The Sixties, Barbara Wootton and the Counter-culture: Revisiting the origins of the Misuse of Drugs Act 1971

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Introduction

More than half a century ago, on May 27th 1971, the Misuse of Drug Act 1971 completed its passage through the UK Parliament and gained royal assent. Niamh Eastwood, Executive Director of the drug policy NGO Release, recently declared the Act to have led to '50 years of failure' (Eastwood 2021) and the hashtag #50YearsOfFailure has become part of a social media campaign calling for radical drug law reform. The Act is seen by many as emblematic of the failed twentieth-century experiment with drug prohibition and as representing a particular strain of right-wing populist moralising about drugs and drug policy. For most in the field, it seems to have little to commend it and calls for its repeal have reached a crescendo in this 50th-anniversary year.

Historians, however, might offer an alternative perspective. The origins of the Act potentially tell a rather different story. Although enacted by a Conservative government, the Act was based very closely on a Bill that had been prepared by the preceding Labour government which had then, somewhat unexpectedly, lost the 1970 General Election before having the chance to pass it into law. This might make us pause, firstly, to reconsider its political roots. The story takes a further twist when we note that the Labour Bill had been strongly shaped by the work of a sub-committee of the Advisory Committee on Drug Dependence whose report on cannabis, known as the Wootton Report (ACDD 1968), was viewed as radical and progressive. Indeed, Barbara Wootton, who had chaired the sub-

committee, was accused at the time in Parliament of being unduly influenced by what was described as the 'cannabis legalisation lobby' (see Oakley 2012). This was a reference to the fact that the report had been prepared against the backdrop of the 'summer of love' in 1967 when drug law reform had been at the heart of the counter-culture, a backdrop to which the report itself alludes in its introduction. History suggests, then, that the 1971 Act is to some degree connected to this important counter-cultural moment of the late 1960s. Interestingly, within the drug field perhaps the only other extant legacy of that moment is Release, which was first born in July 1967 when art student Caroline Coon met radical lawyer Rufus Harris at a demonstration and they decided to create a legal advice service for drug users (Mold 2006:55).

How might we make sense of this striking disjunction? On the one hand, we have a piece of legislation seen as the epitome of outdated moralising prohibitionist thinking. On the other, this same legislation has its roots in the late 1960s, a time of social change in which radical drug law reform was centre stage. This essay explores this question by revisiting the origins of the Act in the 1960s, drawing partly on an archival research project on the counter-cultural origins of the Wootton Report (for a fuller account of this project and its findings, see Seddon 2020a), but primarily through an analysis of the parliamentary debates that took place as the Misuse of Drugs Bill passed through the law-making process in 1970 and 1971. Some implications of this analysis for drug law reform today are considered in conclusion.

Origins and development of the Act

Origin stories are perennially fascinating. This is partly because of our intuition that beginnings are important and that they may sometimes provide a clue to hidden or buried truths. Origin *stories* further appeal by drawing on our deep human attachment to narratives and story-telling. For sociologists, they have proved to be central to the critical analysis of social policy because of the ways in which the framing of social problems is so often shaped by the creation of particular narratives about their origins. Deconstructing these stories is an important part of how we develop new insights on law and policy.

For the Misuse of Drugs Act, clearly at one level it needs to be situated in the twentieth-century story of drug prohibition. Its origins, in that sense, lie in the first two decades of that century, when the British participated in a series of international meetings before and after the First World War, culminating in the passing of the Dangerous Drugs Act 1920 (see Berridge 1984). This Act was superseded by a succession of new pieces of legislation over the following 50 years. The 1971 Act can therefore be understood at one level as just a further iteration or configuration within the basic template of prohibition established a century ago. Yet, even when we step back and take the long view in this way, it stands out in this timeline for its longevity. It remains the primary drug control legislation more than 50 years later and looks likely to continue to be so for some time to come, despite the best efforts of reform advocates.

It is important, then, to explore and try to understand the specific origins of the 1971 Act. A core thesis of this essay is that these origins lie in the 1960s and that this perspective provides an alternative origin story with relevance for thinking about drug law reform today. Reading the parliamentary debates on the Misuse of Drugs Bill, which took place between March 1970 and May 1971, immediately makes these 1960s roots very apparent. There can be little doubt, for example, that the Wootton Report was at the forefront of parliamentarians' minds, with either the report or Wootton herself being mentioned well over 100 times (and Wootton in fact spoke in the debate when it reached the House of Lords). The Labour peer Baroness Serota referred to 'the great cannabis debate which has been going on in this country now for some three or four years', explicitly linking the Bill to the counter-cultural moment from 1967 onwards (HL Deb 4 February 1971, c. 1365). Another strong theme was the idea that the drug problem had changed and worsened during the 1960s and that the new Act was needed to deal with this new situation. Indeed, Home Secretary James Callaghan, in his first contribution to the debates in March 1970 (before the General Election in June), introduced his comments with the observation that 'compared with even three years ago, the pattern of misuse of drugs is much more complicated and more serious […] our defences are far too inflexible against these evils […] the drug scene is constantly changing' (HC Deb 25 March 1970, cc. 1446-8). Others made similar points.

Much of the debate was surprisingly reasonable and measured, although it is also clear that knowledge of the issues was fairly thin and limited for most contributors, often even for those who claimed some level of special expertise or relevant experience. Not all members were able to resist more absurd rhetoric, of course, with Tom Price (Labour MP for Westhoughton) providing a particularly choice example when linking the 'resort to drugs' to the 'decline of Western civilisation' and describing the Wootton Report's recommendations as 'avant-garde' (HC Debate 25 March 1970, cc. 1517-21). From across this body of debate, spanning 14 months, three points can be drawn. The claim here is not that these are necessarily the most central to or prominent within the debates but that they have something to tell us about the Act's origins that is of relevance to thinking about drug law reform in the 2020s.

The first is about the place of law within strategies for drug control. Writing in the *Modern Law Review* the year after the Act was passed, legal scholar Harvey Teff (1972:232) asserted that 'undoubtedly the new Act brings a fresh approach to problems of control', although he concluded that its impact will 'inevitably be marginal' because of the 'inherent limitations of legal control' (1972:241). Teff's scepticism about the capacity of prohibitive laws to regulate drug problems effectively has a distinctly contemporary ring but also in fact resonates with many of the speakers in the parliamentary debates. Callaghan, for example, stated:

> The law has a part to play—hence the Bill—but it is by no means the only agency, because law enforcement which attempts to control personal consumption is difficult. I emphasise at the outset that there is a need for a concerted effort in the legal, social and medical fields.

> The Bill on its own, although it would serve a useful purpose, would by no means deal with the problem, which is growing so fast today. (HC Debate 25 March 1970, c. 1446)

When the Bill came to the House of Lords in early 1971, Wootton herself in her contribution to the debate noted this widespread agreement about the limits of law, describing it as a 'more sober, rational, constructive and less hysterical' approach than her cannabis report had received a couple of years earlier (HL Debate 14 January 1971, c. 252).

Why is this important? First of all, it rather undercuts the #50YearsOfFailure line of critique. The law-makers at the time did not claim the Act on its own would significantly ameliorate the problem and repeatedly argued that by itself it would have a marginal impact. As I have argued elsewhere, the failure over the last 50 years has been more one of policy than law, and the legal structure of the Act in fact builds in considerable flexibility to allow potentially for a wide range of policy approaches (Seddon 2021). Again, it is clear in the debates that this flexibility was both deliberate and also seen as a positive feature of the Act. For example, the Labour MP for South Shields, Arthur Blenkinsop, observed that 'it is right to keep emphasising that the situation changes rapidly […and] one of the great merits of the Bill is that it takes account of that' (HC Debate 25 March 1970, c. 1471). An understanding of the limits of law is also important as it serves as a corrective both to those who see ratcheting up law enforcement and legal punishment as key and those who see changing the law as the principal way forward. Ironically, this understanding seemed stronger back in 1970 and 1971 than it does today. In a recent paper, I have set out a theoretical basis for this need to broaden out from a law-centric focus to a regulatory approach (Seddon 2020b).

The second point follows from the first: if parliamentarians did not believe the new laws were more than marginal to efforts to control the drug problem, then what did they think they were doing when passing this Act. What did they say the objectives were? What was the stated purpose of the Act? There have been many assertions about law-makers' intentions but what did they actually say during the extensive debates in 1970 and 1971?

When we examine the text of the debates, there is surprisingly little reference to the stereotypical tropes of prohibitionists – the 'evils' of drugs, the immorality of drug-taking, the need for strict law enforcement, the desirability of harsh punishment – although these are certainly there. In fact, it is possible to see a considerable consensus coalescing in the debates that the Act was intended to achieve three principal goals. First, by introducing a classification system, it would allow the strictness of controls to vary according to the degrees of harm presented by different drugs. The flexibility of that system (that is, the ability to upgrade, downgrade, add or delist substances) would enable the legal framework to adjust in the face of changes in patterns of drug-taking. The aim was that these decisions about classification would be shaped by expert advice and scientific knowledge. Second, possession offences were to be separated from supply offences, so that the latter could be targeted for harsher punishment. Third, the new Act aimed to consolidate and 'tidy up' drug control provisions that over time had become fragmented across multiple pieces of

legislation. A good example of this consensus came in one of the many contributions to the debates from Norman St John-Stevas, Conservative MP for Chelmsford:

> The principles on which a good law on this subject should be based are threefold. First, drugs must be controlled; everyone is in agreement about that. They should be more or less strictly controlled according to their degree of danger; the reclassification in the Bill does that. Thirdly, a distinction should be drawn between different types of offences, and the Bill does that. Pushing is certainly one thing and possession is another. Clearly, pushing a drug should be punished much more severely than merely having possession of it. (HC Deb 16 July 1970, c. 1818)

This reinforces the point that law-makers at the time presented a relatively modest set of objectives. Assessed on their own terms, rather than against their imagined goals or intentions, it could be argued that the primary point of failure in subsequent decades has been in the use of the classification system. The mechanisms for drawing on scientific advice, particularly over the last couple of decades, have often been subverted (see Stevens 2021) and the flexibility provided by the Act has become a 'policy ratchet' that tends to move only in a more coercive direction (Stevens and Measham 2014). These are failures driven by policy-makers rather than deriving directly from the Act itself.

The third interesting feature of the debates is a thread running through them in which the question is raised as to why alcohol and tobacco are excluded from the Bill. This is probably surprising to most readers. After all, this is the type of question drug law reform advocates raise and it is slightly jarring to see it appear as a recurring theme in these debates. Eric Deakins, newly-elected Labour MP for Walthamstow West and making his maiden speech, put the point most sharply:

> The Bill is […] rather hypocritical. It attacks socially unacceptable drugs but does nothing about socially acceptable drugs. It attacks the drugs of young people, but does nothing about the drugs of middle-aged and elderly people. (HC Deb 16 July 1970, c. 1766).

Before the first debate in the House of Commons in March 1970, an amendment was tabled calling for the House to decline to give a Second Reading to the Bill on the grounds that it omitted reference to 'the most dangerous drug currently available, namely tobacco' (HC 25 March 1970, c. 1446). Although this amendment was not selected by the Speaker, there was nevertheless considerable discussion of tobacco (and alcohol), often making comparisons with cannabis. Liberal Life Peer Lord Foot, for example, asserted:

> It is demonstrable that the use of tobacco is more injurious to the individual than the use of cannabis, and that taking alcohol is more injurious to the individual, and to society, than the use of cannabis. I should have thought that was beyond question. (HL Deb 14 January 1971 c. 240)

Building on this theme, a recurring strand in the debate is about the 'cannabis challenge', with a view repeatedly expressed that cannabis should be treated differently in some way.

Here, we see the strongest links made with the counter-cultural moment of the late 1960s. Whilst only a small number of members called for the legalisation of cannabis, many others argued for the lowering of penalties for possession and even for a special classification to be made for cannabis. Others, of course, argued in favour of a more punitive approach but it is certainly clear from the debates that there was not only a wide range of views on how to deal with cannabis but also some awareness of the conceptual 'fuzziness' of distinctions between cannabis, tobacco and alcohol.

Conclusion

So what conclusions can we draw from this excursion into the history of the 1971 Act and, in particular, the parliamentary debates from 1970 and 1971 which led up to its enactment? I think we can see the outlines of an alternative origin story which may have some different insights for the drug law reform enterprise today. The historical analysis has shown that instead of the Act being just an especially prominent staging post in the post-1945 story of the ever-tightening screw of prohibition, it has a distinctly more mixed and complex genesis and character. It lies squarely in the prohibition template *but* was also shaped by the radical counter-cultural calls for cannabis law reform. It satisfied law-makers who were concerned about the need not to be 'soft' on what they saw as a worrying social problem *but* was also designed to respond in a rational and flexible way to emerging new scientific evidence. It accepted the twentieth-century boundaries drawn between 'drugs' and alcohol/tobacco *but* also allowed for substances potentially to shift within, in to and out of the classification system.

This origin story positions the Act not as a monolithic piece of punitive prohibitionist legislation but rather as something more protean and polymorphous. From the vantage point of the 2020s, we can draw at least two important lessons for drug law reform from this, one historical and one political. The historical lesson is that there have been previous moments where reform seemed on the verge of happening, only to fade away. In the summer of 1967, radical change to the drug laws, particularly relating to cannabis, seemed to be gathering an unstoppable momentum in the UK (see Seddon 2020a). Yet half a century later it still has not happened. Some of the more hyperbolic commentary on recent developments in the Americas might be taken as implying we are moving along an inevitable trajectory towards reform. History tells us this may not be so. Advocacy for reform will need to continue to work hard, not only to achieve change but also to ensure that reform develops in ways that include adequate constraints on corporate power and give due regard to social and racial justice.

The political lesson is perhaps the most important. As I have tried to show in this essay and elsewhere (Seddon 2021), much of what is critiqued about the 1971 Act is actually more to do with how it has been implemented in a wider policy context rather than the form, structure or intent of the legislation itself. The realm of policy and politics therefore needs to be brought much more centrally within reform discourse and analysis. Drug law

reformers tend to identify 'politics' as part of the problem – in the sense of politicians ignoring science and evidence in order to push more populist prohibitionist approaches – and something that therefore needs to be neutralised or avoided. In my view, this is mistaken. There needs to be a proper theoretically-informed understanding of the relationships between law, policy and politics and an analytical embracing of the inherently political nature of state efforts to control citizens' psychoactive consumption practices. The drug question is deeply entangled with some of the core ideas of modern political thought – freedom, rights, justice, citizenship – and so thinking about reform needs to be approached on a much wider basis than simply as a technical matter of rewriting the drug laws.

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