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Drug law reform, performativity and the politics of childhood

Abstract

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

Introduction

In recent years, debates about reforming laws on drugs have, at least in some countries, edged from the margins of party conferences towards the centre of mainstream political debate. Various forms of decriminalised or regulated distribution or possession now exist in Uruguay, some states in the US, the Netherlands, Portugal, Australia and Mexico, among other countries. Candidates were asked to take positions on cannabis regulation during the US presidential primaries in 2015 (Waldman, 2015), whilst in the UK the Liberal Democrats have consistently revisited the question of drug law reform, setting up an expert panel on cannabis legalisation in October 2015 (Travis, 2015). In such debates, and in media reports,

children¹ are often central. Indeed, while political battles are routinely fought on the ‘backs of children’ (Jenkins, 1998: 2), no other policy realm, perhaps aside from sex, has been quite so dominated by images of childhood and warnings about the threats posed to the young.

For those resistant to reform, arguments tend to be framed according to the inevitable damage that will result to ‘innocent’ youth – the tragic victims of the drug scourge - with claims about the harm caused to adolescents by liberalisation,² in particular, often prominent despite equivocal evidential support (discussed below). The International Drug Control Board (IDCB), for example, released a press release condemning the legalisation of cannabis in Uruguay, with President Raymond Yans expressing “surprise” that the Uruguayan legislature “knowingly decided to break” the 1961 Single Convention on Narcotic Drugs (INCB, 2013). He went on:

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

Although images of childhood tend to support conservative social agendas (Gordon, 2008), the child also ‘does a lot of work’ within campaigns that tacitly or explicitly support some form of drug law liberalisation. For example, the protection of children has been invoked as justification for ‘ending the drug war’, with advocates arguing that the imprisonment of parents who use drugs and militarised campaigns to end drug trafficking have displaced children and families and resulted in the widespread violation of children’s rights (Carvosso, 2012; Barrett, 2012). Drug policy organisation *Transform* has recently launched a project ‘Anyone’s Child: Families for Safer Drug Control’, endorsed by Sir Richard Branson, which

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

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

campaigns against the criminalisation of drug use on the basis that it harms children and families.

The impulse to protect children seems obvious and incontrovertible. Why should law, policy and practice not centre on the seemingly weak, vulnerable and impressionable? Yet, as Foucault (2004: 24), among others, might implore, it is often the most self-evident of truths that demand the most focused critical attention. The discussion in this article relies on the premise that images of childhood do not simply affirm an existing, essential state, but in fact produce such representations 'performatively' (Butler, 1993; Austin, 1995, Law, 2011, Race, 2011), for example by distinguishing the pure and innocent, drug-free child from the corrupting adolescent or adult user-abuser. Moreover, focusing on legislative revisions, and documents submitted to the UN General Assembly Special Session on Drugs (UNGASS) in April 2016, as well as political statements made during the event, it suggests that the performance of childhood is also central to the enactment of 'realities' about drug use and law reform. The paper will begin with a problematisation of the link between children and drugs, and its pertinence for political debates, before turning to an examination of the 'collateral realities' (Law, 2011) that are 'made' during the emphasis on children within policy discussions and regulatory reforms. It should be emphasised at the outset that thinking about discourses, and placing concerns about drugs and children within a broader political and cultural context, does not ignore the possibility that drugs can be associated with harms. Indeed, it is argued that attendance to the ontological politics of 'childhood' and 'drugs' is necessary if policy is to address the depth and breadth of young people's drug experiences (Mol, 1999).

Children, drugs and politics

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

The above “disclaimer” is the first piece of information to confront a visitor to the Safer Use Limits website,³ run by the Global Drug Survey, (GDS),⁴ described as the “world’s first guidelines for safer drug use”. Leaving aside, for a moment, the question of whether (all) drugs do “screw up your brains”, it is instructive that under-18s, a significant proportion of whom may take drugs, are barred from reading advice on reducing the harms associated with their consumption. The link between age and drug use is clearly established and data has long found that under-18s comprise a significant proportion of global drug takers (UNODC, 2016). Studies have consistently shown that consumption is rare in the early teen years, but rises rapidly in the mid-teens and peaks in the late teens/early 20s. Use then usually tailors off by the mid to late 20s (Shiner, 2009; Home Office, 2015). In view of the adolescent propensity towards risk-taking, pleasure-seeking and offending behaviour, it could be said that there is in fact something quite ‘normal’ about adolescent drug consumption (Farrington, 1986; Gottfredson and Hirshi, 1990; Collison, 1996). The ethics of harm reduction are, moreover, based on the premise that, whereas drug use is not condoned, neither is it considered morally objectionable and users need to be encouraged to access health advice to mitigate the risks (HRI, 2010). Given that the GDS is run by experts with a commitment to evidential precision, as well as humane drug policies, the disclaimer is presumably not about preventing young people from accessing harm reduction information (even if they did dutifully respond by switching webpages), but an example of the intensely *political* position of childhood within drug discourses. As explored further below, qualifying humane or liberal approaches to drug law and policy, which do not involve either a moralistic or prohibitionist stance, with assurances about child protection – emphasising the need to restrict access (of knowledge or substances themselves) to children – is a recurrent feature of drug discourses and legislative developments.

The role of childhood in discourses on health, morality and behaviour is in general well established. The drivers behind the disapproval of drug use are not confined to anxieties about childhood, of course, but children personify the perceived threats. They include concerns about health, social costs, sinful conduct, deviant groups, as well as the collective

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

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

future (Courtwright, 2001).⁵⁶ Since children are *the* marker for the health and wellbeing of the nation state, scientific discourses, particularly biomedical and, more recently, neuroscientific, have been important in determining how childhood should be governed (Rose, 1989). There is at least some element of social constructionism to the determination of 'childhood', and how it acts as a site onto which adults project their hopes for humanity, and themselves, as well as their fears about moral fragility and physical degradation (Jackson and Scott, 1999; Archard, 2004). For the developmental discourses, which have been so central to 'bio-power' and biopolitics, drugs epitomise the risk posed to the 'normal' biological progression of the child (Foucault, 1980; Wells, 2011).

As a result, in part, of the ways in which childhood is constructed, it occupies a privileged, often unassailable, position within political discourse. The child operates as a floating signifier, or an empty vessel, easily attached to a range of political and moral projects. Barbara Baird (2008) uses the term 'child fundamentalism' to explain the mobilisation of a fixed and absolute image of innocence in which there is "an insistence on the child as an impermeable category that must be defended and where the child often becomes iconised or fetishized" (Baird, 2008: 293). For Robin Bernstein (2011: 4), by the mid-nineteenth century 'sentimental culture' had enabled the fusion of childhood and innocence. To be innocent was to "achieve obliviousness", which did not constitute the mere absence of knowledge, but "an active state of repelling knowledge" (ibid.) The construction of some knowledge as 'difficult', as designated on the *Safer Use Limits* website, is part of this battle for supremacy between competing discourses that lay claim to specific objects (Foucault, 1980). As with information about other taboo subjects, such as sex, distinguishing difficult knowledge is also *productive*. It helps to maintain the adult/child binary and preserve constructions of innocent childhood. For Duschinsky (2013: 765), innocence, which is constitutive of the essence of universal childhood, has been important to processes of normalisation. He writes that: "[t]hrough practices that seem to protect and nurture innocence, a particular account of the 'natural purity' of children can be materially and discursively produced without it seemed to be an artificial imposition". Indeed, it is the

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

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

apparent naturalness of childhood innocence that makes it such a useful political tool in the regulation of the lives of both adults and children (Robinson, 2013: 8).

Collateral realities

Foucault's work, and particularly his development of the concept of bio-power, is closely related to the theory of performativity, which has proved especially important within feminist and queer literature (Butler, 1993), and increasingly so within drugs scholarship thanks, in particular, to the use of John Law's related research on 'collateral realities' (Law, 2011; Fraser, Moore and Keane, 2014; Seear, 2015; Race, 2011; Hart and Moore, 2014). Such work is useful for exposing the ways in which individuals, objects and problems are not necessarily ontologically *a priori* but may be produced by discourses such as the law through reiteration. Like 'gender' or 'sexuality', 'drugs' and 'childhood' thus come into being not because they have a pre-ordained essence or material character, but because of the ways in which they are 'made' – performed (although not necessarily intentionally) - within networks of power. For Law, "If reality appears (as it usually does) to be independent, prior, definite, singular or coherent then this is because it is being done that way. Indeed, these attributes or assumptions become examples, amongst others, of collateral realities" (Law, 2011: 156). Reality is thus 'done in practice' and "must be done and redone again to remain stable, is multiple, and very much open to change" (Fraser, Moore and Keane, 2014: 19). Deliberations about children's 'needs' or 'best interests' provide a good example. While not discounting the universal prerequisites for children's health, care and learning, Woodhead (1997: 77) argues "that apparently unproblematic, taken-for-granted certainty implied in statements about the "needs of children" does not stand up to close scrutiny." He goes on to argue that 'needs' can constitute a 'rhetorical device' that helps to define power relationships and exclude questioning. Apparently objective or neutral scientific claims about health harms, particularly when associated with moral behaviours such as the consumption of drugs and alcohol, can serve political functions or be rooted in certain policy agendas (Douglas, 1992; Dreyfus and Rabinow, 1982; Berridge, 2013). Researchers have also drawn attention to the ways in which such discourses enact realities, such as the production of adolescence as universalised within discourses of brain development, particularly those driven by neuroscientific imaging techniques that reduce the disembodied young person to

a 'brain in a jar' (Kelly, 2012; Bessant and Watts, 2012). Such reductionist accounts stabilise understandings of adolescence as a time of irrationality, impulsivity and risk-taking.

Hart and Moore (2014: 400) apply these perspectives in their study of alcohol epidemiology, arguing that alcohol does not have stable properties but rather *effects* that "are always co-constituted by the human and nonhuman agents making a difference in the events of alcohol consumption." Indeed, they argue, systems for naming and measuring 'causal' effects are as constitutive of those effects as the alcohol itself, even though epidemiological discourses may enact alcohol as a "fixed entity that acts consistently and independently and causes quantifiable effects" (Hart and Moore, 2014: 394). Other 'drugs' and their effects are similarly stabilised in discursive performances, for example in the claim that "drugs screw up your brains" or, as discussed below, through their constitution as an inherent threat to children and 'childhood'. Fraser (2013) and Seear (2015) have similarly explored how conceptualisations of addiction, gender and drugs have been framed, imagined and enacted in discourses on obesity and gambling. Fraser, Moore and Keane (2014) also examine the discursive performance of objects or realities including 'addiction', holding that such an approach is useful because it does not claim authority on the 'truth' of claims, taking a positivistic approach to the legitimacy or otherwise of particular arguments, which may be the case in moral panic or typical social constructionist analyses, but rather investigates a greater complexity of 'discursive dynamics' involved in the production of certain constructs (see also Mol, 1999 and Seear and Fraser, 2014).

The discussion below draws upon these perspectives in order to consider how certain collateral realities are enacted and stabilised within discourses concerning the liberalisation of laws on cannabis, as well as other substances, and minors. It is argued that these include the constitution of the child as:

- the logical victim of (illegal) drugs;
- the natural beneficiary or casualty of reform; and
- as ideally and/or necessarily drug-free.

Moreover, certain related realities about cannabis and ‘drugs’ in general, as well as users and dealers, are also made and re-made within such discourses. These include the enactment of:

- (illicit) ‘drugs’ as an inherent threat to children
- the law as a necessary and effective means of preventing drug use by minors; and
- the drug user or dealer as a nascent corruptor of children and childhood

Methods

The data informing the discussion is drawn from a variety of discursive sources including legislative material, political statements and policy documents. I adopt an interpretative approach involving a discourse analysis of written materials that is, as mentioned above, informed by Law’s (2011) work on ‘collateral realities’. The public and political statements made during UNGASS were gathered using the official United Nations website⁷ where different forms of contributory document, including from non-governmental organisations, governments and other bodies, are housed, and through internet searches for statements made during the conference plenary. Documents relating to, or mentioning, drug law reforms were analysed for mention of the keywords children’, ‘adolescent’, ‘minor’ or ‘juvenile’. UNGASS was selected because it unusually attracted a very wide range of participants and contributors, including governments, UN agencies and ‘stakeholder’ organisations, and was a significant international and *political* event addressing the ‘world drug problem’. The sample is not comprehensive since UNGASS is not the only forum in which statements, policies and evidence are collected and constituted. The analysis is also not intended to be an exhaustive account of the ways in which children are mentioned within drug policy discussions. Indeed, only a few documents specifically addressed or set out law reform measures in relation to minors. The aim is, instead, to examine some of the ways in which realities such as ‘children’, ‘childhood’ and ‘drugs’ are enacted within a defined policy space. It is moreover not suggested that the documents analysed had uniform ‘effects’ since, for example, government statements and non-governmental reports

⁷ Visit: <http://www.unodc.org/ungass2016>

vary in the likely successful enactment of particular realities (although the 'success' or realisation of any performance is never guaranteed (Butler, 1990; Law, 2011; Race, 2011)).

Data was also sourced from articles published on the subject of cannabis, law reform and adolescent or child health in prominent journals in order to both ascertain the latest evidence and to consider how realities about child harm were performed in scientific literature. These articles were gathered using PubMed and Google Scholar from the period 2010 to 2016 (n=23). The sample of literature analysed is again not necessarily representative or comprehensive since other data sources exist. Finally, statutory sources were gathered through internet searches of jurisdictions in which some form of drug liberalisation had occurred (n=31). These jurisdictions were initially identified using a report published by non-governmental organisation *Release* detailing reforms over the last 20 or so years (although a time period was not specified in the report) (Eastwood, Fox and Rosmarin, 2016). Reform measures and revised written laws were then read for evidence of any provisions addressing 'children', 'adolescent', 'minor' or 'juvenile'. The survey was limited to liberalised jurisdictions in order to examine any relationship between the performance of childhood and the politics of reform, although further studies might explore how the law performs childhood across a larger spread of jurisdictions and in relation to other, non-criminal legal spheres. This survey was also limited by the need for information in English, and departed, to some extent, from the nature of other data sources since legislation has material effects and differs from the discursive nature of position statements and policy proposals. Although law may itself constitute discourse, it could be claimed that legal provisions have both greater social force, and potentially remain more stable, than, say, scientific or policy texts. However, legal provisions are also subject to reform and interpretation and have an important role in the production of realities beyond their material consequences, including in the stabilisation and (re) enactment of 'truths' about drugs and children.

Drug law reform and the child-as-victim

Today's drug legislation is imbued with concerns about the risks posed to children, and their potential victimisation by adults has long been a function of criminal sentencing in various

jurisdictions. In fact, under Art. 3 (5) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signatories have an obligation under international law to ensure that courts consider particularly serious offending circumstances including “the victimisation or use of minors” and “the fact that the offence is committed...in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities.” In the US, ‘drug-free zones’, such as near schools, have been in operation since the 70s and the institution of President Nixon’s ‘war on drugs’ (Porter and Clemons, 2013). In the UK, offenders will receive tougher penalties for dealing near schools under the Drugs Act 2005 (s.1(3)). A significant number of countries also have, on their criminal statute books, specific offences for encouraging or enabling children to use drugs.⁸ The political salience of childhood is also manifest in cannabis law reforms, with some evidence to suggest that acquiescence to anxieties about childhood – in the form of stiffer penalties for adults perceived to be threatening children – have been deployed to buffer liberalisation. The Czech Republic, for example, formally decriminalised possession of small quantities of illegal drugs in 2010.⁹ Although no mention of under-18 possession is made in the revised Criminal Code, increased penalties were introduced for ‘promoting’ drug use to a child under 15 years of age of between two and eight years imprisonment (Section 287 (2)). In Belgium in 2003, laws were enacted to lessen the penalties for cannabis use, with the underlying principle being that the application of the criminal law should only be used as a last resort.¹⁰ The punishment for use by adults in the presence of minors was increased to include possible custody. In Mexico, reforms in 2009, which eliminated penalties for personal drug consumption up to small amounts, were accompanied by increases in sentences for a range of crimes, including the sale of drugs to minors or selling near schools.

⁸ In Estonia, for example, Chapter 187 of the Penal Code includes the offence of inducing a minor to use illegal drugs. Specific offences, or aggravated sentencing, are common for circumstances in which adults have provided drugs for children. For example, in Portugal, under Decree Law 15/1993 (still applicable for some offences after decriminalisation in 2000), aggravating circumstances include selling drugs to minors. See also a report on youth, drugs and the law by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA, 2003).

⁹ Czech Criminal Code (Act No. 40/2009) as amended by 467/2009 Coll.

¹⁰ The Law (3 May 2003) amending the Law of 24 February 1921 on the Trafficking of Poisonous, Soporific, Disinfectant and Antiseptic Substances; the Ministerial Directive (16 May 2003) on Prosecution Policy in Relation to the Possession and Retail Sale of Illicit Drugs.

Tougher measures for offences involving children have also been introduced a short time after the enactment of more lenient provisions, perhaps – it is speculated - as part of an expressive political response to perceptions of liberalisation. For example, prior to the introduction of Cannabis Warnings in the UK, and the short-lived downgrading of cannabis from a 'Class B' to a 'Class C' drug in 2004,¹¹ “the drug debate [had become] fuelled by hatred and sadness, where emotions shaped the presentation of drugs as a social problem for ‘middle England’, on the basis that drugs were ‘easy to access’, and that ‘your child’ could be the next victim” (Blackman, 2010: 339). There was strong resistance to the downgrading of cannabis (it was upgraded again in 2008), and following reclassification, the tabloid press “filled hundreds of column inches with exaggerated scare stories about the drug” (Daly and Sampson, 2012: 271). It was soon after the introduction of more lenient measures that the provisions about dealing near schools, under the Drugs Act 2005, were drafted. Similarly, in Greece in 1996, under law 2408/96 (art.4), more lenient measures were introduced for people caught in possession. A year later, law 2479/97 reintroduced a class of drug dealer as 'especially dangerous', providing lifetime imprisonment for recidivist drug traffickers, or for dealing using minors or to minors (art.8). In 2016, the year of the launch of New York State’s medical marijuana programme, providing prescribed marijuana to approved patients, Senator Jack Martins launched a bid to create a new felony crime of dealing drugs to children, resulting in a maximum ten-year jail sentence and a lifetime on probation, despite no apparent evidence (as discussed above) that dealing to children was becoming a problem (Martins, 2016). Successive governments in the Netherlands have, since the early 2000s, advocated more repressive drug policies in response to growing populist movements (Grund and Brecksema, 2013). In 2011, a ban on coffee shops within 250 metres walking distance of a high school was introduced in Amsterdam amid concerns about the city’s reputation for drug tourism. Similarly, in 2012, after the election of a new conservative government, it was announced that Amsterdam would become the first city in the Netherlands to ban the use of drugs in playgrounds and schools under a public nuisance ordinance (Rolles, 2014). These developments did not constitute a response to clear evidence of, say, increasing cannabis use among adolescents. The Dutch National School Surveys on Substance Use, carried out since 1988, suggested a stabilisation in use by

¹¹ Drugs are classified under the Misuse of Drugs Act 1971, inviting different penalties for different offences.

secondary school students between 2001 and 2007, followed by a decrease up to 2013 (EMCDDA, 2014).

Whereas it might reasonably be expected that offenders would be dealt with more severely if they fail to take into account the vulnerability of children, for example in the case of traffickers or dealers who employ (or exploit) minors in their operations, such measures tend to be premised on unfounded fears, informed by anxieties about childhood or political exigencies. As discussed elsewhere (Coomber, 2006), there is very little evidence, for example, for the ‘predation thesis’ whereby dealers target children in order to tap into an emerging market, or that they would risk selling near schools or attempt to victimise minors. Adolescents normally obtain their drugs from peers rather than apparent ‘malicious’ dealers lurking at the school gates (Coomber and Turnbull, 2007). However, the concern here is less with whether any of the discussed measures constitute legitimate responses to an ‘actual’ harm, but rather with the enactment of realities about childhood, particularly childhood *innocence*, to reform measures. The aim of the penalties and increased sanctions may include ‘sending messages’ about the morality of drug use, and/or penalising and stigmatising dealers and people who use drugs in general (both adult and child). The measures could also be understood in straightforward political terms. For example, unfounded fears about ‘stranger danger’ in respect of clauses about dealing near schools can have a politically productive role for politicians and legislators wanting to appear tough on crime by scapegoating drugs offenders and exploiting anxieties about children’s safety. As suggested above, other measures, such as those in the Netherlands or the UK, might also be understood as an expressive means of appearing to reassert power and control in the face of public (or political) perceptions of over-liberalisation.¹² Yet such measures also ‘make’ certain realities. In emphasising the ontological effects of the law, Kane Race (2011: 328) writes that “the criminal law does not transcend the social field, but is imminently involved in its production.” The description of the circumstances surrounding a particular behaviour within sentencing provisions as ‘aggravating’ enacts it as especially transgressive or deviant; that an offence is ‘worse’ if committed near children or a school, and that this is a particular harm that requires attending to. Moreover, this also asserts this particular act as

¹² On the subject of ‘expressive’ criminal justice policy and the reassertion of the myth of sovereign state control in an age of insecurity, see Shiner (2013) and Garland (2001).

one which actually *happens* or at least is liable to happen; children are threatened by the use or dealing of drugs by adults. The law is thus involved in the making (and remaking) of drug behaviours, regardless of any *a priori* essence or 'truth' to such representations. Childhood and the school, where it can be afforded state protection, are performed as vulnerable and innocent spaces, prone to invasion by the unsavoury, drug-dealing 'folk devil' (Cohen, 1972). Finally, such measures have a role in the constitution of drugs themselves. Drugs are enacted as an inherent and consistent threat to the child simply by virtue of a dealer or user's proximity.

The association between liberalised criminal laws and more stringent measures for adult users and dealers also illuminates the ways in which discourses of innocence serve useful political purposes within drug law reforms. Duschinsky (2013: 772) describes innocence as a "discursive 'resource', drawn upon reflexively in the course of situated social action", providing "a particular frame of intelligibility" for people, objects and events. Through the reinforcement of an understanding of the threat posed to children as largely one of 'stranger danger', rather than one emanating from within the school gates, or even within families, the 'natural purity' of children can be discursively produced as if already essential. Innocent discourses can function powerfully because they prompt the disavowal of anything that questions the purity of childhood. They are normalising and exclusionary – both of children themselves (the 'fallen' drug taker, or otherwise sullied child) – and of those who are deemed to threaten their purity. As discussed further below, it is also notable that 'law and order' solutions to the complexities of drug problems among the young, which may centre on the performance of childhood innocence, are not only constitutive of conservative policies or proposals, but also inform progressive reform agendas.

Performing harm: the child as the beneficiary or casualty of reform

Childhood innocence is also central to the enactment of realities in policy spheres and scientific discourses, as demonstrated by the prevalence of appeals to child protection during UNGASS, which carried the tag line 'a better tomorrow for the world's youth'.¹³ For

¹³ Visit: <http://www.unodc.org/ungass2016/>

example, a statement from the representative for Singapore in the plenary read:

When you go down the route of harm reduction, I don't think we should be under any illusion – Drugs harm the abuser, his family, and the community...I heard a lot yesterday about a science-based approach to drugs. What I have said is science-based. Drugs harm you! You wouldn't knowingly and happily give drugs to your teenage children, would you?¹⁴

Here, the immorality or harm associated with drug use is equated with a deliberate decision to harm one's own child, suggesting that humane (that is, 'liberal') approaches to drug use inherently threaten childhood. In this way, children serve as surrogates for purity and innocence, embodying the perceived threat posed to society by drug use. The claim that 'drugs harm you!' also suggests a stable, inherently threatening characteristic of all (presumably illegal) drugs. The Minister of Health for Canada, meanwhile, reiterated Prime Minister Justin Trudeau's election campaign pledge to regulate cannabis by suggesting that it would prevent use by children. She said:

We will introduce legislation in Spring 2017 that ensures we keep marijuana out of the hands of children and profits out of the hands of criminals. While this plan challenges the status quo in many countries, we are convinced it is the best way to protect our youth while enhancing public safety" (Philpott, 2016).

Claims that liberalisation or reform will protect children contrast sharply with those of President Raymond Yans, of the IDCBC, who insisted that Uruguay's plans would in fact encourage early experimentation, contribute to developmental problems and nurture addiction. How is it possible for different sides of a debate to hold such apparently irreconcilable positions? Moreover, who are these children of which these individuals speak? Both Trudeau and Yans claim at various points that 'youth', 'young people' and 'children', will all either be saved or harmed by the regulatory power of the state. In fact, it is the flexibility of abstract notions of childhood that lends itself to such competing political

¹⁴ Visit: <https://www.mha.gov.sg/Newsroom/speeches/Pages/Singapore-Statement-at-the-UNGASS-2016-Plenary-Session---Speech-by-Mr-K-Shanmugam,-Minister-for-Home-Affairs.aspx>

claims, and indeed to political arguments in general (Bernstein, 2011). Collapsing distinctions between children and the more amorphous category of ‘youth’ is strategically useful because, as discussed earlier, it provokes concern about the future of the nation state as well as protective impulses in respect of the physical fragility of the individual child. Both arguments rely on the performance of a unitary, seemingly ‘natural’ truth; the regulatory status of *adult* drug use will *either* harm *or* protect children, enacting child vulnerability and concerns about nationhood as the cornerstones of reform, and reflecting the importance of childhood to the ontological politics of drug law effects, and drugs themselves.

Yet, as Law (2011) contends, realities are unstable and are remade and reshaped as they are enacted and performed in different contexts. Although a repeated association between liberalisation and adolescent or child harm continues to construct children and adolescents as the innocent, passive victims of bad drug laws, ‘child harm’ is enacted in other ways too. For example, organisations such as Youth R.I.S.E, a youth-led international network which co-hosted a side-event at UNGASS,¹⁵ have drawn attention to the ways in which juveniles who use drugs are harmed by policies based only on prevention,¹⁶ and suffer from a lack of available health services (IHRA & Youth Rise, 2009). Some researchers and advocates at UNGASS thus attempted to place the welfare of adolescents who use drugs on the political agenda using a children’s rights framework, which is characterised by its disavowal of the ‘in need’, powerless young person in favour of an embodied, empowered decision-maker (Barrett, 2015; see also Barrett and Veerman, 2011; Freeman, 1998). However, although realities are unstable, some resonate more deeply or persistently and may emerge in more powerful, stable or hegemonic ways.

The performance of childhood as ideally pure and unsullied – which may help to support or oppose reform proposals, and also legitimise progressive measures - necessitates prevention and abstinence as, for the most part, the only legitimate policy approach. This unitary focus on prevention has been recognised by advocacy groups. At UNGASS, a statement by a coalition of non-governmental organisations, read:

¹⁵ See the schedule for the event at: https://www.unodc.org/documents/ungass2016/Programme/16-01871_eBook.pdf

¹⁶ Visit: <http://www.youthrise.org/>

While international agreements regularly refer to the need to protect children and young people from drugs and the drug trade, recommendations rarely extend beyond prevention of drug use and age appropriate drug treatment. While fundamentally important these aspects do not represent the full range of issues children encounter nor the full range of children's experiences (CRIN, 2016).

This was illustrated in the UNGASS outcome document which repeatedly mentioned the need to prevent drug use by children, but only once referred to "the needs...of underage drugs offenders" (UNGA, 2016; para 4(e)). It is also instructive that offenders under the age of 18 are not normally included in drug law statistics (EMCDDA, 2009) whilst the provision devoted to illicit drugs (article 33) in the United Nations Convention on the Rights of the Child suggests that the right to protection from use is the only applicable or relevant entitlement:

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

A preoccupation with 'preventionism' relies on the promise of prohibition in deterring use, and can efface questions about the range of harms resulting from consumption, as discussed further below. A concern for enforcing abstinence is often supported by the performance of research evidence into the particular risks posed by cannabis to minors. However, critical perspectives on the deployment of evidence in health discourses, as well as sociological insights into how childhood is constructed, suggests that claims about risks to youth should be received with caution. Law (2004: 151) for example argues that current social science methods are "blinkered" and "both presuppose and enact a specific set of metaphysical assumptions."

Recall, for example, the statement on Safer Use Limits, above, reflecting similar assertions

by the IDCB cited in the introduction, that there is a ‘huge’ amount of evidence that drug and alcohol use before the age of 18 can cause long lasting impairments in your cognitive and emotional ability’. Under-18 consumption is also described as ‘misuse’ in government policy discourse, and it is rare to find any literature describing under-18 drug use as ‘moderate’, ‘relatively safe’ or indeed anything other than problematic.¹⁷¹⁸ Few scientific papers surveyed addressed the harms experienced by older adolescents – those most liable to use cannabis – who use occasionally, compared with younger, daily or regular users.¹⁹ ²⁰ Studies have found that persistent use of cannabis may be associated with neuropsychological decline and changes to brain structure (Meier et al. 2012; Gilman et al. 2014; Crane et al., 2013), and that early-onset use is a risk factor for later substance use disorders (Behrendt et al., 2009, Buchmann et al., 2009, Chen et al., 2005), early school-leaving (Hall, 2015) and an earlier average age of first-episode psychosis for individuals already showing psychotic symptoms (Large et al., 2011). Some of the research has, at the same time, been disputed and/or qualified. Rogeberg (2013), for example, suggests that the findings in *Meier* are overestimated, that the methodology was flawed and that the “true effects could be zero.” He argues that the results could be explained by socio-economic effects on IQ rather than demonstrating a causal relationship between cannabis use and IQ. Daly (2013), Jackson et al., (2016) and Mokrysz et al. (2016) have also doubted causal links between cannabis use and detrimental neuropsychological outcomes in adolescents. The ‘gateway theory’, which supposes that cannabis, and other ‘softer’ drugs, precede the use of other, more harmful, illicit drugs, is also contentious (Hall and Lynskey, 2005; Hall, 2015). As Hall (2015) acknowledges in a review of the literature, research findings are in general complicated by the thorny question of causality. It is particularly difficult to determine whether the kinds of people who are smoking cannabis heavily are also liable to experience a range of other negative outcomes that may not be a direct result of the drug use itself. For theoretical approach taken in this paper, such a conclusion is not surprising. For Latour

¹⁷ For example, the latest government drug strategy (Home Office, 2010: 7) includes a heading ‘Young People’s Substance Misuse’ followed by the statement “Young people’s drug use is a distinct problem”, but it does not go on to distinguish ‘misuse’ from ‘use’, and the two terms are used interchangeably.

¹⁸ Evidence suggests that within community programmes and treatment practice, there is a better recognition of the nature of drug use by under-18s, including that some use may be acceptable or ‘moderate’. See Flacks (2014).

¹⁹ Defining ‘problematic’ drug use is difficult, particularly in respect of under-18s (Flacks, 2014).

²⁰ It is acknowledged that most of the harm from use of the drug is experienced by daily users (Hughes et al., 2014), although the distinction between heavy and occasional can be muddled and ill-clarified.

(2005) causation is understood as resulting from ‘assemblages’ comprised of both human and non-human actors that lead something to change in an identifiable way. Actors and actants in assemblages thus ‘mediate’ outcomes, but do not determine them, and causation is emergent rather than stable or decisive. Hart and Moore (2014: 399) also draw attention to the ways in which ‘risk factors’ may themselves alter the effects of drugs and alcohol as a result of, for example, cultural conventions or the spatial circumstances in which consumption takes place.

A less abundant research stream has considered the impact of liberalisation on adolescents. In the studies surveyed, the sights of researchers have largely been trained on one question: whether liberalisation results in increases in rates of adolescent use. Some research findings suggesting a link have been doubted (Shi and Lenzi, 2015; Rogeberg and Stevens, 2016; Vuolo, 2013), and no studies have yet found that prohibition-orientated policies reduce levels of drug use (Home Office, 2014; Stevens, 2011), including among adolescents (Simons-Morton et al., 2010). There is also a debate about whether medical cannabis laws increase rates of juvenile cannabis use (Hasin et al., 2015; Stolzenberg et al., 2016; Wall et al., 2016). Research in England and Wales, the Czech Republic and the US did not find any significant effect on rates of consumption or age of onset of use respectively (Cervený et al. 2015; Braakmann and Jones, 2014; Drug Policy Alliance, 2015; CDPHE, 2015; SAMSHA, 2015). Such studies, however, are themselves performative by suggesting both that there is a ‘problem’ to be addressed – because cannabis always harms adolescents – and that the regulatory status of the drug is paramount. Moreover, the focus on rates across a specific demographic enacts general increases in use, rather than, say, a growth in problematic consumption, as the most important measure of harm (discussed further below).

Although evidence appears equivocal, the ideal of prevention tends to be presented as self-evident in both policy and science discourses, and the adolescent is routinely positioned as the motif for reform. For example, Kalant (2016), in this journal, recently placed adolescents at the forefront of a response to an editorial by Crépault, Rehm and Fischer (2016a) endorsing cannabis legalisation in Canada. He cites the disputed evidence discussed above, and argues that “early experience in other jurisdictions suggests that legalization increases use by adolescents and its attendant harms” (p.5). In their rejoinder to Kalant, Crépault,

Rehm and Fischer (2016b) acknowledge the harms caused by chronic use by the young, although draw readers' attention to the lack of evidence to suggest that existing regimes of criminalisation are protective. On the contrary, argue the authors,

One of the main advantages from a legalization-based policy approach will be that it allows for open and proactive prevention/education regarding concrete cannabis use risks focusing especially on young people (e.g., in educational settings) and specifically the modifiable risk factors (e.g., intensive/frequent or high THC product use, cannabis-impaired driving) known to predict the acute and/or chronic health problem outcomes that urgently need to be addressed in this vulnerable population.

For each of these authors, the law is either harmful or protective, potentially saving or harming vulnerable children. This latter observation from Crépault, Rehm and Fischer (2016b) is also notable because it departs from the claim in much of the literature that cannabis, as a stabilised pharmacological agent, is necessarily harmful to young people. Although mention is made of prevention, the emphasis is rather on the risks of excessive or strong cannabis use, and for example associated risky behaviours such as driving, rather than the inherently harmful properties of the drug itself.

Age controls and the idealisation of the drug-free child

In respect of liberalised legislation itself, minors are generally exempted from benefiting from changes that would reduce criminalisation, or are not mentioned at all in revised codes and statutes. Such laws rely on a belief in the power of age controls to prevent use by minors, and represent an investment in the performativity of such laws for the purposes of sending messages about youthful consumption. While enabling the discursive reproduction of childhood innocence, little attention has been paid to the unintended consequences of age controls, such as, for example, whether they promote or inhibit problem drug use among adolescents. Given that, in the UK at least, most children in drug treatment are there because of problems with cannabis (Flacks, 2014), does the criminal law deter people from

seeking treatment, as it does for adults? Is it also possible that the criminal status of cannabis affects the nature of treatment itself by influencing, for example, trust between provider and beneficiary? An interesting proposition is that the adolescent interest in drug-use (Shiner, 2009; Home Office, 2015) may be part of a rejection of the innocence of childhood. Although in the context of fears about child sexualisation and paedophilia, Faulkner (2010: 21) asks whether the increasing fetishisation of children and reification of innocence nurtures those very behaviours and subcultures that threaten it. Similarly, it might be speculated that young people's decisions to consume drugs are informed by a rejection of the innocence to which drug policy remains so wedded. Such rebellion is not necessarily liberating, since 'fallen' children must bear the weight of failing to live up to cultural and societal expectations. For Faulkner (2010: 25), the child "who is not maintained in a state of innocence is fallen, and a grim reminder of life's difficulties and disappointments." Older teenagers and adolescents – those most likely to take drugs – therefore occupy a more ambivalent position within discourse of childhood. Whilst still the focus of determined efforts to preserve their status as non-adults – to 'let children be children' – they test the boundaries of the adult-child dichotomy. As Faulkner (2010: 101) observes, "It is because the ideal of innocence can no longer contain them that teenagers come to threaten it." The defiled, drug-taking teenager is thus both the victim of adult choices about drugs and the threatening purveyor of an infectious behaviour.

For under-18s or -21s for whom drug use continues to be prohibited in jurisdictions where adults use has been decriminalised or depenalised, the consequences are variable. Sanctions may or may not be in line with those for alcohol, although age controls for alcohol also vary considerably across jurisdictions and consumption may be permitted in certain, controlled circumstances such as restaurants. In the UK, for example, it is not illegal for a person under the age of 18 to drink alcohol within the home, but they can be prosecuted for attempting to buy it (Licencing Act 2003, s.150). Responsible drinking is legal within licenced premises for 16 and 17-year-olds in certain circumstances (Licencing Act 2003, s.149). In the US state of Alaska, which decriminalised cannabis possession for over-21s in 2015,²¹ under 21s may be given an alcoholic drink by a parent, guardian, or spouse who is 21 or older, but

²¹ 2014 Alaska Statutes, Title 17 – Food and Drugs, Chapter 17.38 – The Regulation of Marijuana, Sec. 17.38.020 Personal use of marijuana.

not in a place that has a liquor license (like a bar or restaurant that serves alcohol).²² Possession of cannabis by under-21s remains a felony offence in the state (ABA, 2015), and in any other US state, marijuana-related cases that result in conviction may affect an individual's eligibility for Federal Student Financial Aid.²³ This is not the case for alcohol. In general, minors (either under-18s or under-21s depending on the jurisdiction) will be subject to 'soft' sanctions such as community service or fines, although there may be more severe consequences, particularly for repeat offences. Legal reforms in the US states of Colorado, Oregon and Washington²⁴²⁵²⁶ ensured that possession remains criminalised for under-21s with penalties ranging from fines and obligatory drug education to community sentences and jail for repeat offences.²⁷²⁸ Again, under-21s are permitted to drink alcohol on private property and under the supervision of a parent or guardian.²⁹ In 2013, Uruguay became the first country in the world to legalise and regulate the production, marketing and consumption of cannabis,³⁰ but use by under-18s (and those who are legally incompetent) is not permitted (Ibid., article 14). The penalties are not spelled out in the new legislation. In other jurisdictions, age controls almost always apply, although an exception is Portugal where the legal framework on drugs changed in November 2000 with the adoption of Law 30/2000. All criminal penalties' were removed from acts relating to drug demand (acts of acquisition, possession, and consumption), leading to administrative rather than criminal sanctions, and this applies to all age groups. Needless to say, changes to state-level legislation do not necessarily result in significant changes in policing practices or levels of criminalisation.³¹ Although the idea that there should be age-controls in respect of psychoactive substances might appear self-evident, policies and approaches vary between jurisdictions. In Denmark, 16 year olds are permitted to buy alcohol above 1.2% and below 16.5% ABV in stores. On the website of the UK National Health Service, it is advised that

²² Alaska Stat. § 11.71.040. Alaska Statutes - Section 11.71.040.: Misconduct involving a controlled substance in the fourth degree, 4(A)(i) and (ii)

²³ Section 484, Higher Education Act of 1965

²⁴ Colo. Const. Art. XVIII, Section 16(3)

²⁵ RCW 69.50 and WAC 314-55. (Under-21 use is still prohibited under S.14 of S.B. 5052)

²⁶ This followed Ballot Measure 91, although legal implementation is not yet complete.

²⁷ Colorado Revised Statute 18-13-122 (4)(a)(b)and (c)

²⁸ RCW 69.50.4014, RCW 66.44.270, 2002 c 175 § 47; 1998 c 133 § 2; 1993 c 507 § 9.

²⁹ Ibid.

³⁰ Law 19.172.

³¹ See Eastwood, Fox and Rosmarin (2016) for an overview of global moves towards decriminalisation, and particularly how people who use drugs continue to be jailed in some countries such as Uruguay despite liberalisation.

children abstain from drinking before the age of 15 but, if they are (legally) permitted drink, they should be at least 15 years old.³²

For reformers, the continued criminalisation of under-18 drug use is often understood as necessary, and reports submitted to UNGASS only rarely gave extensive consideration to important questions relating to the effect of a new regulatory environment on adolescents, even when advocating for a more ‘realistic’ policy approach to teen drug use (Rosenbaum, 2014: 14; Rolles and Murkin, 2014: 136). This lack of consideration – and acquiescence to prohibition (or indeed ‘preventionism’) – no doubt results, at least in part, from political concerns and the need to lend legitimacy to reform agendas. As a consequence, however, childhood innocence is performed and stabilised in similar ways by both progressive and conservative advocates alike. In Transform’s *After the War on Drugs: Blueprint for Regulation*, for example, it is stated that:

Restricting or preventing access to drugs by non-adults is a key element of any existing or future regulatory models. Any rights of access to psychoactive drugs and freedom of choice over drug taking decisions should only be granted to consenting adults (Transform, 2009: 52).

The framing of access to drugs as a ‘right’ - one that is denied to under-18s - is instructive since conceptions of children’s rights are controversial for the very reason that they challenge constructions of childhood as a time of innocence, submission and passivity (Freeman, 1998). Note also how childhood is performed as binarily opposed to adulthood, and as a time when freedoms must *necessarily* be restricted. It is notable that children, in some situations and in some jurisdictions such as the UK, are legally entitled to drink alcohol (particularly in the home), as mentioned above. Although cannabis is often considered by reformers to be less harmful than alcohol, it is performed here as the privilege of adults only; freedom, particularly to engage in pleasurable, illicit activities, must be curtailed if children are to remain child-like. The use of the word ‘consent’ is also illuminating since it seems unnecessary to emphasise (why/how would freedom to consume be denied to *non-*

³² NHS Choices, ‘Should my child drink alcohol?’, available at: <http://www.nhs.uk/chq/pages/2595.aspx?categoryid=62>

consenting adults?) and yet, by association with children, suggests potential abuse (recall, also, the Singaporean statement at UNGASS in which images of child abuse were also invoked). The report goes on to cite concerns over the impact of drugs on children's health and "more general concerns regarding child vs. adult rights and responsibilities" as the reasons behind the policy position. It states that:

...stringent restrictions on young people's access to drugs— whilst inevitably imperfect—are more feasible and easier to police than population wide prohibitions. Generally speaking, children are subject to a range of social and state controls that adults are not. More specifically, drug restrictions for minors command near universal adult support (Transform, 2009: 52).

The 'easier' policing of young people as justification for the adoption of repressive measures raises important normative questions about justice and proportionality. Moreover, this involves the implicit suggestion that 'population wide prohibitions' would be the most desirable outcome for drug policies, and that the legal status of drugs should have a definitive effect on adolescent use. However, given the organisation's well established support for ending damaging drug policies, including the harms caused to children and young people by, for example, criminalisation,³³ the statement that drug restrictions 'command near universal support' is perhaps more indicative of the thinking behind the policy proposals. To suggest that drug use might also be decriminalised for minors would be certain to invite trenchant criticism for opposing the fundamentalism of preventionism, perhaps attracting unfavourable media attention and detracting from the force of the broader advocacy project. In doing so, however, certain collateral realities are (re) enacted: drugs as an inherent threat to the child; the law as an effective and necessary means of preventing drug use by minors (and prohibition as in the best interests of children); and childhood as ideally drug-free.

³³ See, for example, Rolles et al., (2015).

Other publications address the issue of age control in more detail (Rolles and Murkin, 2014: 133), including whether restrictions should be in line with those on alcohol. The authors recommend that there should be “consistency in how comparable offences involving alcohol and tobacco are dealt with should be ensured, even if this means increasing the level of interventions currently in place (Rolles and Murkin, 2014: 137). The use of intervention is thus performed here as either preferable or necessary, although realities are again not necessarily performed stably and consistently. Bryan, Del Bono and Pudney (2013) apply an economic analysis to the prospective liberalisation of cannabis laws, and question the deficit model of childhood in which adolescents are assumed to be poor decision-makers and the casualty of any legal reforms. Rosenbaum (2014) acknowledges that teen drug use need not be ‘abusive’ or harmful. However, none question the need for age controls, even if Rolles and Murkin (2014: 136) recognise that they are “inevitably imperfect”, and only the economic analysis questions the orthodoxy of an ideally drug-free childhood (Bryan, Del Bono and Pudney, 2013). Again, the ‘performance’ of childhood innocence to legitimise political projects may result from the desire by reformers to keep the most controversial aspects of drug policy proposals at arm’s length in order, perhaps, to qualify their assault on discourses of purity. For Duschinsky (2013: 778)

The modern citizen is placed by innocence discourse in a position suspended between purity and impurity, by virtue of their constitutive distance from innocence. They are able to recuperate this dangerous distance by taking responsibility for nurturing or normalising themselves and innocents, enacting mechanisms of biopolitical regulation and optimisation on behalf, ultimately, of the state.

Indeed, the dominance of concerns about prevention and possible increases in consumption in reform debates, assuming that harm must (only) be measured by rates of (any) use, rather than whether such use is problematic, potentially undermines political accountability and frames discussion on child harm within a conservative moral universe of personal responsibility and law and order. It might, for example, be preferable that a larger number of adolescents consume in small amounts than a smaller percentage of adolescents consume heavily, yet the focus on rates occludes the link between social disadvantage, structural inequality and problem drug use (Bourgeois, 2008; Stevens, 2011). The ideal of

'preventionism' enables the threats posed by drugs to children to be privatised as a consequence of malevolent, predatory adults, faulty regulation or poor behaviour, rather than the complex of structural and agentic circumstances in which problematic consumption takes place. The enactment of collateral realities about the causal properties of pharmacological agents, or the adolescent drug taker, can thus mean that other assembling actors and actants remain hidden or marginalised. Hart and Moore (2014) similarly argue that, in the context of alcohol epidemiology, alcohol may be enacted as a stable agent whereby social and other factors such as socio-economic status may amplify or diminish its effects, but are nonetheless "held at arms-length from causation" because they do not alter the proposition that "it is only alcohol that causes alcohol effects".

Conclusion

The aim in this paper has been to consider the ways in which realities about childhood, drugs and people who use drugs have been enacted in discourses on drug law reform. This approach has enabled closer attentiveness to the productive nature of drug policy narratives concerning law reform and children at a major United Nations conference on the 'drug problem', and within scientific and legal discourses addressing reform. A number of observations about the ways in which realities are made and re-made in discourses have been put forward, including the constitution of the child as the logical victim of drug use, the natural beneficiary or casualty of reform; and as ideally and/or necessarily drug-free. Moreover, further collateral realities include the enactment of illegal drugs as an inherent threat to children, the drug dealer as a nascent corruptor of children and childhood; and the law as an effective and necessary means of preventing drug use by minors.

It has hopefully been made clear that the aim of this discussion has not been to trivialise any risks posed to children by drugs, but rather to pay closer attention to both the performativity of childhood in drug law reform discourses, and to its importance in the enactment of realities about drugs. Whereas reform measures have often been conceived as representing 'progress', it is important to remain attendant to the ways in which the 'effects' of discourses include the continued naturalisation of childhood 'innocence' and its force as a normalising, regulatory tool in maintaining the Otherness of drug dealers and

adult users in general. Moreover, in the subjectification of children to either innocents or deviants, thus doubting their ability to make rational decisions, there is a danger of ignoring the agency of juveniles who comprise a significant proportion of the total number of consumers. Such binary designations also have the potential for effacing or muting the material conditions in which drug use takes place, and the range of mediatory actors and actants that can cause particular drugs to have certain effects on specific people. These discourses also reproduce adolescence as a time of deficit and irrationality, reinforced by the use of neuroscience and the reduction of the young person to a 'brain in a jar' (Kelly, 2012), in which minors are only presumed capable of responding to messages of prevention and legal prohibition.

Researchers and policymakers could more clearly acknowledge the ways in which their epistemological and discursive practices participate in an ontological politics, and thus recognise, for example, that fears about children and drug use are informed by a range of factors and social forces beyond an objective and apparently value-free, rational assessment of risk. A greater awareness of the range of drug young people's drug experiences, and children's agency, seems important if policymakers are to adequately respond to important questions regarding, for example, the use of age controls or the harms ensuing from consumption. Finally, in a fast-changing regulatory context, in which a number of jurisdictions (particularly in the US) are experimenting with some form of drug law liberalisation, the power of the law to effect changes must also be understood as variable and contingent since responsibility and causation are always partial and mediated.

References

Alaska Bar Association (ABA) (2015) *Alaska Youth Law Guide: A Handbook for Teens and Young Adults*, available at:

https://www.alaskabar.org/servlet/content/youth_law_guide.html

Archard D. (2004) *Children: Rights and Childhood* (2nd ed.), New York: Routledge

Austin, J L (1975) *How To Do Things With Words*, Oxford at the Clarendon Press

Baird, B. (2008) 'Child Politics, Feminist Analyses', *Australian Feminist Studies*, 23(57): 291–305

Barrett D. (2015) *The Impact of Drug Policies on Children and Young People*, London: Open Society.

Barrett D. and Veerman P. (2011) 'Children who use drugs: The need for more clarity on state obligations in international law' *International Journal of Human Rights and Drug Policy*, Vol I: 63-81

Behrendt S., Wittchen H.-U., Höfler M, Lieb R, Beesdo K. (2009) Transitions from first substance use to substance use disorders in adolescence: is early onset associated with a rapid escalation? *Drug Alcohol Depend.*, 99, 68–78

Bernstein R. (2011) *Racial Innocence: Performing American Childhood from Slavery to Civil Rights*, New York: New York UP.

Bessant, J. and Watts, R. (2012) 'The mismeasurement of youth: why adolescent brain science is bad science', *Contemporary Social Science* 7(2): 181-196

Berridge V. (2013) *Demons: Our Changing Attitudes to Alcohol, Tobacco and Drugs*. Oxford: Oxford University Press

Blackman, S. (2010) 'Youth subcultures, normalisation and drug prohibition: the politics of contemporary crisis and change?', *British Politics*, 5 (3): 337–66

Bourgeois P. (2008) 'Crack and the political economy of social suffering', *Addiction Research & Theory*, 11 (1):31–37.

Braakmann N, Jones S (2014) 'Cannabis depenalisation, drug consumption and crime – Evidence from the 2004 cannabis declassification in the UK', *Social Science & Medicine*, 115, 29-37

Bryan M., Del Bono E., Pudney S (2013) *Licensing and Regulation of the Cannabis Market in England and Wales: Towards a Cost-Benefit Analysis*, Institute for Social and Economic Research, University of Essex & Beckley Foundation.

Buchmann AF, Schmid B, Blomeyer D, Becker K, Treutlein J, Zimmermann US, Jennen-Steinmetz C, Schmidt MH, Esser G, Banaschewski T, Rietschel M, Schumann G, Laucht M. (2009) 'Impact of age at first drink on vulnerability to alcohol-related problems: testing the marker hypothesis in a prospective study of young adults', *J Psychiatr Res.*(15):1205-12

Butler J. (1990) *Gender trouble: Feminism and the subversion of identity*, New York: Routledge

- (1993) *Bodies that Matter: On the Discursive Limits of "Sex"*, New York: Routledge

Carvoso FH (2012) 'Children and drug law reform', *International Journal of Drug Policy*, Volume 23, 1 , 1 – 2

Cervený, J., Chomynová, P., Mravčík, V., and van Ours J. (2015)., 'Cannabis Decriminalization and the Age of Onset of Cannabis Use', *CentER Discussion Paper Series* No. 2015-007

Chen C, O'Brien M, Anthony J. (2005) Who becomes cannabis dependent soon after onset of use? Epidemiological evidence from the United States: 2000–2001, *Drug Alcohol Depend.*, 79; 11–22

Cohen S. (1972) *Folk Devils and Moral Panics* (3rd ed.), Routledge Classics

Colorado Department of Public Health & Environment (CDPHE) (2015) Healthy Kids Colorado Survey: Executive Summary, available at: <https://www.colorado.gov/cdphe/hkcs/reports>

Child Rights International Network (CRIN) (2016) *Joint statement of child rights advocates for the UN General Assembly Special Session on Drugs*, available at: https://www.crin.org/sites/default/files/attachments/ungass_chrightsngos_st_revised02.pdf

Collison, M. (1996) 'In Search of the High Life: Drugs, Crime, Masculinities' *British Journal of Criminology* 36 (3): 428-44

Coomber, R. (2006) *Pusher Myths: Re-Situating the Drug Dealer*, London: Free Association Books

Coomber R. and Turnbull P. 'Arenas of Drug Transactions: Adolescent Cannabis Transactions in England—Social Supply' (2007) *Journal of Drug Issues*, 37(4): 845 - 866.

Crane, N. A., Schuster, R. M., Fusar-Poli, P., & Gonzalez, R. (2013) 'Effects of Cannabis on Neurocognitive Functioning: Recent Advances, Neurodevelopmental Influences, and Sex Differences', *Neuropsychology Review*, 23(2), 117–137.

Crépault J-F, Rehm J., Fischer B. (2016a) 'The cannabis policy framework by the Centre for Addiction and Mental Health: A proposal for a public health approach to cannabis policy in Canada', *The International Journal of Drug Policy*, 34 (2016), pp. 1–4

Crépault J-F, Rehm J., Fischer B. (2016b) Realistically furthering the goals of public health through cannabis legalization with strict regulation: Response to Kalant, *International Journal of Drug Policy*, 34 (2016), pp. 11–16

Daly M. and Sampson S. (2012) *Narcomania: How Britain got hooked on drugs*, London: Windmill Books, London

Daly M. (2013) 'Personality may explain the association between cannabis use and neuropsychological impairment', *Proc Natl Acad Sci USA*, Mar 12;110(11)

Douglas M. (1992) *Risk and Blame: Essays in Cultural Theory*, London: Routledge

Dreyfus H. and Rabinow P. (1982) *Michel Foucault: Beyond Structuralism and Hermeneutics*, Chicago: University of Chicago Press

Drug Policy Alliance (2015) *Status Report: Marijuana Legalization in Washington After 1 Year of Retail Sales and 2.5 Years of Legal Possession*, available at:
http://www.drugpolicy.org/sites/default/files/Drug_Policy_Alliance_Status_Report_Marijuana_Legalization_in_Washington_July2015.pdf

Duschinsky R. (2013) 'Childhood innocence: essence, education and performativity', *Textual Practice*, 27: 5: 763-781.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (2009) *Drugs Offences: Sentencing and Other Outcomes*, available at:
http://www.emcdda.europa.eu/attachements.cfm/att_93232_EN_TDSI09001ENC.pdf

- (2003) *Young people and drugs – a legal overview*, available at:
<http://www.emcdda.europa.eu/html.cfm/index5620EN.html>
- (2014) Report to the EMCDDA by the Reitox National Focal Point: The Netherlands Drug Situation 2014, EMCDDA: Lisbon.

Farrington, D.P (1986) 'Age and crime' in Tonry, M. and Morris, N. (Eds) *Crime and justice: An annual review of research Vol 7*, pp189-250

Faulkner J. (2010) *The Importance of Being Innocent*, Cambridge: Cambridge University Press

Flacks S. (2014) 'Risk, Welfare and the Treatment of Adolescent Cannabis Users', *British Journal of Criminology*,

Foucault, M. (1980) *Power/Knowledge: Selected interviews and other writings 1972–1977*. New York: Pantheon Books.

- (2004) *Society Must be Defended* (Trans. Macey D.), London: Penguin

Fraser S., Moore D., and Keane H. (2014) *Habits: Remaking Addiction*, Basingstoke: Palgrave Macmillan

Fraser, S. (2013) 'Junk: Overeating and obesity and the neuroscience of addiction', *Addiction Research and Theory*, 21 (6): pp. 496-506

Freeman M. (1998) 'The sociology of childhood and children's rights', *The International Journal of Children's Rights*, 6, 4, 433-444

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press.

Gilman Kuster JK, Lee S, Lee MJ, Kim BW, Makris N, van der Kouwe A, Blood AJ, Breiter HC. (2014) 'Cannabis Use is Quantitatively Associated with Nucleus Accumbens and Amygdala Abnormalities in Young Adult Recreational Users', *The Journal of Neuroscience*, 34(16):5529–5538

Gordon L. (2008) 'The Perils of Innocence, or What's Wrong with Putting Children First', *The Journal of the History of Childhood and Youth*, 1.3: 331-350

Gottfredson, M. and Hirschi, T. (1990) *A general theory of crime*, Stanford, California: Stanford University Press

Graham S (2016) 'Lawyer for underage marijuana possession in Washington State', website of law office of Steve Graham, accessible at: <http://www.grahamdefense.com/Criminal-Defense/Drug-Crimes/Drug-Possession/Underage-Marijuana-Possession-Washington-State.aspx>

Grund, J-P. and Breeksema, J. (2013) *Coffee Shops and Compromise: Separated Illicit Drug Markets in the Netherlands*, Global Drug Policy Program, Open Society Foundations.

Hall W. (2014) 'What has research over the past two decades revealed about the adverse health effects of recreational cannabis use?' *Addiction*, 109

Hall W., Lynskey M. (2005) 'Is cannabis a gateway drug? Testing hypotheses about the relationship between cannabis use and the use of other illicit drugs', *Drug and Alcohol Review*, Vol. 24, Iss. 1

Harm Reduction International (HRI) (2010) *What is Harm Reduction? A Position Statement from the International Human Reduction Association*, available at: http://www.ihra.net/files/2010/08/10/Briefing_What_is_HR_English.pdf

Hart A and Moore D. (2014) 'Alcohol and Alcohol Effects: Constituting Causality in Alcohol Epidemiology', *Contemporary Drug Problems*, 41(3) pp. 393 - 416

Hasin D., Wall M, Keyes KM, Cerdá M, Schulenberg J, O'Malley PM, Galea S, Pacula R, Feng T (2015) 'Medical marijuana laws and adolescent marijuana use in the USA from 1991 to 2014: results from annual, repeated cross-sectional surveys' *The Lancet Psychiatry*, Volume 2 , Issue 7 , 601 - 608

Home Office (2015) *Drug Misuse: Findings from the 2014/15 Crime Survey for England and Wales Statistical Bulletin 03/15*, accessible at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462885/drug-misuse-1415.pdf

- (2014) *Drugs: International comparisons*. London: Home Office

Hughes J., Fingar J., Budney A., Naud S., Helzer J., Callas P. (2014) 'Marijuana use and intoxication among daily users: an intensive longitudinal study', *Addictive Behaviors*, 39: 1464–1470

IHRA, & Youth Rise. (2009). *Drugs, harm reduction and the UN convention on the rights of the child: Common themes and universal rights*. International Harm Reduction Association

Ingraham C. (2014) Teen marijuana use falls as more states legalize, *The Washington Post*, Dec. 16, 2014, accessible at: <https://www.washingtonpost.com/news/wonk/wp/2014/12/16/teen-marijuana-use-falls-as-more-states-legalize/>

International Drug Control Board (2013) 'Uruguay is breaking the International Conventions on Drug Control with the Cannabis Legislation approved by its Congress', *UN Information Service press release*, 11 Dec. 2013, available at: http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release_111213.pdf

Jackson N., Isen J., Khoddam R., Irons D., Tuvblad C., Iacono W., McGue M., Raine A., and Baker L., (2016) 'Impact of adolescent marijuana use on intelligence: Results from two longitudinal twin studies', *PNAS* 113 (5)

Jackson S., and Scott S. (1999) 'Risk anxiety and the social construction of childhood', in Lupton, D. (Ed). *Risk and sociocultural theory: New directions and perspectives*, Cambridge: CUP

Jenkins H. (1998) 'Introduction: Childhood innocence and other modern myths' in Jenkins H. (ed.) *The Children's Culture Reader*, New York: NYU Press

Kalant H. (2016) 'A critique of cannabis legalization proposals in Canada', *International Journal of Drug Policy*, 34: 5-10

Kelly, P. (2012). The brain in the jar: A critique of discourses of adolescent brain development. *Journal of Youth Studies*, 15 (7), 944-959.

Large M., Sharma S., Compton M. T., Slade T., Nielssen O. (2011) 'Cannabis use and earlier onset of psychosis: a systematic meta-analysis', *Arch Gen Psychiatry*; 68: 555–61.

Latour B. (2005) *Reassembling the social: An introduction to Actor-Network Theory*, Oxford: Oxford University Press.

Latour B. and Weibel P. (eds.) (2005) *Making Things Public: Atmospheres of Democracy*, MIT Press.

Law J. (2004) *After method: Mess in social science research*, London and New York: Routledge

Law, J. (2011). Collateral Realities. In F. Dominguez Rubio & P. Baert (Eds.), *The politics of knowledge* (pp. 156–178), London: Routledge.

Martins J. (2016) 'Senator Martins: Tougher Penalties for Dealing Drugs to Children Passed By Senate', New York State Senate Website, accessible at:

<https://www.nysenate.gov/newsroom/press-releases/jack-m-martins/senator-martins-tougher-penalties-dealing-drugs-children>

Meier M., Caspi, Ambler A., Harrington H., Houts R., Keefe R., McDonald K., Ward A., Poulton R., and Moffitt T., 'Persistent Cannabis Users Show Neuropsychological Decline from Childhood to Midlife', (2012) *PNAS*, 109(40)

Ministry of Justice (MoJ) (2016) *Youth Justice Statistics 2014/15 England and Wales, Youth Justice Board / Ministry of Justice Statistics bulletin*, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495708/youth-justice-statistics-2014-to-2015.pdf

Mokrysz C, Landy R, Gage SH, Munafò MR, Roiser JP, and Curran HV (2016) 'Are IQ and educational outcomes in teenagers related to their cannabis use? A prospective cohort study' *J Psychopharmacology*: 30(2):159-68.

Mol, A. (1999): 'Ontological Politics: a Word and Some Questions'. In Law J. & Hassard J. (eds.): *Actor Network Theory and After*, Blackwell, Oxford, 74 - 89.

Nadelmann E (2004) 'An End to Marijuana Prohibition: The drive to legalize picks up', *National Review*, accessible at:

http://www.drugpolicy.org/docUploads/Nadelmann_National_Review_Article_with_Footnotes.pdf

Philpott J. (2016) *Plenary Statement for the Honourable Jane Philpott Minister of Health - UNGASS on the World Drug Problem*, April 20, 2016, available at:

<http://news.gc.ca/web/article-en.do?nid=1054489>

Porter N. and Clemons T. (2013) *Drug-Free Zone Laws: An Overview of State Policies*, The Sentencing Project.

Race, K. (2011) 'Drug effects, performativity and the law', *International Journal of Drug Policy*, 22(6), 410-412.

Robinson K.H. (2013) *Innocence, Knowledge and the Construction of Childhood: The contradictory nature of sexuality and censorship in children's contemporary lives*. London: Routledge

Rogeberg O. (2013) 'Correlations between cannabis use and IQ change in the Dunedin cohort are consistent with confounding from socioeconomic status,' *PNAS*, 110 (11) 4251-4254

Rolles S. (2014) 'Cannabis policy in the Netherlands: moving forwards not backwards', *Transform*, available at: <http://www.tdpf.org.uk/blog/cannabis-policy-netherlands-moving-forwards-not-backwards>

Rolles S., Barton M., Eastwood N., Lloyd T, Measham F., Nutt D and Sumnall H, (2016) *A framework for a regulated market for cannabis in the UK: Recommendations from an expert panel*, London: Liberal Democrats, available at: [http://tdpf.org.uk/sites/default/files/A framework for a regulated market for cannabis in the UK.pdf](http://tdpf.org.uk/sites/default/files/A%20framework%20for%20a%20regulated%20market%20for%20cannabis%20in%20the%20UK.pdf)

Rolles and Murkin (2014) *How to Regulate Cannabis A Practical Guide*, Transform, available at: <http://www.tdpf.org.uk/sites/default/files/How-to-Regulate-Cannabis-Guide.pdf>

Rolles S, Murkin G., Powell M. and Kushlick D., (2015) *Count the Costs of the War on Drugs: Harming, not protecting, young people*, London: Transform, available at: <http://www.countthecosts.org/sites/default/files/Children-and-young-people.pdf>

Rose N. (1990) *Governing the Soul: The Shaping of the Private Self*. London: Routledge.

Rosenbaum, M. (2014). "Safety First: A Reality-Based Approach to Teens, Drugs, and Drug Education." Drug Policy Alliance, available at: [http://www.unodc.org/documents/ungass2016//Contributions/Civil/DrugPolicyAlliance/DP A SafetyFirst 2014 0.pdf](http://www.unodc.org/documents/ungass2016//Contributions/Civil/DrugPolicyAlliance/DP%20A%20SafetyFirst%202014%200.pdf)

Eastwood N., Fox E. and Rosmarin A (2016) *A Quiet Revolution: Drug decriminalisation policies in practice across the globe*, London: Release

Seear K and Fraser S. (2014) 'The addict as victim: Producing the 'problem' of addiction in Australian victims of crime compensation laws', *International Journal of Drug Policy* 25(5): 826–835

Seear, K. (2015) "Making addiction, making gender: A feminist performativity analysis of *Kakavas v Crown Melbourne Limited*" *The Australian Feminist Law Journal* 41 (1): 65-85

Shi Y, Lenzi M, An R (2015) Cannabis Liberalization and Adolescent Cannabis Use: A Cross-National Study in 38 Countries. *PLoS ONE* 10(11): e0143562. doi:10.1371/journal.pone.0143562

Shiner M. (2009) *Drug Use and Social Change*, Basingstoke: Palgrave Macmillan

- (2013) 'British drug policy and the modern state: reconsidering the criminalisation thesis', *Journal of Social Policy*, 42 (3). pp. 623-643

Simons-Morton, B., Pickett, W., Boyce, W., ter Bogt, T. F. M., & Vollebergh, W. (2010). Cross-national comparison of adolescent drinking and cannabis use in the United States, Canada, and the Netherlands. *The International Journal on Drug Policy*, 21(1), 64–69

Steinberg, L. (2008). A Social Neuroscience Perspective on Adolescent Risk-Taking. *Developmental Review : DR*, 28(1), 78–106. <http://doi.org/10.1016/j.dr.2007.08.002>

Stevens, A. (2011). *Drugs, crime and public health: The political economy of drug policy*. Abingdon: Routledge

Stolzenberg, L., D'Alessio, S.J., and Dariano, D. (2016) The effect of medical cannabis laws on juvenile cannabis use. *International Journal of Drug Policy*; 27: 82–88

Substance Abuse and Mental Health Services Administration (SAMSHA) (2015) *National Survey on Drug Use and Health: Comparison of 2012-2013 and 2013-2014 Model-Based Prevalence Estimates*, available at:

<http://www.samhsa.gov/data/sites/default/files/NSDUHStateEst2012-2013-p1/ChangeTabs/NSDUHsaeShortTermCHG2013.htm>

Transform Drug Policy Foundation (2005) *Drugs Bill 2005 Lords Second Reading Briefing, London*, Transform, available at: <http://www.tdpf.org.uk/sites/default/files/Critique-drugs-bill-2005.pdf>

Travis A (2015) Liberal Democrats set up expert panel on cannabis legalisation, *The Guardian*, 12 October 2015, accessible at: <http://www.theguardian.com/politics/2015/oct/12/liberal-democrats-expert-panel-cannabis-legalisation>

United Nations General Assembly (UNGA (2016), *Our joint commitment to effectively addressing and countering the world drug problem*, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/S-30/L.1>

United Nations Office of Drugs and Crime (UNODC) (2016) *World Drug Report 2016*, Vienna: UNODC, available at: <https://www.unodc.org/wdr2016/en/index.html?lf=1&lng=en>

Vuolo M (2013) National-level drug policy and young people's illicit drug use: A multilevel analysis of the European Union. *Drug and Alcohol Dependence* 131(1-2): 149–156.

Waldman P. (2015) 'Why marijuana legalization is the rare issue that divides the 2016 Republican presidential field', *The Week*, accessible at: <http://theweek.com/articles/569009/why-marijuana-legalization-rare-issue-that-divides-2016-republican-presidential-field>

Wall, M.M., Mauro, C., Hasin, D.S., Keyes, K.M., Cerda, M., Martins, S.S. et al. (2016) Prevalence of marijuana use does not differentially increase among youth after states pass medical marijuana laws: Commentary on Stolzenberg et al. (2016) and reanalysis of US National Survey on Drug Use in Households data 2002–2011. *International Journal of Drug Policy*. 2016; 29: 9–13

Wells K. (1998) 'The Politics of Life: governing childhood', *Global Studies of Childhood* Volume 1 Number 1k

Woodhead, M. (1997) 'Psychology and the cultural construction of children's needs' in James, A. and Prout, A. (eds) *Constructing and Reconstructing Childhood: contemporary issues in the sociological study of childhood* (2nd edition), Basingstoke: Falmer Press.
