Settlement (Government of Canada 2005) https://www.collectionscanada.gc.ca/settlement/kids/021013-2031.3-e.html

45 The Canadian state has acknowledged the ‘cultural genocide’ represented by Indian Residential Schools through the Truth and Reconciliation Commission of Canada.

46 Examples of government, non-profit and academic reports on racism in Canada include: the Royal Commission on Aboriginal Peoples (October 1996); the Report of the Commission on Systemic Racism in Ontario (Queen’s Printer for Ontario, 1995); The Report by the Canadian College of Family Physicians on Health Care Implications of Systemic Racism on Indigenous Peoples in Canada (Andrew Leyland et al., Indigenous Health Working Group, College of Family Physicians Association of Canada, February 2016); A Canada for All: Canada’s Action Plan Against Racism (Department of Canadian Heritage, Minister of Public Works and Government Services Canada, 2005); Errors and Omissions - Anti-Black Racism in Canada: A Report on the Canadian Government’s Compliance with International Convention on the Elimination of all Forms of Racial Discrimination (African-Canadian Legal Clinic, January 24 2012), and Crimes of Color: Racialization and the Criminal Justice System in Canada (Wendy Chen and Kiran Mirchandani, Broadview Press, 2001)

As the original “purpose of this state [was] to maintain and reproduce this racial order, securing the privileges and advantages of the full white citizen and maintaining the subordination of nonwhites,” the machinery of racial settler states is rooted in systemic racism, affecting many policies.\textsuperscript{48} Mills argues this system is so entrenched that it endures to some degree without the awareness of ‘whites’: “economic structures have been set in place, causal processes established, whose outcome is to pump wealth from one side… to another, which will continue to work largely independent of the ill will, good will, racist or antiracist feelings of individuals.”\textsuperscript{49} Although this political system has been reformed, it still perpetuates itself using coercion as well as “norms and procedures for determining what counts as moral and factual knowledge of the world.”\textsuperscript{50} Mills explains that “the coercive arms of the state, the police, the penal system, and the army need to be seen as enforcers of the Racial Contract, so that across white settler states, non-whites are incarcerated at differential rates from whites.”\textsuperscript{51}

\textit{ii. The White Technician}

A second concept in critical race theory that is useful for understanding the racialization of Canadian Cannabis policy is Sartre’s analysis of racial oppression in terms of the role of the ‘White Technician.’ The norms and procedures that Mills identifies as perpetuating white supremacy emanate from and legitimate the power

\textsuperscript{48} Ibid, pp. 14.

\textsuperscript{49} Ibid, pp. 36-37.

\textsuperscript{50} Ibid, pp. 32, 19.

\textsuperscript{51} Ibid, pp 84.
of a professional class of “technicians, scholars, and politicians” who create policy according to European Enlightenment values of “rationalism, materialism and positivism.”\(^{52}\) These White Technicians embody Enlightenment values as individuals empowered to resolve and explain social problems with “professional, economic and scientific know-how.”\(^{53}\) With regards to Cannabis, the White Technicians I will discuss include politicians, scientists, and businessmen who claim superior knowledge and abilities to legitimate their use of the Cannabis plant.

In settler states like Canada, Enlightenment knowledge and processes are traditionally valued in the mainstream alongside Christian principles, the legitimacy of which also empowers the decisions of those defined as authorities in Canadian society.\(^{54}\) In Mills’s words, the “Euro-centrically normed conception of rationality is coextensive with the Christian message.”\(^{55}\) Or, as Sartre put it, “for the White Technician, God is first of all an engineer… He conceives the world through his understanding and brings it into being through his will.”\(^{56}\) In the following section, I will show how early anti-Cannabis legislation allowed White Technicians to grant themselves the privilege of profiting from Cannabis through licensing and research with the moral support of Christian missionaries, subsequently controlling early definitions of legitimate/illegitimate cannabis use.

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53 Sartre, Ibid, pp. 16.


iii. The Orient

Historically, White Technicians, in this case “technicians of empire,” were entrusted with studying unfamiliar phenomena in acquired territories; this field of study was “orientalism.”

Orientalism, and the understanding of newly-acquired territories in places like the ‘Orient,’ is the final Critical Race Theory concept that I argue explains Cannabis policy in Canada and the wider British Empire.

According to Edward Said, ‘the Orient’ has been perpetually “re-discovered by Europe” in a process that “defies neutral, disinterested or stable definition” due to “economic, political, cultural or religious considerations.”

As power informs knowledge, orientalism as a study of various colonized cultures was informed by “ideological suppositions, images and fantasies about a politically urgent region of the world,” ideas tied to relations of domination.

This “knowledge of the Orient, generated out of strength, in a sense created the Orient in a dominating framework.”

As Charles Mills puts it, White Technicians, through academia and public administration, invented “white mythologies, invented Orients, invented Africas, invented Americas, with correspondingly fabricated populations… who attain[ed] a virtual reality through their existence in travelers’ tales, folk myth, popular and highbrow fiction, colonial reports, and scholarly theory.”

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57 Edward Said, Orientalism (Vintage Books: A Division of Random House, October 1979), pp. 44.
58 Said, Orientalism Reconsidered (Cultural Critique, no.1 Autumn, University of Minnesota Press, 1985), pp. 92-94.
59 Said, Orientalism Reconsidered, pp. 90.
60 Said, Orientalism, pp. 40.
61 Mills, Ibid. pp. 18.
knowledge of the Orient formed the basis for the denizens of the racial polity to understand the world in terms that reflected the project of empire-building.

While Said’s theory focused on the Orient in the Middle East, I extend this analysis to outline how non-white natives were portrayed in other parts of the British Empire, too. In general, the ‘Orientalist’ understood the ‘oriental’ or ‘native’ as ‘other’—“irrational, depraved, child-like, and ‘different’” from the “virtuous, rational, mature, normal” European.62 Assumed to be incapable of self-rule due to this unruly nature, ‘orientals’ and more broadly non-white natives were understood to have degenerate ways that posed “problems to be solved” with the know-how of ‘white technicians’.63 As the authority on such matters, the “white man enjoyed the privilege of seeing without being seen,” studying ‘others’ while embodying the ‘norm.’64 I will show how Cannabis was treated similarly as ‘other’ by institutions like the League of Nations, where European experts studied the problem of ‘Indian hemp’ addiction based on research in colonized territories in ‘invented Orients,’ informing the development of cannabis laws in countries like Canada.

Enlightenment ideals are often understood as being universal, yet given how White Technicians have assumed the right to define legitimate and illegitimate Cannabis use, the procedures and norms of the White Technician empower certain groups selectively. Cannabis the drug is thousands of years old, but when Indian hemp was ‘discovered’ in India by the British it was evaluated through orientalism

62 Said, Orientalism, pp. 41.
63 Said, Orientalism, pp. 207.
64 Sartre, Black Orpheus, pp. 13.
and sold by license on the European and European settler markets as an exotic, but
dangerous, habit-forming drug. In the following section, I will show Cannabis was
framed as an ‘oriental narcotic,’ prior to 1923 through an examination of primary
sources that painted non-white native users of this substance as having an irrational,
vViolent, wild nature that was unleashed by cannabis.

As a British settler state, Canada occupied a space where racist narratives
about Indian hemp echoed from throughout the British Empire with specific effects
in the Canadian context. Prior to 1923 and 1938, Canadian authorities published
Cannabis criminalization narratives written by British imperial authorities in
invented Orients, like the Union of South Africa, the East and West Indies, and
Persia, which justified policy licensing, and criminalizing unauthorized, Cannabis
markets to control trade in certain regions and colonies. Tropes of orientalism and
white supremacy in British colonies like South Africa, India, parts of the Middle
East, and Trinidad and Tobago underlie early definition in Canada of
legitimate/illegitimate cannabis use. By contrast, contemporaneous studies by
international experts on the drug, and use of the plant for fiber, were legitimized.

I also address similarity between the Canadian legislation in 1938 and the
influential 1937 Marijuana Tax Act in the U.S. Both the 1937 and 1938 acts
controlled by license and criminal penalty the production and use of Cannabis for
legitimate use. This was supposedly to prevent Cannabis addiction, amid media

65 Ernest Abel, Marihuana the First 12,000 Years (Library of Congress Cataloguing in Publication
Data, 1943); James Mills, Cannabis Britannica: empire, trade and prohibition 1800-1928 (Oxford
University Press, 2003)
“claims that use of the drug was concentrated in minority (primarily African-American and Hispanic) communities, causing them to commit crimes.”  

Arguably, this racist way of knowing early Cannabis markets in the British Empire and United States has created a recurring dynamic that has shaped and still underlies modern understanding and regulation of cannabis markets on First Nations reserves in Canada. To structure this argument, I refer to some Indigenous perspectives on the new Cannabis Act, as well as my own media analysis.

iv. *The Racial Contract, the White Technicians and Canadian Policy*

One social problem that continually confronts White Technicians (that is, academic, political, or other authorities charged with resolving social issues rationally through Western norms and procedures) is drug addiction. Accepting that addiction is an issue for some drug users and that Cannabis can be abused, why have White Technicians insistently criminalized unlicensed drug trade as a solution to a health problem?  

White Technicians claim to have criminalized Cannabis markets in order to limit a trade and thereby addiction alongside critiques from scholars like Michael Steinberg that repressing the drug trade appears, if anything, to have increased drug supplies, not diminished them.  

They have done so even as accusations of human rights abuses have followed criminalization for years.

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67 Report from the Commission on Systemic Racism in Ontario, pp. 82.


69 The Report of the Commission on Systemic Racism in Ontario, page 83
To borrow Charles Mills’s words, however, the perplexing violations of the rights and reason of European Enlightenment and democratic ideals that result from Cannabis and other drug prohibition “in fact uphold the terms of the Racial Contract.”\textsuperscript{70} The policy, at state discretion, distributes criminal records, fines, the loss of civil liberties, and employment prospects in such a way that differentially impacts communities of color as well as other socially marginalized populations.\textsuperscript{71} The issues that drive systemic racism run deeper than drug laws, but the connection between marijuana policy-making and racism requires explicit analysis if there is hope to reset the racial script as Cannabis laws evolve.

The following sections of this paper break down the racist media narratives in the history of Cannabis prohibition in Canada and their parallel articulations in the U.S and the British Empire. I explain how the suppositions of ‘orientalism’ and the power relations between racialized groups that informed early study of hemp smoking shaped public understanding of ‘Indian hemp’ as a dangerous and disorderly import commodity which was associated with various ‘non-white’ populations in the years leading up to early criminalization laws in Canada. In contrast to the racialized non-white criminalization of early illicit marijuana, the last section of this paper consults Indigenous perspectives on the Cannabis Act as well as media and other representations of Licensed Producers to show a whitening of the reputation of marijuana is underway as upstanding members of society “uncover

\textsuperscript{70} Mills, \textit{The Racial Contract}, pp. 4.

credible evidence”\textsuperscript{72} about its benefits, allowing the settler elite—financial gurus, former police, scientists, and politicians—to re-discover and capitalize on a product that has arguably been co-opted through criminalization.

In sum, the racist roots of the legal cannabis industry, controlled by restrictive licensing and the criminalization of the unlicensed cannabis trade, has functioned according to the terms of the Racial Contract, claiming cannabis through criminalization and by the exercise of the norms and procedures of White Technicians for their own benefit to the exclusion of meaningful Indigenous participation in the legal market and development of the new cannabis laws so far. This situation would seem to indicate that whiteness is ultimately defined not by skin colour but, as W.E.B. Du Bois argued, by claiming the right to “ownership of the Earth forever and ever, amen.”\textsuperscript{73}

\textsuperscript{72} Task Force on Legalization and Regulation, “Toward the Legalization, Regulation and Restriction of Access to Marijuana: Discussion Paper” (Government of Canada 2016), pp. 8

Chapter 4. The Racial Contract and the Licensing and Criminalization of (Indian) Hemp

According to Mills, the Racial Contract was created to secure economic advantage for those defined as whites: “the whole point in establishing a moral hierarchy and judicially partitioning the polity according to race is to secure and legitimate the privileging of those individuals designated as white/persons… The bottom line is material advantage.” Evidence of this contract is “historically locatable” in sources on European colonialism and reforming it requires “understanding the workings of the system of oppression” in order to render visible the logic of the racial polity, which is often latent rather than explicit since decolonization.

In this section, I use this theory to demonstrate how the Racial Contract underwrites Cannabis policy in Canada by placing sources on Canadian Cannabis policy in the context of the policy, narratives and historical sources from the wider British Empire and the League of Nations. I compare Canada’s rationale for early Cannabis control to British imperial policy in various ‘invented Orients,’ a term that I employ to refer to “politically urgent” regions that were colonized by the British or Americans and whose ‘natives’ were or are perceived in similar terms to the ‘oriental.’ I will use my media research to show that historically, White Technicians benefitted from narratives of legitimacy in hemp markets grounded in Enlightenment norms and procedures, while colonized and racialized non-white


75 Ibid, pp. 20, 109
groups (‘natives’) were disadvantaged by criminalization scripts that targeted Indian hemp. Historical laws licensing and criminalizing cannabis thereby incorporated the terms of the Racial Contract, simultaneously associating non-whites with illicit marijuana and whites with legitimate Cannabis use reflecting narratives of orientalism and white supremacy. These discourses defined Canadian Cannabis policy according to policy recommendations brought to the League of Nations by a few nations, including racial states like South Africa and the United States.

i. International Cannabis Laws and their Effect on Canadian Laws

Between 1925 and 1939, the Second Geneva Conference and a Committee on Cannabis hosted by the League of Nations held several international conferences on opium and other habit-forming drugs, at which Canada was a participant. At these meetings, states including the Union of South Africa and the United States urged controlling cannabis use and markets internationally. Recommendations from the Committee on Cannabis relied on the expertise of scholars studying cannabis-consuming societies in the United States and British and French administrations in the Middle East and North Africa.76 In parliament, Canadian officials used these international conferences as a basis to update cannabis policies in 1932 and 1938.77

76 Liat Kozma, “The League of Nations and the Debate over Cannabis Prohibition” (History Compass 9/1 2011); an index to the Advisory Committee’s Research shows the areas of interest to the leading experts on cannabis, including: Dr. Bouquet, a French Inspector of Pharmacies in Tunis, and Dr. de Myttenaere, who studied Cannabis addiction in Algeria, considered in its relationship to mental pathology and criminality; U.S documentation by Harry Anslinger on the 1937 Marihuana Tax Act; and a series, O.C 1542, “on the chief aspects of the problem of Indian hemp and the laws relating thereto in force in certain countries.” The index is here: https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1952-01-01_4_page007.html

Abroad, Canadian representatives participated in international discussions in ways that underscored Canada’s allegiance as a Dominion to British policies and priorities. For instance, in response to British “reports from African colonies that hemp was grown almost everywhere,” Sharman noted in 1934 that “there have been seizures of African Indian hemp in Montreal.”\(^{78}\) Canadian enforcement thereby reflected knowledge shared in these discussions, suggesting Canada had common interests with states administering drug control.

Canadian Cannabis policy-making was developed alongside European imperial administration of colonies with dominated Cannabis-consuming societies, as discussed in the League of Nations.\(^{79}\) For instance, during the 1925 Geneva Convention which first regulated cannabis internationally, the British explained of their model in India that “consumption of hemp is controlled on lines very similar to those applied to opium… The plant grows wild… In addition to bhang and ganja made from native products, charas is imported over land from Central Asia; these imports are controlled as closely as the native production.”\(^{80}\) Likewise, France’s delegate explained that “hashish is treated in exactly the same way as the drugs to

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\(^{79}\) Different legislative regimes governing cannabis trade were compared at the 1925 Geneva Convention. This included a number of colonized territories, including the Belgian Congo, which outlawed by decree in 1903 cannabis cultivation, sale, trade and possession, according to a document circulated in the Committee on Cannabis after the 1925 Geneva Convention, “Situation En Ce Qui Concerne le Chanvre Indien: Note generale sur le hashisch et situation legislative au Congo-Belge,” 15 February 1935, O.C 1542.(f).

\(^{80}\) Minutes of the Eighth Session Held at Geneva from May 26th to June 8th 1926, Official No. O.C 415, Annex 3, pp. 150
which the Hague Convention applies. Each colony has its own regulations based, in the first place, on local conditions and in the second on administrative possibilities…. In the Congo there are several tribes of savages and cannibals among whom the habit is very prevalent. It would therefore be hypocritical on my part to sign a Convention laying down strict measures… I can undertake to have those measures applied in France because this would seem to me a practical proposition but the same does not apply in the Congo."81

Insofar as Canadian policy reflected international policy, the rationale for cannabis policies of states developing international control of hemp drugs further clarifies the racist logic underlying Canada’s laws. For instance, in 1923, the same year Canada added Cannabis indica to the Confidential Restricted List of Drugs scheduled by the Opium and Narcotic Drugs Act, the Union of South Africa proposed that the League of Nations’ Advisory Committee on the Traffic in Opium and Dangerous Drugs include Indian hemp on the list of habit-forming drugs subject to international control.82 This action came after passage in 1922 of a domestic Customs and Excise Duties Act controlling by license and criminal penalty the import, export, and manufacture of dakka, or Indian hemp.83


82 Westel Willoughby, Opium as an International Problem: the Geneva Conferences (Johns Hopkins Press 1925), pp. 374

Public reports like South Africa’s Wragg Commission of 1887 and the Report of the Inter-Departmental Committee on the Abuse of Dagga (R.I.D.C.A.D.) of 1949 framed cannabis control within Apartheid logic.\textsuperscript{84} In 1887, the Wragg Report responded to tensions between European planters and East Indian indentured immigrants using cannabis obtained from “Kaffirs” by urging that the state prohibit Cannabis cultivation, possession, use and sale to East Indians while imposing a “duty upon all licenses issued under the rules.”\textsuperscript{85} The Wragg Commission cited licensing laws targeting Cannabis use in colonies with an East Indian population including British India, Ceylon, British Guiana, and Trinidad and Tobago.\textsuperscript{86} Cannabis criminalization came under review in R.I.D.C.A.D., which recognized “it is common knowledge that the different racial groups in the Union do not use dagga, or traffic in it, to the same extent.”\textsuperscript{87} The data cited made clear which populations were most policed under this law—“the Natives with 80.6 percent and the Coloureds with 16.3 percent together formed 96.04 percent of all persons prosecuted in connection with dagga.”\textsuperscript{88} R.I.D.C.A.D. acknowledged Europeans participated in hemp drug markets too, but claimed “respectable” Europeans grew

\textsuperscript{84} Andre du Pleiss, Imiel Visser, and Alyn Smit, “Cannabis Position Paper: Presented by South African National Cannabis Working Group to the Central Drug Authority at the Department of Social Development” (Creative Commons, 2013), pp. 50-52.


\textsuperscript{86} Ibid, pp. 7-8.

\textsuperscript{87} L. Van Schalkwijk, \textit{Report of the Inter-Departmental Committee on the Abuse of Dagga} (The Government Printer, 1952) pp. 9

hemp for fiber, even if the report also discouraged a tendency of hemp drug users to overlook “race and other prejudices” with regards to fellow “addicts.”

It is clear from these public reports that early Cannabis criminalization in South Africa was designed to use licensing and criminalization powers to protect and separate white interests and people from the non-white subjects and industry of Apartheid in South Africa. This policy followed a model in British colonies like Trinidad and Tobago, where a cannabis licensing and taxation policy was developed according to a variant of the same logic.

In Trinidad, an indentured labor system was set up by government and planters to replace slaves with East Indians on plantations after abolition. By nature of their contracts, these workers were marginalized. Hailing from British-controlled India, many used hemp drugs in ways authorities did not understand—and, according to anthropologist Michael Angrosino, “earned money apart from the plantation system” through a “thriving cottage industry on the margins of estates” in ganja. Initially British government tried to cut in on the profit by importing Cannabis from India, but “in 1885 legislation was passed requiring the payment of a $100 license fee for those wishing to grow marijuana in addition to a $60 license fee for the selling,” wiping out legal profits from the drug trade on grounds that it

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91 Ibid, pp. 105-108.
caused crime and insanity.\textsuperscript{92} Officials still provided legal access to alcohol, also a habit-forming substance associated with crime but one that they “controlled and profited from directly,” and as such, “colonial authorities were able to monopolize price and supply in ways the Indians never could” under their circumstances.\textsuperscript{93}

The 1925 Opium Convention delegates adopted South Africa’s proposal to add Indian hemp to the purview of a team of international drug control experts. A committee led by French authorities on the ‘Middle East’ and ‘North Africa,’ and including ‘Union of South Africa’ and ‘Ceylon’ authorities, was created to study the issue of Cannabis addiction.\textsuperscript{94} From then on, these experts and public officials met in the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs to discuss controlling Cannabis addiction by limiting the international market in cannabis. The international community appeared to perceive the issue in terms similar to the logic of Apartheid in South Africa: while 1925 Convention delegates argued that policies regarding cannabis were “of capital importance for a large number of Eastern peoples,” but not Europeans, the Committee reported “the problem [was] no longer to combat a practice which is deep-rooted in ancient populations, but to cope with a vice that is extending to circles hitherto

\textsuperscript{92} Ibid, pp. 108.

\textsuperscript{93} Ibid, pp. 110.

uncontaminated.” It was known that “the harmful custom of smoking hemp [was] widespread in Central Asia and Africa,” but not in Europe. In 1950, the lead expert claimed Europeans historically used hemp seeds only for medicine.

Like the Advisory Committee on Cannabis in the League of Nations, Canadian media was concerned Indian hemp addiction could spread and undermine the racialized civilization. In 1935, for instance, the Ottawa Journal published an account of the conviction of a Johannesburg seaman that recalled the Apartheid logic of early cannabis policy in South Africa. Describing the man’s face as “carved from dark wood,” the article explained he was charged with “not being an authorized person having in your possession a drug, to wit, Indian hemp.” The arresting officer justified the arrest as “authorities take a very serious view of this

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97 Dr. Bouquet claimed that Europeans long knew of “hemp as a textile, but [gave] only very vague indications of its medical uses… In the East, on the other hand, it was known for its intoxicating qualities… In Hindustan, in distant ages when the secret of the priests was revealed or stolen, hemp was used solely for the preparation of potions… In Persia, Asia Minor, Egypt, and other Moslem countries… in spite of the repeated prohibitions of the imams and the edicts and penalties of the emirs and sultans, hashish triumphed and triumphs still. As R. Meunier so rightly says, “every Oriental is at once an artist and a metaphysician; he has the gift of conceiving forms and unity, the abstract in the concrete; but he has a great disdain for works and a lazy disinclination to act; he is an artist only for himself, whence his taste for intoxicants and especially for hashish, which conjures up visions of dazzling forms, of which each possesses an intense emotive coefficient”… In Europe, Cannabis was known only for its textile properties. Occasionally its seeds were used as medicine.” (R.J Bouquet, Cannabis, 1 January 1950 https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1950-01-01_4_page03.html)

98 Inspector George Guthrie was quoted in the Toronto Star as follows: “The danger to civilization through narcotics is that they not only make slaves of their victims and open up a life of misery but they strike at home, produce pauperism, destroy morality, and encourage criminality… Hasheesh, not commonly used here, is the real murder drug… Addicts in India sometimes run amok killing or maiming all with whom they come into contact until overcome.” Narcotic Horrors Related by Sleuth (Toronto Daily Star, February 28 1928) Accessed in Toronto Star archives 2016.
matter. Cigarettes like these are being sold to white girls in West End Clubs.” The magistrate agreed, noting, “I had a girl before me the other day who was only 18. She had been buying them from a colored man.”

Cannabis was controlled by the 1925 Geneva Convention not through total prohibition but an “import-export certificate model.” This reflected policy in British India, where colonial authorities, despite resistance from Indians, capitalized on a pre-existing market in hemp drugs using licensing and tax powers enforced with criminal penalties. The British India system of drug control was of “a very stringent nature. Charas [a preparation of Cannabis] is not prepared in India but is imported from Central Asia; import is controlled by license. The production of ganja is prohibited except in small areas, controlled by excise authorities.” In undertaking to tax and control this Indian market, the British met resistance for criminalizing a product bearing social and religious significance, with the result, according to the British India delegate in the League of Nations Advisory Committee on Cannabis, that “native States” could grow and trade outside of the international regulations without the British Government of India exerting any control. This did not stop the British from creating a monopoly over the legal

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99 *Drugged Cigarettes Sold to Girls in Night Clubs*, The Ottawa Journal, 29 July 1935, pp. 15


101 James Mills, *Cannabis Britannica: empire, trade and prohibition*, pp. 67


103 Advisory Committee on Traffic in Opium and Other Dangerous Drugs, *Minutes of the Nineteenth Session Held at Geneva from November 15th to November 28th, 1934*, pp. 28.
trade in colonies like Burma (now known as Myanmar) and delegates questioned whether monopoly or straight prohibition was a better way to control Cannabis addiction through control of the trade.104 “Total prohibition or prohibitive duties,” the British claimed, “[have] not served to reduce addiction but merely increased the activities of smugglers.”105

The 1925 Convention called for more study of Cannabis addiction to clarify such issues and acknowledged that “all derivatives of hemp are capable of providing, in addition to products injurious to public health, fibers used in industry,” making it difficult to prohibit the plant altogether even if:

an effort should be made to adopt drastic measures with a view to prohibiting the growing of the specially poisonous species… While effective practical measures could apparently be taken fairly easily with regard to highly developed countries this is not the case in regards to Central Africa and Central Asia… The Protecting Powers have issued severe measures in Africa to achieve the same results… The use of Indian hemp and the preparations derived therefrom may only be authorized for medical or scientific purposes.106

In Canada as internationally, the 1923 law controlling Cannabis enforced a certificate system which licensed registered analysts, dentists and veterinarians to import, export and trade in cannabis at fixed tax rates, criminalizing uncertified

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105 Advisory Committee on Traffic in Opium and Other Dangerous Drugs, Minutes of the Nineteenth Session Held at Geneva from November 15th to November 28th, 1934, pp. 28.

106 League of Nations, Report of the Sub-Committee F Concerning Indian Hemp, O.D.C/72 ; Willoughby, Opium as an International Problem: the Geneva Conferences, pp. 382. https://archive.org/stream/opiumasinternati00will#page/382/mode/2up/search/hemp
markets in hemp drugs.\textsuperscript{107} Hemp drugs were traded internationally with centers in various ‘invented Orients’—parts of Asia like India or Africa like South Africa—where ‘natives’ and immigrants under British (or other European) rule used Cannabis profitably and traditionally.\textsuperscript{108} Although Cannabis drug use may not have been common in Canada, Cannabis tinctures and Grimault and Co. Cannabis indica cigarettes were available in Canada before the turn of the century.

British colonial activity in places like Trinidad and Tobago might seem far removed from Canada’s context, but historical sources show Canadians were implicated in these activities. For instance, Canadian missionaries like Reverend John Morton “worked closely” with government and planters in Trinidad and Tobago to outlaw Indian hemp in the early twentieth century.\textsuperscript{109} These missionaries reported to Canadians their efforts to spread Christianity and temperance: an 1878 note to one reverend’s Nova Scotia parish claimed he had “baptized 74 Asiatics” whose “sincerity” was evidenced by their “abandon” of poisons like ganja.\textsuperscript{110}

On the other hand, a reverend’s wife reported to Canadians the dangers of Cannabis when used in a religious ceremony, Hossee Day. The use of Cannabis


\textsuperscript{109} Jankowiak and Bradburd, Drugs, Labour and Colonial Expansion, pp. 110.

appeared to spur on a riot in Trinidad and Tobago in 1885 when authorities
restricted revellers’ movements: “Indian hemp is used by the people at that time to
stimulate them to unnatural energy… Some feared a general rising of East Indians
against Europeans.”

I will now use my media research to show how Canadian (and American) media developed the burgeoning narrative that hemp drugs
threatened Europeans with disorder, violence and insanity.

ii. Early media narratives of cannabis criminalization in various invented orients

The idea that hemp drugs endangered Europeans by inspiring mutiny in
‘Indians’ was reiterated in Canada’s *Globe and Mail* (and a number of U.S. news
sources) in an 1885 article titled *The Ganja-Eater*. This news story claimed that in
India, ganja smokers were considered “the most dangerous class,” as Indian hemp
makes man “a mad, wild beast… It is used for the stimulation of fanatics who are
then sent out into the world to ‘run amuck’ and to kill and be killed ‘for the faith.’”
It further claimed that “in Eastern warfare captains have fortified their men, when
courage seemed faltering, with this maddening juice, and during the Indian mutiny
in 1857 and 1858 the rebel sepoys often met our troops when intoxicated and
frenzied with bhang.” This problem in India was apparently ongoing, as a nameless
Indian, “brutalized by [ganja] use, stabbing left and right in the Bombay Bazaar,”
was an example of a ‘particular’ problem for authorities: “A ganja-eater is a
criminal of which we happily have no counterpart in this country. He is an Asiatic
monster. We hear of men being mad with drink, but their frenzy differs in degree
and kind from that which results from indulgence in the juice of the hemp.”

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111 S. Morton, *The Mohammedan Mohurram—Its Results in Trinidad* (The Canadian Presbetary
The *Ganja-Eater* article claimed that this issue extended outside of India:

“Almost every savage tribe has a hasheesh of its own. Opium and ganja are the two narcotics best known in the East. In the West fortunately we have little experience of either.” 112 Another article, *Dream-bringing Ganja*, lamented the spread of the drug craze: “so addicted is the coolie to solacing himself with its fumes that in whatever part of the world he happens to pitch his tent… he makes the ganja plant occupy a prominent place… Habitual use does tend to produce insanity.”113

Despite a budding reputation as a dangerous drug spreading and creating disorder, namely when used by Eastern populations, “Indian hemp, the crude drug” was added to the free list for imports to Canada in 1879.114 After this, restrictions started to apply in provinces. For instance, by 1896, the law in Nova Scotia

112 *The Ganja-Eater*
India’s Narcotics, Jamestown Weekly Alert, North Dakota, October 1 1885, Image 7
India’s Narcotics, Little Falls Transcript, Minnesota, October 2 1885, Image 3
The Ganja Eater, Vermont Phoenix, Vermont, August 28, 1885 Image 1
India’s Narcotics, Griggs Courier, North Dakota, October 16, 1885 Image 6

113 *Dream Bringing Ganja*
Qu’Appelle Progress, October 19, 1893, pp. 3, Item Ar00306
Portage la Prairie Weekly, October 26 1893, pp. 2
Banner-Democrat, Louisiana, 18 November 1893, pp. 1
Junction City Kansas, 23 September 1893, pp.
The Covington Crescent, Alabama, 17 November 1893, pp. 1

114 Journals of the House of Commons of the Dominion of Canada from the 13th of February to the 15th of May 1879, 1st Session of the 4th Parliament of Canada, Session 1879, pp. 105
restricted legal “Indian hemp” drug sale to registered druggists in the Nova Scotia Pharmaceutical Society who “possess[ed] knowledge of English grammar” and were empowered to write prescriptions.\textsuperscript{115} By 1921 British Columbia had adopted a similar policy, labelling Indian hemp a poison when sold by registered druggists.\textsuperscript{116} Various pharmacy laws, also enacted in Quebec and Ontario, gave pharmacists “the exclusive right to trade in poisons as long as they followed proper procedures.”\textsuperscript{117}

The 1923 amendments to the Opium and Narcotic Drugs Act continued to restrict access to the product by granting a federal Minister power to issue licenses for the import, export, manufacture and distribution of hemp drugs for medical and scientific use, plus the right to refuse or revoke license at discretion and to criminalize unlicensed markets. The law controlled any preparation of Indian hemp, specifically “hasheesh,” a drug Canadians had been studying since at least 1878, when the \textit{Canadian Pharmaceutical Journal} informed readers that “natives of the Turkish Empire and in the north of Africa are far more addicted to the use of hashish (Cannabis Indica) than to that of opium.”\textsuperscript{118} The question for the literature at that time was this: “the plant or plants which produce these narcotics—whether

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\item\textsuperscript{115} Canadian Druggist, \textit{Canadian Pharmaceutical Organizations}, Vol. 8. No 5 (W.J Dyas, May 1896), pp. 111
\item\textsuperscript{116} Vancouver Daily World, \textit{Forty More Drugs Labelled Poisons}, June 25, 1921, pp. 2
\item\textsuperscript{117} Dan Melleck, \textit{When Good Drugs Go Bad: Opium, Medicine, and the Origins of Canada’s Drug Laws} (UBC Press, 2015), pp 74
\item\textsuperscript{118} The Canadian Pharmaceutical Journal, \textit{Hashisch} (Vol. 7 No. 4, November 1873) pp. 135. Accessed June 2018 via Early Canadiana Online.
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\end{footnotesize}
they are different species or mere varieties of the common hemp. Probably C. sativa and Indica are identical.”¹¹⁹ (They were the same plant, cultivated differently.)

Just as the Indian hemp of South Africa and Trinidad and Tobago was associated with non-white populations, namely Indian or African natives, hasheesh was linked with ‘Arabs’ in Canada before 1923. Consider an article from 1907 in Alberta. “The Arabs’ Hasheesh” recounted how an “orientalist” got “kiff drunk” for the first time in the Sahara, and this authority, like Christian missionaries before him, was empowered to explain the drug to new audiences: “Kiff is made of hemp and it makes you drunk. The Arabs mix it with tobacco, bread liver with it and drop it in coffee.”¹²⁰ As in Trinidad, hemp drugs were said to have dangerous effects in invented Orients like Persia, where, in 1906, the British also tried to control cannabis trade by special license and criminal penalty.¹²¹ *Secret Orders of the Middle Ages*, published in 1911 in Manitoba (and in Arizona, among other states), described “a Mohammedan fanatic” in Persia who founded a “sect of Assassins”


¹²⁰ *The Arabs’ Hasheesh*  


¹²¹ In 1926, the British submitted to the League of Nations Advisory Committee on the Traffic in Opium and other Dangerous Drugs the King’s Regulations Made Under Article 55 of the Persian Coasts and Islands Order in Council of 1907. These regulations prohibited the “import, export, buy, sell, or deal in opium or any dangerous drug,” including “Indian hemp,” “unless “expressly permitted by general or special licence granted by the Consul-General” (O.C. 419, Annex 4, pp. 200, Advisory Committee on Traffic in Opium and other Dangerous Drugs, Minutes of the Eighth Session, Held at Geneva from May 26th-June 8th, 1926)
whose hashish habit was rumored to have inspired the word assassin, giving “a permanent place in the languages of Europe a synonym for murderer, derived from the hemp opiate hashish, wherewith they were won’t to fuddle their brains to a pitch of frenzy.” The drug supposedly “transported [the sect] in a state of intoxication” to a “sham Paradise,” inspiring them to kill with a “foretaste of life after death.”

Notably, hemp drugs were not just seen as dangerous but as valuable. In 1907 in B.C. (and Oregon, among other U.S. states) media proclaimed Indian Hemp a “weed of great value… Among Orientals it is almost as highly prized as beer and whiskey are to us.” “Fashionable beauties” in London used the drug according to Canadian and American news. In the U.S, scientists like Dr. Horatio Wood

122 Secret Orders of Middle Ages/Secret Societies
Brandon Daily Sun, August 10, 1911, Manitoba, page 2

The Dillon Herald, August 31, 1911, South Carolina, Page 6 Image 6, Library of Congress.

Arizona Republican, June 18, 1911, Section 2, p. 3 Image 15, Library of Congress

Bismarck Daily Tribune, August 31, 1911, North Dakota, Image 7, Library of Congress

123 Weeds of Value/Weeds Worth Millions
Slocan Mining Review September 19, 1907, pp. 3

The Ocala Evening Star, Florida, January 8, 1908, p. 2 Image 2, Library of Congress

The News Record, Oregon, October 5, 1907, Image 6, Library of Congress

Stevens Point Journal, Wisconsin, December 16, 1907 p. 1, newspapers.com

The Hartford Republican, Kentucky January 17, 1908 p. 6 newspapers.com

124 Hemp-eaters/Hasheesh Temples
Mining Review, British Columbia, August 11, 1900, p. 7, BC Historical Newspapers


Crossfield Chronicle, Alberta, May 14 1914 p. 6

The Inter-Ocean, Illinois, 30 June 1900, page 6
sought to develop “Cannabis americana,” a home-grown version of this imported drug. The Texas state Department of Agriculture also planted Indian hemp experimentally. Yet prohibitionists like magistrate Emily Murphy remained wary of the “peculiarity” of hashish, claiming “its fantasia almost invariably takes Oriental form. It is hashish which makes the Syrian and the Saxon Oriental.”

After hasheesh was criminalized in Canada in 1923, certain White Technicians maintained the right to possess this valuable but dangerous product for scientific and law enforcement purposes. For instance, “Professor Moore” of McGill University was profiled by the Montreal Gazette when he showed samples of illegal narcotics to police chiefs in 1928, “explain[ing] that the true meaning of hashish was assassin, a true description of the drug,” and that he was only “permitted to carry by special authority of the federal government… He displayed the signed and framed permit at the same time that he showed the samples.”

At the same time that trade in Indian hemp was controlled by license and criminal penalty, the Canadian Hemp Bounty Acts of 1923 offered a bounty on the production of Cannabis for binder twine at a factory in Manitoba. Bounties on hemp

The Pittsburgh Press, Pennsylvania, 9 July 1900, page 11

125 Dr. Horatio Wood, A Treatise on Therapeutics, comprising materia medica and toxicology, (J. B. Lippincott & Co., 1874) pp. 235-240

126 Montreal Gazette, “Mexico’s Death Plant,” December 5 1908

Buffalo Sunday Morning News, “Mexico’s Death Plant,” October 11 1908

Scranton Truth, “Mexican Marihuana Plant to be Imported,” October 26 1908


127 Emily Murphy, The Black Candle (T. Allen, 1922) pp. 335.

were not new.\textsuperscript{129} In this case, Parliament urged the federal government to take measures to “encourage to the fullest extent the development of hemp growing in this country” by putting the seed on the free list for agricultural uses.\textsuperscript{130} In a debate on the Hemp Bounty Act, Agricultural Minister William Motherwell stated the goal of the bill was to “establish an industry which we stand very much in need of and for the product of which we should be independent of the outside world.”\textsuperscript{131} He was concerned that the wheat industry in Canada, which was the greatest exporter of wheat in the world, would suffer if war cut off access to binder twine from Mexico or the Philippines. This project, which involved capital from Ireland, was part of a plan to “make the growing of hemp in western Canada a real success.”\textsuperscript{132}

In other words, the Canadian government sought to create a Cannabis fiber industry in the West through a subsidy and tax-free policy for a company with European leadership that certain members of parliament knew personally.\textsuperscript{133} The “many prominent men” involved in the Canadian hemp binder twine scheme in Manitoba were also profiled differently from Indian hemp users in the press.\textsuperscript{134}

\textsuperscript{129} For instance, the encouragement of hemp growth given the “great public benefit (as well as private advantage to the Governor) that would ensue upon government purchasing a Tract of Indian Land… which might be particularly appropriated to the culture of hemp,” was recorded by Douglas Brymner, \textit{Report on Canadian Archives 1891-1892} (S. E. Dawson, Printer to the Queen's Most Excellent Majesty, 1893), pp. 69

\textsuperscript{130} House of Commons Debates, 13\textsuperscript{th} Parliament, 2\textsuperscript{nd} Session Vol. 2, page 1549 http://parl.canadiana.ca/view/oop.debates_HOC1302_02/523?r=0&s=3

\textsuperscript{131} Ibid.

\textsuperscript{132} House of Commons Debates, 14\textsuperscript{th} Parliament 2\textsuperscript{nd} Session Vol. 3 page 2780 http://parl.canadiana.ca/view/oop.debates_HOC1402_03/736?r=0&s=3

\textsuperscript{133} For instance, Irish Senator George Henry Bradbury claimed to know an Irish manufacturer “closely identified” with the project. Senate Debates, 14\textsuperscript{th} Parliament, 2\textsuperscript{nd} Session, Vol 1 pp. 1205 http://parl.canadiana.ca/view/oop.debates_SOC1402_01/1217?r=0&s=4

\textsuperscript{134} The Winnipeg Tribune, “Hemp Industry For Manitoba Now Assured,” 11 February 1926, pp. 17
Winnipeg Tribune described one of these men, Colonel William de Grassie, as “the greatest of his race” and attended his lecture on hemp. The enterprise was portrayed by the Winnipeg Tribune as scientific, beneficial, profitable, and well-organized: it would “give employment to hundreds of men... [and the] subsidy to the hemp industry [was] the result of presentations made by Winnipeg business men. Colonel William Grassie, of the William Grassie Land Company, who for years has been experimenting with hemp in the west, interviewed [federal Finance Minister] Mr Fielding and placed before him the suggestion that concessions should be made by the parliament of Canada which would encourage the investment of capital in such an undertaking in the West... Irish financiers are interested in the proposition as a result of examination of the fields.” Experts from the Manitoba Agricultural College also supported Colonel de Grassie’s findings. That the enterprise was grounded in science and backed by European capital gave it such legitimacy that the press and government encouraged its development.

Like many Cannabis fiber projects at the time, the Manitoba project struggled even with such support (“pioneering in this industry has not been an easy task,” Colonel de Grassie told the Winnipeg Tribune in 1927). Still, in the early 20th century, various prominent settlers asserted the right to grow hemp. During the Great War, the privilege of a license to grow hemp was extended to Howard

135 Winnipeg Tribune “Untitled,” 12 August 1922, pp. 4
136 The Winnipeg Tribune, “Tariff Proposal to Pay Bounty Helps Project,” 12 May 1923, pp. 1
137 Winnipeg Tribune, “Hemp May be Added to Standard Crops Here,” 1 November 1919, pp. 51
Fraleigh, an Ontario farmer and politician who in 1918 was supported in putting hemp seed on the free list by an acquaintance in the Senate who argued Fraleigh “was entitled to bring [the seed] in free of duty” because he was “doing pioneer experimental work… in the interest of the country as a whole.” Experimental work was conducted in British Columbia as well, although this land was ‘unsettled’ in the sense that it was (and is) un-ceded by Indigenous peoples. A “Professor Odlum” who was involved in such research still concluded, after a study on the adaptability of hemp to soil in B.C., that “the best climate to be found [in Canada] for the growth of the finest quality of hemp is that of British Columbia… I’m asked if British Columbia is in Canada. Of course it is.” In 1921, Great War Veterans Association lobbyists met with the federal Minister of Agriculture to encourage hemp growth not just for fibre but for “drugs, the value of which alone would more than compensate for the development of hemp cultivation.”

While the 1923 Canadian Hemp Bounty Act attempted to establish a European hemp industry in Western Canada, the 1923 amendment to the Opium and Narcotic Drugs Act sought to tax and control the trade in Indian hemp drug products, but did not target cultivation of the plant. In 1938, following the Marihuana Tax Act in the U.S. and the Geneva Trafficking Convention, the Canadian Parliament empowered the Health Minister to control by license (and so

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140 Vancouver Daily World, “Hemp Culture: Prof Odlum Declares that British Columbia is Specially Adapted to its Growth,” 30 July 1890, pp. 3

141 Manitoba Free Press, “Dominion Executive of GWVA To Discuss Hemp Production,” 2 February 1921, pp. 10
prohibit by discretion) Cannabis cultivation too. The Minister cited media articles from the United States and the U.S. Marijuana Tax Act (designed to tax, define and control markets in cannabis with a graduating excise tax\(^{142}\), claiming that “in the United States, the Federal Government secured legislation to license the growing of hemp, or Cannabis Sativa, and so control its production,” in order to support the policy.\(^{143}\) Other evidence advanced in support of the law included the story from *Secret Societies of the Middles Ages*, the tale of the “Arab Hashishin,” Islamic assassins whose brutality was claimed to be powered by hashish.\(^{144}\)

In the 1930s, the ‘Islamic Assassins’ were compared not to ‘Indian Ganja-Eaters’ but to ‘Mexican marijuana smokers’ in media. Arguably the media’s shift in focus from ‘Indian Ganja-Eaters’ to ‘Mexican marijuana’ reflected the new market targeted by settler government. Regulation in Canada and the U.S. was less focused on Asia and Africa, where hemp drugs were traded, having shifted to lands in the U.S. obtained from Spain near Mexico, where Spanish settlers sought to control Indigenous Cannabis production of hemp for medical and spiritual drug use.\(^{145}\) In 1918, the U.S Bureau of Indian Affairs recommended prohibiting sale of Indian hemp to “Indians” because “the evils resulting from the use of Cannabis Indica, or...

\(^{142}\) H.R 6906, Public No 238, August 2 1937. An act to impose an occupational excise tax upon certain dealers in marihuana, to impose transfer tax upon certain dealings in marihuana, and to safeguard revenue therefrom by registry and recording. For more information on taxation and protection of legitimate industry in the 1937 U.S Marijuana Tax Act, see Cheryl Chambers, *Drug Laws and Institutional Racism: The Story Told By The Congressional Record* (LLB Scholarly Publishing 2010) pps. 113-114

\(^{143}\) Senate Debates 18\(^{th}\) Parliament 3\(^{rd}\) Session Volume 1, page 78 [http://parl.canadiana.ca/view/oop.debates_SOC1803_01/89?r=0&s=2](http://parl.canadiana.ca/view/oop.debates_SOC1803_01/89?r=0&s=2)

\(^{144}\) House of Commons Debates, 18\(^{th}\) Parliament, 3\(^{rd}\) Session: Vol. 1 page 772 [http://parl.canadiana.ca/view/oop.debates_HOC1803_01/774?r=0&s=3](http://parl.canadiana.ca/view/oop.debates_HOC1803_01/774?r=0&s=3)

\(^{145}\) Isaac Campos, *Home-Grown: Marijuana and the Origins of Mexico’s War on Drugs*. 
Indian hemp, are well known and no argument should be necessary to establish the advisability of enacting this provision.¹⁴⁶ The Chicago Tribune claimed that:

for centuries priest enchanters among the Aztecs and other more or less civilized races of Mexico used numerous narcotic plants in mystic ceremonies… These narcotics today survive as pure and unadulterated vices… The marihuana and the peyote are known and used ceremonially by many of the Indian tribes of the United States west of the Mississippi and they are still indulged in in secret by numerous tribes in Oklahoma… [the war on drugs] will succeed in breaking up the narcotic tradition which reaches back to the misty past of the great races ruling Mexico at the time of the conquest.¹⁴⁷

As with reports of the ‘Islamic Assassins’ and the ‘Indian Ganja-Eaters,’ media in Canada (and in the U.S.) recounted violent stories of ‘Mexican marijuana’ use well before the 1930s legislation came into law. As early as 1904, a news article in Canada and the U.S. told of two men whose names but not identities were known, Manuel Guerrero and Florencio Pino, who “smoked cigarettes composed of tobacco in smaller amounts than marihuana and after a few minutes ran amuck. They went into the street shouting, vociferating, and attacking everybody … declaring they were the bravest men on Earth.” The writer feared they would “lose their minds permanently, as is often the case with marihuana smokers.”¹⁴⁸

Once again Cannabis drug use by a population dominated by European settlers was associated in popular North American discourse with the will and the


¹⁴⁷ John Cornyn, War on Drugs Commenced by Mexico, Chicago Tribune, 18 October 1931, pp. 83

¹⁴⁸ Dangerous Mexican Weed
Vancouver Daily World, British Columbia, July 29 1904, page 4
New York Sun, June 19 1904, Third Section, Page 10 Image 34, Library of Congress
Marble Hill Press, Missouri, September 15 1904, Image 2, Library of Congress
The Big Sandy News, Kentucky, August 19 1904, Image 1, Library of Congress
false courage to act with random violence—the ‘running amuck’ of people insane
and unknown. In the tradition of European orientalism, and similar to how Arab and
Indian consumers were once portrayed as assassins and criminals, little information
was provided about Pino and Guerrero’s motives or identity, just their names and
the violence and insanity that resulted from their marijuana habit.

Meanwhile, ‘Americans’ were portrayed as less susceptible to the risk of the
addiction than Mexicans even if addiction to the drug could lead to ruin. A 1911
article entitled War on Marihuana Smoking informed readers that “it [was] a rare
thing for an American to become addicted to the use of marihuana.” Nonetheless,
the article reported the case of a man who “the first few cigarettes did not make…
crazy as they did most people. He had smoked maybe a dozen cigarettes in as many
days when he was suddenly seized with a bit of insanity.” In contrast, the article
asserted that a “Mexican laborer,” Malquiades Miereles, had “hardly finished
smoking the marijuana cigarette when he was seized with a fit of insanity.”

Demonstrating how widespread these attitudes were at the time, media was
backed in its prejudice by some medical experts. For instance, the Canadian Lancet
reported in 1935 the stock Eurocentric ‘facts’ on cannabis:

As is well known, the hemp plant (Cannabis sativa) when cultivated
in warmer regions yields, by virtue of the resin of the flowering tops,

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149 War on Mexico Weed/ Death in Marihuana Weed,
Morning Telegram, Manitoba, 12 July 1907 page 8

The Kingsville Reporter, Ontario, June 13 1907, pp. 2

The New York Sun, New York, May 26 1907, Second Section, Image 17, Library of Congress


The Chillicothe Constitution-Tribune, Missouri, 20 August 1907, pp. 4
the narcotic drug cannabis indica. As hashish, ganja, bhang and churras, it has for centuries been used in the Orient, either as an intoxicating drink or smoked like tobacco, and its tendency to cause addicts to run amok has added the word assassin to the vocabulary…
In Detroit, New York, Montreal and Ottawa these cigarettes are heavily charged with Indian hemp… [and] peddled in dance halls… The traffic in Indian hemp has attained the proportions of an industry with widespread ramifications.150

When science vindicated the safety of cannabis drugs in 1926, press in Canada and the United States noted the study was limited in scope to Anglo-Saxons.151 In 1939, Dr. Logan Clendening explained this double standard in explicitly racist terms:

“There are racial differences in reaction to the drug. Anglo-Saxons do not show the excitement or hysterical symptoms of Orientals and other races.”152

As in South Africa, and along international guidelines, cultivation of cannabis for fiber was theoretically protected in Canada (and the U.S.) in the late 1930s. Still, the Canadian Parliament also understood the 1938 cannabis law reserved the right of government to license the drug; it “empower[ed] the Minister to control by license not only the production of opium but also of the product Cannabis Sativa, which, though a new product here, has been known for centuries in the Orient.”153 The opposition argued that “to legislate that such a plant may be grown by license is to give it a kind of semi-respectability,” but officials justified


this measure as “occasion may arise to justify the granting of licenses for the
cultivation of hemp.” An “essentially international” market targeting youth with a
crime-causing drug was criminalized, but during the Great War and later “in certain
parts of Canada hemp [was] grown for its fibre,” and farmers had “worked up a
measure of business” from it, in which case, “if the cultivation of hemp is to be
permitted, it must be done under very strict supervision.” He claimed “the license
requirement would give the Health Department a measure of control not possible
under straight prohibition.”

Besides, “most English-speaking people [did not]
know to what grave uses it could be put,” suggesting the preferred class of settlers
would not be affected by it—even if “in probably every other garden [in Western
Canada] you will find this weed.”

This legislation did restrict hemp culture for
fiber in Canada, but when needed in the Second World War, hemp was revived.

The emerging market in the marijuana drug, “commonly called reefers,” that
was of explicit interest to Canadian officials in Parliament in 1938 “passed through
Windsor,” on the border of Detroit.

Media, like a series of articles published in
the *Winnipeg Tribune* by Tony Allan, clarified that reefers were “peddled among
the colored population in the United States at a comparatively early date.”

Allan also acknowledged that “after a hemp factory was established in the town of

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154 Senate Debates 18th Parliament 3rd Session Volume 1, pp. 78-79.  
http://parl.canadiana.ca/view/oop.debates_SOC1803_01/89?r=0&s=2

155 House of Commons Debates, 18th Parliament, 3rd Session: Vol 1 pp. 775.  
http://parl.canadiana.ca/view/oop.debates_HOC1803_01/777?r=0&s=2

156 The Ottawa Journal “Hemp Revived,” 29 January 1943, pp. 43

157 House of Commons Debates, 18th Parliament, 3rd Session: Vol. 1  
http://parl.canadiana.ca/view/oop.debates_HOC1803_01/775?r=0&s=3

Portage La Prairie” and closed down, hemp still “grew wild” in the area, so “most of the reefers are hand-rolled locally and made from marihuana that was grown locally.” In any case, by 1939, the essentially international traffic between Canada and the United States had been brought to the experts at the League of Nations Advisory Committee on Opium and other Dangerous Drugs, who in a report that year listed Canada and the United States as two of the “principal illicit markets” in “Indian hemp,” alongside ‘Burma’ (Myanmar).

iii. Connecting Canadian cannabis policy to cannabis policy in the League of Nations and British colonial policy

In sum, the restrictive licensing structure of Canada’s early Cannabis criminalization laws not only reflected British imperial and American legislation on cannabis markets but fit into the logic of European and European settler powers in the 1920s and 1930s international opium conferences. The prevailing view was that there were some legitimate uses of the plant but that the drug was addictive and its addicts dangerous and ‘other,’ though the vice was unfortunately spreading into ‘circles hitherto uncontaminated.’ Delegates at the League of Nations determined that “the establishment of a complete government monopoly (i.e., retention in the hands of government of the importation, manufacture, sale and distribution to consumers) [was] by experience the only effective way to control consumption” of habit-forming drugs like opium. Cannabis was factored into this legislation and


160 Advisory Committee on Traffic in Opium and other Dangerous Drugs, Report to the Council on Work of the 24th Session Held at Geneva from May 15th to June 12th, 1939, pp. 25.

161 Westel Willoughby, Opium as an international problem: the Geneva Conferences, pp. 178
to reach this conclusion, delegates built on knowledge of European colonies, namely in Africa and Asia. In tandem with the experience of European colonial powers in various ‘invented Orients,’ Canada developed a drug control system that reflected the international community’s idea of a ‘highly developed country,’ prohibiting Cannabis use but by license and criminalizing unlicensed Cannabis activity so the government could define and control through licensing and taxation the legal market in the plant for legitimate use (for fiber in 1938, or scientific or medical drug use in 1923) while prohibiting, but retaining the right to license, ‘other’ Cannabis use, which was criminalized in various media in relation to subjects also referred to in international conferences as ‘natives’ and ‘orientals.’

The international context for the criminalization of the Cannabis trade indicates how colonial power dynamics in South Africa, India, or Trinidad and Tobago could be relevant to understanding cannabis criminalization and licensing in Canada. The Canadian federal government, through the Hemp Bounty Acts of 1923, subsidized hemp production for select entities with a view to “establishing” a European industry on appropriated ‘native’ land. ‘Native’ land was ‘developed’ for this and other projects, sometimes using the labor of Chinese immigrants for undesirable work when white immigration was preferred; government gradually established a mechanism to deport some immigrants through opium policy. At the same time, the market in Indian hemp drugs, formerly an import market, began to grow in popularity as officials started to understand that North America could in theory produce the drug domestically. The discriminatory effect of Canada’s opium laws on ‘oriental’ immigrants has been studied by researchers like Carstairs,
Mosher, and Boyd, but given recent developments around the *Cannabis Act* and the Senate Standing Committee on Aboriginal Peoples, it is time to consider how Canada’s Cannabis laws impact ‘native production’ of marijuana.

The early association of drug use with orientals and natives has dissipated as the substance has become popular with many groups and the legal hemp drug industry has been white-washed. Yet new research by Owusu-Bempah, Luscombe and Canadian media using information obtained through the Freedom of Information Act show non-white populations have been disproportionately targeted with various criminal convictions for marijuana possession during the last ten years. The disproportionate effect of cannabis arrests on Indigenous peoples, especially Northerners, was acknowledged by New Democratic Party Members of Parliament during hearings on the Cannabis Act. Member Anne Minh-Thu Quach stated that discrimination shaped cannabis arrest statistics as “people most affected by this are… young people from different cultural backgrounds and First Nations.” A 2013 report for the Canadian Centre for Justices Statistics likewise

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163 Jim Rankin, “Toronto Marijuana Arrests Reveal Startling Racial Divide,” The Toronto Daily Star, July 6, 2017


found that “the trafficking, production or distribution rate in the Northwest Territories was 8.5 times higher for Cannabis” than the average province.166

A contributing factor to higher rates of criminality could be that Indigenous groups use Cannabis more than average.167 For instance, a study of Innu preadolescents in Quebec claimed this community was nine times more likely to use Cannabis than youth in the general population.168 Some activists attribute higher drug use rates to intergenerational trauma.169 A recent study of ‘problematic Aboriginal use of marijuana’ in Canada found that in a sample of Indigenous communities a “large percentage of people (53.2 percent) reported ever using marijuana more than once a week,” suggesting “a normalization of frequent marijuana use in this community.” This report suggested this normalization could result from a number of factors, possibly including “biological” factors like “genetic heritability of substance dependence.”170

166 Mary Allen and Simon Perreault, “Police Reported Crimes in Canada’s Provincial North and Territories” (Government of Canada, 2013)

167 “Surveys show that Indigenous communities report higher rates of cannabis use in the past year than the general Canadian population. Cannabis use is particularly high for First Nations youth aged 12 to 17 living on reserve and in northern First Nations communities.” Standing Senate Committee on Aboriginal Peoples Evidence, Record of April 17 2018 https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/53941-e

168 Julie-Christine Cotton and Myriam Laventure, The Canadian Journal of Native Studies Vol. 33, Iss. 1, Early Initiation to Alcohol, Cigarettes and Drugs Among Innu Preadolescents of Quebec


Alternatively, in hearings on the *Cannabis Act*, Chief Randall Phillips of the Oneida Nation stated that Cannabis was a traditional crop in some Indigenous societies that was used not recreationally but ceremonially and medicinally.\(^{171}\) A 500 year old pipe containing hemp resin found in Morriston, Ontario supports the idea that some Indigenous groups traditionally smoked hemp.\(^{172}\) Adding weight to these claims, Ucluelet and Cowichan First Nations claim that Cannabis was a traditional crop like tobacco in Submissions to the Government on British Columbia’s legislation of the Cannabis Act.\(^{173}\) Indigenous Hemp, an advocacy group, claims that Cannabis “was part of Indigenous cultures on this continent long before the first colonists set foot here… It is believed to have been introduced from China by explorers, migrating birds from across the Bering Strait, or possibly drifting shipwrecks.”\(^{174}\) However, this history is disputed by some: “It’s not about anything remotely traditional. It’s about money,” claimed activist Susan Oak.\(^{175}\)

Given concerns about addiction and crime, there are First Nations that oppose legalization. Specifically, stakeholders from Nunavut expressed discomfort

\(^{171}\) “It’s the same presentation with respect to the tobacco. It has a use. It always has. You use it ceremonially. You do the proper protocols with respect to treatment and a plan and then this medicine will work. It’s a medicinal plant; it always has been. That’s what our elders are saying.” Chief Randall Phillips, the Standing Senate Committee on Aboriginal Peoples Evidence, February 28 2018 [https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/53856-e](https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/53856-e)

\(^{172}\) Leah Spicer, *Historical and Cultural Uses of Cannabis and the Canadian Marijuana Clash: report prepared for the Senate Special Committee on Illegal Drugs*, (Library of Parliament, 2002) [https://sencanada.ca/content/sen/committee/371/ille/library/spicer-e.htm#INTRODUCTION](https://sencanada.ca/content/sen/committee/371/ille/library/spicer-e.htm#INTRODUCTION)


with the *Cannabis Act* in hearings, noting that they could not likely produce the substance and profit from it, but that increased availability of the product could further strain the vulnerable social fabric in Northern communities with higher rates of crime, addiction and mental illness.\(^{176}\) In particular, the lack of healing and addiction treatment centres was highlighted by Nunavut elders. Isaac Shooyook pointed out that “there are no social counselling services. There are police… They say that Nunavut smokes the most. Their highest rate is for alcohol problems. We heard that Nunavut will be using cannabis and that they use it the most.”\(^{177}\)

It is important to recognize that policing of Cannabis laws in places like Nunavut or on disputed Mohawk territory also takes place in the context of colonization. However, arguably Canadian media addresses Cannabis production in Indigenous communities by downplaying on-going colonization and emphasizing the lawlessness of reserves. Consider now how Canadian and American media portrayed recent policing of Mohawk communities for marijuana crimes.

\textit{i. Media and ‘Mohawk Marijuana’}

In 1995, after the Oka Crisis and in the midst of ongoing land disputes, Mohawk communities on the Canadian-U.S. border were repeatedly prosecuted for growing and smuggling Cannabis, including on federal land due to be transferred to the Mohawks.\(^{178}\) Conflict around marijuana smuggling resulted in publicized

\(^{176}\) The Standing Senate Committee on Aboriginal Peoples Evidence, March 26, 2018
\url{https://www.sencanada.ca/en/Content/Sen/Committee/421/APPW/53901-e}

\(^{177}\) Ibid

\(^{178}\) According to media, there were at least five publicized raids on Mohawk reserves near the St Lawrence River between the Oka Crisis and the Cannabis Act involving U.S or Canadian police and/or authorities: in 1995 (“Marijuana Plantations Go Up in Smoke,” Canadian Press, Newswire, 28 July 1995; “SQ Destroys 7 Marijuana Fields; Sweep on Kanesatake,” The Montreal Gazette, 30
conflict between dissenting Mohawk leadership.\textsuperscript{179} Whether this market was more of a cottage industry or the work of organized crime is controversial in the community, and some community members requested more police protection.\textsuperscript{180} In any case, U.S. and Canadian policing of Mohawk reserves generated controversy, and when the Mohawk community tried to take “unilateral” action to destroy marijuana crops in 1995, Quebec officials “were enraged… ‘This is a job for


\textsuperscript{179} “A Mohawk Chief, whose house was torched in a policing dispute, has long been obsessed by a phantom illegal drug problem, says a band council opponent,” reported the Canadian press in 2004. This conflict appears to have been between band council Chief James Gabriel, whose home was burned down after he removed a police chief ‘soft’ on marijuana crime, and his opponent Steven Bonspille, who denied the Mohawk community was “a haven for organized crime and marijuana growing operations.” (“Chief, Mohawks at odds,” Prince George Citizen, 15 January 2004; “Mohawks deny organized crime claim,” Sault Star, 15 January 2004, accessed through ProQuest 2016.) The 2004 violence was preceded by political turbulence in 1995 when former grand chief Clarence Simon and a group of “Mohawk traditionalists, community elders and longtime critics” attempted to remove Jerry Peltier from Band Council leadership for “ignoring marijuana cultivation and other illegal activities” before the Quebec police raided the reserve (“Mohawks want Peltier to quit; Coalition plots strategy against chief after pot raid,” The Gazette, 1 August 1995; “Moves Made to Oust Mohawk Chief,” The Vancouver Sun, 2 August 1995, accessed ProQuest 2016). The 1995 grow was apparently “on federal land that [was] expected to be handed over to Kanesatake” and “members of the band’s governing council [were] involved” in its operation, according to articles like this one published in the United States (“In Canada, a weed that few dare pluck: Police shy away from Mohawk Marijuana.” by Colin Nickerson, 27 July 1995, ProQuest 2016). Peltier’s associate Robert Gabriel, whose family members were reportedly beaten by criminals in retaliation for the police action, claimed “people who complain about feeling unsafe at Kanesatake are doing so for political reasons because they oppose Peltier’s leadership.” (“Pot raid triggered wave of reprisals, some Mohawks say,” The Montreal Gazette, 29 August 1995, accessed ProQuest 2016).

\textsuperscript{180} In the United States, hemp-growing was part of a “Hemp for Sovereignty” scheme on the Pine Ridge Indian Reservation, according to Steve Smith (\textit{Hemp for Sovereignty: Scale, Territory and the Struggle for Native American Sovereignty}, Space and Polity, Vol. 12, No. 2, 231–249, August 2008). As much as 50 percent of the Kanesatake community was said to be involved in marijuana growing in 1995, according to \textit{Marijuana Growers Say Council Members Involved}, Canadian Press Newswire, 25 July 1995, accessed ProQuest 2016. However, many Mohawk publicly repudiated the Warriors and the smugglers, including Sohenrise Paul Nicholas.
experts. They're doing it in a very amateurish way,’ said Quebec Public Security Minister Serge Menard.”

Despite the complexity of issues and multiplicity of perspectives surrounding the unlicensed Cannabis industry on reserves, media outlets arguably focused more on Mohawk drug traffickers’ criminal associations than detail or nuance on how the smuggling industry developed. In the United States, for instance, the New York Times named Mohawk and other reserves a “haven in the shadows of Indian County” for drug traffickers. In contrast, reports on French-Canadian marijuana trafficker Jimmy Cournoyer and in-depth profiles of him by mainstream publications like the Toronto Star emphasized the success of Cournoyer’s operations while highlighting the criminal nature of his associates. The Toronto Star’s profile, for instance, portrayed Cournoyer’s “underlings,” including residents of the Akwesesane reserve, in limited detail, characterizing the Indigenous traffickers in the Toronto Star only by their lawyer, “the lawyer of choice for accused terrorists and Hamas.” Cournoyer, on the other hand, was presented by the Star as a “playboy” with celebrity friends who was potentially set up by his Mohawk accomplices’ lawyer.


183 Despite this claim, the attorney in question, Stanley Cohen, also “won a great victory” for the Mohawk community in 2013, when a New York judge determined that the actions of police who arrested a Mohawk woman with marijuana in her car “bordered on racial profiling” and vacated those charges. (“Seeing ‘Racial Profiling’ in Stop of Mohawks, Judge Suppresses Pot,” Joel Stashenko, New York Law Journal, 28 March 2013, accessed ProQuest 2016).

The *New York Times* likewise characterized Cournoyer as a successful “playboy” with “underlings” including “Native American smugglers,” who were not profiled aside from the name of an informant.¹⁸⁵ The *National Post* used similar language as well, depicting otherwise unknown Indigenous players as “expert smugglers” in “nebulous” legal territory while characterizing Cournoyer as a “playboy” and exceptional entrepreneur who “does regret he has been a bit of a wild child” since his parents lost their fortune.¹⁸⁶ Background on the situation on the reserves that led to smuggling was neglected, whereas Cournoyer’s motives were humanized in strikingly uniform detail, suggesting a common source.

Perceived bias in the coverage of a Canadian-U.S. raid in 2011 (which allegedly involved 500 officers on the disputed Mohawk territory) prompted then-Grand Chief Sohenrise Paul Nicholas to point out “this is not just a Mohawk problem... The presence of such a large number of police, accompanied by journalists, contributes even more to the negative image of this community that Kanesatake people wish to improve.”¹⁸⁷

Yet a *Montreal Gazette* article from 1938 shows that this issue is an old one, as a Mohawk reserve (Caughnawaga, or Kahnawake) was raided after that year’s passage of the Cannabis cultivation licensing legislation. Describing Cannabis as “most feared of all narcotics,” this news story claimed that “in Caughnawaga, as in many sections throughout Canada and the United States, [marijuana] grows wild,”


¹⁸⁶ *National Post*, “Quebec Playboy Jimmy Counroyer accepts plea bargain,” May 29 2013

¹⁸⁷ *Montreal Gazette*, “Sweeping Drug Raids,” June 15 2011, pp. 1
and asserted that “marijuana has been growing in Caughnawaga as long as residents can remember. It was not until this summer however that people got to know what it was.” The article further claimed that “eradication [of the plant] … [was] being carried out under orders of the Department of Indian Affairs” and quoted an “Indian police officer,” Chief Jocks, who claimed “no one on the reserve was using the drug. Several people knew of its properties however from visits to United States cities where it is widely used.”

In another article entitled “Mounties Grab Tons of Dope,” the Globe and Mail claimed that this marijuana “find” on the Caughnawaga reserve was “one of the thickest in the Province, if not in Canada… R.C.M.P officers fear it more than any other drug.” In contrast to the statement by Chief Jocks that no one was smoking Cannabis, the article claimed “Royal Canadian Mounted Police lately have made at least two raids on a dance hall within the reserve and seized marijuana found on young men attending the dance. It is believed these raids led to discovery of the growth in the district…. Police fear[ed] the Indians would secure quantities for themselves or to sell at high prices to the dope peddlers.”

Although these are but two sources, and a small snapshot of the situation at the time, these media stories do support the argument that at least one Mohawk community was potentially involved in the Cannabis drug trade at the time that unlicensed cultivation of the plant was criminalized in 1938. These articles also offer an interesting picture of what in this situation was highlighted as problematic.

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189 Globe and Mail, “Mounties Grab Tons of Dope: Huge Crop of Marijuana Destroyed on Quebec Indian Reservation,” September 29 1938, ProQuest Historical Newspapers 2016
by the R.C.M.P officers, namely that the drug was the “most feared of all narcotics,” and that ‘natives’ could either use this themselves or profit from the substance by producing a commodity for which there was an emerging market, particularly in the United States. Notably, Cannabis was understood as having grown there “as long as” anyone remembered. In 1938, there was also no mention of Canadian settlers in relation to marijuana except for the R.C.M.P.

Sociologist Don Clairmont notes that in more recent years, different Mohawk communities have coped differently with marijuana production, smuggling, policing, and media coverage of this issue, but that generally “the lure of money can become entwined with issues of political rights and autonomy (e.g., the right to grow marijuana), which can make enforcement very difficult and dangerous, sapping community support for the police service. While such a development seems to have occurred in some First Nation communities (e.g., Kanesatake), it has been strongly contested in Akwesasne.”

Despite attempts to limit rights to self-determination, Mohawks have continually asserted sovereignty. Since the Cannabis Act, certain traditionalists in Kanesatake have refused the authority of the Canadian government and band council on their claimed territory, rejecting the licensing system alongside other Indigenous communities.

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The recent bias manifest in the understanding shown to a ‘French Canadian entrepreneur’ but not to ‘Native American smugglers (and terrorists) on lawless territory’ is not as pronounced as the encouragement shown to today’s Licensed Producers (L.P.) of medical marijuana as compared to the ‘criminals’ the government fights. The L.P.s have been depicted as in fitting with the norms and procedures of White Technicians just like Colonel de Grassie’s enterprise under the Hemp Bounty Acts. A Toronto Life news article, for instance, called the “New Dealers… the new pot kings,” profiling three white men involved in the earliest legal medical marijuana startups who also have a background in finance and “own suits, have smart haircuts and list their companies on the T.S.X.” Noting the millions made by these men in the legal cannabis industry, the article describes one of these individuals involved in an LP as a “Master Grower.”

Not only is L.P. leadership and dominance emphasized by such profiles, but their operations were hailed by the press as creating jobs and using science and procedure to produce a superior product. Public images of scientific research and business leadership in which ‘white’ and wealthy characters were centered characterized initial

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193 For instance, consider the title of the following press release when WeedMD opened: “WeedMD.com Poised to Become Canada's Top Provider of Medical Marijuana: Former Imperial Tobacco factory in Aylmer, Ontario will produce product that exceeds Health Canada standards and creates quality jobs Canadian market could exceed $1.3 Billion in 2024” (Marketwire, 21 February 2014.) Stories like this one emphasized “good production practices” : “We've developed a system capable of producing standardized chemical compounds derived from plants. This unique technology sets us apart from the traditional competitors in the cannabis industry. Experts agree this is the only way to grow plants to be accepted as medicine.” (Yahoo Finance, “AbCann Medicinals Receives Full Facility Approval from Health Canada,” July 16, 2015) . Some LPs jointly disseminated a press release claiming “unbelievable potential for generating wealth” (“Licensed Producers Hold Key to Canadian Marijuana Success, PR Newswire, November 7, 2017).
representations of the Licensed Producers on their websites and in the press. A small sample of this imagery is attached in Appendix A.

Access to this club of “pot kings” has been highly restricted by startup costs. The financial barriers to getting involved in the early legal medical marijuana industry were summed up in a profile in an agricultural magazine of two licensed producers in Ontario. This profile noted that “in addition to investments in growing equipment, security regulations mean that every medicinal marijuana facility needs at least hundreds of thousands of dollars’ worth of security features… Staff also need to go through extensive background checks.”\(^{194}\) In another article, legalization point man Bill Blair described the standards and regulations for the early medical marijuana facilities as “really quite extraordinary.”\(^{195}\) To protect their investments, licensed medical marijuana producers organized into a lobbying organization of “politically-connected government insiders, former police chiefs, and lobbyists who angled to secure a slice of the pie for themselves” in the new legal framework for recreational marijuana as well.\(^{196}\) These lobbyists succeeded in provinces like British Columbia, which made Licensed Producers of medical marijuana the initial source of the legal product for the recreational market. As such, the original L.P.s have been given early and protected access to this multi-billion-dollar industry.

The profiling of licensed producers as scientific and successful pioneers in a new industry can be usefully contrasted with the historical portrayal of criminal


\(^{195}\) Peter Koven, “Marijuana Legalization Point Man Bill Blair Praises Canada’s Licensed Producers,” Financial Post, May 24 2016

gangs of ‘Indian Ganja-Eaters,’ ‘Islamic Assassins,’ ‘Mexican marijuana’ and today, ‘Native American smugglers.’ These profiles emphasized the disorderly aspects of an industry Europeans and settlers did not control, while the Licensed Producers are held up as examples of order, science and procedure in an otherwise “Wild West” type industry.197 In profiling the cannabis industry as legitimate or illegitimate, Canadian media has rewritten, albeit more subtly, old narratives of orientalism and white supremacy.

ii. Criminalization and Licensing under the Cannabis Act

Another consistent aspect of the administration of Canadian cannabis markets, from the early prohibition laws until today’s Cannabis Act, is a policy of criminalizing unlicensed trade while empowering government to grant licenses for select purposes under strict regulation. In the past, this policy gave European governments power to selectively encourage and discourage the licensing of different cultural uses of cannabis (fibre, medical and scientific drug, ‘other’), arguably acting in the process as a “mechanism for the subjugation of Indigenous peoples and economies, and the advancement and enfranchisement of European settlers in terms of social status and wealth.”198 The Cannabis Act is structured in such a way that renewal of this Racial Contract is possible. According to the summary of the Act, it “provides legal access to cannabis” while still “imposing

197 The “Wild West” system of licensing dispensaries was identified as such by the Globe and Mail in “Medical Pot Growers Lobby Ottawa to shut down pot dispensaries,” 21 January 2016

198 Katherine Hensel and Josephine de Whytell, Brief with respect of the impacts of Bill C-45, On Behalf of the Indigenous Bar Association to the Standing Committee on Indigenous Peoples, pp. 4
serious criminal penalties for those operating outside the legal framework.”¹⁹⁹ The maximum penalty is 14 years in prison and/or a five million dollar fine for offences not explicitly provided for but nevertheless unauthorized by the Act.²⁰⁰ Depending on how restrictive government licensing is in practice, and how the market is policed, criminalization of illegal Cannabis could further perpetuate an indirect form of racism through an apparently race-neutral law of general application.²⁰¹

Provinces have varied regimes under Bill C-45, but the British Columbia draft legislation tightly controls profit. The B.C. Cannabis Control and Licensing Act establishes that a person cannot possess or sell Cannabis unless the person “is the government,” “holds a license,” obtains Cannabis lawfully from the government or a government-approved distributor, or has been gifted marijuana bought legally.²⁰² Given such restrictive laws, the Indigenous Bar Association notes:

Bill C-45 essentially creates a trading monopoly over the new legal Cannabis trade for provincial and federal government and their selected entities… It provides such governments and their agents with wide discretion and criminal law powers to protect their intellectual property in this new industry. It does so amidst a justice system that fails to serve Indigenous peoples…[and] a number of socioeconomic barriers faced by Indigenous peoples who might wish


²⁰¹ Hensel and de Whytell, Brief with respect of the impacts of Bill C-45, On Behalf of the Indigenous Bar Association to the Standing Committee on Indigenous Peoples, pp. 5-19

²⁰² Draft Bill 30, Cannabis Control and Licensing Act (First Reading, Legislative Session: 3rd Session, 41st Parliament) http://www.bclaws.ca/civix/document/id/bills/billscurrent/3rd41st:gov30-1#section14
to become legal producers, distributors, importers, growers or medical patients under the current licensing system.\textsuperscript{203}

So far, this arrangement has not worked well for Indigenous stakeholders. Of the 105 federally licensed producers for the medical marijuana market, who are now engaged to supply the recreational market in provinces like British Columbia, only five were “affiliated with” Indigenous organizations by the time negotiations on the Cannabis Act were closed, according to the Canadian government.\textsuperscript{204}

In hearings on the Cannabis Act, Indigenous cannabis industry lobbyists like Bill Robinson asserted that their communities have been excluded from the legal market, noting they are “behind” on “direct ownership” as “from the business development side… the [amount of] use of First Nations land by large corporations versus ownership by First Nations is startling.”\textsuperscript{205} In response to this point, Chief Phillips added that the costs of getting licensed are so substantial that it is difficult for First Nations to start their own industries, tempting some bands to go into business with large Canadian and multinational corporations.\textsuperscript{206} Not only are Indigenous groups largely excluded from the licensed cannabis drug market so far,

\begin{footnotes}
\item[203] Hensel and de Whytell, \textit{Brief with respect of the impacts of Bill C-45, On Behalf of the Indigenous Bar Association to the Standing Committee on Indigenous Peoples} pp. 5-8
\item[204] Letter from Honourable Scott Tanas to Honourable Senator Lillian Dyck June 06 2018 https://sencanada.ca/content/sen/committee/421/APPA/Briefs/2018-06-06_C-45_Philpott_e.pdf. The Standing Senate Committee on Aboriginal Peoples Evidence, Wednesday February 27, 2018 https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/53839-e
\item[205] The Standing Senate Committee on Aboriginal Peoples, Evidence of Wednesday, February 28, 2018 https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/53856-e
\item[206] The Standing Senate Committee on Aboriginal Peoples, Evidence of Wednesday, February 28, 2018 https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/53856-e
\end{footnotes}
but the federal government and provincial governments have agreed to split the tax proceeds from the recreational marijuana market between them for now, out of the gate excluding Indigenous governments from tax profits all together.

The federal government indicated in the Standing Senate Committee on Aboriginal Peoples’ Hearings on the Cannabis Act that, from the perspective of federal officials, First Nations cannot take matters into their own hands either. As a Department of Health official, Eric Costen, stated in the Cannabis Act hearings:

“This Indigenous producers, like all commercial producers of Cannabis, will need to be federally licensed to operate. Similarly, any distribution and retail regimes will need to be authorized by the federal government or through relevant provincial or territorial legislative frameworks. Working within that framework, officials from both Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada are actively engaging with Indigenous communities to explore ways of supporting Indigenous participation in the emerging cannabis marketplace.²⁰⁷

Since profits have been monopolized for the settler government and select entities with limited inclusion of Indigenous groups thus far, the drug control project conceived in the League of Nations is arguably being realized in Canada.

Beyond worries about Canadian government control over profits, Indigenous groups have raised other important concerns about the bill:

The discretion reserved for the Minister under Bill C-45 has no regard to Indigenous self-determination including the governance authority, wishes, cultures and needs of First Nations, Inuit, Metis and Indigenous communities… It assumes that it is culturally appropriate, beneficial, and necessary for implementation by each unique and distinct Indigenous Nation, regardless of the Nation’s

²⁰⁷ The Standing Senate Committee on Aboriginal Peoples, Evidence of February 27 2018 https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/53839-e
perspectives and actual needs… [an approach] some Chiefs have taken to calling ‘legislative genocide.’\textsuperscript{208}

The Indigenous Bar Association claimed that Indigenous groups would like to extract tax revenue from cannabis sales, and also develop unique regulatory regimes for Cannabis use depending on each Nation’s “medicinal uses, ceremonial uses, and education needs, in keeping with their unique and distinct Indigenous cultures.”\textsuperscript{209}

The respect the Association demands for differing and unique approaches to legislating Cannabis, and the right to enact laws, is related to self-determination.

As such, the Indigenous Bar Association urges the federal government to concede that it is “not adept to comprehend or regulate traditional knowledge that Indigenous peoples have kept sacred,” including how to use Cannabis in ceremonial and medical ways, and that ignorance of these ways could fuel criminalization.\textsuperscript{210}

The Nishnawbe-Aski Legal Services, which represents individuals from Northern Ontario First Nations, raised a related concern: that “people will hear that marijuana is legal… and that’s all they’ll hear. We will have people who will be growing it and distributing it without understanding the law… [and] more criminalization.”\textsuperscript{211}

The federal government, when confronted with this latter concern, offered funding for culturally sensitive education programs for Indigenous groups to avoid misunderstandings and issues of addiction that could arise from the Bill. As to the

\textsuperscript{208} Hensel and de Whytell, \textit{Brief with respect of the impacts of Bill C-45, On Behalf of the Indigenous Bar Association to the Standing Committee on Indigenous Peoples}, pp. 4.

\textsuperscript{209} Ibid, pp. 9.

\textsuperscript{210} Ibid, pp. 11.

\textsuperscript{211} Standing Committee on Aboriginal Peoples, \textit{The Subject Matter of Bill C-45: Report of the Senate Standing Committee on Aboriginal Peoples}, pp. 9.
former issue, First Nations tax collection and other forms of Indigenous sovereignty over Cannabis policy have been put aside for review in coming years.

The Federal-Provincial split of the tax profits was challenged in the Senate by the Standing Committee on Aboriginal Peoples, which recommended delaying the Cannabis Act to allow the Canadian government and First Nations time to agree on “the implementation of appropriate excise tax collection and sharing measures from revenue generated from cannabis produced on First Nations land.”212 This approach failed to change the Cannabis Act, but Senator Lillian Eva Dyck pointed out that “we are in this situation [because] we have a law of general application—the Cannabis law, because it’s amending the Controlled Drugs and Substances Act—which then applies across the country, including on reserves, so that takes away some of the section 35 constitutional rights of Indigenous people to govern themselves.” She pointed to procedural “constraints” on amending the bill according to the issues Indigenous groups raised and claimed her “hands are tied in many ways” from affecting the law to reflect Indigenous concerns, from those common to multiple bands like over-criminalization, to the particular issues regarding the lack of access of First Nations to the legal market. Meanwhile, noting a familiar dynamic in recent years with regards to tobacco, Nunavut Senator Dennis Patterson argued that history is repeating itself as, “on Mohawk reserves, they have set up Cannabis shops, and they are selling it, but it’s what is called a ‘grey market.’ It is being done, but it is not legal.”213

212 Ibid, pp. 16.

iii. Policy recommendations by Indigenous representatives in the Canadian Senate

The potential to renew the Racial Contract with Cannabis legalization by further excluding from the legal market populations which have already been disproportionately impacted by the criminalization of cannabis can be overcome through the following methods, as suggested by the Standing Senate Committee on Aboriginal Peoples: the provision of funding for traditional addiction healing and culturally sensitive public health information on Cannabis; broader decriminalization of Cannabis offences and amnesty; enacting a First Nations Goods and Services tax to be imposed through the First Nations Tax Commission; and a minimum fixed Indigenous share of the legal Cannabis industry.

If Indigenous communities are not factored into the regulatory framework in such a way that reflects an understanding of some of these concerns, Indigenous representatives are clear “there will be some communities… who will still operate their business and enter this grey market that is already happening for cigarettes,” with the same over-criminalization that has attended cannabis laws in the past.214

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214 1st Session, 42nd Parliament, Vol. 150 Issue 211, Wednesday May 30 2018
Chapter 6: Conclusion

The legislative framework for Cannabis legalization in Canada has in common with the early structure of prohibition two policies—restrictive licensing and the criminalization of unauthorized Cannabis activity—that have worked in tandem to co-opt profits from Cannabis markets for settler government and select licensed entities at the exclusion of full Indigenous participation in the legal trade so far. In the past, this policy defined legitimate Cannabis industry in such a way that restricted non-white hemp drug markets in the British and American Empire while establishing industries in Cannabis for fiber and scientific study of the drug for European settlers. More recently, legalization has given a head-start to the Canadian elite (White Technicians) in the creation of a new legal Cannabis drug market, washing the substance of racist associations that rationalized early criminalization of the Cannabis drug trade and denying Indigenous self-determination around Cannabis policy. This represents a renewal of the Racial Contract that favors settler populations and industry over racialized native peoples.

There are positive signs that a new relationship with Indigenous peoples is possible. When confronted with the possibility of failing to pass Bill C-45 in the Senate, the Canadian Government sent a letter indicating an openness to “advanc[ing] a new fiscal relationship with Indigenous communities,” pledging further discussion of “continued development of First Nations taxation and regulatory regimes.”215 The draft B.C law includes a provision indicating

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consultation must take place prior to using First Nations land in that province for Cannabis production, and some of the LPs that are engaged to supply recreational markets are affiliated with First Nations. These promises nevertheless accompany on-going raids on Indigenous Cannabis industry. For instance, an RCMP raid on a recently opened dispensary on Tobique First Nation “came close to full-out conflict,” according to the Chief of that band, Ross Perley, who viewed the raid as “disrespectful” of band sovereignty and licensing. The politicized nature of Cannabis raids was also suggested by a Seneca faith-keeper and dispensary owner in Six Nations, who claimed he was raided due to conflict with the band council over his views on the legalization of Cannabis on reserve.

Given the current Trudeau Government’s stated intention to consult with Indigenous peoples and engage in meaningful reconciliation, hopefully the laws governing the legal Cannabis industry can be amended according to a compromise with some First Nations interests, producing a more accessible industry. It is also

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216 In Saskatchewan, two First Nations were given four of the 51 permits issued for cannabis retail stores according to Dan Jones, “First Nations Groups get four cannabis retail permits,” MBC Radio June 1 2018 https://www.mbcradio.com/2018/06/first-nations-groups-get-four-cannabis-retail-permits). British Columbia, New Brunswick and Nova Scotia also engaged an LP with investments from the Listuguj First Nation (Financial Post “Zenabis Secures Third Provincial Supply Agreement with British Columbia Distribution Branch,” July 30 2018)


time to recognize, in the words of the Indigenous Bar Association, that “respectfully” the criminalization of Cannabis should be abandoned.\textsuperscript{219}

\textsuperscript{219} Hensel and de Whytell, \textit{Brief with respect of the impacts of Bill C-45, On Behalf of the Indigenous Bar Association to the Standing Committee on Indigenous Peoples}, pp. 20
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Appendix A – Image of the White Technicians

Image 1 – Screenshot from the original website for Cannabis Canada, the lobbying organization for Licensed Producers, taken in 2016.

Image 2 – Screenshot of technicians at work taken from the website of Licensed Producer the Green Organic Dutchman in 2016.
Image 3 – Screenshot of the Board of Directors of Licensed Producer Aurora, taken in 2016.

Louis Gagnon, Master Grower

With over thirty years experience in horticulture, including as one of Rona Canada’s main suppliers of plants and flowers, our master grower Louis has an unsurpassed knowledge and passion for growing flora.

He specializes in the cultivation of difficult-to-harvest flowers and plants and is familiar with hundreds of different varieties. Louis understands seed production, biological controls, grafting and propagation, and has perfected the process of growing climate-sensitive phenotypes in large scale greenhouses.

He now applies this knowledge along with uncompromising standards of quality, to the production of Hydropothecary’s medical marijuana and a superior customer experience.

Appendix B

Overview of Media Research to Date

I began systematically researching Canadian and American online newspaper archives around 2016 after I read Cheryl Chambers’ coverage of the 1937 Marihuana Tax Act in the United States, *Drug Laws and Institutional Racism*. Chambers emphasized the extent to which the representatives who passed the Tax Act relied on media sources to justify the Bill. I started looking into media to see what the ‘popular’ perception of cannabis was prior to cannabis criminalization – whether hemp was ‘unknown’ as a drug, if the coverage was racist, etc. I also wanted to determine who was being arrested for cannabis crimes and who was licensed to use it. These were the primary goals of my research.

Since then, I have been collecting media from the Library of Congress 1789-1963, Newspapers.com 1700-2000, University of Manitoba, Peel University Library, B.C Historical Newspapers, Early Canadiana, the Daily Colonist, INK-Scholars Portal, ProQuest Historical Newspapers (with a focus on the Globe and Mail and the New York Times archives), and the Toronto Daily Star 1900-1971, between the periods of 1878-1942 and 1990-2018.

These online newspaper archives have search engines that use Optical Character Recognition technology to pull up articles from a range of newspapers depending on the search parameters entered. For instance, it is possible to look up specific word searches in specific time frames in specific places, or to bring up a range of sources from different periods and locations. It is also possible to examine the content of just one newspaper.
Using this technology, these archives yield, in the case of the Library of Congress and Newspapers.com in particular, thousands of results for each of these terms from newspapers across the North American continent; some (but not all) of the articles overlap with different search terms and collections, making it difficult to quantify how many articles there are in total.

I have calculated how many articles I have saved and ordered in some form at 2,000. I have collected these articles by searching different terms related to cannabis at different points in different places. The terms I search include hemp, Indian hemp, marijuana, marihuana, ganja, hashish, hasheesh, ganja, cannabis, indica, sativa, reefers, etc. Sometimes I search narrowly for specific people and dates, ie Howard Fraleigh in 1937/8. I also search widely for more random results.

By going through archives from different parts of the continent in batches, sometimes with wide date ranges and sometimes focusing on specific states or provinces at specific times, as well as using a range of terms for cannabis on the assumption that these names represented different racialized markets, I realized there was similar language used to describe cannabis markets even at great distances. Some articles were repeating verbatim. I started to collect these articles, which are representative of the general themes of press coverage at the time.

Due to the range of the digital formats these archives use, and the number of articles involved, I have not saved my data in one place or format, but rather printed some, bookmarked others, saved some to the archive where I have an account, or downloaded a pdf. I have compiled them into different groupings of recurring articles I have found in a range of states and provinces.
Newspapers.com 1700-2000 is very user-friendly and it is the site I use the most because I can index articles on site without downloading them. I have “clipped” or saved 1,567 articles to my account on this website. This paid-access archive has media from all U.S states and several Canadian newspapers, including the Ottawa Citizen, the Vancouver Daily World, the Montreal Gazette, and the Winnipeg Tribune from 1700-2000.

The Library of Congress 1789-1963 is a public and historical site only, so storage of data from this archive is more difficult and for my purposes the results are limited to the U.S. before 1942. I used this archive early on to get an idea of the general issues at stake in cannabis history. Leaving date and state options completely open, I searched each term for cannabis and read articles from the first 5-10 pages of search results that the search engine itself deemed “most relevant.”

I do not know how the search engine determines the ‘relevance’ of the articles it generates. It is also my experience that the search engine is not entirely neutral. Sometimes, searching too specifically for something yields no results; in order to find truly relevant sources, it is often necessary to first cast a wide net and then work through dozens of irrelevant sources (sometimes, for instance, the search engine brings up the River “Ganjies” instead of Ganja, etc). Also, the search engine does not bring up every reference – it misses articles I sometimes find later on when I have gone looking through the pages individually. On the other hand, the search engine allows access to multiple archives in multiple jurisdictions simultaneously.

I estimate that I have read over 500 articles in this archive over two years. I think there are at least 4,000 articles from 1878-1942 in this archive, or more.
have tried to search this archive randomly to get a ‘general’ sense of the coverage at various dates in different states as a starting point. I have 127 saved to my computer as a pdf, and a further 250 saved to word files.

These two larger archives yield more American than Canadian results, so I am searching smaller online archives to fill in Canadian content. The University of Manitoba archive, which is focused on content from Manitoba, yields at least 2,000 results for hemp, hashish, marihuana, and cannabis between 1878-1942. So far I have mostly focused on “hemp.” I have saved 14 articles and have read at least 200.

B.C Historical Newspapers and the Daily Colonist contain material from British Columbia; INK-Scholars Portal and the Toronto Star from Ontario; Peel from Alberta, and University of Manitoba from Manitoba. INK-Scholars Portal, Early Canadiana, the Daily Colonist, Peel, and BC Historical Newspapers all yielded smaller search results, a hundred each at most for all the terms together, except “hemp,” which brings up more like 800 to 2,000 results. I use these archives for the 1878-1942 search, not 1990-2018. I have been through another 400 articles on all these sites combined, and I have saved 15 from ink-scholars portal, 8 from the Daily Colonist, 16 from Peel and 20 from the BC Historical Newspapers. I am largely saving sources that relate to the larger collections I have from Newspapers.com and the Library of Congress, ie I am looking for articles that recur in both Canada and the U.S. However, I also have been saving material related to specifically Canadian news.

In 2017, I also paid for access to the Toronto Star 1900-1971 for a week. In this time I collected 125 articles from 1900-1942.
For the 1990-2018 search, I relied on ProQuest Historical Newspapers where I searched for “Mohawk,” “Marijuana,” “cannabis,” “hashish,” and “hemp,” in the New York Times and Globe and Mail historical archives at various key points, ie in 1885, in 1923, in 1926, in 1937/8, etc. I also used this site to research the portrayal of Jamaican marijuana crime between 1990-2018 after reading Luis Aguiar’s *Repertoires of Racism*. I have in pdf 17 historic *New York Times* sources, 41 historic *Globe and Mail* sources, 12 modern miscellaneous American and 10 modern Canadian articles saved so far. I have also read articles from a variety of news outlets as they have been released. I have at least another 60 miscellaneous articles from websites like the *National Post*, the *Globe and Mail*, the *New York Times*, *Toronto Life*, *Yahoo*, *The Atlantic*, *Salon*, the *CBC*, etc but I have also been reading news stories on this topic regularly for two years during legalization.

In general, my searches of the Candian archives have been much more targeted than the Library of Congress and newspaper.com searches. I also have been looking into Licensed Producers’ (LPs) websites (namely the first 35 medical marijuana), the Cannabis Association of Canada website, and the LinkedIn of LP leadership. Finally, I read public reports available online that are archived by the United Nations or a range of governments, Canadian government debates in 1923, 1938, and 2018, and American 1937 Tax Act Hearings.