Dan Malleck

When Good Drugs Go Bad: Opium, Medicine, and the Origins of Canada's Drug Laws

UBC Press · Vancouver · Toronto

Library and Archives Canada Cataloguing in Publication

Malleck, Dan, author
When good drugs go bad : opium, medicine, and the origins of Canada's drug laws / Dan Malleck.

Includes bibliographical references and index.
Issued in print and electronic formats.
ISBN 978-0-7748-2919-9 (bound). – ISBN 978-0-7748-2921-2 (pdf). – ISBN 978-0-7748-2922-9 (epub)

1. Narcotic laws – Canada – History. 2. Opium abuse – Law and legislation – Canada – History. 3. Drugs – Law and legislation – Canada – History. 4. Drug addiction – Social aspects – Canada – History. 5. Drug addiction – Economic aspects – Canada – History. 6. Drug control – Canada – History. 7. Medicine – Canada – History. I. Title.

KE3720.M34 2015	345.71'0277	C2015-903303-9
KF3890.M34 2015		C2015-903304-7

Canada

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund), the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

Page 1 image: Poppy NLM, a012406, courtesy of the National Library of Medicine

UBC Press
The University of British Columbia
2029 West Mall
Vancouver, BC V6T 1Z2
www.ubcpress.ca

Contents

When Good Drugs Go Bad

Introduction: Its Baneful Influences

Opium is awesome. A versatile medicine, it can treat the symptoms of a variety of ailments and ease the pain caused by many others. It is especially useful for dealing with illnesses of urbanization, such as dysentery, cholera, and tuberculosis – conditions that result in the excessive expulsion of bodily fluids. As a substance that dries up pulmonary secretions and slows gastrointestinal action, it significantly reduces the vomiting, diarrhea, coughing, and other actions related to conditions caused by polluted water, dirty air, and substandard food storage. Moreover, as a pain reliever, it has few substitutes. It is no surprise that the pain killers of today are modern opiates and that they continue to be overprescribed and misused.

Opium is awe-inspiring. Taken alone or combined with alcohol, opium is a hallucinogenic that fuelled much of the intense imagery of early-nineteenth-century Romantic poetry and fiction. Samuel Taylor Coleridge's *Kubla Kahn* is said to have been the result of an opium-inspired dream; *Frankenstein* was written after a hallucinatory trip that Mary Shelley experienced while visiting the chalet of opiated bon vivant Lord Byron. And of course let us not forget the *Confessions of an English Opium Eater,* written by Romantic author Thomas De Quincey. Although ostensibly offered as a cautionary tale, it did not hold back on indulgent reminders of how lush and complex opium dreams could be, and it was criticized, appropriately enough, for *romanticizing* recreational opium consumption. In a literary style that was heavy in intricate imagery, Romanticism was an opiated wonderland.

Opium is awful. De Quincey was not the only sufferer to detail the terrible effects of prolonged exposure to, and numerous attempts to break the habit of using, opium. The nineteenth-century popular press is full of such images, some more celebratory than others. One of the books that inspired this research was Oscar Wilde's *The Picture of Dorian Gray,* which begins with a character smoking an opium-laced cigarette as an image of genteel excess

and devolves (spoiler alert) into Dorian haunting the opium dens of London amid scenes of debauchery and decline. By the end of the century, the white person in Chinese opium dens of Chinatowns in London, Vancouver, and San Francisco was a familiar, and frightening, representation of the West in decline and of the threats that it faced from within and beyond its borders. But the awfulness extends well beyond the trope of the white person lured by the exotic excesses of the Chinese man. The addicted middle-class woman, hooked by medical treatment (iatrogenic addiction), although a less prominent image of literary conceit and social danger, was an equally familiar figure in the Victorian world and likely more personally resonant among polite society.

These three sides of opium converged at the beginning of the twentieth century to drive the impetus for policy change that, to this day, has significantly affected the lives of citizens. They combined, intertwined, and constructed discourses constraining the idea of opiate consumption. In turn, embedded within these discourses, was the acknowledgment that such a complex, powerful, and dangerous substance needed careful management. A valuable but dangerous medicine required prescription and distribution by responsible health professionals; a substance of indulgence and fantasy in a society increasingly fixated on self-control, productivity, and abstemiousness required strict containment; and a dangerous habit-forming drug required judicious oversight, government intervention, and rigorous enforcement. In an era when ideas of nation were intertwined with concerns about the character and behaviour of the citizenry, these were powerful forces.

The stories of the development of anti-opium legislation have been told for many Western countries, and the histories of Great Britain and the United States have considerable bearing on what happened in Canada. Historians including Virginia Berridge, Terry Parssinen, Geoffrey Harding, and Louise Foxcroft have traced the social, cultural, and legal development and impact of opium legislation in Britain.[1] There, concerns about domestic opium consumption were combined with discussions of the national disgrace of Britain forcing the opium trade on China and the effects that such self-interested imperialism had on Asia in general.[2] For the United States, David Musto, David Courtwright, Wayne Morgan, Timothy Hickman, and Caroline Acker have chronicled similar stories, showing how the complex development of urban America, the industrial needs of the state, the rising medical and reformist perspectives, and a crisis of modernity drove the creation of restrictive drug policy.[3]

There has been no similarly detailed treatment of the origins of Canada's drug prohibition. Canada's history has often been influenced by the legislative and social movements of its continental neighbour and its imperial motherland. As we will see, these countries had some influence over components of Canada's drug policies, although Canada's path was unique

in many ways. With few exceptions, research on Canada's drug laws has concentrated on the impact of drug legislation, not on its creation. As a result, the first federal law, the Opium Act of 1908, which was passed before similar legislation in the United States and Great Britain, has been interpreted not only as the foundation of Canada's drug laws but also, since it came on the heels of anti-Asian riots in Vancouver, as a product of racism instead of part of a long process of changing ideas about what we might today call recreational drug use. The reason for such close association with racism is understandable. As a consequence of the damages caused by those riots, Deputy Minister of Labour William Lyon Mackenzie King was dispatched to Vancouver on a one-man Royal Commission to assess damage and allocate reparations payments. While there, he was encouraged by several influential local residents to investigate and report on what he saw as a troubling opium industry in that city. In his Royal Commission report, he observed that "its baneful influences are too well known to require comment." He followed this report with a separate, detailed discussion of what he saw as the need to suppress opium. Notwithstanding the fact that most of the legislators to whom King's report was written likely had first-hand experience with opium as a useful but habit-forming medical substance, and probably had at least one addicted acquaintance (as did King), historians of Canada's drug laws have generally viewed these "baneful influences" as referring to Chinese opium smoking.[4] Three years later, with this precedent for federal drug prohibition established, the government expanded the legislation into the Opium and Drug Act of 1911, including morphine and cocaine alongside opium in an unholy trinity of dangerous substances. The impetus for this legislation, so King told Parliament, was pressure by police chiefs in Montreal and Vancouver and by several moral-reform agencies, who all insisted that more needed to be done to control the possession of opium, morphine, and cocaine, drugs that continued to be associated with opium dens and Chinatowns.

For the most part, King's report and the 1908 legislation have served as a preface to studies of the impact of the legislation. In arguments showing how the creation of a new class of lawbreakers (i.e., addicts) was an example of the labelling approach to criminology or tension between materialist and functionalist impressions of Canada's drug-policy formation, well-meaning sociologists and criminologists did not see a need to dissect the creation of the laws. Historian Catherine Carstairs's important study of what happened to addicts when subjected to the power of the state, a sensitive and detailed examination of the impact of criminalization and the cultures that it engendered, did not need to explore the complexity of law creation, although her popular article on the "racist origin" of Canada's drug laws reproduced the tantalizing but distorted excesses of the narrow historical view.[5] As a result, most of these histories assert the racism underpinning the legislation and

then move forward. The few studies that have touched on the precursors to 1908 have been generally short and similarly focused on the post-1908 period.[6] None of this is intended as a criticism of these scholars. Their interest was in the results of criminalization, their intention was not to study the origins of the legislation, and, to be fair, they did not have histories of the pre-1908 story on which to draw. Even P.J. Giffen, Shirley Endicott, and Sylvia Lambert's insightful *Panic and Indifference,* which provides a detailed critique of the simplifications of earlier histories, is likewise focused more on the consequences of the laws than on their multifactorial origins.[7]

This historiographical gap is problematic not only because it is important to get the history right but also because it has led to distorted statements in policy formation. Attacks on our current drug laws as being "racist," intended as laments of misguided legislation, lack the sophisticated appreciation of the social and cultural context in which legislation was formed.[8] Racism may have framed some discussions, but as Giffen, Endicott, and Lambert note, King heard from a number of prominent Chinese residents of BC who wanted the government to take action on opium use.[9] If one wants to use history to argue that a law should be changed, the history should be presented with its many nuances. Law formation is a complex social process, normally involving the emergence of some understanding about the problem that exists and the way to fix it. Simple allusions to racism do not help us to understand the origins of these laws or to see a way forward if we want to modify them. We should be asking questions like: What was it that made such restriction even possible in an era when government control of trade was a touchy subject and when laissez-faire proclamations continued to have ideological weight? Is it enough to say that the legislation should be discarded because the roots were racist? Of course not. When history is distorted, credibility is diminished.

We live in a complex society, as did our Victorian forebears. It is not enough to conclude that legislators could be swayed by arguments that opium was bad because the Chinese used it. Was King so influential that his little report changed everybody's mind? This is doubtful. Anti-Chinese sentiment, while undeniably a feature of the Victorian Canadian psyche, was not the only realm of understanding in which opium existed. Indeed, the real home of opium in Victorian Canada was the Victorian Canadian home. We need to look no further than the Dominion House of Commons and at no other time than the same session in which the Opium Act was passed into law. A week before debating and passing that legislation, the Canadian Parliament passed the Proprietary or Patent Medicine Act, legislation that placed new restrictions on prepackaged proprietary medicines. The new law, the outcome of years of debate and lobbying by the medical and pharmaceutical professions, required precise labelling of the ingredients of alcohol, opiates,

and cocaine. The Proprietary or Patent Medicine Act passed with minimal debate, although more than the first Opium Act. The baneful influences of proprietary medicines were also well known.

Notable in these two pieces of 1908 legislation are the assumptions and absences. In King's report to Parliament, he urged "the enactment of such measures as will render impossible, save in so far as may be necessary for medicinal purposes, the continuance of such an industry within the confines of the Dominion."[10] The legislation's title specified that the prohibition was on the "Importation, Manufacture and Sale of Opium for Other than Medicinal Purposes." In other words, medical professionals retained the power to control the use of opiates. This is what Paul Starr, channelling Max Weber, calls *social authority,* which he describes as "the control of action through the giving of commands" or, in this case, the writing and filling of prescriptions.[11] With this power came the definition of what proper and improper use meant. This, again quoting Starr, was Weber's *cultural authority,* or "the construction of reality through definitions of fact and value."[12] The legislation inscribed the social authority of physicians in controlling access to opiates, and it included them in the broader process of constructing meanings of opium use. This latter process, although suggesting a degree of cultural authority in defining the "fact" of the dangers of certain drugs and suggesting certain "values" associated with their use, was not absolute: the law gave the authority to prescribe and dispense, but it also constrained the actions of physicians by forcing them, and their pharmacist colleagues, to submit to strict processes for distributing narcotics. It still does.

Although they may seem obvious today, with medical authority proclaiming confidently on everything from somatic illness to gambling addiction, the reasons for the medical exemption are worth considering in more depth. After all, the Opium Act tacitly recognized medical definitions as legitimate ones but then constrained medical authority in the Proprietary or Patent Medicine Act. It seems more appropriate to consider the two pieces of legislation to be complementary. Indeed, they were the outcome of social agitation that redefined various channels of authority and constructed a new discourse of proper and improper social behaviour. For example, this session of Parliament also saw the passing of a law that prohibited the sale of cigarettes to minors, an ongoing issue for the temperance movement. Much of this agitation manifested both secular and religious notions of the modern state. Evangelical reformers, known for their agitation for alcohol prohibition more than drug prohibition, as well as Sunday-closing laws, anti-gambling legislation, school reform, and other progressive policies, sought to elevate the nation to a (higher) state of grace. Secular reformers often joined their evangelical colleagues, seeing the role of the state in such areas as public health and social welfare as crucial to the nation's stability and future.

I see this broad discourse of national welfare, whether secular or religious, moral or healthful, as speaking to the idea of *national integrity*. The term holds a convenient double entendre: on the one hand, "integrity" suggests strength and stability, important goals for the young nation; on the other hand, it implies something fundamental or crucial, those aspects of a nation that are *integral* to its success. Perhaps it holds a triple entendre, since "integrity" may describe an individual's character, and the idea of moral strength, or strength of character, informed discussions about the future of the country. As we will see, professionals like physicians manifested this triumphalist discourse when defining their role in the country's future. They argued that the integrity of the profession would help to protect and guide the integrity of the nation. So did temperance reformers, possibly the most vocal of those seeking progressive social change. They advocated the restriction or prohibition of alcohol as a key step toward social elevation, be this elevation part of a postmillennialist construction of the Kingdom of God on Earth or, less aspirational but no less inspirational, part of an improved society for all. The control of access to medications, including the strict definition of proper and improper use of such substances, was but one part of a broader vision for the future of Canada and, really, the Western world.

The idea of "national integrity" raises a second question: What do I mean by "national"? Simply put, "nation" meant different things to different people. Canadians who expressed a sense of the nation deployed an idea that was based on their own sense of the essential characteristics of that nation. This is the notion of "imagined communities" discussed by Benedict Anderson.[13] People had their individual idea of what their community was, and in a large, geographically dispersed nation, the only way to experience this national community was to imagine it. So arguments in which we find allusions to a sense of national integrity may not always agree. They may contradict each other, or at least work at cross-purposes. For example, a moral reformer who thought that all patent medicines containing opiates needed to be restricted because they were debilitating to good, middle-class women might have a heated argument with a pharmaceutical manufacturer who felt that his remedies were helping many people and that constraints on the free market were a national disgrace. The former argued from a sense of nation based on ideas of health and (gendered) vitality, whereas the latter saw a strong nation as one where industry was allowed to be economically vital. We will see many contrasting views of nation, and of how to ensure that its integrity remained intact, throughout the course of this study.

There were common elements of nation along with many nuances. For many influential Canadians, their nation was white, European, and (for English Canadians) Anglo-Saxon, or Anglo-Celtic. So even when the editor of the *Halifax Morning Chronicle* read the results of the Royal Commission on Chinese Immigration and decided that Chinese people were not

such bad additions to the national economy, he did not go so far as to consider Chinese people to be suitable Canadians.[14] They were not the people who fitted into the vision of nation held by most white Canadians. But beyond basic ethnic categories, different communities viewed the nation differently. Evangelical Protestants had an idea of national values and culture that included a certain way of behaving and acting in order to build the Kingdom of God on Earth. Major political reformers, including William Lyon Mackenzie King, drew inspiration and motivation from this vision.[15] Others saw the nation differently and elucidated a discourse of nation that drew on their own values and ideas about the best way to construct, physically, economically, and morally, the young nation of Canada.

Such visions informed governance. Government is not simply the operation of a political class on the people, writing laws, and enforcing them. It is a process that begins and ends with value formation. Philip Corrigan and Derek Sayer call this "moral regulation," a "project of normalizing, rendering natural, taken for granted, in a word 'obvious,' what are in fact ontological and epistemological premises of a particular and historical form of social order."[16] In this process, some behaviour is normalized, and other behaviour is rendered *ab*normal. Moral regulation is partly a form of governance, and the state's ability to manage certain challenges to the continuance of the state by encouraging certain forms of behaviour has been described cleverly by Michel Foucault as governmentality – the "conduct of conduct." This is the way that governing bodies view and affect the behaviour of citizens. The structure of this vision of the activities of the people is more simple and mercurial than it may appear. It is what Mitchell Dean has labelled the "field of visibility" of government, which changes depending on the priorities and values of the state regulatory apparatus.[17] I characterize it as akin to a spotlight in the darkness. A field of visibility is the way we understand what is "seen" during the construction and operation of law. Like a spotlight, all within the light's glow is illuminated, possibly even distorted, in sharp relief. But all outside of the beam remains unseen. In the construction of drug laws, the field of visibility shifted several times, as certain behaviours were interpreted differently depending on *who* viewed them.

This "who" is, of course, key. Different social and political groups had different ways of defining and interpreting behaviour. Governing bodies – not just state governments but also regulatory bodies, colleges of medicine or pharmacy, and other social actors, including temperance and religious groups – took on an overseer role, saw social issues illuminated by their own specific spotlights, and asserted an esoteric authority over them. They sought to influence the way that citizens perceived their own physical behaviour. This is an example of Foucault's biopolitics, the notion that government's role includes the regulation of life and thereby shapes our understanding of ourselves as embodied beings, people whose bodies are the conduit through

which we act in society. This may seem self-evident, but what is important here is to consider how various forms of governance shaped ideas of proper personal behaviour, how those ideas changed as different authorities' views became prominent, and how those views of self and of others affected the definition of proper and improper use of drugs. For groups like pharmacists and physicians, these definitions were not just about personal consumption of drugs, they were also about proper distribution of them. And all of these ideas were shaped within a national framework.

Although governmentality is normally used to describe the work of states themselves, it can help us to understand the work of the governments of various professions, the licensing bodies. For example, associations that gained the legal right to oversee and license their members, such as colleges of physicians and pharmaceutical associations, deployed a different type of governmentality because the conduct that they were conducting was not uniform. The responsibility of these agencies was to encourage their members to act properly within their scope of practice while also stopping individuals from outside the profession from acting as professionals. Their enabling legislation provided them with the legal right to undertake certain activities that other people could not, so these professional governments had a responsibility to the state to stop nonmembers from doing these things. Consequently, pharmacists spent a lot of time making sure that only licensed pharmacists were dispensing medicines, and physicians made sure that only licensed physicians were providing medical advice. In these activities, we see other aspects of governmentality as discussed by Dean. Not only did it imply a certain way of seeing behaviours (i.e., field of visibility), but it was also involved in the "formation of identities" and deployed certain forms of truth.[18] So the work of professional regulatory bodies involved a certain way of viewing certain behaviours that were related to a certain type of technical prowess, while simultaneously establishing and defending the unique professional identity of the profession. We see these elements reproduced in the discussions by pharmacists and physicians, by their own regulatory bodies, by their confreres across professional lines, and by governments. Since physicians were allowed to dispense medicines and pharmacists were consulted by customers on the best remedy for various symptoms, the overlap and conflict between these two professions, as they attempted to conduct the conduct of their professional brethren and those outside of the profession, often involved tense definitions of proper professional behaviour.

The drive for professionalization did not operate in a cultural vacuum, and the rhetoric connecting the professionalization project to other social concerns was itself contextualized and articulated through other symbolic meanings. In the discussions over the consumption of habit-forming drugs, for example, the late-century debates drew on discussions that had been

going on for decades about the problem of the habitual consumption of alcoholic beverages. The temperance movement and medical debates about the impact of alcohol on the body provided a framework with which physicians could build, or at least against which they could test, their ideas about the habitual consumption of other drugs. As we will see, these ideas were intertwined but never really connected. Medical concern about habituation created a cohort of interested practitioners, leading to the development of associations interested in dealing medically with the problems of substance habituation. But the relationship between ideas of drug use and alcohol consumption was never entirely comfortable; drugs were medicines first, but alcohol, although often used medicinally, had a much more expansive social and cultural existence. Consequently, when we look at ideas of drug habituation, we need to examine them in relationship to ideas of the alcohol habit but remember that they were different, notwithstanding current debates about whether alcohol is simply "another drug."[19]

The turn of the century in Canada was a time of transformation – with expanding urbanization, industrialization, and immigration – and therefore a time of hand-wringing over the nation's future in the face of such changes. This book seeks to add to our understanding of this period, while contextualizing the development of drug laws within it. In *The Age of Light, Soap and Water,* Mariana Valverde notes that most historians think that their period of investigation is transitional and important but that her book's period, the 1880s to the 1920s, was especially significant to Canada.[20] I concur in both sentiments. The turn of the century was a time when reform movements, politicians, industrialists, labour unions, and other influential voices, progressive or not, were all spending a tremendous deal of energy, spilling a lot of ink, and pulping a lot of trees to push for significant reforms. Many of these looked to a better future, be it the city on the hill, a new Jerusalem, or just simply keeping the country from sliding headlong into moral disaster. These varieties of perceptions of what Canada should be included eugenic concerns over the physical integrity of the citizenry, racial concerns about outsiders dragging down the character of the nation, progressive concerns about the need for better laws to elevate the poor and disenfranchised, and political concerns about Canada's place in the world.[21] This was, after all, the era during which, at an inaugural meeting of the Canadian Club, Sir Wilfrid Laurier made the oft-misquoted prediction that the twentieth century belonged to Canada: "I think we can claim that it is Canada that shall fill the twentieth century."[22] He was responding to a toast made by one Mr. W.L.M. King, first vice president of the club, who spoke of "the unselfish ability and commanding integrity heretofore shown by Canada."

This book places the emergence of the 1908 legislation in that broader framework of change, and roots it in the discourse of national integrity. It

does not view 1908 as the beginning of the story but as a significant moment of transition. It looks at how broad nineteenth-century changes drove twentieth-century policy. These discursive shifts were complex, involving changing perceptions of the body and its processes; medical innovation; the development of a modern, progressive state; the place of the individual body within the body of the state; and, conversely, the place of the state in managing the body of the individual. Necessarily, the book takes a long view, considering events and contexts stretching back at least to the beginning of the nineteenth century in order to build a picture of how things converged in 1908. It follows the course of several streams of change: the emergence of various health professions and the authority that they wielded; the growth of social reform movements, most notably temperance; epistemological shifts in the medical and social perception of the habitual use of mind-altering substances; the development and problematization of new drugs such as cocaine and heroin; international influences, including the opium trade, on the national economy and politics; and the idea that the problems presented by habitual and nonmedical drug use required the various levels of government to take a stronger role in conducting the lives of individuals. Following these streams as they grew, sometimes into raging torrents of rhetoric and hyperbole, we will see how ideas about drugs emerged and changed over the course of the nineteenth century and then converged in the first decade of the twentieth century to form raging rapids of prohibitory legislation – all of this springing from the baneful influences of opium, that awesome, awe-inspiring, and awful substance.