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Thinking about drugs histories and private purposes in South Africa

In early June of this year, South Africa's Cannabis for Private Purposes Act (Act 7 of 2024) was signed into law. It sought to resolve a core contradiction of the post-apartheid state, a contradiction formally denounced by a 2018 ruling of the Constitutional Court between a punitive drug policy and a commitment to civil rights. The new act decriminalises, and provides new regulatory measures for, cannabis consumption and cultivation in recognition of the plant's longstanding and varied cultural, religious, and medicinal values. It also sets out conditions under which the criminal record of a person convicted on a cannabis charge under the previous law may be expunged.

The development is significant. In South Africa, cannabis was restricted in national law from 1922, along with cocaine, morphine and heroin. Jan Christian Smuts, in his capacity as the prime minister of the Union of South Africa and an architect of the League of Nations, was influential in establishing international cannabis controls, implemented from 1925 (Chanock 2001; Waetjen 2021). Across the century, especially from 1971, South African legislation provided for increasingly harsh punishments for possession and consumption, as well as for trade in cannabis (Waetjen 2022). The racist impacts of drug policies, with disproportionate carceral effects on black South Africans, were a feature specifically of cannabis criminalisation. This was a notable continuity across National Party and African National Congress governments.

Why did it take almost 25 years of democracy for a discriminatory law to be declared unconstitutional? And: What does it mean to disaggregate cannabis from

other psychoactive substances long-scheduled as 'dangerous, prohibited drugs', by demarcating its legitimate uses as a feature of the private? The new law raises these and other questions, requiring that we bring some specifics of history into focus in order to consider what is at stake.

History matters because 'drugs' are ontologically uncertain and cannot be separated from the social and political contexts of their consumption, trade and regulation – their 'set and setting' (Zinberg 1984). Moral and legal definitions of what constitutes a 'drug' are related to power through, for example, whose intoxicant traditions provide a normative base-line for consumption and profitable production, and how legitimate practices are institutionally situated. Rationales of use have also served in defining 'drugs', with designated gatekeepers. During the previous century, 'medicinal purposes' sanctioned the consumption of certain substances (opium, cocaine, morphine) for health, healing, and pain-relief, as regulated through licensed medical expertise (Parle 2019). These same substances were designated for suppression if used for 'intoxicant purposes'. Yet health, whether public or individual, has not been a stable criterion, as the examples of tobacco and alcohol easily illustrate. In these cases, regulation is addressed to issues of problematic use and excess, as private matters, identifying and treating the individual 'inebriate' or 'addict'. By contrast, drug problems in a public frame are expressed within a politics of panic. Here, substances are attributed with neurochemical – even spiritual – agency, as an 'evil', a 'social ill', acting with apparent malevolence to enslave and possess, to generate disorder. The 'addict' of the media is not a private person, but a vessel of atavistic irrationality, through which a drug inflicts chaos and criminality.

Drugs, in other words, are historical objects. Their neurochemical or physiological effects are given meaning and reality within the structures and ideologies of culture and time, changing and changeable. It is notable, for example, that the language of 'addiction' and the 'addict' arose with industrial modernity. Inebriety and addiction presented as the antithesis of civil and economic rationality, and a source of disorder against the disciplines of the clock and the factory. Legal regulations and prohibitions were strategies of political-economic control, as much as they were abstract prescriptions for human health and wellbeing.

Legislative restrictions and increased capacities of policing have also shaped the context of drug use during the last century. Punitive policies and, later, militarised 'wars on drugs', emerged as states embraced their regulatory role and endowments of legitimated violence. Today, there is a growing consensus that wars on drugs have failed, and that many of the harms attributed to certain substances are in fact exacerbated by suppression or are a direct effect of criminalisation. While prohibitions can result in lower rates of consumption,

this comes at a high cost. In conditions of inequality and poverty, prohibitions tend to increase the economic stakes of a drug trade, enhancing the power of criminal actors and the scale of official corruption. As drug consumption moves underground, users are driven into activities which increase their legal and vital vulnerabilities, and away from legitimate care and nurture.

Current shifts of approach towards harm reduction, in the case of some substances (such as opioids), have been crucial for lowering overdose and stigmatisation in many parts of the world. Yet conundrums of legal regulation remain politically fraught. One issue is the production and global circulation of increasingly potent pharmaceuticals (fentanyl is a well-known example), associated with rising rates of overdose death. Another is that, while some societies (like Portugal and the Netherlands) demonstrate long and successful track-records of implementing harm-reduction approaches, others have faced ideological backlash. Stand offs in the United States, for example, are heated; between, on the one hand, harm-reduction advocates (who promote an array of evidence-based interventions, from clean needles to safe injecting spaces) and, on the other, advocates of law enforcement (some who view punishment as a needed 'rock bottom' consequence of problematic use, supposedly aiding in recovery and abstinence).

Such stand-offs reveal the extent to which 'drugs' – as a public issue – are situated as a nexus of cultural meanings, values and moralities in response to anxieties about change and uncertainty. In the United States, the influx of new and potentially lethal street drugs coincided with crises of housing, to which Covid-19 contributed, with complications surrounding mental health and job insecurity. Drug use is highly visible in North America as rising numbers of unhoused people squat in tent communities along streets, railways, vacant lots and public parks. The conditions and effects of post-industrial capitalism, against which policy is in so many ways a patch job for protecting normative and familiar ways of life against needed distributive transformation, is a relevant aspect of contemporary 'drug' problems. As Jason Pine (2019) has demonstrated in his account of methamphetamine use in Missouri, the social and chemical 'alchemy' of a drug tend to blur (and even explode) the boundaries between legitimate and illegitimate practices – both of consumption and production.

So, what about South Africa, where cannabis was (for centuries of pre-colonial history) an indigenous intoxicant and medicine, regulated through the authority of family and patriarchy? Today's cannabis reforms are accompanied by the growth of a global billion-dollar cannabis industry, with new and vast markets for its alkaloids, oils and fibres. This will certainly shape ongoing governmental plans for a cannabis sector and related future legislation. Meanwhile, it is unclear

how the Cannabis for Private Purposes Act will be integrated into a cannabis and hemp industry, as formal economic developments and how this will impact the cultivators who have long relied on illicit cannabis for survival.

It is worth understanding the discriminatory nature of earlier cannabis laws in South Africa. In part, its racist impacts were a structural feature of competing nationalisms, both steeped (in different ways) in race ideology. One was rooted in the colonial relations of white minority rule, which accommodated cultural difference by partitioning African traditional authority from settler political culture; the other nationalism was aligned with modern progressivism, imposing universal strictures.

That history and its implications are easily summarized. Cannabis was long tolerated by South African colonial state-makers as a 'native tobacco' (Du Toit 1973; Gordon 1996; Duval 2018; Waetjen and Ndandu 2024). New economic conditions of wage labour, in agricultural and mining sectors, created new spaces and rationales for cannabis consumption. Mass demand stimulated commercial cultivation, at a time when prohibition and increased law enforcement rendered cannabis trade lucrative (Nkosi et al 2020). 'Tribal' areas, formalised through the 1913 Native Lands' Act – and economically underdeveloped as reservoirs for the alienated labour of African men – became important also (along with Lesotho and Swaziland) as regions of clandestine cannabis production.

Following World War II, segregation in South Africa began to unravel. The National Party, elected in 1948, reimposed segregation as 'apartheid' and bolstered policing, including over cannabis. In the 1960s, media alarms about white youth consuming cannabis – as well as new synthetic tranquilizers and sedatives – emerged as an issue of 'national security'. 'Hippies' were defying the cultural and Calvinist religious ideals of Afrikaner nationalism, the bedrock of racial political supremacy. In military camps, cannabis, along with alcohol, was accused of generating undisciplined, violent behaviours among conscripted young white men. Harsh legislative action imposed upon drug traders and users sought to protect the white nation 'from within' (Waetjen 2022).

Meanwhile, apartheid was extended, in the bid for a 'white South Africa', by refurbishing the colonial machinery of indirect rule. 'Ethnic homelands' re-invented racial segregation and racial capitalism as modern, nationalist independence. Within these spaces, where it had already taken hold, an illegal multimillion rand cannabis agribusiness thrived with new stakeholders and new protections. The relations and networks in an 'everyday narco-capitalism' (Ghiabi 2022) replicated, in miniature, those of global, south-north drug supply chains.

As cannabis livelihoods were eked out in the shadows of apartheid segregation, the National Party passed a draconian drug control law. In 1971, the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act was designed ostensibly to protect white youth from 'hard drugs.' Including cannabis as a 'prohibited, dangerous drug' predictably skewed the law's impact on African cannabis consumers and traders. Helen Suzman, a lone early voice advocating cannabis decriminalization (Seganoe and Waetjen 2023), noted over 80,000 cannabis convictions, 98% of them of black South Africans in the first years after the law came into effect. While Richard Nixon was still deliberating on the status of cannabis in the United States, South Africa's war on drugs (essentially a war on cannabis) began in earnest. It affected black communities both directly, through disproportionate convictions, and indirectly (by increasing the stakes of illicit trade and strengthening criminal networks in townships and fuelling corruption at all official levels). Police raids in rural, cannabis-growing areas shifted from ground crews cutting, confiscating and incinerating cannabis crops, to militarized operations, involving the chemical herbicide glyphosate sprayed from aircraft.

When the ANC came to power, it both inherited and reinforced punitive anti-drug policies and, with them, the structural paradoxes of the previous regime. Anti-drug moralism had resonance with many mission-educated anti-colonial leaders, who had long battled for inclusion and rights on the basis of cultural, rational and moral equality with Europeans. With growing criminal activity surrounding an urban drug trade in many townships – especially around the methaqualone Mandrax – a majority of voters after 1994 approved of government 'crackdowns' on a drug 'evil'. Such actions provided government leadership with grounds for justifying tough means as an exercise of moral authority (Super 2016). The structural racism embedded in drug policy continued under a 'non-racial' government for 22 years.

The 2024 Cannabis for Private Purposes Act newly regulates cannabis practices by deploying an idea of the private. Adults 18 years or older may consume or cultivate cannabis for private purposes. 'Private purposes' endeavours to sidestep the older litmus test of legitimate drug consumption, which sanctioned 'medicinal' purposes against 'intoxicant' rationales. It provides for diverse uses, and for those not easily classified within a single intent. Private is the operational principle, identifying the legitimate spaces, relationships and values of cannabis practices. There are several aspects similar to frameworks governing 'legal' drugs: for example, limits on age, on public consumption, and on activities that might threaten public security. There are also differences, such as a language of rights (the law proposes to 'respect the right of an adult person to use or possess

cannabis'). The Act allows for the gifting and sharing of cannabis, but prohibits 'dealing' in terms of sales, cultivation, exports and other exchanges that are unlicensed in terms of other national legislation. Maximum prison sentences for illegal 'dealing in cannabis' have been dropped from 25 to 10 years.

In accommodating 'private' consumption of cannabis, including private smoking, the law proposes a flexible idea of the private. Its emphasis is on conduct that avoids negative impacts on other people. Depending upon the 'likelihood' of creating a 'nuisance', an outdoor public space may be considered acceptably private for smoking, while proximity to the window or door of a private dwelling may not be. The Cannabis for Private Purposes Act, in effect, works to decriminalise existing social realities, unburdening the law of undesirable (and impossible) policing and punitive activities, while maintaining protections for minors and non-users.

It is not my intention here to consider the implications of the new Act, or to discuss why I am convinced that decriminalising all substances defined as 'drugs' would be a progressive next step. But I do wish to reflect a bit further on the issue of the private, and what it raises for a drug policy embedded in conditions of severe economic inequality and systematic exclusion.

I am worried, essentially, about the issue of belonging – that is, the right to belong, and the postures both of state power and of popular opinion that make belonging meaningful or elusive. The word 'marginalised' has, in some sense, referred to people whose belonging is insecure, whether because unprotected by a state, unable to benefit from the economy, or because physiological or mental conditions create vulnerabilities within systems that assume rational agency. Safety nets for marginalized people, where they have existed, are in decline. In many places, the private itself has been, or is becoming, a privilege. Where once a state of alienation referred to human bodies with 'only their labour to sell', there are currently fewer spaces to sell labour at a price that can ensure its sustainable reproduction. The issue of the body, as a keeper of the private, is relevant in discussions of drugs and what they raise for the issues of the social and of belonging.

Hannah Arendt observed, in *The Human Condition* (1958: 112-3), that the body was the ultimate indication of a reality that could be called private. The foundations of property, she writes, was based on the embodied realities of labour, of bodily activity capable of property-making:

[T]he very privacy of one's holdings, that is, their complete independence 'from the common,' could not be better guaranteed than by the transformation of property into appropriation or by an interpretation of the 'enclosure from the common' which sees it as the result, the 'product', of bodily activity (Arendt 1958: 112).

Even more intensively private than labouring activity, says Arendt, was a body's capacity for pain. Pain reveals that the body is the 'quintessence of all property because it is the only thing one could not share even if one wanted to' (Arendt 1958: 112). Pain – which turns a person's concentration 'inward' (on the body) – demonstrates its bounded, personal nature. The same is true also, she observed, with the experience of pain relief, specifically the experience of contrast which an individual feels acutely and temporarily between pain and its absence. Such short term 'euphoria', as she proposes in a footnote (Arendt 1958: 113), and the desire to be free from pain inevitably bears on rationales of 'addiction'. Here, the agent of addiction is not the enslaving chemistry of a substance, but resides in a human desire to experience relief from their private experience of pain.

But pain, in another way of seeing this, while privately felt, is not necessarily privately produced. Pain can be a privatised injury of the social and political. Treatment, as for veterans returning from war, is individualised; but – notwithstanding medals or a hero's welcome – social alienation may well prohibit relief that can be felt as 'proper'. Thus, bracketing the 'commons' and politics of pain – which is what 'private purposes' looks (in part) to manage in law – must necessarily be but a compromise, though it is quite an important one. Privacy here does not pertain to individuals only, but to a communal private – and to those practices that sustain belonging against exclusion, including in a religious or cultural sense.

In the United States, the very visibility of the 'drug problem' is mistaken for its essence. Unhoused people seek shelter and community in available or abandoned spaces, pitching tents, squatting under bridges and beside parks, to find belonging against private exclusion and relief against private pain. Here it is not labour, nor productive activity that secures property and propriety, but a reclamation of the commons, both purposeful and inadvertent. The pursuit of a freedom from a pain 'that cannot be shared even if one wanted to' stands in for a claim, in a world where consumption is itself the basis of civic recognition. In public discourse, categories of deserving and undeserving poor coalesce around an individual's capacity to 're-habilitate', 're-integrate with [normative] society', or in some way to secure a private means of substance use.

This exemplifies one reason why 'private purposes', as a means of bracketing the commons, reveals itself in the long term to be of limited progressive value. Systems of property, like propriety, are shown to be at the heart of drug policy, where protection of the private must be the means for protecting an abstract social good. To the extent that distributions of the social good is increasingly narrow, we must again raise the importance of the commons in policy thinking – a commons of resources as much as of rights, within a holistic approach towards reducing

harm, reducing pain, and towards increasing belonging where these aims remain elusive. A 'drug free' society, pushed by moralists, is not viable (even if it was desirable), but a better and more just society for all is an ethical imperative.

The ways in which cannabis has been historically consumed are inherently social, despite long-term attempts to classify the spiritual, the medicinal and the recreational as distinct 'purposes'. The social realities of substance practices blur the boundaries between private and public. What happens when people lose, or do not have, access to the private? Social consumption becomes visible, manifesting visibly in other social problems. It goes without saying that we need to consider better ways of thinking about social organizations and distributions. The problems identified around drug consumption and production are part of, and not separable from, other urgent social issues that cannot be resolved privately.

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