

**MYTH MAKING, JURIDIFICATION, AND PARASITICAL DISCOURSE: A
BARTHESIAN SEMIOTIC DEMYSTIFICATION OF CANADIAN POLITICAL
DISCOURSE ON MARIJUANA**

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ABSTRACT

The legalization of marijuana in Canada represents a significant change in the course of Canadian drug policy. Using a semiotic approach based on the work of Roland Barthes, this dissertation explores marijuana's signification within the House of Commons and Senate debates between 1891 and 2018. When examined through this conceptual lens, the ongoing parliamentary debates about marijuana over the last 127 years are revealed to be rife with what Barthes referred to as *myths*, ideas that have become so familiar that they cease to be recognized as constructions and appear innocent and natural. Exploring one such myth—the necessity of asserting “paternal power” over individuals deemed incapable of rational calculation—this dissertation demonstrates that the processes of political debate and law-making are also a complex “politics of signification” in which myths are continually being invoked, (re)produced, and (re)transmitted. The evolution of this myth is traced to the contemporary era and it is shown that recent attempts to criminalize, decriminalize, and legalize marijuana are indices of a process of juridification that is entrenching legal regulation into increasingly new areas of Canadian life in order to assert greater control over the consumption of marijuana and, importantly, over the risks that this activity has been semiologically associated with. Although the government's legalization decision seems to be a liberalization of drug policy at odds with processes of juridification, it is shown that legalization's transformation of irrational and criminal marijuana users into legitimate consumers subject to a strict regulatory framework is entirely compatible with a neo-liberal perspective that is saturated by the myth of irrationality and the necessity of paternal power. The reaching of this counterintuitive conclusion helps demonstrate this dissertation's primary contribution: the illustration of the value of Barthesian semiotics as a means of producing new and alternative insights into seemingly familiar criminological issues.

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INTRODUCTION

As of October 17, 2018, Canadians of legal age are able to consume marijuana recreationally without fear of arrest or criminalization. As a result of the passage of the *Cannabis Act* in Parliament, possession of marijuana is permitted, as is the purchase of marijuana from government-licensed suppliers. If they so choose, Canadians can even cultivate their own marijuana plants at home. This is a significant change in Canadian drug policy. In terms of our past, it ends 95 years of marijuana prohibition that many consider to have been an utter failure that led only to the criminalization and incarceration of thousands of Canadians, the enrichment of criminal organizations, and the squandering of law enforcement resources. In terms of our present, it makes Canada one of only two nations in the world to legalize marijuana for recreational purposes. In terms of the future, it opens up a wide variety of questions, like what will be done for Canadians who already have criminal records for marijuana offences, how an effective means of roadside drug testing will be developed, how legalization will affect Canada's ongoing participation in the global War on Drugs or its compliance with international anti-drug treaties, and so on.

The November 2015 election marked what for many was an important turning point in Canadian politics and criminal justice, as the Conservative Harper government was defeated after nearly ten years in power by the Liberals led by Justin Trudeau, whose election platform included the legalization of recreational marijuana use. The changes brought about by marijuana legalization have generated questions about whether Canada is in a transformative period, that is, a moment of historical change in which one penal policy era is ending and another is beginning. Yet questions like these are nothing new. In

the decades prior to the 2015 election, there had already been an ongoing debate within criminology in Canada about what recent criminal justice policies signify. Criminological interpretations of these policy changes often hinge on characterizations of conservative governments as having embraced a punitive policy agenda and of liberal governments as embracing a more moderate and balanced one. However, as I show in chapter 1, these characterizations lose their self-evidence when we consider the case of marijuana legalization in Canada.

This kind of debate is characteristic of our discipline. Criminologists, like scholars in many other disciplines, spend a great deal of time examining our contemporary social, political, or economic context in order to find out what is going on with respect to penal policy and what these trends signify. Moreover, many criminologists would argue that we have a responsibility to take the knowledge generated by our research and use it to effectuate change. However, there are diverse theoretical and methodological resources that could be mobilized in order to explain what is happening, but which are currently underutilized or entirely absent from criminological theorizing. This dissertation seeks to help address this issue by contributing to the enlargement of criminology's theoretical and methodological repertoire.

In particular, I mobilize Roland Barthes' semiotic framework in order to illustrate its value for studying naturalized forms of signification. My dissertation also mobilizes important contributions by Stuart Hall, Dick Hebdige, and Marianna Valverde, which further develop Barthes' framework. This body of literature offers a theoretical framework that facilitates the conceptualization of ideological knowledge that is visible everywhere

and yet goes unrecognized as being ideological. Moreover, Barthes' work offers a methodological means of not only identifying and exposing myth—the ideological paradigms that surround us and yet are taken-for-granted as natural—but also a means of analyzing their social function. A more complex and nuanced understanding of signifying practices provided by Barthes and others will greatly enrich criminological discussions about the significance of a wide variety of discourses, whether they be verbal, textual, or visual, as well as the ideological paradigms that underlie them.

The purpose of this dissertation is to demonstrate the viability as well as the value of these theoretical and methodological tools for criminology. I do so by illustrating their use in the context of Canadian parliamentary discourse about marijuana. My application of Barthes' framework to this empirical referent offers a penetrating analysis of the ways in which myths pervade and shape the political system as well as the process of law-making. My sample includes transcripts for all of the debates and committee meetings in the House of Commons and the Senate debates that discuss marijuana, beginning on August 4, 1891, the date of the earliest mention of the drug in Parliament that I could find, and June 21, 2018, the date that the *Cannabis Act* received Royal Assent. This proved to be an ideal empirical referent for illustrating the tremendous analytic versatility of Barthes' semiotic method. Among other things, going back as far as 1891 allowed me to illustrate the ability for semiotics to account for *semiosis*, the incremental evolution over time in the signification associated with a discursive object like marijuana. Moreover, including a few images into my sample allowed me to illustrate the ability for Barthes' method to analyze visual cultural representations with the same ease that it accounts for textual signification. The results of my analysis corroborate Barthes' (1957) original characterization of myth as

a form of signification that is parasitic on language and other sign systems and, consequently, is parasitic upon the signifying practices of individuals. However, my results also enlarge upon this characterization. I argue that the range of signifying practices through which myth is parasitically (re)produced, (re)transmitted, and thereby introduced into new areas of social life, is extensive and includes visual, verbal, and textual political discourses, legal discourses, regulatory strategies, and even regulatory practices themselves.

The dissertation is composed of six chapters. Chapter 1 empirically situates my project with respect to ongoing debates about what recent Canadian criminal justice trends signify. I discuss the dramatic changes to Canadian criminal justice that have occurred over the course of the last two decades and critique the punitive turn thesis, one of the leading explanations that scholars have proposed to account for these changes. I argue that the debate surrounding the punitive turn thesis is based on and reproduces an over-simplified binary logic that reifies perceived differences between political parties and between policy agendas. At their core, these debates are about conceptualizing the signifying value of policy trends, yet the binary logic through which these policy trends are framed is incapable of producing a conceptualization that is not reductionist and inadequate. The chapter's key proposition is that these debates demonstrate criminology's bias towards criminalization and criminal law to the exclusion of other forms of legal regulation and that the reductive binary logic that serves as their premise must be evaded in favour of a more adequate means of analyzing and conceptualizing the signifying value of policy trends.

Chapter 2 situates my contribution within criminology as an academic field or discipline. I trace the development of Marxist-inspired radical and critical criminologies whose focus was on the demystification of knowledge, showing that innovative and robust theoretical and methodological tools were developed by some of Marx's intellectual successors, most notably by Roland Barthes and scholars at the Centre for Contemporary Cultural Studies at the University of Birmingham. Yet over time, Marxist influences were purged from criminology, resulting in the evolution of a contemporary critical criminology that kept demystification as its goal while abandoning approaches that had proved effective in achieving this. I argue that a recovery of approaches like Barthes' can facilitate a demystification of contemporary criminal justice trends, leading to a more nuanced and critical conceptualization of what they signify.

Chapter 3 discusses the recent interest in "myths" among criminologists which exemplifies the continued emphasis within criminology on the importance of questioning, challenging, and subverting accepted knowledge and speaking truth to power. I examine six criminological studies of myth that exemplify this critical emphasis on demystification through the lens of immanent critique, arguing that they can be categorized according to three different conceptualizations: myth as primitive thought, myth as falsity, and myth as naturalized signification. I argue that the first two conceptualizations are problematic because they can produce an understanding of demythologization as a civilizing project consisting of dispelling illusions or primitive beliefs and replacing them with academic "truths" and that this dichotomous premise of truth/illusion can give rise to epistemological and ontological challenges for scholars who do not subscribe to positivism. I argue that, in contrast, a conceptualization of myth as naturalized signification based on

Barthes evades these problems by virtue of beginning from an entirely different theoretical premise, thereby offering a more viable and practicable approach to demystification.

The remaining three chapters illustrate the value of Barthes' conceptualization of myth and his method of semiotic analysis for producing demystifying scholarship. I begin in chapter 4 by presenting the results of my analysis of the transcripts of Canadian parliamentary debates and committee meetings about marijuana spanning from 1891 until 2018. This chapter opens by contributing an alternative explanation for the Canadian government's decision to prohibit marijuana in 1923, a decision which has greatly puzzled scholars due to the complete absence of explanation, debate, or even comment on the subject in Parliament. Based on the application of Barthes' framework to contemporaneous news media discourse, I argue that, instead of being solely the result of Emily Murphy's anti-drug campaigns or American pressures or influences as some scholars claim, the prohibition of marijuana seems to have been more closely related to its connotative associations with a perceived threat from a mythic "Orient". I argue that as a result of a unique semiotic peculiarity known as metonymy that allows one sign to take on the signification of another, marijuana became inextricably associated with opium, another threatening "Oriental" drug, and that this association contributed to marijuana's prohibition. The application of Barthes' framework to the political discourses before and after the decision to prohibit marijuana similarly results in an alternative conceptualization of marijuana's history as a subject of parliamentary debate. I argue that this history can be separated into eight temporal periods. In each of these periods, a recurring association is constructed between marijuana and youth, though, as a result of the evolution of signification that occurs over time, each period deals with different and distinct discursive

objects that all bear the name “marijuana” and “youth”. Tracing the development and evolution of these different discursive objects using the tools provided by Barthesian semiotics reveals multiple layers of signification as well as the presence of myth within the parliamentary debates, layers which are disentangled and examined in the two chapters that follow.

Chapter 5 goes deeper into these observations, focusing not only on *what* was signified in these different historical periods, but also *how* it was signified in Parliament through rhetorical strategies that included heckling, jeering, boasting, and humour, as well as outside of Parliament through visual signifying practices. These signifying practices are described as intentional and as forming part of purposive struggles over signification. In the case of marijuana’s legalization, I show that all of the major political parties sought through their purposive signifying practices to connect their particular stance on marijuana legalization with the notion of protecting children, which I show to be a myth, while also trying to frustrate their political opponents’ signifying practices. I show that, in the process, all of these parties inadvertently (re)produced and (re)transmitted that myth as well as another underlying parasitic myth. I argue that through these signifying practices, both marijuana and youth became signifiers of a myth of irrationality and of the consequent necessity of paternal power that is rooted in an Enlightenment philosophy that remains present as an ideational backdrop for many of our contemporary social institutions. Interspersed throughout the discussion of the results of my analysis, this chapter also provides detailed theoretical explanations of Barthes’ conceptualization of myth, his semiotic framework for its analysis, and its application to both visual and textual signifying practices.

Chapter 6 addresses the question of myth's social function. I show that the main function of the myth of irrationality and paternal power over the course of the last 127 years of parliamentary discourse about marijuana has been the furtherance of a process of juridification. Moreover, I show that this process of juridification has occurred through three seemingly disparate regulatory strategies—prohibition, decriminalization, and legalization—devised to address the problems posed by youthful marijuana users. The presence of the myth of irrationality and paternal power in over a century of discourse about marijuana has led to repeated attempts by Parliament to assert control over the consumption of marijuana, which in turn has legitimized the ever-increasing expansion and penetration of legal regulation into Canadian social life. But as I show, regulation is itself a signifying practice, which means that the process of juridification also further (re)produces and (re)transmits the parasitic myth of rationality and necessity of paternal power that underlies it. This chapter also addresses the seeming contradictions that emerge between my findings about juridification and its underlying myth of irrationality and paternal power with what the literature suggests about the rationality and behaviour of neo-liberal governments. However, I show that when a more nuanced understanding of neo-liberalism is considered the two are perfectly compatible and, furthermore, that they facilitate a more complete understanding of the Liberal government's decision to create a new economic market for legal marijuana that will be subject to a strict regulatory framework. The myth of irrationality and necessity of paternal power renders marijuana consumption to be problematic and naturalizes the need to minimize the risk that users represent by asserting increased control over them. The legalization framework accomplishes this by transforming unproductive *criminal* marijuana users into legitimate and productive

consumers of a lawful commodity, while also surrounding them with legal regulations that will facilitate their more effective control by the state.

Finally, my concluding chapter offers a discussion of the implications of my findings and summarizes the ways in which they constitute a contribution to knowledge. I argue that my findings corroborate Barthes' characterization of myth as a parasitic form that high-jacks existing sign systems and signifying practices, using them as a vehicle for its own signification. Moreover, I argue that my analysis and its results illustrate the value, flexibility, and viability of Barthes' theoretical and methodological framework as a means of producing critical and demystifying scholarship within criminology. I close with a discussion of potential avenues for further research that are opened by my findings.

Chapter 1 - Punitive Turn or Penal Intensification? Assessing Explanations of Tough-on-Crime Politics and Policies in Canada

1. INTRODUCTION

The Canadian criminal justice system seems to have undergone a great deal of change in recent years. Overall, these changes seem to have brought the Canadian criminal justice system towards increased severity and punitiveness and further away from the leniency and compassion with which it had formerly been associated. This chapter tracks some of these developments and contextualizes them within the broader framework of global punishment and crime control trends. It begins with a discussion of the 2006 federal election and the “tough” Conservative political rhetoric which made crime such a pivotal campaign issue. I go on to discuss how the Conservative Harper government delivered on their tough campaign promises by developing and implementing policies whose stated intent was to increase the punitiveness of the criminal justice system. The practical outcomes of these policies are also discussed, as are the ideological and political repercussions that these policies are believed to have had on how the Canadian state approaches the task of administering criminal justice.

Having discussed this immensely transformative decade, I take a step back and discuss the broader historical, political, and economic currents that have increased the presence of punitiveness in Canada and elsewhere in the world, including the decline of welfarism, the rise of market capitalism, and sundry conditions of late modernity. Over the last twenty years, two leading theses have emerged within criminological literatures that seek to explain how these changes have affected Canadian criminal justice. It has been

argued by some that Canada experienced a “punitive turn” that has drastically shifted the emphasis of the criminal justice system away from rehabilitative approaches towards more severe and retributive ones. In contrast, others argue that no such turn occurred and that the etiology of global punitiveness lies within the unique regional dynamics of individual punitive nations. The experiences of several countries, including the United States, United Kingdom, France, Germany, New Zealand, Australia, Ireland, Scotland, and Japan, are discussed to see which thesis their example supports—whether or not punitiveness is more attributable to global factors as the punitive turn thesis would suggest, or whether it has more to do with regional dynamics.

While, initially, these examples appear to support the punitive turn thesis, I argue that this conclusion is misleading and that a closer review of the punitive turn literature and of its chief international exemplars evidences a number of significant limitations which critics have argued renders the punitive turn thesis inadequate. I agree with Matthews (2005: 178, 181) and others who have noted that this concept is under-theorized and that its fatal flaw lies in its reduction of a highly complex issue into an oversimplified punitive/non-punitive dichotomy. I argue that when this oversimplified dichotomy is applied to the Canadian context the result is the reification of the perceived differences between so-called liberal and conservative crime control strategies, which often results in the former being perceived as progressive and forward-thinking and of the latter as retributive and authoritarian. Yet, as I will argue, these tropes obscure the covert illiberality and coerciveness of liberal crime control strategies and portray conservative law-and-order strategies as a regressive aberration from a liberal civilizing process (Snider 1998: 36; Valverde 1996: 370). In light of the inadequacy of the punitive turn thesis, an

alternative explanation based on the work of Joe Sim (2009) is discussed which re-conceptualizes Canada's recent criminal justice developments as forming part of a gradual process of "penal intensification" which was already present, if not explicitly, in criminal justice policies and legislations. Finally, this chapter closes by reflecting on how these seemingly divergent positions exemplify criminology's tendency to focus predominantly on criminal law, criminalization, punishment, and so on, while underemphasizing the significance of other forms of legal ordering and modes of regulation.

The majority of this chapter is devoted to summarizing the main threads that make up the diverse tapestry of contemporary criminological debate about what is happening in Canada before offering a critique of them. The overarching purpose of this chapter and its function within my dissertation is to establish the criminological context within which my work makes a contribution. In recent years, trends in punishment and crime control have become important topics within criminology as well as in other related disciplines. The issues outlined in this chapter represent some of the key positions that have been debated in academic criminological literature to interpret what these punishment and crime control trends signify. My intention is not to contribute yet another interpretation of these trends, though my analysis does make a contribution in this regard. Rather, my purpose is to elaborate and illustrate a theoretical and methodological approach capable of producing new insights about familiar debates like this one. So, this chapter's somewhat lengthy discussion of the current state of scholarly debate about recent punishment and crime control trends sets the stage for later chapters in which I will illustrate the value of Barthes' theoretical and methodological framework.

2. THE NEW CAMPAIGN POLITICS OF CRIME

The Canadian criminal justice system has been the site of a great deal of change over the last few decades. In addition to the continuous stream of legislative and policy changes, there has also been a noticeable shift in how criminal justice issues are discussed. One of the trends that are immediately apparent is that criminal justice issues have been increasingly politicized over the last ten years. According to Webster and Doob (2015: 316), this politicization intensified during the 2006 federal election campaign, which elevated the issue of crime to national political prominence as never before in Canadian history.

In 2006, under the leadership of Stephen Harper, the Conservative Party began to publicize its campaign platform and one of the things topping that agenda was crime and criminal justice (Behiels 2014: 138). The Conservatives claimed that the preceding Martin and Chrétien Liberal governments had been soft-on-crime and had allowed the criminal justice system to deteriorate, to the point where Canadians no longer held any faith in its effective functioning (Kelly & Puddister 2017: 406; Mallea 2011: 13; Martin 2010: 209; Piché & Walby 2017: 1; Roberts 2009: 539; Varma & Marinos 2013: 555). Among the Conservatives' main targets was the conditional release system, which has long been seen by their party as an inefficient revolving door facilitating recidivism and the coddling of prisoners (Kelly & Puddister 2017: 405; Mallea 2011: 13; SOC Deb 8 December 2011; Zinger 2012: 120). The soft-on-crime attitude of previous Liberal governments appeared all the more negligent in light of Conservative claims that drug, gun, and gang-related violence was on the rise and reaching epidemic proportions (Jeffrey 2015: 215; Mallea 2010: 5, 11; 2011: 13, 32). Therefore, a key plank in the Conservative election platform was

to restore the functioning of the criminal justice system and meet the rising criminal threat by getting tough on crime, in order to protect Canadian communities and restore the faith of Canadians in their justice system (HC Debate 21 September 2011; HC Debate 29 November 2011; Mallea 2011: 14-15; Roberts 2009: 539; Sprott, Webster, & Doob 2013: 280).

In order to accomplish this, the campaigning Conservatives promised, among other things, to create mandatory minimum sentences for a wider range of criminal offences, reduce the number of people eligible for conditional sentences, hire more police officers, invest more into victim services, eliminate pre-trial custody credits, and toughen the parole system by making early release a privilege rather than a right (Dawe & Goodman 2017: 798; Mallea 2011: 13-14; Zinger 2016: 2). In addition to these kinds of specific policy changes, they also promised to get tough on certain types of offenders, particularly sex offenders, violent youth, dangerous offenders, and those serving life sentences (Bousfield, Cook, & Roesch 2014: 204; Mallea 2011: 13-14; Sallée 2017: 250-251).

Although the Harper Conservatives chose to make crime issues a central component of their 2006 campaign strategy, there remained a disparity between their campaign assertions and the available empirical evidence. While the Conservatives were building a tough-on-crime agenda into their campaign, premised on assertions of an ever-worsening crime problem, data gathered by Statistics Canada suggested that crime was in decline and had been for over twenty years (Boyce 2015, 5; DeKeseredy 2013: 21; Mallea 2011: 32). However, the undeterred Conservatives either downplayed or ignored contradictory evidence and continued to assert that drug, gun, and gang crimes were reaching catastrophic levels (Jeffrey 2015: 215; Prince 2015: 62-63). Over the next several years,

this denial of evidence and assertions of a contradictory reality would be repeated and evidence-based policy development would be rejected (Roberts & Bebbington 2013: 334; Webster & Doob 2015: 309; Zinger 2016: 7). Throughout Harper's years in power, the government's own sources of empirical evidence, including Statistics Canada, Public Safety Canada and the Department of Justice, continued to produce reports indicating that the rates for many of the serious crimes about which the Conservatives expressed so much concern, such as homicides and firearms offences, were continuing to decline (Jeffrey 2015: 215; Martin 2010: 208; Zinger 2016: 7). Nevertheless, the Conservatives continued to pursue their tough-on-crime agenda over the years with an "Old Testament-style determination to impose order on a world they view as lawless and dangerous, despite all evidence to the contrary" (Jeffrey 2015: 214).

Yet, even in the face of the seeming abundance of contradictory evidence, the Conservatives' assertions about rising levels of crime were not challenged by the other political parties in the 2006 election. In post-9/11 Canada, the Conservative focus on criminal justice and getting tough on crime seems to have resonated with their political opponents, particularly the Liberal Party and New Democrat Party (Martin 2010: 212). Not only did the NDP and Liberals not challenge the unsubstantiated claims made by the Harper Conservatives about rising crime rates, they actually started to adopt similar rhetoric and began arguing for the need to adopt measures to protect Canadians from an increasing criminal threat (Mallea 2011: 14-15; Piché 2015: 146; Webster & Doob 2015: 316; 2007: 357-358). Both parties constructed their election platforms in such a way as to protect themselves from any further accusations of being soft-on-crime or of having "hug-a-thug" mentality as the Conservatives had been in the habit of suggesting (Martin 2010:

211; Piché 2015: 146; Zinger 2016: 2). Thus, in order to clearly demonstrate that they could be just as tough-on-crime as the Conservatives, they too began expressing concerns over gang violence and drug trafficking and vowing to increase mandatory minimums for both trafficking and gun crimes (DeKeseredy 2013: 21; Mallea 2011: 14-15; Webster & Doob 2015: 311, 316). While some parties, such as the NDP and Bloc Québécois, continued to advocate for social programs as part of a larger focus on crime-prevention, the law-and-order strategy which the Conservatives adopted during the 2006 election influenced the rhetoric of their political opponents in two significant ways. First, it greatly reduced or eliminated any discussion of restraint in the application of custodial sentences and, second, it encouraged the use of catastrophic rhetoric when discussing both crime rates and the state of the justice system (Mallea 2011: 15; Webster & Doob 2015: 311-312).

3. INTO ACTION: TURNING TOUGH PROMISES INTO TOUGH POLICIES

The outcome of the 2006 election is well known, as are the outcomes of the subsequent 2008 and 2011 elections. Between 2006 and 2015, successive Harper governments introduced 91 criminal justice bills in the House of Commons and Senate (Webster & Doob 2015: 318). Taken together, these 91 crime bills represent over one third of all of the legislations introduced by the Harper government over the last decade (Jeffrey 2015: 212-213; Mallea 2010: 7). Out of these 91 crime bills, 35 received Royal Assent and became Canadian law, resulting in considerable changes to the criminal justice system (Webster & Doob 2015: 318). Two areas in which these policy changes have been most acutely felt are sentencing and conditional release provisions. Accelerated parole, which allowed non-violent and first-time prisoners to be released after only one-sixth of their sentence instead of the usual one-third, was abolished (Comack, Fabre, & Burgher 2015: 6;

Piché 2015: 145; Shook & McInnis 2017: 295; Zinger 2012: 121). The judiciary's ability to grant pre-trial custody credit was severely limited (Comack et al. 2015: 5; Piché 2015: 145; Snow & Moffitt 2012: 281). The Faint Hope Clause was abolished, which permitted those serving life sentences to seek early parole (Comack et al. 2015: 6; Roberts 2009: 537-538; Webster & Doob 2015: 313). Mandatory minimum sentences were created for a wide variety of drug, sex, and violence-related offences (Bousfield et al. 2014: 204; Comack et al. 2015: 6; DeKeseredy 2013: 21; Doob 2012: 10; Shook & McInnis 2017: 283). Limitations were imposed on eligibility for conditional sentences (Bousfield et al. 2014: 204; Comack et al. 2015: 6; Doob 2012: 11; Piché 2015: 145; Shook & McInnis 2017: 295). The cumulative effect of these changes has been to diminish the likelihood of all forms of conditional release while simultaneously increasing the length of incarceration for a wider range of prisoners.

In addition to toughening sentencing and release provisions, the Harper government also took measures to save millions of dollars for law-abiding Canadians by cutting down on the costs of incarceration (Comack et al. 2015: 7; Fayter & Payne 2017: 14; Jeffrey 2015: 219; Shook & McInnis 2017: 274, 277-278; Zinger 2016: 9). It was claimed that reducing incarceration costs by making prison conditions more austere would help ensure that "law abiding Canadians come first while criminals are being held fully accountable for their actions" (Comack et al. 2015: 7; Piché 2015: 145; Shook & McInnis 2017: 274; Zinger 2016: 9). The *Deficit Reduction Action Plan*, introduced by the Conservatives in 2012, created more Spartan prison conditions and made prisoners bear more of the costs of their incarceration, essentially by charging them more for room and board and telephone calls, reducing food quality, abolishing incentive pay for work done

within the institutions, and limiting their ability to purchase outside goods (Comack et al. 2015: 7, 15-16; Fayter & Payne 2017: 14; Jeffrey 2015: 218; Shook & McInnis 2017: 274, 277-278, 289; Zinger 2016: 9). The Conservatives also proposed policy alterations to prevent or reduce the frequency of visits that prisoners would be able to receive from family and friends (Jeffrey 2015: 218). However, according to both prisoners and frontline workers, these extensive budget cuts have been felt most acutely in the gutting of rehabilitative, mental health, medical, and educational resources within Canadian prisons (Comack et al. 2015: 12; Fayter & Payne 2017: 18, 26-27; Jeffrey 2015: 219; Shook & McInnis 2017: 284-287, 291-292; Zinger 2016: 10). The quality of the few resources which remain have been drastically reduced because Correctional Services Canada is increasingly training its own staff internally to run these resources, rather than hiring experienced contractors from the outside (Comack et al. 2015: 15; Shook & McInnis 2017: 285).

4. PRACTICAL OUTCOMES OF HARPER'S TOUGH-ON-CRIME AGENDA AND THEIR CRITICAL RECEPTION

Over the course of their near decade in power and in spite of periods in which they formed only minority governments, the aggressive tough-on-crime agenda which the Harper Conservatives pursued has greatly changed the nature and quality of criminal justice in Canada (DeKeseredy 2013: 21; Mallea 2011: 17; Webster & Doob 2015: 314; Zinger 2016: 5). It has been argued that increasing the severity of criminal sanctions has shifted the balance of criminal sentencing in favour of deterrence, incapacitation, and denunciation, and diminished the importance of rehabilitation (Piché & Walby 2017: 1; Webster & Doob 2015: 311; Zinger 2016: 5). According to Webster and Doob (2015: 314) and DeKeseredy (2013: 21), the criminal justice system is moving further and further away

from what it has been like in Canada's past and moving towards the punitiveness of the American criminal justice system under successive administrations, shifting from a welfare state to a penal state. This similarity between the Harper Conservatives and the Reagan Republicans was anything but haphazard (Behiels 2014: 124; Jeffrey 2015: 45-46; Smith 2012: 26). Under Stephen Harper the Conservatives drew inspiration from the Republican's 1980 election campaign and patterned some of their own strategies on those of the Reagan administration (Behiels 2014: 124; Jeffrey 2015: 45-46; Smith 2012: 26). According to Jeffrey (2015: 45), this emulation was based in the numerous similarities that existed between the beleaguered post-Nixon Republicans in the late 1970s and the fractious Conservatives of the early 1990s. One example of the Conservatives' adoption of Republican strategies is the mobilization of regional discontents for political ends (Jeffrey 2015: 47). Whereas the Republicans had sought to make themselves appealing to white voters in the Deep South of the United States alienated by the federal government's civil rights policies, the Conservatives made themselves appealing to Western Canadians alienated by decades of policies favouring central Canada (Jeffrey 2015: 47; Laycock 2005: 178-179). Under Stephen Harper, this strategy was expanded in a way that further exemplified American Republican influence. The Harper Conservatives developed social policies that broadened their voter base by appealing to special interest groups opposed to bilingualism, multiculturalism, and so on (Jeffrey 2015: 47). This suggests that, under the Conservatives, a more profound ideological shift has taken place in Canadian politics, which will be discussed further in the next section.

Although their effects are still reverberating throughout the criminal justice system, several problematic outcomes of the Harper government's criminal justice policies have

been identified by criminal justice scholars who have closely scrutinized them over the course of the last decade. Beyond the legislative changes which intentionally precluded some categories of prisoners from obtaining parole, some of the Harper government's policies have also had unintentional consequences which further limited access to conditional release. For instance, as was mentioned in the previous section, the *Deficit Reduction Action Plan* resulted in the termination of a wide variety of rehabilitation programs, thereby placing further demand on the few already overburdened programs which remained (Comack et al. 2015: 14; Fayter & Payne 2017: 14-18; Shook & McInnis 2017: 295-296; Zinger 2016: 10). As a result, many prisoners were caught in an unwinnable Catch-22 scenario, facing parole boards who refused to grant early release unless they had completed rehabilitative programs, which either no longer exist because the Conservatives took away their funding, or have extensive waitlists, or are inaccessible due to the prisoner's security level (Comack et al. 2015: 14, 20; Fayter & Payne 2017: 14-18; Shook & McInnis 2017: 295-296).

In addition, it is believed that the nature of parole hearings has changed considerably in that the Conservatives' punitive political rhetoric has reshaped the decision-making process within parole hearings (Comack et al. 2015:18; Zinger 2012: 121-122; 2016: 8). This is most evident in the heightened emphasis being placed on prisoner accountability, a concept upon which parole decisions increasingly hinge (Comack et al. 2015: 18; Shook & McInnis 2017: 273; Zinger 2016: 8). In the past, this term applied to whether or not a prisoner accepted responsibility for their criminal actions; however, it has been suggested that parole boards may now be interpreting the meaning of prisoner accountability through Conservative ideology and rhetoric in order to reduce their

responsibility for parole failures (Comack et al. 2015: 18; Zinger 2012: 122). As a result, to be considered as having been held fully accountable, prisoners must not only serve their sentence, they must completely accept and conform to the narrative about themselves that has been constructed by the Crown attorney, police, and others (Comack et al. 2015: 18). In short, this subtle shift in meaning has altered the standard to which prisoners seeking parole are held, which has in effect further restricted eligibility for conditional release via parole (Comack et al. 2015: 18).

Another problematic consequence of tough-on-crime policies has been their disproportionate effect on vulnerable or disadvantaged groups within the criminal justice system. For example, the changes introduced by the Harper government, like the removal of various programs within carceral institutions, are believed to be aggravating the existing problems relating to the treatment of prisoners living with mental health issues (Fayter & Payne 2017: 27-28; Mallea 2011: 136-137; Shook & McInnis 2017: 284-286; Zinger 2016: 8). It is estimated that nearly 35% of the federal prisoner population suffers from a mental illness that requires treatment (Mallea 2011: 137; Zinger 2012: 127). Prisons have become a backup system for the inadequate mental health care system, especially since the process of de-institutionalization of mental illness began over three decades ago (Mallea 2011: 138). Similarly, it has been argued that recent tough-on-crime policies have also had a disproportionate effect on Indigenous, Black, and women prisoners (Bousfield et al. 2014: 209; Comack et al. 2015: 3; DeKeseredy 2013: 21; Mallea 2011: 144-145; Shook & McInnis 2017: 279; Zinger 2016: 4; 2012: 127-128).

Problems such as these have resulted in strong resistance to the Harper tough-on-crime approach from within the courts, where legal challenges have been raised by a

variety of advocacy groups and community organizations, resulting in several legislations and policies being found to be unconstitutional (Bousfield et al. 2014: 204; Comack et al. 2015: 2, 32; Dawe & Goodman 2017: 798; Macfarlane 2018: 11). In addition to being ruled in violation of the *Canadian Charter of Rights and Freedoms*, it is also worth noting that the Conservatives' treatment of Canada's incarcerated population is believed to have violated numerous national and international laws and ethical standards, including the *Canada Labour Code*, the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, and the *Compendium of United Nations Standards and Norms in Crime Prevention and Justice* (Comack et al. 2015: 26; Jeffrey 2015: 219; Macfarlane 2018: 2).

The cost-effectiveness of the Conservative tough-on-crime strategy has also been widely challenged (Piché 2015: 146). For example, in 2012 the Parliamentary Budget Officer estimated the cost of the controversial *Safe Streets and Communities Act* at \$8 billion, a figure which stood in sharp contrast to the Conservatives' original estimated cost of \$2.7 billion (HC Deb 29 November 2011). The exorbitant cost of this legislation, coupled with the Conservatives' obfuscation of details which would have allowed for a more accurate cost analysis, resulted in heated debate both in the House of Commons and in the media. The response which became the Conservatives' default position on the issue was perhaps best exemplified by Rob Nicholson, the Minister of Justice and Attorney General of Canada, in response to a criticism raised by an NDP Member of Parliament:

If he is worried, I can assure him that most of the cost of crime is borne by victims. A study in 2008 said that the cost of crime in the country was \$99 billion, and 83% was borne by the victims of crime. Why do those members not stand up for victims of crime for a change? Why not make that a priority? (HC Deb 21 September 2011)

Mr. Nicholson's invocation of the estimated total costs of crime and the reiteration of the Conservative Party's commitment to protect the victims of crime and law-abiding Canadians at any cost, along with the suggestion that these values were not shared by the opposition parties, became the prototypical response to budgetary attacks on the tough-on-crime agenda (Jeffrey 2015: 216; Piché 2015: 145-146).

However, victims groups have been among those who have repeatedly opposed the tough-on-crime policies that Stephen Harper created on their behalf (Mallea 2011: 146-147). Groups such as the Canadian Resource Centre for Victims of Crime, The Church Council on Justice and Corrections, the Association Québécoise Plaidoyer-Victimes, as well as the federal Victims Ombudsman, have expressed their disapproval of tough on crime policies and opposed them (Mallea 2011: 146-149). At face value, the goals of victim advocates seem compatible with those of the Conservatives; however, the conceptualization of these goals and how they can best be achieved has often proven to be radically different. For instance, while the Conservative goal to increase prisoner accountability was shared by many victim advocacy groups, the former tended to view accountability as an outcome of the retributive application of penal severity, whereas many among the latter believed it to be an outcome of rehabilitative efforts towards reconciliation, reparation, and ultimately, successful social reintegration (Mallea 2011: 148-149).

Among the more scathing critiques of the Harper government's decade-long tough-on-crime agenda is the assertion that it has failed to achieve the central purpose for which it was created. While the Harper government was extremely vocal about the fact that tough-on-crime policies were implemented "to protect the most vulnerable in society and

to work to prevent crime” (Speech from the Throne 2011), many of those familiar with or working within the criminal justice system have argued that it has accomplished neither. This punitive agenda has actually made our communities *less* safe because prisoners are being kept in prisons for longer but without receiving rehabilitative support either during their incarceration or following their release (Bousfield et al. 2014: 204, 207; Comack et al. 2015: 2). As a result, they are being released back into the community with fewer alternatives to returning to a life of crime (Comack et al. 2015: 4; Shook & McInnis 2017: 292).

Recent research also suggests that tough-on-crime policies have decreased the safety and security of Canadian prisons as well (Comack et al. 2015: 1; Mallea 2011: 132; Zinger 2016: 6). While the number of new admissions has not grown significantly under Harper, the total prison population has increased, largely as a result of the increases in overall sentence length, combined with the reduction in opportunities to obtain early release (Bousfield et al. 2014: 204-205; Comack et al. 2015: 19). The Harper government’s policy changes, especially the removal of rehabilitative resources, overcrowding, and the removal of incentives for good behaviour such as parole, have created an increasingly dangerous and violent carceral environment for both prisoners and staff alike (Comack et al. 2015: 24; Fayter & Payne 2017: 28; Jeffrey 2015: 219; Zinger 2016: 6). These changes have increased the level of prisoner frustration, stress, and resentment towards what is seen as unfair treatment (Comack et al. 2015: 16, 24; Fayter & Payne 2017: 28; Shook & McInnis 2017: 287).

When this increased severity is combined with the removal of incentives, privileges, and rehabilitation, all of which help to mitigate these negative emotions, the inevitable

result is a more volatile and potentially dangerous prison environment (Comack et al. 2015: 24; Zinger 2016: 6). The atmosphere of resentment and hostility which these changes have engendered has also made it more difficult to implement dynamic security within carceral spaces, which depends on good communication and developing mutual respect between prisoners and correctional staff (Comack et al. 2015: 27; Mallea 2011: 133; Zinger 2016: 11). This was to be expected. Expert opinion, first-hand experiences, and empirical evidence, all of which the Conservatives ignored, had long suggested that the combination of longer prison terms and more austere prison conditions was correlated with increased criminal behaviour and recidivism (Jeffrey 2015: 216; Smith, Goggin, & Gendreau 2002: 10; Zinger 2012: 121).

The Conservatives also alleged that their tough-on-crime agenda would “help strengthen [...] the confidence that Canadians have in our justice system” (Department of Justice 2010: 1), though they never presented any evidence either of Canadians’ lack of confidence or how their agenda would restore it (Roberts 2009: 539). However, the results of a recent study conducted by Sprott, Doob, and Webster (2013: 287) suggest that the increase in punitive sanctions over the last several years has in no way affected public confidence in Canadian criminal justice (Varma & Marinos 2013: 555). Moreover, public opinion research suggests that the Conservatives’ claims about the alarm of Canadians over crime and their lack of faith in the justice system may have been significantly overstated (Varma & Marinos 2013: 554-555). Even back in 2006, when the Conservatives first began to assert the dire need for tougher policies, public opinion polls asserted that “a failure of confidence in the system is not a major problem” (Mallea 2011: 40) and that, contrary to

Conservative rhetoric, the majority of Canadians were “satisfied with their personal safety” (Jeffrey 2015: 215).

5. POLITICAL AND IDEOLOGICAL TRANSFORMATION OF CANADIAN CRIMINAL JUSTICE

While the Harper government’s tough-on-crime agenda has undoubtedly produced significant changes, their underlying rationale suggests that a far more significant ideological shift has taken place in the way that crime and the nature of criminality have been officially conceptualized by the state. Tough-on-crime rhetoric is certainly not a recent political invention in Canada, yet there are notable differences in the intensity and degree to which the Harper Conservatives adopted this approach (Sprott et al. 2013: 280). Prior to 2006, it had long been the view on both sides of the aisle in the House of Commons that prisons were a necessary evil and that incarceration should only be used as a last resort (Comack et al. 2013: 8; Doob 2012: 13; Webster & Doob 2015: 299). This paradigm of criminal justice and its core values are summarized by Webster and Doob (2015: 308):

Until 2006, [...] compassion, inclusion, reintegration, restraint, rehabilitation and moderation were the central values being promoted by the policy elite of this era. Indeed, their attitudes towards offenders and appropriate state responses to crime were clear. Crime was seen as being largely socially determined and those who commit criminal acts continued to be perceived as citizens – albeit ones who had temporarily fallen and in need of assistance. Reintegration was the principal goal. By extension, high imprisonment rates were perceived as problems to be addressed.

This understanding of crime as being a social problem and of criminals as citizens in need of assistance led to the state’s promotion of rehabilitation and emphasis on eventual reintegration into society (Cullen & Gilbert 2012: 9, 23; Webster & Doob 2015: 305). Not only did prisons not address the social roots of criminal behaviour, they were seen as a

criminogenic environment that, while necessary, could jeopardize the reintegration of prisoners into society (Cullen & Gilbert 2012: 187, 192; Webster & Doob 2015: 304).

The damaging effects of incarceration had been officially recognized in Canada as far back as 1938, when a Royal Commission concluded that it was the responsibility of the Canadian state to take steps to ensure that a prisoner's time in prison did not inflict any additional harm on them (Archambault 1938: 100; Lowman & MacLean 1991: 136; Webster & Doob 2015: 305). The same Commission's report also noted that the prison environment was such that the state would never be able to fulfill this responsibility and concluded that, invariably, individuals released from prison would be "worse members of society than when they entered them" (Archambault 1938: 100; Webster & Doob 2015: 305). This recognition of the invariably harmful effects of incarceration, combined with an inclusive view of prisoners that placed a value on their rehabilitation, produced a culture of restraint on the application of incarceration which endured within Canadian criminal justice for the better part of a century (Snider 1998: 35; Sprott et al. 2013: 288; Webster & Doob 2007: 331). In contrast, the tough-on-crime legislative agenda that the Harper government pursued in their decade in power seems to reflect a conceptualization of criminal justice that is entirely at odds with this traditional notion of restraint. In fact, the Harper government's tough-on-crime agenda committed considerable resources to rolling back many of the policies which had been developed based on this restraint (Zinger 2016: 5). The Conservatives' policy changes, as well as the political rhetoric upon which they were founded, reflect a significant shift in how crime, criminals, and justice were conceptualized by the state under the Harper government.

In the previous century, incarceration had been considered a necessary evil to be used sparingly, but under the Harper government it was championed as a way of reducing crime and increasing public safety (Webster & Doob 2007: 331; 2015: 311). Similarly, the traditional premise that prisoners are sent to prison *as* punishment was openly rejected by the Conservatives and replaced by the view that such lenience was part of the problem and that prisoners ought to go to prison *for* additional punishment (Comack et al. 2015: 8; Jeffrey 2015: 216; Mallea 2011: 135). This radical change in the tone of official rhetoric towards incarceration and punishment suggests that an underlying ideological shift occurred during the Harper years in the official state conceptualization of crime's etiology. Although, in years past, official policy had long reflected an understanding of crime as being socially determined, the rhetoric and policies of the Harper government reflected the conservative belief that criminality is the result of rational choices made by the individual (Cullen & Gilbert 2012: 23-24, 60; Fox & Arnull 2015: 89; Webster & Doob 2015: 310). This emphasis on individual choice as the root cause of criminal behaviour resulted in the resurgence of the belief that criminals are qualitatively different from other human beings, a belief which previous Canadian governments had rejected as archaic (Webster & Doob 2015: 303). These philosophical points of departure concerning the nature of crime and criminal behaviour have produced radically different conceptualizations about how the state should respond to them, resulting in very different policy trajectories.

It has been argued that, especially over the last two decades, being a "criminal" has become a permanent identity, one that does not go away when a prisoner is released back into the community after having completed their sentence (Garland 2001: 180; Webster & Doob 2015: 312). The Harper government's decision to replace the word "pardon" with the

far more ambiguous term “record suspension” demonstrates this change in perspective (Webster & Doob 2015: 312). While pardons offered ex-criminals a clean slate based on the promise that their past criminal convictions would be officially forgotten, record suspensions offer something completely different. For the few categories of people to whom they are still available, record suspensions offer only the promise that the criminal record will be “kept separate and apart from other criminal records” (Parole Board of Canada 2014: 2). The suggestion is that, in the eyes of the state, ex-criminals will never be considered the same as other Canadians, even if they have successfully reintegrated into society and become law-abiding citizens.

This shift in the official state conceptualization of prisoners and the corresponding reduction in concern for rehabilitation have allowed for policy changes which would never before have been deemed acceptable. For instance, publishing the names of criminalized youth, something which would have previously been considered counter-productive to their eventual rehabilitation and re-integration into the community, has become an acceptable practice in some circumstances (Webster & Doob 2015: 312). As Webster and Doob (2015) note, this signifies another important ideological shift—that criminalized individuals are now seen as being “unworthy of compassion or even tolerance” (314) and that in the new penal regime “ostracism rather than rehabilitation is now promoted as an appropriate response to crime” (312). The publication of names and the forced wearing of signs or stigmatizing clothing are examples of the use of the sentencing process to publicly shame, humiliate, or degrade (Garland 2001: 181; Karstedt 2002: 302; Pratt 2000: 419). This represents a return to the spectacles of punishment that were dominant during the 19th century, before people began to find these spectacles of public punishment disturbing

(Pratt 2000: 423). As a result, the modern penal system was sanitized of emotions, which were deemed to interfere with rationality (Karstedt 2000: 300). Along with the “rediscovery” of the victims of crime came a rediscovery of collective emotions towards crime, including anger, vengeance, disgust, and revulsion (Garland 2001: 9; Karstedt 2002: 303). The “re-emotionalization” of criminal justice is one of the characteristics of tough-on-crime and law-and-order in the USA and UK (Garland 2001: 9; Karstedt 2002: 301; Pratt 2000: 433).

Some criminal justice scholars, including Cheryl Webster and Anthony Doob (2015: 310) have suggested that these ideological changes at the level of official state policy during Harper’s tenure transformed the legislative process itself. One of the most obvious symptoms of this transformation was the complete rejection of evidence-based policy development. As I discussed earlier, the Harper government continually espoused and pursued policies, such as mandatory minimum sentences, based on assertions that directly contradicted empirical evidence and expert opinion (Kelly & Puddister 2017: 411; Martin 2010: 209; Zinger 2016: 6-7). Throughout the Harper years there were examples of jurisdictions, most notably the United States, which had implemented similar punitive policies in the past and, having found them to be disastrous, were in the process of reversing them (Dawe & Goodman 2017: 798; Martin 2010: 209; Webster & Doob 2015: 314).¹ Yet, while the Harper Conservatives set about creating “a Canadian version of the Thatcher-Reagan phenomenon that focused on social conservatism and neo-liberal

¹ A variety of factors, including a declining US national crime rate, the economic impact of the 2008 recession combined with the prohibitive costs of decades of tough-on-crime policies, as well as shifting public perceptions of punishment and prisoners, have contributed to “a growing bipartisan rejection—on both practical and moral grounds—of the punitive rhetoric and strategies feeding mass incarceration” (Green 2015: 288) and an increasing support for penal reform and the exploration of alternatives in the United States in recent years (Cullen & Gilbert 2012: 183).

economic policy” (Snow & Moffitt 2012: 280), they completely ignored the contemporary efforts to reverse the punitive policies to which this rhetoric gave rise (Martin 2010: 209, 211; Webster & Doob 2015: 314).

According to Martin (2010: 209-210), the Department of Justice during the Harper years became “the most ideologically driven in memory” because the Conservatives chose to embrace a politics of fear rather than listening to empirical evidence. While it had been the norm for governments to invite policy advice from experts and conduct comprehensive and ongoing empirically-based evaluations of policy, this practice ended in 2006 when Harper was elected (Martin 2010: 213; Webster & Doob 2015: 310; Zinger 2016: 7). Often, the only empirical evidence which was raised concerning Conservative criminal justice policies was cited by individuals outside of the party and, invariably, this evidence contradicted their tough-on-crime approach (Martin 2010: 209). In response to these evidence-based challenges to their policies, the Harper Conservatives only became more brazen in their rejection of empirical evidence and criminal justice expertise (Martin 2010: 210). As time went on, the Conservatives went from simply ignoring empirical research to more openly vocalizing their contempt for it. This contempt was exemplified by Stephen Harper in a 2008 speech, in which he criticized those who elevate statistics above Canadians’ “personal experiences and impressions” about crime (Martin 2010: 210).

This comment also hints at the fact that the Conservatives’ contempt extended to those who had produced such empirical evidence and research. In particular, the Conservatives held a distinctly negative view of criminologists, as well as criminal justice scholars within other academic disciplines, whom they viewed as biased promoters of policies which were completely out of sync with the reality of crime in Canadian society

(Abu-Laban 2014: 217; DeKeseredy 2013: 17; Martin 2010: 210; Sawyer & Laycock 2009: 137). According to Ian Brodie, Stephen Harper's Chief of Staff, the Conservatives considered it to be politically advantageous to be at odds with academic elites since these elites were deemed to be completely out of touch with Canadians (Deshman & Hannah-Moffat 2015:91; Snow & Moffitt 2012: 282). However, the Harper Conservatives' contempt was not limited only to the "university types" who opposed them but also extended to special interest groups and so-called elites of all stripes (Martin 2010: 212; Sawyer & Laycock 2009: 137). The expert opinions of those working within the civil service were also greatly devalued during the Harper years (Mann 2016: 56; Webster & Doob 2015: 309). Some civil servants who voiced warnings or contradictory opinions about tough-on-crime policies were targeted by the Conservatives and became the subject of "political-style personal attacks" (Webster & Doob 2015: 309). Others who opposed or criticized the Conservatives "found themselves dismissed as special interests, demonized as radicals, listed as enemies or expelled as traitors and excluded from policy deliberations" (Mann 2016: 56).

The belief that criminal justice policy should be developed in a coherent and principled manner is another traditional element of the Canadian legislative process which was eroded during the Harper era (Dawe & Goodman 2017: 798; Doob 2012: 13). Despite their overarching commitment to getting tough-on-crime, Conservative policy changes were somewhat erratic and there were no clearly elucidated principles or an underlying rationale linking their different legislative changes into a single purpose or goal (Doob 2012: 12; Webster & Doob 2015: 310). Although the Harper Conservatives introduced 91 crime bills over a nine year period, only 35 of these bills became law (Webster & Doob 2015: 318). Doob (2012: 12) notes that many of these legislations had little chance of

success because they were poorly written and poorly conceived. It has been suggested that the reason for the Conservatives' low legislative success rate is that they were more concerned with cultivating an appearance of being tough-on-crime than with the actual policy outcomes of their legislations and therefore were unconcerned whether they were passed at all (Doob 2012: 12-13; Kelly & Puddister 2017: 407). When considered in this way, all of these bills fulfilled an important political purpose, regardless of whether or not they received Royal Assent, in that each newly introduced Conservative crime bill could be pointed to as proof that the Harper government was keeping its promises to get tough on crime (Doob 2012: 12-13). This assertion supports the conclusion that, under the Harper Conservatives, the legislative process served more of a symbolic or ideological function, rather than being a practical means of producing social change.

It has also been suggested that the real objective behind these ideological tough-on-crime maneuverings was to drastically reconfigure Canadian politics in such a way as to ensure the dominance of the Conservatives for years to come. In order to accomplish this, Harper would need to end the Liberal party's long-standing political dominance and build the Conservative party into Canada's natural ruling party (Behiels 2014: 121; DeKeseredy 2013: 19-20). Stephen Harper himself confirms that this was his explicit aim:

My long-term goal is to make Conservatives the natural governing party of the country. And I'm a realist. You do that two ways. . . . One thing you do is you pull conservatives, to pull the party, to the centre of the political spectrum. But what you also have to do, if you're really serious about making transformations, is you have to pull the centre of the political spectrum toward conservatism. (Stephen Harper, 17 September 2008)

Given the Conservatives' rocky history in recent decades, this would have been a significant challenge. In the years prior to Harper's consolidation under the newly formed Conservative party in 2003, the Canadian political right was weak and fractious, being

composed mainly of various iterations of conservative parties each representing a diversity of conservative interests and ideals, including Mulroney's Progressive Conservatives, Manning's Reform party, and Day's Canadian Alliance (Behiels 2014: 124, 131; Laycock 2005: 193). According to Tom Flanagan, one of Harper's long-time political allies, the Conservatives under Harper's leadership developed a long-term plan designed to make themselves a more centrist party and cultivate conservatism among Canadians, all while weakening the Liberal party (Behiels 2014: 124). This goal of shifting Canadian politics to the right in order to ensure the future of the Conservatives as the natural governing party (Behiels 2014: 134; DeKeseredy 2013: 19-20) could explain why the Conservatives' policy agenda appears to be so eclectic and why many of the Conservative changes appear far more symbolic and ideological than practical.

6. CONTEMPORARY STRATEGIES OF CRIME CONTROL

The increased presence of punitiveness within contemporary Canadian political rhetoric and criminal justice policy can only be fully understood in relation to the broader history of political economy, particularly the decline of welfarism, the rise of market capitalism, and other economic and political conditions of late modernity in the global West. In the early 20th century, industrial capitalism rose to pre-eminence in many Western nations including Canada and the United States (Teeple 2000: 9). However, early capitalist modes of industrial production such as Fordism were associated with exploitative practices, inadequate wages, unsatisfactory working conditions, as well as high rates of injury and mortality (Allen 1997: 284; Snider & Pearce 1995: 33).² Early social reforms

² Fordism emerged as the leading mode of industrial production in the early 20th century. It is characterized by the mass production of consumer goods through a system of assembly lines. This assembly line production process

emerged to protect workers from abuses by the capitalist class and to provide insulation from the cycle of boom and bust to which this form of capitalism was prone (Purvis 2002: 35; Teeple 2000: 12-13). Moreover, the destruction of pre-capitalist modes of production and their replacement with industrial capitalist ones (e.g. Fordism) created new social needs among industrial workers which had to be met, such as the need for child care and injury insurance for example, resulting in the growth of state involvement in the regulation of an ever-increasing range of facets of everyday life (Purvis 2002: 35; Teeple 2000: 11).

While these early class conflicts during capitalism's adolescence led to the development of specific and limited social reforms, the "welfare state" is mostly associated with the post-WWII period, when the world's leading industrial economies needed rebuilding following their complete war-time decimation (McGrew 1997: 254-255; Teeple 2000: 16). Post-war welfarism was driven by Keynesian economic policies, which were founded on the principle that the state should intervene in the national economy in order to regulate unemployment and ensure social well-being (Larner 2000: 5; McGrew 1997: 256; Purvis 2002: 36-37; Teeple 2000: 17). Under the welfare state framework, this central premise of "managed capitalism" through Keynesian economics served as the rationale for state intervention in economic life (McGrew 1997: 255-256; Teeple 2000: 17). In welfare state nations like Canada and the United States, state intervention mostly took the form of supporting the working class directly by providing goods or services, regulating the labour market, providing income assurance, or creating an institutional means to resolve class

was semi-automated and relied on the piece-meal labour of mostly unskilled workers who worked in shifts, allowing production to continue on a 24-hour basis. As a result of these characteristics, Fordism is associated with a high level of output and accumulation of capital, as well as class conflict stemming from the power imbalance that is created between capitalists and the labourers in their employ (Allen 1997: 283-285; Snider & Pearce 1995: 32-33; Teeple 2000: 18).

conflict in the form of collective bargaining (Gordon 2005: 57; McGrew 1997: 255; Purvis 2002: 35-36; Teeple 2000: 15). Essentially, the welfare state functioned as a redistributive averaging mechanism, intended to redress the social inequalities and conflicts to which capitalist production inevitably gave rise (McGrew 1997: 256; Purvis 2002: 35-36; Teeple 2000: 19).

From the post-war period through to the 1970s, Keynesian welfarism was the dominant intellectual framework through which criminal justice issues were understood and policies were created (Phelps 2011: 36; Purvis 2002: 36-37). As it turned out, the welfare state's optimism was not limited to the economy. The welfare state paradigm also generated optimism about increased state intervention in the correctional system, where it might facilitate the rehabilitation and social reintegration of individual prisoners (Cullen & Gilbert 2012: 5; Sears 2003: 86-87). Influenced by research findings in the relatively new fields of psychology and sociology, penal welfarism sought to reduce recidivism through individual therapeutic interventions and to reduce crime rates by addressing the social problems believed to cause crime (e.g. poverty) through social programs and services (Cullen & Gendreau 2001: 316-317; Garland 2001: 47; Phelps 2011: 36).

However, turbulent changes led to the decline of the welfare state within only a few years (Garland 2001: 53-54). At a macro level, this decline was precipitated by a loss of economic momentum (Gordon 2005: 57; McGrew 1997: 268; Purvis 2002: 37; Ratner & McMullen 1983: 31; Rice & Prince 2013: 88). Beginning in the mid-1970s, there were significant declines in gross national product, industrial output, and international trade, which, when combined with rising unemployment and inflation, led to criticisms of Keynesian welfare policies coming from both ends of the political spectrum (Cullen &

Gilbert 2012: 65; Gordon 2005: 57; McGrew 1997: 268; Purvis 2002: 37; Ratner & McMullen 1983: 31; Rice & Prince 2013: 88; Sawyer & Laycock 2009: 135-136; Walters 1997: 223). In both Canada and the United States the tide of popular political opinion quickly turned against the welfare state, which was increasingly viewed as wasteful and even counter-productive to economic prosperity, due to its inefficient redistribution of resources and its growth inhibiting regulatory practices (Bayley & Shearing 1996: 599; Gordon 2005: 59; Purvis 2002: 38-39; Ratner & McMullen 1983: 32; Sears 1999: 94; Snider & Pearce 1995: 23, 26; Walters 1997: 224). Moreover, the enormous amount of capital needed to fund the welfare state and the ever-increasing number of people dependent on the entitlements it provided, seemed unjustifiable due to its lack of progress in addressing the social problems that it had been created to solve (Bayley & Shearing 1996: 599; Purvis 2002: 38-39; Rice & Prince 2013: 88-89). Ratner and McMullen (1983: 34) argue that this led to a political and economic point of crisis in the UK and USA which, while present in Canada as well, was not as acute “owing to its relatively subordinate status within the international marketplace”.

As this ideological push back against welfarism became more entrenched, it led to the formation of an alliance between governments and the business sector (Ratner & McMullen 1983: 32; Snider & Pearce 1995: 25). This alliance resulted in the implementation of new social and economic policies intended to roll back the welfare state in order to encourage economic growth by meeting the needs of domestic and global capitalism (McGrew 1997: 267; Purvis 2002: 39; Ratner & McMullen 1983: 32-33; Rice & Prince 2013: 165). The premise of this new market-oriented capitalist framework was that the role of the state should not be to intervene or attempt to direct the economy, but rather to “remove barriers

to competition in labour, product and financial markets” (Snider & Pearce 1995: 24) and allow the market to regulate itself (Harcourt 2009: 6; Lerner 2000: 5; Purvis 2002: 37-40; Ratner & McMullen 1983: 32; Sears 2003: 11; Shichor 1993: 115). Consequently, throughout the 1970s and 1980s, there was a “privatization wave” which reduced the role of the state to that of a “night watchman”, responsible only for protection from external threats and the provision of a minimal social security net for the “deserving poor” (Bayley & Shearing 1996: 587; Maurutto & Hannah-Moffatt 2016: 178; Sheldon & Brown 2000: 46; Snider & Pearce 1995: 25). In Canada this led, among other things, to the restructuring of welfare into a kind of “workfare” (Gordon 2005: 60). Benefits were reduced to below the minimum wage, participation in employment programs became mandatory and an ideological assault was launched on welfare recipients that labelled them as “lazy, undeserving, and starving the government and public of much-needed funds” (Gordon 2005: 60).

One of the areas in which this scaling back of the welfare state can be most clearly discerned is in criminal justice and penal policy. In the United States, the failure to deliver on promises to reduce recidivism and crime rates, resulted in growing pessimism and disillusionment with a criminal justice system that appeared too lenient (Bayley & Shearing 1996: 599; Cullen & Gendreau 2001: 313; Cullen & Gilbert 2012: 5; Feeley & Simon 1992: 456; Lewis 2005: 120-121; Phelps 2011: 36-37). The combination of high expectations and disappointing results led to an emotive response, which found expression in populist punitive political slogans like “just deserts”, “nothing works”, “back to justice”, and “zero tolerance” (Cullen & Gilbert 2012: 10, 102; Garland 2001: 70; Pratt 2007: 46-47, 92; Phelps 2011: 37; Snider 1998: 30). By the 1980s, in light of these failures, supporting penal

welfarism or the rehabilitative ideal became tantamount to endorsing failure, which only increased its political unpopularity (Cullen & Gilbert 2012: 5; Garland 2001: 62). In Canada, where there was a declining crime rate, neoliberalism and the scaling back of the welfare state facilitated the development of an aggressive law-and-order policing that targeted those whose subsistence depended on alternatives to wage-labour, such as panhandlers, squeegeers, sex workers, and welfare frauds (Comack & Silver 2008: 818, 822; DeKeseredy 2009: 307; Gordon 2005: 62, 64, 66-68, 70-72; Prince 2015: 64; Roberts et al. 2003: 9; Sears 1999: 105).

However, beyond the apparent failure of the welfarist project, the shift towards market capitalism, the larger transformative forces of globalisation and the destabilizing currents of late modernity further precipitated a change in penal rationalities (Garland 2001: 77-78; Pratt 2007: 55; Purvis 2002: 43-44). As the welfare state was scaled back by free market economic policies, the workplace became less stable and workers lost much of their job security (Pratt 2007: 58; Ratner & McMullen 1983: 38). This reduction in job security occurred alongside other significant social trends, such as increasing divorce rates, a general decline in church attendance, and the rise of litigation (Pratt 2007: 58-60). Rather than being part of a collective composed along nationalistic lines, individuals increasingly belonged to a diversity of communities, which made the very notion of society lose much of its self-evidence (Garland 2001: 89; Rose 1996: 328, 332-333). In the United States, crime rates doubled between 1960 and 1975 and continued to rise for the next two decades, which resulted in crime becoming a hallmark of society at the same time as society's more traditional hallmarks (e.g. work, family, religion, etc.) ceased to provide a sense of social security and stability (Cullen & Gilbert 2012: 1; Garland 2001: 152; Pratt 2007: 62; Ratner

& McMullen 1983: 33; Young 2011: 94). The perception of a criminal threat became a reality in people's lives and the potential for victimization became an ever present reality (Garland 2001: 106; Roberts et al. 2003: 68).

Taken together, these trends increased the general sense of precariousness and insecurity that has since become characteristic of late modernity and further undermined any remaining sense of social cohesion, making the rehabilitative ideology that had sustained penal welfarism even less salient (Pratt 2000: 44-45; 2007: 58-60). During the mid-1970s, the welfare state had been slow to react to rising crime rates and growing public concerns about crime, which resulted in increased support for politicians who promised to take action to protect the public by getting tough on crime (Pratt 2007: 61). Political sensibilities shifted in favour of a unique and somewhat contradictory combination of neo-liberalism and neo-conservatism, resulting in a political climate which favoured the relaxing of controls over the economy and responsabilization of individuals on the one hand, with an intensification of repressive law-and-order policies and punitive measures on the other (Garland 2001: 98-100; Dawe & Goodman 2017: 799; Harcourt 2009: 4; Purvis 2002: 40-41; Ratner & McMullen 1983: 32-33).

At the height of welfarism in the 1960s, there had been a fascination with prisoners and the focus had been on developing individual therapeutic interventions for the purpose of rehabilitation (Feeley & Simon 1992: 452; Garland 1996: 447; O'Malley 1996: 29). The state itself was considered to be the symbolic victim of crime, since it was the embodiment of the social and claimed sole responsibility for tackling all social problems including crime (O'Malley 1996: 29). However, the rise of neoliberal economic policies and the resurgence of neo-conservative law-and-order politics in the 1980s resulted in a "rediscovery" of

victims and the usurpation of the state's privileged place as the embodiment of society (Garland 2001: 11-12, 159; O'Malley 1996: 29, 31; Snider 1998: 30). Concordantly, the penal welfare focus on individual therapeutic intervention and rehabilitation was increasingly overshadowed by a focus on managing and regulating dangerous individuals as an aggregate population, driven largely by growing concerns with the costs of crime borne by society and the need to protect innocent citizens from victimization (Feeley & Simon 1992: 452; Garland 1996: 447; 2001: 128-129; Maurutto & Hannah-Moffatt 2016: 178-179). However, while this new penal rationality conceptualized criminals as an aggregate to be managed, it conceptualized society as individualistic and social problems like crime as being the responsibility of individuals rather than the state (Amable 2011: 6; Bayley & Shearing 1996: 558; Feeley & Simon 1992: 452; Garland 1996: 452; Purvis 2002: 40-41; Rose 1996: 339). This responsabilization led to the pluralization of policing as community crime prevention strategies like neighbourhood watches and voluntary foot patrols, as well as the growing use of private security, displaced traditional policing as the primary guarantors of community security (Bayley & Shearing 1996: 587-588; Garland 1996: 452; Sheldon & Brown 2000: 52-53). Policies shifted in favour of the newly redefined criminal justice priorities, set by the dominant new penal rationality, which emphasized risk management, fiscal solvency, and the protection of victims (Deshman & Hannah-Moffatt 2015: 92; Feeley & Simon 1992: 452; Garland 1996: 448; 1997: 185; 2001: 128-129, 188-189; O'Malley 1996: 29; Pratt 2000: 46). Within this new neoliberal or market capitalist political economy, penal welfarism gave way to a law-and-order rationality, and in this the therapeutic coddling of prisoners was replaced by a new view which stressed the need to protect the public by making sentences longer and making prison conditions more austere

(Cullen & Gilbert 2012: 5, 7; Deshman & Hannah-Moffat 2015: 92; Garland 2001: 37; Purvis 2002: 41).

7. THE PUNITIVE TURN THESIS

In the United States, which is generally held up as the quintessential example of this transformation (see Tonry 2009, Frost 2006, Phelps 2011, Garland 2013 and Webster & Doob 2007), these changes led many U.S. states to embark on a punitive legislative agenda beginning in the 1960s which, among other things, introduced mandatory minimum sentences, restricted conditional release, and limited judicial discretion. Consequently, the American incarceration rate rose by 500% and surpassed the rest of the world (Christie 2000: 31; Green 2015: 272; Webster & Doob 2007: 310; Wexler, Lurigio, and Rodriguez 2011: S3). The American prison population surpassed 2.3 million and the number of Americans involved in some phase of the correctional system rose to nearly 7.3 million over the last 40 years (Garland 2013: 477; Green 2015: 272; Wacquant 2005: 7; Wexler et al. 2011: S3). Over the last two decades, concerns have been raised that this pattern is being repeated in other Western countries including Canada. Some scholars have argued that these legislative changes are representative of a larger transnational trend that has been dubbed “the punitive turn” or “new punitiveness” (see Pratt et al. 2005, Frost 2006 and 2010, Green 2012, and Meyer & O’Malley 2009 for example), which is causing Western nations to develop tough-on-crime policies as a way of adapting to the conditions of late modernity. It is believed that the promotion and implementation of punitive policies in influential nations like the United States has produced a domino effect in other parts of the Western world, resulting in the adoption of increasingly punitive policies in nation after nation (Pakes 2006: 154). Nations experiencing a punitive turn are believed to exhibit

three main characteristics or symptoms: carceral hyperinflation, the decline of rehabilitation as a penal aim, and the politicization of criminal justice issues (Carrier 2010: 3-5; Garland 2013: 477; Snacken 2010: 273-274).

The politicization of criminal justice issues is characterized by what is referred to in the academic literature as “penal populism” or “populist punitiveness” (Bottoms 1995: 40; Hogg 2013: 105; Hutton 2005: 243-244; Pratt 2007: 2; Roberts, Stanlans, Indermaur, and Hough 2003: 4). While the concept of populism is subject to a great deal of contestation, it is commonly understood to be a reaction by “the common people” against the dominant power structure and the politicians who are part of it as well as the values or ideas of the political establishment (Abts & Rummens 2007: 407; Canovan 1999: 4; Hogg 2013: 211-212; Panizza 2005: 1, 3-5; Pratt 2007: 9-10). Populist movements are characterized by a disillusionment with the status quo and with its rejection in favour of an alternative populist agenda oriented around common grievances and the restoration of popular sovereignty (Abts & Rummens 2007: 408; Canovan 1999: 4-5; Panizza 2005: 11-15; Pratt 2007: 9-10). As a result, populist politicians tend to mobilize popular discontent by positioning themselves as the anti-establishment and anti-elite champions of the common people whose interests they represent (Abts & Rummens 2007: 408; Canovan 1999: 3-5; Hogg 2013: 107, 112; Panizza 2005: 5, 12-15; Pratt 2007: 9-10, 20). For example, in 2016 Donald Trump was elected President of the United States, supported by a groundswell of populist support from disillusioned voters, predominantly blue-collar and rural Americans alienated by politicians seen as corrupt elites (Fuest 2017: 2; Gusterson 2017: 210; McDevitt & Ferrucci 2018: 519). The 2016 referendum that led to the UK’s withdrawal from the European Union, popularly known as “Brexit”, is another example of a populist

movement based in popular discontent, disillusionment, and alienation with the status quo of political representation (Bogaards 2017: 514-515; Gusterson 2017: 212; Maher, Igou, & van Tilburg 2018: 206).

In the context of the penal system, populist punitive discourses include all of the characteristics listed above, but are also particularly associated with the political mobilization of the fear of rising crime rates and disillusionment with a seemingly lenient penal system that appears to favour prisoners over crime victims, leading to the promotion of punitive tough-on-crime or law-and-order policies (Hogg 2013: 106-107; Pratt 2007: 12-13, 20-21 Roberts et al. 2003: 61, 64-66).³ The United Kingdom, another often-cited example of the new punitiveness, experienced a similar disillusionment with penal welfarism and rise of law-and-order politics as the United States, beginning in the 1970s and reaching a climax in the 1990s (Hogg 2013: 106; Newburn 2007: 425). Many of the tough-on-crime policies which the United Kingdom adopted, such as zero-tolerance policing, three-strikes laws, and mandatory minimum sentences, are noticeably similar to American tough-on-crime laws, which has been viewed by many scholars as evidence of international policy transfer and proof of the punitive turn thesis (Jones & Newburn 2006: 781, 798; Snider 1998: 31). As a result of these tough-on-crime policies, the incarceration rate in the United Kingdom rose by 200% over the course of the last several decades (Webster & Doob 2007: 310).

³ Hogg (2013: 115, 118) cautions against conflating populism with punitiveness or equating it with a particular political ideology. Leftist or progressive populist movements, such as Left Realism, have existed in the past and that these demonstrate that populism does not uniquely emerge from the political right (Abts & Rummens 2007: 409; Hogg 2013: 115; Laycock 2005: 198-200).

A number of other liberal democracies in the West, many of which share a similar political and legal system to the US and UK, have also been identified as experiencing this shift in favour of a more retributive law-and-order approach to criminal justice. Australia is frequently cited as a typical example of a nation whose response to crime over the last several decades seems to have followed the pattern set by other punitive turn nations (DeKeseredy 2013: 16; Kornhauser & Laster 2014: 446; Tubex, Brown, Freiberg, Gelb, & Sarre 2015: 349; Snider 1998: 31). Australian criminal justice issues have undergone unprecedented politicisation over the last 20 years, as successive governments have sought to exploit public concern about criminal justice issues to their political advantage (Roberts et al. 2003: 53; Tubex et al 2015: 365), while completely disregarding expert advice or empirical evidence about “what works” (Kornhauser & Laster 2014: 448; Tubex et al. 2015: 355). Moreover, like other punitive jurisdictions, Australia created three strikes legislations, established mandatory minimum sentences, and restricted conditional release (Roberts et al. 2003: 53-55; Snider 1998: 31), resulting in a 90% increase in Australia’s imprisonment rate since the 1980s (Kornhauser & Laster 2014: 447).

In New Zealand, the decline of penal welfarism in the 1970s and its apparent failure led to the erosion of its tradition of penal moderation and facilitated the rise of law-and-order politics (Pratt & Eriksson 2013: 168). Politicians sought to rebalance the criminal justice system by restricting the rights of accused criminals and by enhancing the rights of victims (Hamilton 2013: 158; Pratt & Eriksson 2013: 173; Roberts et al. 2003: 58-59). In the decades that followed, punishment in New Zealand was strengthened and made broader, more communicative, and emotive, resulting in a dramatic increase in New Zealand’s incarcerated population (Pratt & Eriksson 2013: 174-175; Roberts et al. 2003;

58-59). In addition to implementing familiar policies associated with punitive turns in other countries, New Zealand also experienced a resurgence of support for previously outmoded punishments such as hard labour (Hamilton 2013: 158; Pratt & Eriksson 2013: 176).

While the outcomes have been far less drastic as in the US and UK, several European countries are also believed to have succumbed to the sweeping influence of punitive law-and-order politics. The Netherlands, which has traditionally been considered a bastion of tolerance and penal moderation, experienced a five-fold increase in its prison population between 1987 and 2003, largely as a result of policy changes which have made it “one of Western Europe’s most punitive nations” (Pakes 2006: 141, 154) and, some argue, one of the clearest examples of the sweeping changes characteristic of the onset of the punitive turn (De Keijser & Elffers 2009: 60). Punitiveness also might be spreading deeper into Europe through countries like Poland, where punitive public sentiment appears to be on the rise and where politicians are increasingly adopting a rhetoric that promotes tougher criminal laws and harsher sentencing provisions (Krajewski 2009: 104).

According to Fenwick (2013: 216), the rest of the world have not been exempt from the punitive turn, even though it is a trend that is generally associated with Western nations. For example, recent criminal justice reforms in Japan have followed a punitive pattern that resembles those in Europe or North America (Fenwick 2013: 216). Measures have been taken to make custodial sentences longer, strong emphases have been placed on protecting victims, and the focus of youth justice has shifted noticeably away from rehabilitation and towards increasing sentencing severity (Fenwick 2013: 216).

8. DISSENTING OPINIONS: REGIONAL DYNAMICS AND OTHER LIMITATIONS OF THE PUNITIVE TURN THESIS

However, in spite of what appears to be compelling evidence for the existence of a punitive turn, this explanation of global criminal justice trends suffers from a number of significant limitations. First, there are several examples of Western nations whose experiences do not correspond to this domino effect, despite having close cultural, political, and economic ties with countries which have experienced notable increases in punitiveness. Germany, for instance, seems to have avoided a punitive turn altogether (Oberwittler & Höfer 2005: 496). Unlike its more punitive neighbours, Germany's use of incarceration as a formal sanction has been in decline for over a century, despite the Weimar, Nazi, and Soviet interludes during which it briefly rose (Oberwittler & Höfer 2005: 494). Although there has been some increase in the punitiveness of German legislations over the course of the last 25 years, this increase has mostly been restricted to specific areas of concern such as sex offending and youth violence (Kury, Brandenstein, & Obergfell-Fuchs 2009: 72). Despite these increases, crime has not become a highly politicized issue in the way that it has in nations associated with the punitive turn (Oberwittler & Höfer 2005: 498). Moreover, Germany remains committed to rehabilitation and increasing the use of non-custodial sanctions such as fines (Kury et al. 2009: 79; Oberwittler & Höfer 2005: 492).

There are also countries, most notably Ireland and Scotland, which have shown some of the symptoms of rising punitiveness, yet without relinquishing elements of penal welfarism (Hamilton 2013: 158). Much like Germany, Ireland has experienced periodic flare-ups of punitiveness towards certain types of crimes, usually in the aftermath of

shocking and highly publicized crimes, which have sometimes prompted punitive legislative responses and resulted in slight increases in the use of imprisonment (Hamilton 2013: 158). Yet, in spite of these limited manifestations of punitiveness, Irish society remains relatively unconcerned with crime, a fact which has helped Ireland to retain its welfarist commitment to rehabilitation and “individuated justice” while also preventing any excessive politicization of crime (Hamilton 2013: 158; Matthews 2005: 195). Scotland has experienced some drastic increases in its incarceration rate over the course of the last few decades, culminating in the 1990s when its use of imprisonment surpassed both England and Wales (Hamilton 2013: 158). However, what is paradoxical in Scotland, compared with other punitive turn countries, is that many aspects of the penal welfare model remained intact in spite of its dramatic increase in the use incarceration (Hamilton 2013: 158). Scotland has maintained a firm commitment to rehabilitation and has even developed a reputation for penal innovation due in no small part to its distinct youth justice system (Hamilton 2013: 158; Hutton 2005: 255).

Other countries, like France, present a more complex case study in punitiveness. In recent years France has begun to exhibit many of the symptoms that have become characteristic of the punitive turn. First, France’s criminal justice issues have become intensely politicized. Since the 2002 and 2007 national elections, French politics have reflected a clear law-and-order agenda and an American-style tough on crime rhetoric has been adopted, complete with now-familiar slogans such as “war on crime”, “zero-tolerance”, and “three-strikes” (Roché 2007: 520; Shea 2009: 84, 94). Second, this law-and-order stance has resulted in the creation of a variety of legislations which have increased the length and severity of sentences for sex offenders and adult recidivists (Bérard &

Chantraine 2013: 16, 121; Shea 2009: 93-94). Third, as a result of these policies, the French incarceration rate and prison population have risen, resulting in overcrowding and increasingly strained resources (Bérard & Chantraine 2013: 120; Roché 2007: 505-508; Sallée 2017: 253; Shea 2009: 97, 99). While these changes might appear to indicate that France has succumbed to a punitive turn, a closer investigation reveals that the severity of French punitiveness is somewhat illusory.

While at face value the use of punitive slogans such as “zero-tolerance” seems clear evidence of the influence of the United States, which coined the term and pioneered its punitive expression, a closer analysis reveals that the meaning attached to this term is completely different in France (Roché 2007: 520). In the United States, the term zero-tolerance generally referred to an aggressive policing strategy targeting crime-prone areas or particular types of offences (Comack & Silver 2008: 815), which as Matthews (2005: 194-195) points out, essentially amounts to “selective intolerance”. However, in France this term has been used to advocate for crime prevention measures which included making police officers more visibly present within the community and increasing the number of CCTV security cameras in cities (Roché 2007: 520-521). The rise in France’s prison population is equally misleading because this increase has occurred alongside a rise in the creation of non-custodial alternatives and diversionary programs (Bérard & Chantraine 2013: 78-79, 120-121; Roché 2007: 470; Sallée 2017: 253). To some, this demonstrates that “French policy-makers remain fundamentally skeptical about the value or desirability of imprisonment” (Roché 2007: 470) and that resistance to punitive sentiment in France remains strong (Sallée 2017: 263).

Thus, for scholars like Roché (2007: 522) and Green (2012: 366), the French case seems to suggest that although punitive rhetoric and policies have indeed been imported from the United States and United Kingdom, these punitive influences have not altered France's institutional structure nor its moderate ideological orientation towards criminal justice and valuation of human rights over retribution. Others like Bérard and Chantraine (2013: 16-17, 162) argue that the contradictions within France's recent penal reforms are the result of conflict between competing agendas advocated by state actors, politicians, social activists, and so on. The result was contradictory penal reform that, for example, increased the number of admissions to prisons while also facilitating more conditional releases (Bérard & Chantraine 2013: 78-79, 82; Sallée 2017: 255). These reforms also recognized prisoners' rights in some areas while reorganizing the penal system around the management of the dangerousness and risk, leading to the retraction of prisoners' rights in other areas (Bérard & Chantraine 2013: 162-163; Sallée 2017: 255). Bérard and Chantraine (2013: 16-17) show that at the heart of France's seemingly modernizing reforms remains an inherently punitive penal system that maintains a repressive domination of prisoners and that, ultimately, "constitutes one cog in the machinery used to discipline the poor" (28).

These examples lead me to another major limitation of the punitive turn thesis, something that Carrier (2010: 14) calls its "totalizing diagnosis". There is a tendency within punitive turn literature to focus mainly on the most severe examples of this trend, particularly the US and UK, while paying little or no attention to nations who have continued to show relatively stable trends (Webster & Doob 2007: 307-308) or to examples of non-punitive penal policy developments in punitive turn countries (Matthews 2005: 180). Within the punitive turn literature, the United States is generally accepted as

the model, representative of exactly how punitiveness unfolds in each country in which it takes root, resulting in the production of an oversimplified and universalizing explanation (Carrier 2010: 14-15; Hamilton 2013: 157; Webster & Doob 2007: 298). This oversimplification is aggravated by the fact that “punitiveness” has not been adequately defined or conceptualized, giving the punitive turn thesis a generality which, according to Matthews (2005: 178), has made it appear to be able to explain all sorts of penal trends.

Yet, such a totalizing diagnosis obscures or entirely ignores “the micro politics of the local” (Kornhauser & Laster 2014: 449). France’s experience with what, at face value, appeared to be punitive policies demonstrates the somewhat specious nature of the punitive turn thesis’ universalizing tendency. There is some evidence that, in recent years, American anti-crime political slogans have ended up in the speech and communications of French politicians and lawmakers who, like their American predecessors, utilized them in order to appear tough-on-crime and demonstrate to their constituents that they were carrying out a promised commitment to law-and-order (Roché 2007: 544; Shea 2009: 87-88, 101). However, a closer analysis reveals that aside from the fact that the slogans themselves are American, everything else about them, including their interpretation, application, and consequences, was distinctly French (Roché 2007: 520-522).

However, the argument for the importance of regional factors over transnational influences in determining punitiveness is not merely supported by contradictory examples such as Germany, Ireland, Scotland, and France. In fact, the limitations of the totalizing diagnosis inherent within the punitive turn thesis are equally apparent in relation to its chief exemplars: the United States, the United Kingdom, and Australia. In addition to their connections through a common colonial history, these three countries also speak the same

language, have comparable legal systems, and have retained close cultural, political, and economic ties over the centuries. Based on a reading of the punitive turn literature, it would seem reasonable to presume that these similarities have facilitated the transfer of punitive ideologies and policies between them.

However, according to Michael Tonry (2009: 377), the exceptionally harsh penal policies which developed in the United States over the course of recent decades have little to do with “amorphous and over-generalized” global trends like the rise of neoliberalism or the conditions of late modernity. He argues that more than any of these international trends, the criminal justice trajectory of the United States has been shaped by four factors unique to its historical, political, and cultural development (Tonry 2009: 379). The first of these factors is the presence of paranoia within American politics, particularly towards unseen and dangerous “others” who needed to be eradicated from American social and cultural life, which gave rise to various political crusades such as the xenophobic Red Scare of the early 20th century, the War on Drugs of the 1980s, and the millennial War on Terror (Tonry 2009: 380-382). Tonry (2009: 382) argues that paranoid political rhetoric eventually became mainstream and facilitated the adoption of punitive policies by weakening the American justice system’s commitment to human rights.

A second factor which Tonry (2009: 382-383) identifies as shaping American punitiveness is the United States’ history of religious fundamentalism and intolerance. The United States has a history of embarking on moralistic crusades against morally inferior ‘others’, which at different times in American history has been combined with its paranoid political style and resulted in the creation of disproportionate sentences (Tonry 2009: 383-384). The third factor which Tonry (2009: 384) argues has shaped American punitiveness

is the obsolescence of a constitution which remains unchanged since the 18th century and reflects outdated values and priorities. With regard to criminal justice, this has become problematic because American judges and prosecutors continue to be elected through a political process that forces them to campaign for votes, thereby tying them to public opinion and the sweeping emotional reactions and factual misconceptions to which it can be prone (Tonry 2009: 384-385).

Finally, the particular manifestations of punitiveness in the United States cannot be understood without a consideration of the nation's unique history of race relations (Alexander 2010: 6; Tonry 2009: 386). As paranoia, religious intolerance, and populism found their expression in politics and policies, one of the results was the racialization of crime and the maintenance of white dominance over African-Americans through the criminal justice system, resulting in their overwhelming incarceration (Alexander 2010: 136; Tonry 2009: 386-387). As Alexander (2010: 27-30) shows, each of the advances made by African-Americans in American society, from the Emancipation Proclamation through the Civil Rights Movement and even into the present, has been met by a fiercely repressive backlash intended to preserve the racial hierarchy. For example, the gains made during the post-Civil War Reconstruction Era, including Constitutional protections for African-Americans' right to vote, were met with terrorism, non-compliance with federal legislation, and eventually segregation laws and disenfranchisement (Alexander 2010: 30-31, 34-35). Similarly, the success of the Civil Rights Movement in bringing an end to Jim Crow segregation resulted in a backlash that saw crime become racialized and the criminal law increasingly used to maintain white hegemony and the place of African-Americans at the bottom of the American racial hierarchy (Alexander 2010: 56). Inherent and systemic racial

inequalities ensured that law-and-order agendas, like the War on Drugs declared by President Nixon and pursued by successive American presidents for instance, resulted predominantly in the arrest, incarceration, and permanent social exclusion of African-Americans (Alexander 2010: 47, 92-94, 136; Simon 2007: 141-142). As Alexander (2010: 12-13) shows, the mass incarceration of African-Americans creates a “racial caste system” that permanently excludes them from social and economic life in the United States, thereby perpetuating the racial hierarchy and inequalities of Jim Crow-era segregation.

There is an undeniable similarity between the development of punitiveness in the United States and United Kingdom and clear evidence of policy transfer between the two nations, especially during the 1980s between the Reagan and Thatcher administrations (Jones & Newburn 2005: 74). However, Newburn (2007: 426) warns us against placing too much emphasis on this policy transfer:

[I]t is vital not to overplay the globalized nature of such developments. While accepting that there are broad currents underpinning ostensibly comparable trends in a number of jurisdictions, [...] there remain significant divergences and [...] what has occurred in Britain is quite distinct in some respects—certainly in scale—from what has been occurring in the United States. Understanding these differences requires an analysis of the distinctive nature of the neoliberal political economies of the different jurisdictions, as well as the different political and sociocultural conditions within which penal policy making occurs.

Some of the differences to which Newburn (2007) makes reference to can be seen in the reintroduction of privatized prisons in the UK and US. The nature and timing of this reintroduction in both countries has been cited as an example of “the emergence of ‘United States-style’ penal policy developments in the United Kingdom” and there is an extent to which this is true, since the American experience gave the UK a pattern of prison privatization to follow (Jones & Newburn 2005: 59). British politicians and government ministers visited several privatized prisons in the US in order to make recommendations

about how the UK should proceed and a number of American corrections corporations allied themselves with equivalent corporations in the UK in order to lobby the British parliament for privatization and eventually to compete for contracts (Jones & Newburn 2005: 64-65).

However, there were also significant divergences between the two countries' experiences with privatization, historically, politically, and in terms of the outcomes produced by these policy changes. In the US, privatized prisons had first emerged in the 19th century before re-emerging again in the 1960s, growing rapidly over the next several decades as a result of the War on Drugs and tough-on-crime policies such as mandatory minimum sentences (Jones & Newburn 2005: 62-63; Shichor 1993: 114). In contrast, the UK already had a lengthy history with privatized prisons and corrections, extending from the Middle Ages all the way up to the 19th century (Jones & Newburn 2005: 63). Renewed interest in privatization in the UK during the 1970s was initially related to its potential utility in dealing with the detention and transportation of suspected illegal immigrants (Jones & Newburn 2005: 63). Yet the most significant difference between the two countries lies in the much greater extent to which privatization took hold in the US compared with the UK. One of the reasons for this is that lobbyists representing private interests wielded greater influence in the US than in the UK, due to key differences in their respective governmental structures, which gave lobbyists more opportunities to target key decision-makers (Jones & Newburn 2005: 70). In addition, unlike in the UK, local governments in many US jurisdictions were actively involved in lobbying the federal government for increased privatization, since privatized prison industry represented a source of employment and income for communities with economic problems during the financially

difficult 1980s and 1990s (Jones & Newburn 2005: 70). When combined with the US' vastly larger and growing prison population, these factors caused prison privatization to develop into a bigger market in the US than it did in the UK (Jones & Newburn 2005: 71). This example shows that although both the US and UK followed a similar tough-on-crime policy agenda, their resulting experiences were not at all similar.

The Australian example further demonstrates that attributing a nation's punitiveness solely to the influence of its geopolitical neighbours effaces that nation's unique social, cultural, institutional, and political composition (Kornhauser & Laster 2014: 449; Tubex et al. 2015: 367). Although the 90% increase in Australia's incarceration rate since the 1980s is often attributed to American and British influences, this explanation overlooks the exceptional penal history that has shaped Australia's criminal justice system (Kornhauser & Laster 2014: 447, 449). As the "great social experiment of the 18th Century", transportation to Australia offered a more humane alternative to the barbaric violence of England's "Bloody Code", an alternative which simultaneously offered foolproof incapacitation and the chance of rehabilitation (Kornhauser & Laster 2014: 449). But the need to maintain control over such a potentially dangerous population led to the creation of a penal regime that became especially brutal and severe, traces of which remain present within contemporary Australian society (Kornhauser & Laster 2014: 451-452). This is the reason why, in spite the fact that countries like the US are moving away from incarceration, Australia "simultaneously remain[s] wedded to the prison while also preserving an apparent aptitude for innovation and a willingness to experiment with alternatives" (Kornhauser & Laster 2014: 449). These contradictions to the punitive turn thesis have prompted many scholars (e.g. Green 2012, Kornhauser & Laster 2009, Newburn 2007,

Oberwittler and Höffer 2005, Tonry 2009, Tubex et al. 2015, and Roché 2007 among others) to reject it on the grounds that, while there may be evidence of transference of political rhetoric and even of policies between nations, the root causes of punitiveness are to be found in regional dynamics rather than in any sweeping transnational trend.

Finally, yet another problem with the punitive turn thesis is its “critical pretension” (Carrier 2010: 16; Piché 2014: 20). Carrier (2010: 17) suggests that there seems to be an unarticulated common sense underlying the literature’s romanticizing of the disciplinary era and vilifying of the punitive era, which suggests that we now punish badly (Carrier 2010: 17). Within this lies a tacit acceptance of the legitimacy of the state’s right to impose punishment and inflict suffering, which results in a critique which at best is timid and at worst is counter-productive because it naturalizes the state’s use of penal power (Carrier 2010: 17; Piché 2014: 20). Discourse about the punitive turn reproduces the erroneous idea that some penal sanctions are acceptable and desirable and others are punitive and therefore undesirable, which obscures the fact that all sanctions are inherently punitive and legitimizes and perpetuates “a penal status quo that inflicts pain and fails to meet the complex needs of those affected by criminalized conflicts and harms” (Piché 2014: 20). Matthews (2005: 196) also suggests that the punitive turn thesis’ fundamental limitation is not its exaggerated claims about global crime control trends, but rather that this fatalistic narrative is delivered without any “viable strategy or political programme” or even any “conceptual tools by which we could realistically address these issues”. Based on these limitations and critiques, the utility of the punitive turn thesis in explaining what has been happening in Canada can legitimately be called into question. In the next and final section of this chapter, I will discuss the “penal intensification” thesis as an alternative narrative by

which we can attempt to make sense of the changes that have occurred in Canada with regard to crime control over the last several decades.

9. THE CANADIAN CASE: PUNITIVE TURN OR PENAL INTENSIFICATION?

The changes which have occurred in Canada over the last few decades, and which I briefly summarized earlier, have generated spirited debate about whether or not Canada's experience is demonstrative of a punitive turn. There is evidence to suggest that, even prior to Stephen Harper's 2006 election, punitive tendencies were already on the rise in Canada (DeKeseredy 2009: 305-306; Snider 1998: 32). Throughout the late 1990s and early 2000s, the Chrétien and Martin governments implemented a variety of policies which followed the punitive example of more punitive jurisdictions like the US and UK (DeKeseredy 2009: 305-306; Snider 1998: 32). Zero-tolerance policing, a "made-in-America" crime control strategy, was put into practice in cities like Toronto and Winnipeg in order to deal with street-level drug dealers, panhandlers, squeegee kids, prostitutes, and the homeless (Bayley & Shearing 1996: 589; Comack & Silver 2008: 818, 822; DeKeseredy 2009: 307; Gordon 2005: 72; Roberts et al. 2003: 9). Maximum sentences were increased for a variety of offences, mandatory minimum sentences were created, and parole eligibility was reduced (Doob & Webster 2006: 333; Zinger 2012: 120). The political discourse surrounding these changes in penal policy demonstrate that Canada was already home to a vibrant tradition of populist punitiveness before Harper's election (Laycock 2005: 173; Sawyer & Laycock 2009: 136). In the decades leading up to the 2006 election, Canadian populist politicians, particularly those from the right-wing parties that would eventually merge to become the Conservative Party of Canada, sought the support of disillusioned special interest groups by rhetorically positioning themselves as antagonistic to the Canadian political elite and as

promoters of a tougher brand of justice that would revive the ailing and ineffectual penal system (Landreville 2007: 36; Laycock 2005: 173, 180-182). It has been argued that, following the 2006 election, the Harper Conservatives continued and expanded this populist punitive tradition by, among other things, fomenting the fear of crime while simultaneously characterizing their opponents as out of touch elites and positioning themselves as only party capable of adequately protecting Canadians from the criminal threat through the necessary imposition of common sense tough-on-crime policies (Kelly & Puddister 2017: 394-395, 404-406; Mallea 2010: 9-12; Prince 2015: 66; Snow & Moffitt 2012: 271, 282).⁴

Ultimately, by the early to mid-2000s, the similarities in political rhetoric and policies between Canada and seemingly punitive nations like the US, UK, and Australia, as well as the political, cultural, and economic similarities that we already shared with these nations, led many scholars (e.g. Bauman 2000, Pratt 2002, Haggerty 2001, Young & Hoyle 2003) to conclude that Canada was indeed succumbing to a punitive turn. In response, other scholars (e.g. Meyer & O'Malley 2009; Webster & Doob 2007; 2006; DeKeseredy 2009), argued that Canada was the exception to the rule. Pointing to Canada's relatively stable imprisonment rates, Webster & Doob (2007: 297) argued that, despite the adoption of punitive rhetoric and policies, Canada had managed to avoid the catastrophic mass

⁴ The particular brand of populism employed by the Harper Conservatives is identified in academic literature as "market populism", a distinctly neo-liberal type of populist politics (Kelly & Puddister 2017: 404; Mann 2016: 51, 57; Sawyer & Laycock 2009: 140; Snow & Moffitt 2012: 272-273). In accordance with this neo-liberal market populist orientation, the Harper Conservatives takes as their goal the freeing of the economic market from external constraint, but sought to accomplish this through populist strategies that included appealing to the common sense of "the people" (i.e. taxpayers) in order to pit them against "the elite" (e.g. establishment politicians, academics, special-interest groups) as well as those who are economically unproductive (e.g. welfare recipients, "criminals", refugees, etc) (Kelly & Puddister 2017: 404-405; Mann 2016: 57; Prince 2015: 65; Sawyer & Laycock 2009: 140; Snow & Moffitt 2012: 271-273, 284). It is argued by some that the punitive aspects of the Harper agenda emerged out of this larger neo-liberally-inspired market populist orientation (Kelly & Puddister 2017: 404-406; Prince 2015: 65-66; Sawyer & Laycock 2009: 143; Snow & Moffitt 2012: 273).

incarceration experienced by truly punitive countries like the US. They attributed this exceptionalism to the presence of a variety of protective factors unique to Canadian society which had so far shielded it from the undesirable consequences of the new punitiveness (Webster & Doob 2007: 297). For example, they point out that Canadian judges experience much less political interference than their American counterparts due to their insulation from the political process and from public opinion, giving them the freedom to determine sentences without consideration of tough-on-crime rhetoric (Webster & Doob 2007: 344-346). They also make mention of the “culture of restraint” in Canada that has historically minimized the use of custodial sentences and favoured rehabilitative alternatives (Webster & Doob 2007: 338). The conclusion reached by Doob and Webster (2006: 360) and Landreville (2007: 23) was that Canada had indeed experienced an increase in some indicators of punitiveness, but that their negative impacts had largely been blunted by the moderating presence of Canada’s unique political, social, and legal protective factors.

At that time, in 2007, Webster & Doob (360) had warned that the proliferation of harsher criminal justice policies by the then newly-elected Harper government could render these protective factors less effective in countering punitiveness, yet they still expressed an overall optimism about the future of Canadian criminal justice. Their assessment of the situation in 2015, however, was comparatively less optimistic. After reviewing the legislative and ideological changes introduced by the Harper Conservatives over the last decade, which I briefly summarized earlier, they suggest that these changes may have begun to lead Canada “down the punitive path from which Americans are currently retreating” (Webster & Doob 2015: 314). Nevertheless, they still maintained the hope that, in the long run, the previous 9 years of punitiveness would not be able to

expunge or override the influence of the preceding 75 years of penal moderation and restraint (Webster & Doob 2015: 314).

However, a number of scholars disagree with this argument concerning the punitive turn and the 'exceptional' place that Canada is believed to hold within it. Moore and Hannah-Moffat (2005: 85), as well as Comack and Silver (2008: 815), reject this notion of Canadian exceptionalism on the grounds that this characterization obscures the underlying punitiveness of Canadian criminal justice policies. Comack and Silver's (2008) analysis of the adoption of an American-inspired zero-tolerance policing strategy in Winnipeg shows that punitive ideology can and does lead to punitive practices in spite of protective factors, which challenges the notion of a Canadian exception to the punitive turn. However, there is a larger limitation of the punitive turn thesis in that it constructs a punitive/non-punitive dichotomy, often based predominantly on incarceration rates, which obscures the fact that crime control strategies are extremely complex and diverse (Comack & Silver 2008: 817; Matthews 2005: 181; Moore and Hannah-Moffat 2005: 85). The use of this narrow and under-theorized dichotomy contributes to the construction of the aforementioned romanticized portrayal of welfarism and the vilification of the disciplinary era which comes through in the punitive turn literature (Carrier 2010: 17). This conceals the excessive punitiveness and illiberality that existed beneath the apparent liberality of penal welfarism (Feeley & Simon 1992: 464; Moore & Hannah-Moffat 2005: 86, 97).

Rehabilitation, while commonly thought of as being the antithesis of punitiveness, becomes inherently punitive when combined with a neoliberal rationality which places the blame for criminality squarely on the individual's exercise of free choice (Moore & Hannah-Moffat 2005: 94; Moore & Hirai 2014: 13). The result in Canada was a coercive

rehabilitative structure which simultaneously delivered therapeutic help alongside the threat of further punishment and in which full participation and acceptance of responsibility became prerequisites for the authorities to be satisfied and for parole to be considered (Hannah-Moffatt 2000: 528; Fayter & Payne 2017: 27; Moore & Hannah-Moffatt 2005: 96-97; Moore & Hirai 2014: 8). To make matters worse, prisoners participating in counselling sessions with psychologists employed by CSC also face the added threat of having the things they disclose included in their institutional file, potentially leading to formal and informal consequences, in spite of the fact that the contents of these sessions are supposed to be confidential (Fayter & Payne 2017: 27). According to Valverde (1996: 362, 370), this coercive dimension of liberal governance emerges because its underlying rationality emphasizes individual autonomy and yet takes a pessimistic view of the individual's ability to make ethical choices about their self-governance—a characteristic which she argues makes “liberal governance logically dependent on despotism”. In many ways, the openly exclusionary attitude towards criminalized individuals and ambivalence towards their rehabilitation expressed by the Conservatives during their recent tenure can be understood as an extension of a less visible process which was already underway, in which the criminalized were simultaneously marginalized, pathologized, and responsibilized for their behaviour (Feeley & Simon 1992: 467; Moore & Hirai 2014: 13, 18; Webster & Doob 2015: 311-312; Zinger 2016: 5).

These critiques and limitations evidence the theoretical inadequacy of the punitive turn thesis as argued by Carrier (2010: 17), Matthews (2005: 195), and Moore and Hannah-Moffatt (2005: 85). Consequently, it now seems as though some scholars (see Piché 2015 and 2017, as well as Fiander, Chen, Walby, & Piché 2016, etc.) are favouring other

explanations like Sim's (2009) penal intensification thesis. After tracking the development of authoritarian policies in the UK over the decades, Sim (2009) concludes the fifth chapter of *Punishment and Prisons: Power and the Carceral State* by suggesting that certain authoritarian aspects of the Conservative Thatcher government survived as an undercurrent in Tony Blair's New Labour government. While there was no continuation of specific policies between these governments, there was a continuation and even an intensification in the use of the state's "coercive capabilities" to maintain law and order (Sim 2009: 94, 96). In light of the many critiques of the punitive turn and its obvious theoretical limitations, the notion of penal intensification seems to be a far more useful and appropriate explanation of the Canadian political and criminal justice context. As we have seen, the punitive turn thesis posits that a shift has occurred in Western nations leading them to embrace punitiveness; however, there is a great deal of support for the argument that punitiveness was already present in Canada. Political rhetoric advocating for tough-on-crime policies already existed, as did mandatory minimum sentences and other policies considered to be punitive in nature. Moreover, as Moore and Hannah-Moffat (2005) have shown, the "liberal and progressive" and even therapeutic (86) appearance of Canadian punishment during previous decades masked the reality of "an extremely punitive system" (97). Consequently, it would appear that, rather than inventing Canadian punitiveness, the Harper Conservatives simply intensified it by bringing the subtly punitive and covertly coercive elements of extant policies out into the open and affirming them as the default state position on criminal justice.

Ultimately, these debates about whether Canada is experiencing a sudden punitive turn or merely the intensification of a pre-existing and implicit punitiveness demonstrate a

tendency within criminology to focus overwhelmingly on manifestations of *criminal* law while overlooking or underemphasizing other forms of law. While they arrive at different conclusions concerning the relative punitiveness and overall significance of recent penal trends, both the punitive turn and penal intensification theses are centered overwhelmingly on criminalization, incarceration, deterrence, and other issues relating to criminal law and criminal justice policy. Consequently, these debates do not account for the great diversity of legal regulatory practices at work within Canadian society and how these are changing and evolving over time. As the coming chapters will show, focusing on *signification* rather than *punitiveness* broadens the scope considerably and has the opposite effect. Rather than obscuring or masking the diversity of legal forms of regulation and regulatory practices, Barthesian semiotics brings these into focus and sharpens the contrast between them, thereby facilitating a more nuanced and comprehensive analysis. Examined in this way, instances of criminalization like those at the heart of the debates about punitiveness can be understood as part of an overarching trend that also includes seemingly disparate instances of decriminalization and legalization. Although within the punitiveness literature these modes of regulation often appear to be opposite poles on a spectrum of penal severity, my examination, elaborated through chapters 4-6, reveals that recent exemplars of criminalization, decriminalization, and legalization are all furthering *juridification*—a process whereby state control is embedded further and further into society and into the lives of individuals at the expense of their autonomy and agency (Blichner & Molander 2008: 42-43; Hunt 1997a: 105; Loick 2014: 760-761; Smart 1989: 17, 20; Teubner 1998: 389). This argument is explored in more depth in chapter 6.

10. CONCLUSION

The changes brought about by the Harper government between 2006 and 2015 have been viewed by many over the years with a sense of alarm. From the very beginning of their 2006 campaign, the Harper Conservatives promoted a tougher approach to criminal justice and, once elected, they vigorously pursued this agenda by implementing punitive legislations. At face value, the Harper Conservatives' punitive ideology and the harsh policies to which it led appear in stark contrast to their Liberal predecessors under the Chrétien and Martin administrations. One criminal justice expert, quoted by a news media source, suggested that "[u]nder Stephen Harper's watch, Canada underwent a fundamental shift from being a principled, human rights-based system to an 'ideological grab bag of repression and meanness'" (Harris 2015). This perceived difference between the two parties becomes even more pronounced when the Conservative Harper administration is compared with the Liberal Trudeau administration. As one optimistic criminal justice commentator put it, "[t]here is widespread expectation among progressive lawyers, criminologists and community and mental health workers that Justin Trudeau's Liberal government will reverse some of Stephen Harper's draconian criminal laws" (Youssefi 2015). As if responding to this expectation, the Trudeau government promised to adopt "a more principled approach" (Harris 2015) to criminal justice by, among other things, legalizing marijuana, repealing controversial Conservative legislations like the anti-terrorism provisions of Bill C-51, and by enacting legislation aimed at addressing some of the long-standing problems which have plagued our criminal justice system such as overcrowding and the treatment of the mentally-ill (Bear 2017: 97; Fine 2015; Harris & Crawford 2015). These changes have been optimistically interpreted as potential evidence

of “a fundamental shift to a less ‘punitive’ approach to criminal justice” (Harris & Crawford 2015).

This perception of difference between the Liberal and Conservative parties based on their disparate criminal justice agendas might help explain why some scholars have been drawn to the ‘punitive turn thesis’ explanation of the Canadian experience. A conceptualization of recent Liberal administrations as progressive and forward-thinking and of the Harper Conservatives as authoritarian and retributive corresponds to the punitive/non-punitive dichotomy upon which the punitive turn thesis rests. However, as I discussed earlier, a closer examination of the punitive turn thesis suggests that this explanation is both misleading and unhelpful because it produces an oversimplified account that fails to consider the many possible variations and degrees when it comes to the relative punitiveness of crime control strategies and the penal system (Carrier 2010: 17; Comack & Silver 2008: 817; Matthews 2005: 181). The result is a romanticized view of the past that often leads to the conclusion that we need to return to the efficacy of our former methods of punishing (Carrier 2010: 17). When applied to the Canadian case, this claim completely obscures the veiled coerciveness, illiberality, and punitiveness of criminal justice policies first implemented under the Liberals (Comack & Silver 2008: 815; Moore & Hannah-Moffat 2005: 86, 97; Valverde 1996: 370). This makes it appear as though the tough-on-crime agenda pursued by the Harper Conservatives was a regressive de-civilizing of the criminal justice system, rather than a continuation and intensification of a trend that was already present in Canada, albeit hidden beneath the surface of liberal policies. This can only serve to reinforce the now-familiar political tropes of retributive and regressive Conservatives and forward-thinking and progressive Liberals.

Yet these tropes reveal that there is something profoundly symbolic and communicative occurring within the politics of criminal justice. In other words, this rhetoric and the practices they lead to *signify* something. During the Harper years, this was apparent in tough-on-crime rhetoric that demonized criminals and idealized the victims of crime (Comack et al. 2015: 31). It was also discernible from policies which appeared to serve no other purpose than to construct and substantiate their image as a tough-on-crime government and of their opponents as weak and ineffectual (Doob 2012: 12-13; Kelly & Puddister 2017: 407). The eradication of the faint hope clause is one such example of a legislative change which, in light of declining overall crime rates and the fact that this particular provision is only ever invoked by a handful of people every year, supports the conclusion that some policy changes are meant to be more symbolic than substantive (Roberts 2009: 538; Webster & Doob 2015: 315-316). A number of scholars have critiqued this use of the legislature and of government authority by the Conservatives under Stephen Harper (e.g. Behiels 2014, Doob 2012, Martin 2010, and Webster & Doob 2015). However, as we have seen, previous Liberal governments enacted laws that were inherently coercive and punitive. Moreover, many of the Liberals' legislative changes possessed a similar symbolic quality to those implemented by the Conservatives, such as the zero-tolerance targeting of certain categories of dangerous offenders (e.g. prostitutes, drug traffickers, etc.) (Bayley & Shearing 1996: 589; Comack & Silver 2008: 818, 822; DeKeseredy 2009: 307; Gordon 2005: 72). However, unlike the Harper Conservatives, previous Liberal governments seem to have done so while maintaining the overall veneer of liberalism with all of its progressive and civilized connotations. Neocleous (2008: 13) argues that it is this perception of liberalism which actually facilitates the unquestioning acceptance of

profoundly illiberal and authoritarian policies. This suggests that criminal justice legislation and the political rhetoric that accompanies it is a process of signification. This dimension—the signifying value of recent policy trends—is explored further in the next chapter. As I will show in later chapters, when the focus becomes *signification* rather than *punitiveness*, the seeming distance between political parties and policy agendas disappears and the modes of regulation they favour, whether criminalization, decriminalization, or legalization, can be understood as forming part of an overarching process of juridification.

Chapter 2 - The Search for Meaning: Radical and Critical Criminological Approaches to Signification

1. INTRODUCTION

The extent and degree to which the Canadian justice landscape has changed in recent years has caused alarm among those working within the criminal justice system, as well as politicians, various interest groups, academics, and many others. One of the questions that has recently come to the forefront in mass mediated debates on the issue asks what these dramatic changes mean. A number of differing and conflicting meanings have already been attributed to these criminal justice trends. In the previous chapter I discussed two such examples: the punitive turn thesis and the penal intensification thesis. However, as I argued, attempts to find meaning in these recent trends are often highly reductive and under-theorized. Before this question can be reasonably addressed, it is necessary to begin with *signification* – the ways in which meaning is produced and conveyed. Meaning has been a longstanding interest within the social sciences and humanities but signification has received much less attention. A great deal of literature exists on the subject of meaning, written from within a wide range of academic disciplines and scholarly traditions or schools of thought. For example, the oldest approach to discerning meaning is hermeneutics, which began as the scholarly interpretation of sacred scripture and is now a mainstay across the humanities and social sciences (Craib 1992: 28, 233). German philosopher Wilhelm Dilthey is a representative of this tradition as is Hans-Georg Gadamer (Craib 1992: 233; Šuber 2010: 270). Dilthey had an enormous impact on the social sciences given his influence on the work of Max Weber and the latter's notion

of *Verstehen* (i.e. understanding) (Feest 2010: 1; Šuber 2010: 267, 276, 280; Weinberg 2014: 5).⁵

Additionally, social constructionism, rising to prominence in the post-war period, is concerned with how human beings interpret and experience the world (Burr 2003: 3; Weinberg 2014: 1-2). Broadly speaking, social constructionism falls into this hermeneutic tradition but is also heavily based on symbolic interactionism, a philosophy proffered by the pragmatist G.H. Mead and interpreters such as Blumer (Carter & Fuller 2016: 932-933; Craib 1992: 85; Maines 2001: xii; Stryker 1980: 33-34; Weinberg 2014: 8). In the 1970s and 1980s as social science went through the “linguistic turn”, the focus on meaning and especially the linguistic mechanisms important to its production and dissemination, increased (Carter 2013: 583; Palmer 1992: 3; Partner 2009: 827; Peters 2013: 39). All of these developments and others have led to what today is called the interpretive tradition in social science, which is a formidable rival to positivism. This rivalry is sometimes seen to pit the analysis of structure against that of social action and this has been worked out in innumerable ways and there is much variation within each camp. However, for the purposes of this chapter I will side-step these debates, as I am interested not in “structure vs. action” or “macro vs. micro”, the differentiated nature of interpretivism or even the merits of the interpretive tradition, but rather in the production of what in our society have become hegemonic and naturalized understandings of crime, law and justice and, crucially, how these have been and are produced and reproduced via ideological and discursive mechanisms.

⁵ According to Weber (1947: 88), sociology “is a science which attempts the interpretive understanding of social action in order thereby to arrive at a causal explanation of its course and effects”. The notion of *verstehen*, or “understanding”, is central to Weber’s conceptualization of sociology as an interpretive science whose focus is to understand how individual behaviour is shaped through meaningful social interaction (Tucker 1965: 157).

Critical criminology is an umbrella term that refers to a variety of interpretive approaches that place a strong emphasis on uncovering and challenging these hegemonic and naturalized ways of understanding crime (Brooks 2008: 54; Kilty 2014: 2-3; McLaughlin 2011: 51-53). Critical criminology evolved from earlier Marxist and radical criminologies that posited that the dominant conceptualizations of crime, law, and criminal justice issues were ideological and produced a *mystification*, an obscuring of reality that served dominant interests, and they emphasized that a key responsibility of social scientists is *demystification* – a commitment to questioning and challenging the dominant ideologies on crime and justice (Box 1991: 12-14; Caputo & Hatt 1996: 416; Hulsman 1986: 70-71; McLaughlin 2011: 51; Muncie 1998: 224; Rock 2002: 65; Spitzer 1975: 638; Young 1998: 17). In this chapter, I trace the evolution within radical criminology from a simple Marxism, represented by Taylor, Walton, and Young, towards a more nuanced cultural Marxism exemplified by the Birmingham School. I argue that radical criminology's emphasis on demystification reached a pinnacle of theoretical and methodological sophistication at the Centre for Contemporary Cultural Studies (CCCS) at the University of Birmingham. As I will show, the unique strategy of "raiding" other disciplines for useful conceptual and analytic tools produced new approaches to understanding and exposing ideological signification. The combination of cultural Marxism and Barthesian semiotics in the work of Birmingham scholars like Dick Hebdige, for example, facilitated a demystification of the styles of various youth subcultural groups in postwar Britain.

In this chapter I discuss the profound influence that the Birmingham School had on the radical and critical criminological project and its goal of demystifying crime and criminal justice issues, as well as the gradual rejection of Marxist theory by critical

criminologists throughout the 1980s and 1990s. I argue that, as a direct result of this purge of Marxism from critical criminology, the robust analytic tools developed by the Birmingham School have fallen into disuse, which is particularly regrettable given their proven usefulness for attaining the purported aims of critical scholarship. I further argue that the use of these tools can demystify recent Canadian criminal justice trends in order to help us gain a better understanding of what they signify. However, even more important than demystifying the signification of these particular events is the way that the tools of Birmingham School illustrate the value of Barthesian semiotics for the demythologization of other phenomena. The purpose of this chapter, in relation to the rest of my dissertation, is to situate my contribution to criminology as an academic discipline. Whereas the last chapter outlined some of the leading interpretations of what recent Canadian criminal justice trends signify, this chapter discusses the critical orientation within criminological scholarship that shapes such interpretations of meaning within our discipline. By establishing that contemporary critical criminology's aims of demystification are beyond its means, owing to the rejection and neglect of key theoretical and methodological tools, this chapter sets the stage for later chapters in which I will elucidate and illustrate a demystifying approach based on the semiotic method developed by Barthes and utilized by the Birmingham School.

2. RADICAL AND CRITICAL CRIMINOLOGIES

The key assumptions, methods, and orientations that we recognize today as forming part of critical criminology are based in an earlier tradition of Marxist-inspired radical scholarship that first emerged in the 1960s and 1970s. Although a number of countries

experienced this intellectual shift towards radical scholarship, including Australia, Italy, Germany, and Norway, the development of Canada's radical and critical criminologies has largely been shaped by the United States and United Kingdom, due to our close ties to both of these nations (Dandurand 1975: 49; DeKeseredy 2012: 61; DeKeseredy & Dragiewicz 2012: 9-10; DeKeseredy & MacLean 1993: 363-364). Consequently, it is on Anglo-American iterations of radical scholarship and their evolution into contemporary critical criminologies that I will focus in this section. In both the USA and UK, the development of radical and critical criminologies was beholden to a number of different intellectual traditions, including interactionism, phenomenology, feminism, and postmodernism (Barak 1998: 35; Michalowski 1996: 13; Pavlich 2001: 158; Stubbs 2008: 9, 12-13), yet Marxism has been the most significant influence in terms of developing its particular emphasis on the importance of demystification. So, although I acknowledge and will briefly mention the other diverse influences that have shaped the evolution of radical and critical criminologies, it is primarily on Marxist influences that I focus.

However, even by focusing and delineating my discussion in such a way, it is difficult to provide an account of this evolution that is at once comprehensive enough to avoid reductionism, yet is concise enough to remain on topic. One of the reasons that providing such an account is difficult is that there is conceptual confusion arising from the use of the "radical" and "critical" labels which obfuscates their lineage. There are four factors which contribute to the conceptual confusion surrounding these terms. First, each is, to one degree or another, an umbrella term that has subsumed a wide variety of divergent and often conflicting approaches to criminology (Brooks 2008: 54; Inciardi 1980: 7; Kilty 2014: 2-3; McLaughlin 2011: 51-53; Wright & Friedrichs 1998: 213) and this can produce

ambiguity about what these labels refer to in a given text. Second, there is a considerable degree of inconsistency in the application of these labels, made worse by the fact that there are a number of alternative ones that are often used interchangeably in the literature. For example, at various times “radical” criminology has also been referred to as “new”, “critical”, “conflict”, “Marxist”, “left-wing”, and “socialist” criminology, as well as “radical deviancy theory” (Friedrichs 1980: 35; Huff 1980: 61; Mungham 1980: 19; Taylor, Walton, & Young 1974: 441).

A third and related point is that there is little or no consensus in the literature on what some of these different labels mean or what they apply to. Fourth, the same labels can mean different things in different parts of the world and within different scholarly traditions. For instance, the radical label was applied to emerging approaches to criminology in both the UK and USA in the 1960s and 1970s, yet these approaches were very different. As we shall see, in the UK radical criminology generally referred to a Marxist-inspired understanding of crime, whereas in the USA it generally referred to a symbolic interactionist-inspired activist criminology that had evolved out of social and political struggles (Friedrichs 1980: 35-36, 38; Platt 1974: 2; Wollan 1979: 552). In the discussion that follows, I have done my best to describe the aspects of radical and critical criminologies that are most relevant to the concepts I wish to address in the chapter, while trying not to do these criminologies an injustice by oversimplifying them and presenting a caricature.

2.1 Marxism, Radical Criminology, and Ideological Mystification

At the outset, it is important to distinguish between the radical orientations that began to emerge in Britain and the United States. Early radical criminology in the United States began as a response to the social and political struggles that defined American society in the 1960s, such as the Civil Rights movement, the Vietnam War, incidents of police brutality against student protestors and political opposition (e.g. Black Panthers), as well as examples of political corruption like the infamous Watergate scandal (Friedrichs 1980: 35-36; Michalowski 2012: 37; Platt 1974: 2; Sykes 1974: 211-212; Wollan 1979: 555). These socio-political and historical factors caused many criminologists to rebel against the structural functionalist tradition in American scholarship (Michalowski 2012: 35; Quinney 1973: 592). This functionalist perspective saw the existing social order and law as representing a social consensus and saw punishment as a symbolic means of expressing society's disapproval for actions that violated shared values while symbolically reasserting those values (Huff 1980: 62-63; Schichor 1980: 2). However, during the 1960s, when radical criminology was first emerging in the USA, Marx had not yet had an impact on American scholarship to the same extent that he had in Europe (Friedrichs 1980: 38; Michalowski 2012: 36; Quinney 1973: 592). Throughout the 1950s and 1960s, Marxism had been rejected and repressed in American academia as a result of anti-communist sentiments, which limited the degree to which Marx's ideas influenced American radical criminology in its initial years of development (Michalowski 2012: 36; Platt 1974: 6). So, unlike their British counterparts who had early exposures to Marx, American scholars were primarily "radicalized" by witnessing and participating in the social and political struggles

of their day and not by exposure to radical theory or revelatory empirical data (Sykes 1974: 211).

In the absence of a Marxist scholarly tradition, American radicals disillusioned with functionalist conservatism or liberal criminologies turned to other perspectives already well-established within the American academy that resonated with their radical ethos, such as conflict theory.⁶ Conflict theory had developed during the 1950s and rejected functionalist criminology's pluralist notion of social consensus and developed the alternative conception that society is composed of different groups and individuals who are locked in competition with one another over limited resources (Friedrichs 1980: 39; Huff 1980: 63; Quinney 1973: 592; Schichor 1980: 3). Instead of being a reflection of society's shared values, the law and criminal justice system were understood by conflict theorists to represent the values and interests of whichever group of individuals has the advantage in the social struggle and become tools that these dominant groups use in order to maintain their advantage (Huff 1980: 63; Schichor 1980: 3). It was only later that radical American scholars such as Currie, Quinney, Turk, Platt, and others, discovered Marx and found in his work a set of concepts that helped to give theoretical shape and support for the radical beliefs that had been born out of their political and social activism (Friedrichs 1980: 38). Once exposed to Marx, many American radicals found conflict theory to be theoretically inadequate on several grounds, not least of which was its empiricism and its obliviousness to class and history (Quinney 1973: 592). Moreover, conflict theory relied on state definitions of crime and had reform of the criminal justice system as its goal, making it part

⁶ Reconstructions of the history of radical and critical criminologies offered in contemporary textbooks sometimes conflate Marxist and conflict theories, though these are in fact separate and irreconcilable theoretical perspectives.

of a liberal mainstream criminology that helped reinforce state ideologies about crime and condoned and reproduced a repressive status quo (Friedrichs 1980: 39, 43; Platt 1974: 2; Turk 1975: 42). Quinney (1973), for example, concluded that conflict theory was “misguided at best, and at worst a mistake” that had “served to mystify reality” (591) by becoming “merely another bourgeois academic enterprise” (592).

However, the influence of the radical understanding of crime produced by new readings of conflict theory, as well as labelling and deviancy theories, reached across the Atlantic as well, shaping the development of what in the UK was being called “radical deviancy theory”, “critical criminology” and, following the publication of Taylor, Walton, and Young’s landmark book by the same name, “the new criminology” (Mooney 2012: 17; Pavlich 2001: 150; Young 1988: 163, 169). British scholars too were influenced by counter-cultural currents and were galvanized by the troubling events of the late 1960s, including American war atrocities in Indo-China and the brutality with which political unrest among students was met in the United States and in France (Mooney 2012: 16; Pavlich 2001: 153). Like their American peers, radical British scholars rejected the positivist criminological mainstream and sought answers elsewhere (Mooney 2012: 14; Pavlich 2001: 153; Young 1988: 161). While they were strongly influenced by American interactionist scholarship, they also sought to innovate and expand interactionism and deviancy theory in radical new directions (Young 1988: 63). As Mooney (2012: 17) notes, “the innovation of the British theorists was to [...] place this in a macro-context that examined the dynamics of society as a whole”. Marxism was one of the theoretical frameworks that radical scholars in Britain like Taylor, Walton, and Young turned to in order to develop the structural macro-level context that was absent from liberal deviancy theory (Bankowski, Mungham, & Young

1977: 41; Mungham 1980: 26; Rock 1973: 594). This synthesis of Marxism with interactionism replaced the reformism that had been the goal of liberal deviancy theory with a commitment to work towards the abolishment of inequalities (Mungham 1980: 26).

Radical criminology in Canada followed a similar development. As they had in the United States and in Britain, socio-historical factors in the tumultuous late 1960s combined with insights about deviance offered by interactionism and led to the rejection of positivist mainstream criminology and the search for radical alternatives by several Canadian criminologists (O'Reilly-Fleming 1996: 1). Moreover, as they had in Britain, insights offered by interactionism were combined with a humanist conceptualisation of Marxism "which recognized deviance as a natural phenomenon within the capitalist state, and linked itself with idealistic notions of the end of repressive state structures" (O'Reilly-Fleming 1996: 2). Canadian scholars were greatly influenced by American and British criminologists' readings of Marxism (DeKeseredy & MacLean 1993: 363). The influence of Marx's political economy seems to have been facilitated by the fact that Canadian academic criminology has traditionally been more receptive of European theory than academic criminology in the United States for example (Doyle & Moore 2011: 7).⁷ However, despite its close ties with the United States and Britain and its receptiveness to European theory, radical criminology in Canada took longer to gain momentum, owing to the resilience of the liberal and pluralist criminological mainstream and the isolation and marginalization of radical Canadian scholars (Dandurand 1975: 49; DeKeseredy & MacLean 1993: 366, 369; Ratner 1984: 156,

⁷ The influence of British criminology in particular is considered have been very strong, so much so that, according to Doyle and Moore (2011: 7), it still produces "a form of intellectual colonization where junior Canadian critical criminologists can be more familiar with developments overseas than with what has happened in their own country".

159). Nevertheless, the few criminologists who were pioneering a radical orientation to criminology in Canada were greatly encouraged by milestones in the development of radical criminology elsewhere, such as the 1973 publication in the UK of *The New Criminology* by Taylor, Walton, and Young (Ratner 2006: 649-650).

So, American, British, and Canadian radical criminologists arrived to Marx under similar and yet distinct routes; nevertheless, by the 1970s and through the 1980s, there was an explosion of Marxist theorizing within criminology (Russell 2002: 115). Although Marx had little to say about crime (Brooks 2008: 55; Carlen 1998: 65; Chambliss 1975: 149; Matthews 2012: 94) his conceptual framework provided a “sensitizing perspective” (Huff 1980: 64) that was used by radical criminologists to re-imagine the fundamental concepts at the core of the discipline, such as “crime”, “justice”, and “social control” in light of political economy (Friedrichs 1980: 52; Pavlich 2001: 156-157; Russell 2002: 115). In order to accomplish this conceptual re-examination, radical criminologists applied the method of *immanent critique* first invented by Hegel and later developed and refined by Marx (Antonio 1981: 332-334; Finlayson 2014: 1142; Pavlich 2001: 156). Immanent critique is a way of examining something, like an argument, discourse, ideology, etc., in order to identify its inherent contradictions for the purpose of exploring possibilities for change or the development of an alternative (Antonio 1981: 332; Pavlich 2001: 156; Sabia 2010: 687; Vincent 2008: 492; Wrenn 2016: 453). As a method, immanent critique requires that scholars immerse themselves into the internal logic of whatever they are trying to critique (Vincent 2008: 492) to find within it the raw materials or “critical resources on which the criticism depends” (Sabia 2010: 687).

Perhaps the best example of this approach is Marx's immanent critique of capitalism. Instead of trying to evaluate bourgeois economic production according to some kind of independent criteria, Marx identified its inherent contradictions and problems by comparing its purported aims or ideals with the practical realities of its outcomes (Pavlich 2001: 157; Wrenn 2016: 453). The application of immanent critique resulted in a radical new understanding of criminology, particularly with respect to crime's etiology and the relationship between the economy, the state, and the criminal justice system (Inciardi 1980: 7; Russell 2002: 115; Wollan 1979: 552). Inspired by Marxism, radical criminologists conceived of the mode of production as the main determinant of social relations and conditions and that the roots of crime are to be found in capitalist production and in the social relations that it imposes and perpetuates (Arrigo 1998: 40; Chambliss 1975: 149, 151; Currie, MacLean, & Milovanovic 1992: 12; Hulsman 1986: 66; Inciardi 1980: 7; Russell 2002: 115; Taylor, Walton, & Young 1974: 441-442; Spitzer 1975: 641).

According to Marxist-inspired radical criminology, the exploitative and alienating nature of capitalist relations of production invariably lead to deprivation and poverty among the working class, yet the ideology that surrounds capitalism encourages excessive consumption and, by extension, greed and selfishness (Brooks 2008: 55; Chambliss 1975: 150-151; Friedrichs 1980: 38; Matthews 2012: 94-95; White 2008: 37). Together, these factors create drastic social divisions which cause some among the poor to enter into a life of crime as a means of survival (Brooks 2008: 56; Chambliss 1975: 150; Platt 1974: 6; Taylor et al. 1974: 444). The rich and dominant classes also engage in crime, yet their criminal activities tend to be disguised as legitimate and economically productive business activities and obscured by the inordinate attention paid by the state on "street crime" (Hall

et al. 2013: 181; White 2008: 33). Unlike the lower classes whose criminal activities are rigorously policed, the dominant classes appear to be able to break the law with impunity (Box 1991: 219; Chambliss 1975: 152; White 2008: 38).

For Marxist-inspired radical criminologists, this obvious disparity between the crimes of the poor and marginalized and the crimes of the rich and powerful points to the existence of an ideological mystification regarding crime (Box 1991: 12; Mungham 1980: 26; Spitzer 1975: 638). The very concept of “crime” is understood by Marxist criminologists to be an ideological construct that serves a vital function in helping to maintain capitalist relations of production (Box 1991: 7; Brooks 2008: 58-59; Chambliss 1975: 151; Hall et al. 2013: 168-169). They note that the crimes which are enforced by the law and punished by the criminal justice system favour the interests of capital, helping the dominant class preserve its hegemony through both coercion and the mobilization of consent (Box 1991: 8-11; Brooks 2008: 56, 59; Chambliss 1975: 152; Hall et al. 2013: 200-202). This is no coincidence, as Marxist-inspired radical criminology asserts that the dominant class has the power to ideologically define what constitutes “crime” and “deviance” because it dominates the political institutions, such as law, the police, education and mass media, necessary to apply these definitions to those who threaten capitalist relations of production or disturb ruling class hegemony (Box 1991: 6-7, 209; Chambliss 1975: 151; Gordon 2005: 70; Hall et al. 2013: 183, 187-189; Pavlich 2001: 155; Quinney 1973: 593; Spitzer 1975: 640, 642).⁸

⁸ According to Spitzer (1975), there are two categories of people that present a challenge to the hegemony of the dominant classes. One of these groups, the “social junk”, is composed of those who represent a burden to the state due to their inability to participate in wage labour but are otherwise harmless, which he says includes the mentally and physically handicapped as well the elderly (Spitzer 1975: 645-646). The other group, the “social dynamite”, is composed of individuals who have the potential to question the status quo and resist dominant hegemony, which he says includes young people, the marginalized and alienated, as well as political radicals

This is the reason that laws against crimes which pose very little threat to the public, such as prostitution, panhandling, and loitering, are enforced with so much fervor by law enforcement (Gordon 2005: 64, 68, 70). As Chambliss (1975: 165) argues, “[c]rime is a matter of who can pin the label on whom, and underlying the socio-political process is a structure of social relations determined by the political economy”. Therefore, the state, having more resources at its disposal in the ideological struggle over criminalization, is able to define crime and apply the law in such a way as to ensure the continued and unhindered accumulation of capital (Brooks 2008: 58; Quinney 1973: 592).⁹ One of the most powerful of these resources is the mass media because of its ability to inform and shape public opinion (Brooks 2008: 59; Friedrichs 1980: 42-43; Hall et al. 2013: 217). However, the state must also work to ideologically preserve the perceived legitimacy and fairness of law and the criminal justice system (Box 1991: 14; Brooks 2008: 58; Friedrichs 1980: 42-43). This means that, in the short-term and in specific cases, the law and criminal justice system will side with the poor and marginalized against the dominant classes in order to bolster perceptions of their legitimacy and impartiality (Box 1991: 8; Brooks 2008: 58-59; Currie et al. 1992: 17; Hall et al. 2013: 191, 204-205).

Marxist-inspired radical criminologists argued that common-sense ideas people have about crime and criminal justice are saturated by ideology, which obscures the way things are and produces a mystification (Box 1991: 12-14; Hall et al. 2013: 164-165, 169;

(Spitzer 1975: 645-646). Some people, like alcoholics and drug addicts, can be considered as both “junk” and “dynamite” in that they are economically non-productive yet still have the potential to resist dominant hegemony (Spitzer 1975: 645-646). He argues that those who fall into the “dynamite” category are generally dealt with by criminal justice system (Spitzer 1975: 645-646).

⁹ For Marxists, this explains why an employer’s responsibility for a death in the workplace is constituted as negligence instead of murder for example (Brooks 2008: 57). Marxists have observed that court decisions involving corporate crime reveal that the rich and powerful get differential treatment and that there is a clear pro-business bias to judicial rulings (Currie et al. 1992: 16-17; Hall et al. 2013: 191).

McLaughlin 2008: 51; Muncie 1998: 224). Thus, “signification, the act of giving meaning,” was seen by radical criminologists as “either manipulative or misconceived, a matter of giving and receiving incorrect and deformed interpretations of reality” (Rock 2002: 66). Scholarship which failed to engage in conceptual questioning and uncritically utilized the pre-fabricated concepts and definitions provided by the state or mainstream media (as conventional positivist and administrative criminology were accused of doing) not only submitted itself to this mystification, but precluded itself from ever getting beyond it and ended up colluding with the same repressive system it should critique (Hulsman 1986: 70-71; Muncie 1998: 224; Schichor 1980: 4; Walton 1998: 2, 9).¹⁰ Therefore, “demystification”, the process of revealing those concepts that have become taken for granted as facts and actively subjecting these to immanent critique, became a central component of radical criminology and remains central to contemporary critical criminology as well (Caputo & Hatt 1996: 416; Friedrichs 1980: 43, 49; Hulsman 1986: 66; Kilty 2014: 2; Mungham 1980: 26; Pavlich 2001: 157; Turk 1975: 41). Attempts to demystify the concept of “crime”, for example, led a number of radical criminologists to conclude that crime has no ontological reality (McLaughlin 2011: 52-53; Stubbs 2008: 6). They argued that what we understand to be “crime” and who we consider to be “criminal” are based on the “definitional processes and enforcement practices of the criminal law and criminal justice system” (McLaughlin

¹⁰ Manders (1975: 54-55), for example, argues that labelling theory moved away from positivist notions of crime, but continued to accept and leave unchallenged many of the assumptions of liberal sociology, such as the notion of pluralism. Consequently, labelling theory remained “saturated by capitalist ideology” (53) and precluded itself from perceiving or understanding the importance of ideology, hegemony, or the mobilization of consent as forming the basis of social control (Manders 1975: 58). By focusing on societal reaction, labeling theorists embedded in a pluralist liberal tradition were seen by radical criminologists as “furthering ideological mystification” (61) by directing attention away from capitalist exploitation (Manders 1975: 58). According to Platt (1974: 2-3), interactionism’s acceptance of official definitions of crime amounts to “politically irresponsible hipsterism” which helps to ensure the continued misrecognition of state crimes, which include murder, the denial of indigenous rights, and various other brutalities.

2011: 52) and that “[c]riminalization is one of the many ways to construct social reality” (Hulsman 1986: 71). By following Marx’s approach to immanent critique, radical criminologists sought to develop alternative ways of understanding what had been taken for granted about these issues (Pavlich 2001: 161).

Taylor, Walton, and Young’s (1973) *The New Criminology* became a landmark text that exemplified this radical new way of understanding crime, mystification, and the need for criminologists to engage in demystification. Their approach to radical criminology had a tremendous influence on other radical scholars in Britain, as well as in Canada and the United States. However, the formulation of Marx in this early radical criminology was limiting, owing to a reductionist and determinist understanding of the ruling class as a unified group who impose a singular ideology that imparts a mystifying false consciousness on the lower classes.¹¹ Although the radical criminology pursued by Taylor, Walton, Young, and others, made the connection between ideological mystification and signification and devoted much attention to critiquing specific examples of it (e.g. the concept of crime), ideological signification was not discussed in any meaningful way. Yet, as I will discuss in the following section, some of Taylor, Walton, and Young’s contemporaries at the University of Birmingham, including Stuart Hall, Chas Critcher, Tony Jefferson and others, were developing their own radical approach that went beyond pointing to examples of mystification and provided a sophisticated understanding of mystification as a process of ideological signification.

¹¹ Owing to issues such as these, the question of whether Taylor, Walton, and Young’s approach was genuinely Marxist remains contentious among contemporary scholars.

3. BRITISH CULTURAL STUDIES AND THE BIRMINGHAM SCHOOL

By the 1980s, the radical criminology of the 1960s and 1970s had started to evolve into a more inclusive and generalized critical criminology (DeKeseredy & Dragiewicz 2012: 2; Friedrichs 1998: 77; Michalowski 1996: 13; 2012: 40-41; Russell 2002: 113). Prompting this transition was the increased influence within criminology of a wide variety of new literatures that included feminism, postmodernism, poststructuralism, the Frankfurt School, British cultural studies, and semiotics, which caused radical criminological scholarship to become critical in a broader and more inclusive way than its predominantly Marxist predecessors (Barak 1998: 35; Michalowski 1996: 13; 2012: 40-41; Stubbs 2008: 9, 12-13). The inclusion of these literatures within radical criminological scholarship seems to have somewhat diluted the orthodox Marxist critique that had been the core of critical criminology and had largely animated radical criminology (Michalowski 2012: 40-41; Ratner 2006: 654; Russell 2002: 114; Wright & Friedrichs 1998: 212). The evolution from radical criminology to critical criminology was marked by a gradual progression away from revolutionary Marxist analyses centered on historical materialism and political economy towards a “Western Marxism”, based on Althusser, Gramsci, and others, which was more focused on ideology and hegemony (Caputo & Hatt 1996: 417, 421-422; Michalowski 1996: 13; 2012: 40-41; Mooney 2012: 20; Russell 2002: 114). The influence of scholars from the Centre for Contemporary Cultural Studies such as Stuart Hall and Dick Hebdige on criminology is thought to be considerable, since they not only exemplified this more nuanced and sophisticated Western Marxism but also applied it to criminology in landmark studies such as *Policing the Crisis* and *Subculture: The Meaning of Style*, texts which remain quintessential examples of the new critical criminology (Michalowski 1996: 13; Mooney

2012: 20-21; Ratner 1984: 158; Young 1998: 28). In the next section I discuss the contribution made to criminology by the Centre for Contemporary Cultural Studies, better known as “the Birmingham School”, particularly as it relates to their unique conceptualization of signification.¹² Through an exegesis of *Subculture: The Meaning of Style* by Dick Hebdige, arguably one of the school’s greatest exemplars, I examine how Birmingham’s approach to signification facilitated demystifying research that remains an important, albeit underutilized, part of critical criminology’s literary canon decades later.

3.1 The Birmingham School’s Origins and Influences

The Birmingham School is considered to be a key institution in the development of cultural studies (Connell 2015: 274; Turner 2003: 62). The growing scholarly interest in culture that preceded the creation of the Birmingham School was triggered by important contextual factors in British society. The 1950s and 1960s were decades of intense change in Britain (Hall 1990: 12; Seidman 2004: 135). Internationally, the British Empire was breaking apart as several of its former colonies gained their independence, while also facing the complex new geopolitical realities of the Cold War (Hall 1980a: 4; Seidman 2004: 135). As I noted above, these decades were punctuated by violent conflicts all over the world, which included the atrocities of the Vietnam War, the coercive repression of student

¹² It is worth noting that the use of the term “Birmingham School” in reference to the Centre of Contemporary Cultural Studies is contentious. Stuart Hall (1990: 11), one of the Centre’s most prominent and influential scholars, rejected the term on the grounds that it implied that the department was unified around a single position. In contrast to this misleading implication of agreement and harmony, Hall’s (1990: 11) memories of his time at Birmingham were “mainly of rows, debates, arguments, of people walking out of rooms”. He notes that there was a lot of theoretical and methodological disagreement among the Centre’s scholars and that this helped to prevent orthodoxy from taking hold within the department (Hall 1980a: 26). It is also worth noting that many of the texts within the corpus that we have come to associate with the Birmingham School were actually written after their authors had left Birmingham and found positions at other universities. Thus, according to Hall (1990: 11), “there is no such thing as the Birmingham School”. However, while I acknowledge the contentiousness of the term as well as Hall’s important warning against reductionism, I have chosen to use the term on the grounds that it is by this name that the Centre for Contemporary Cultural Studies is most well-known.

protests in various countries, and so on (Mooney 2012: 16). Meanwhile, at home, British society was in a period of rapid social change resulting from the aftereffects of a severe economic depression and the subsequent development of the welfare state, the post-war re-establishment of capitalist production, and social unrest as various social groups (e.g. women, youth, homosexuals, minorities, etc.) advocated for their rights (Hall 1980a: 4; 1990: 12; Seidman 2004: 135). Another significant change was the “Americanization” of popular culture (Turner 2003: 33). Technological advances in post-war Britain facilitated the production of cultural representations like magazines, novels, newspapers, films, music, and television on a mass scale (Turner 2003: 34). The turbulent social and political changes, as well as the decline of traditional class culture and its replacement by a mass-mediated culture, brought issues of social relations and identity politics to the forefront and demonstrated the need to study contemporary culture (Hall 1990: 12; Seidman 2004: 135). However, orthodox Marxism, with its conceptualization of the economic base as determining all aspects of the superstructure including culture, seemed unable to adequately explain these social changes (Seidman 2004: 135; Turner 2003: 18).

Prompted by these changes and the questions that they raised, the Centre for Contemporary Cultural Studies was founded by Richard Hoggart at the University of Birmingham in 1964 (Connell 2015: 274; Turner 2003: 41, 62). Hoggart was among a new generation of British scholars whose origins were working class and whose scholarship was critically engaged with the new “mass culture” that was emerging in post-war Britain (Turner 2003: 35-36). Although Hoggart’s own scholarship was critical of this new mass culture, which he saw as usurping the place of a genuine popular culture that corresponded to people’s lived experience, he nevertheless helped to develop a new understanding of

culture as “a field of forms and practices” that needed to be further understood (Turner 2003: 39, 41). Hoggart, along with other notable British culture scholars such as Raymond Williams and E.P. Thompson, broke away from traditional conceptualizations of culture (Hall 1980a: 7; 1990: 12; Rojek & Turner 2000: 631). At the time, mainstream sociology was largely dependent on American structuralist and functionalist theories based on the work of Talcott Parsons and it was also strongly oriented towards positivism and “scientific” approaches to social science (Hall 1980a: 8). It had no well-developed concept of “culture” or “ideology” (Hall 1980a: 8).

Hoggart, Williams, and Thompson influenced many Birmingham School scholars to conceive of culture as being “the stuff of everyday life” (Seidman 2004: 136), composed of things like popular music, films, magazines, and television programs, rather than merely of elements of high culture like literature, classical music, and fine art (Connell 2015: 273; Rojek & Turner 2000: 631; Turner 2003: 63; Webster 2004: 854). However, it was under the direction of Stuart Hall, from 1969 to 1979, that the Birmingham School developed the theoretical insights and landmark scholarship which made its Marxist approach to cultural studies known internationally (Connell 2015: 274; Sparks 1989: 71; Turner 2003: 59; Webster 2004: 852). Under his guidance, Birmingham School scholars expanded the parameters of cultural studies into the areas of mass media, youth culture, race, ideology, history, and their effects on everyday life (Turner 2003: 63-64; Webster 2004: 852, 860). Another important dimension of this research “was understanding the ways in which power relations are regulated, distributed and deployed within industrial societies” (Turner 2003: 17).

Theoretically and methodologically, Birmingham School faculty and students drew on a wide range of influences, particularly under the directorship of Stuart Hall (Turner 2003: 59). According to Hall (1990: 15-16), this eclecticism was an intentional part of their strategy:

The strategy of the Center for developing both practical work that would enable research to be done in the formations of contemporary culture and the theoretical models that would help to clarify what was going on was designed as a series of raids on other disciplinary terrain. Fending off what sociologists regarded sociology to be, we raided sociology. Fending off the defenders of the humanities tradition, we raided the humanities. We appropriated bits of anthropology while insisting that we were not in the humanistic anthropological project, and so on. We did the rounds of the disciplines.

This strategy of “raiding” other disciplines for useful theoretical and methodological tools was made necessary by the frequent attacks made on the Birmingham school by scholars within these disciplines. Far from being accepted into the academic family, the Centre for Contemporary Cultural Studies was regarded by many as an affront to established scholarship and was marginalized from the very outset (Connell 2015: 274; Hall 1980a: 9; 1990: 12; Webster 2004: 854). Positivist sociologists considered cultural studies to be “hopelessly unscientific”, whereas liberal humanists considered it to be “a treason of the intellectuals” (Hall 1980a: 9). The opening of the Centre in 1964 was met with both suspicion and hostility and its founder, Richard Hoggart, was warned by some of his peers that he was jeopardizing his career (Webster 2004: 854). Similarly, Hall (1990: 13) recalls how on the very day the Centre opened its doors, they received letters from faculty members of the English and Sociology departments, stating that cultural studies was neither needed nor welcomed at the University of Birmingham.

It is perhaps as a fortunate consequence of this adversity that Birmingham School scholars were forced to develop the unique approaches to the study of culture for which

their work would later come to be so highly regarded. Their theoretical starting point, particularly throughout the 1960s and 1970s, was that sociology as well as the remaining humanities and the arts were replete with ideological assumptions that needed to be exposed and openly challenged (Hall 1990: 15). Hall (1990: 15) believed that this decision “to undertake a work of demystification to bring into the open the regulative nature and role the humanities were playing in relation to the national culture” may have had much to do with the hostility that Birmingham School scholars encountered from other departments. As a consequence of this orientation, Birmingham School scholars placed a great emphasis on theorizing and began the work of cultural studies by problematizing the definitions of culture they “raided” from other disciplines and explore alternative theoretical formulations rather than uncritically accepting them (Hall 1980a: 13-14).

3.2 Signification and the Birmingham School

When it came to producing a theoretical understanding of signification there are two bodies of literature that Birmingham scholars “raided” that I will focus particular attention on: structural Marxism and structural linguistics.¹³ Early Birmingham scholars

¹³ There were, of course, other disciplines and bodies of literature that were “raided” by the Birmingham School and which contributed to their conceptualization of signification. Symbolic interactionists in the United States, particularly the works of subcultural theorists doing ethnographic work at the Chicago school, also had an impact on the development of the Birmingham School by influencing its scholars to consider the importance of “experiential accounts” to their own work (Hall 1980a: 11). However, the other influences that the Birmingham School drew upon resulted in an interest in how such experiential accounts might fit into the larger context of history and social structure, a concern which was largely absent in symbolic interactionism (Hall 1980a: 11). This is because cultural studies emerged from the Weberian tradition of sociology (Hall 1980a: 11), whereas symbolic interactionism emerged from the Durkheimian tradition (Carter & Fuller 2016: 932; Maines 2001: xi-xii; Stryker 1980: 6). Feminist scholarship also had a significant impact on the theoretical development of the Birmingham School. According to Hall (1980a: 26; 1996: 268), feminist influences challenged their implicit male-centric assumptions and prevented the development of an orthodoxy within the department and produced a more rigorous conceptualization of culture and subjectivity, since understandings had to be continually challenged and reformulated in order to take women’s experiences of patriarchy into account. Finally, Foucault also had a notable influence on the development of the Birmingham School’s theoretical orientation, particularly through his

rejected traditional Marxism because its economic determinist framework was deemed to be of limited usefulness (Hall 1985: 97). They were, however, heavily influenced by the more complex articulations of Marxism that became available through English translations of the works of Louis Althusser, Antonio Gramsci, György Lukács, Lucien Goldmann, Jean-Paul Sartre, Walter Benjamin, and Theodor Adorno (Hall 1980a: 12; Marsh 2005: 389; Seidman 2004: 137; Rojek & Turner 2000: 633; Turner 2003: 17; Vincent 2008: 495).¹⁴ The work of Althusser and Gramsci provided the most enriching theoretical influence for Birmingham scholars, particularly because of their revision of the Marxist concept of *ideology*.

Marx and Engels (1965: 61) had argued that those who control the material means of production also control the necessary ideational means of safeguarding it. In other words, the dominant class was believed to possess the ability to exert control over the ideas of the subordinate classes by imposing their definitions of the social world (Marx & Engels 1965: 61). Thus, the original Marxist conception of ideology was entirely pragmatic; ideology's usefulness was based in its ability to transmit the values, beliefs, and outlooks of the dominant class directly into the consciousness of the subordinate classes, universalizing them as the defining ideas of that epoch (Hall et al. 2013: 139; Marx & Engels 1965: 61). According to this understanding, ideology functions as an illusion or inverted reality that leaves people with "false conceptions about themselves, about what they are

conceptualization of "discourse" and "power" (Hall 1980a: 25; 1988: 71; Rojek & Turner 2000: 637; Turner 2003: 25).

¹⁴ This Marxist influence did nothing to ameliorate the Centre's reputation at the largely conservative University of Birmingham. Webster (2004: 855-856) notes that the Marxist influences and socio-political engagement of its members earned the Centre an enduring reputation within the university as "an agitator's nest" full of "left-wing troublemakers".

and what they ought to be” (Marx & Engels 1965: 23). Marxists assert that the imposition of this illusion or false consciousness is necessary because capitalism consistently fails to deliver on its promises of freedom, equality and justice (Hunt 1993: 45). Thus, the role of ideology is to superimpose an imaginary condition of existence over the individual’s repressive reality in order to both manufacture and mobilize their assent and ensure the continuation of capitalist production (Althusser 1971: 162; Hunt 1993: 53; Poulantzas 1973: 50; Poulantzas 1978: 195).

Here as in other areas, Marxists like Althusser and Gramsci rejected oversimplified, reductionist, and conspiratorial conceptualizations of ideology inherited from traditional Marxism.¹⁵ Rather than presuming a passive subject who is a blank slate for indoctrination, this new generation of Marxists recognized the importance of the individual’s interpretive

¹⁵ As the 20th century progressed, Marxism went through a crisis, as a number of scholars found Marx’s conception of economic determinism and historical change to be reductive, limiting, and fraught with contradictions (Barrett 2012: 258; Bidet & Kouvelakis 2008: xiii; Craib 1992: 151-152; Goldstein 2005: 9; Seidman 2004: 120, 134; Vincent 2008: 495). While Marx’s original formulation suggested that communist revolution would restore “the working classes’ unalienated human self”, the degeneration of Marxist-inspired revolutions around the world into bloody totalitarian regimes suggested otherwise (Craib 1992: 182-183; Goldstein 2005: 11; Rojek & Turner 2000: 635; Tosel 2008: 41). Moreover, Marx’s predictions about the imminence of proletarian revolutions failed to materialize in Western Europe and North America, where capitalism continued to thrive and workers never developed a unifying class consciousness (Rojek & Turner 2000: 635; Seidman 2004: 134; Tosel 2008: 39). Thus, Marx’s legacy was a theoretical perspective fraught with contradictions and problems (Craib 1992: 150-151; Seidman 2004: 119; Vincent 2008: 495). Among other things, Marx’s reluctance to explain his basic concepts and presuppositions, including ideology, resulted in theoretical inadequacies which had to be addressed by a new generation of Marxists (Craib 1992: 150-151; Larrain 1983: 7-8; Seidman 2004: 126). For example, Marx’s discussion of labour, the concept at the centre of Marx’s theoretical framework, has been criticized for being confused and inconsistent (Seidman 2004: 127). In some instances the concept of labour is elevated to an idealist abstraction representing shared beliefs and values that guide behaviour and create solidarity, while in others it is reduced to a materialistic mode of social organization (Seidman 2004: 127). Therefore, the clarification, reformulation, and extension of Marxist theory became the preoccupation of a number of later Marxist scholars, including Antonio Gramsci, Louis Althusser, members of the Frankfurt school, and many others. These extensions and reformulations of Marxist theory resulted in the creation of a number of divergent branches and sub-branches of Marxism. For instance, the fundamental tension between Marx’s scientific aspirations and his moral vision produced two divergent perspectives: structural Marxism and critical Marxism (Seidman 2004: 33). Structural Marxism gave primacy to Marx’s scientific vision and sought to discover the laws by which society functions as well as its structural composition (Craib 1992: 151; Seidman 2004: 120). In contrast, critical or humanist Marxism rejected these scientific and economist aspects of traditional Marxism in favour of a more “voluntarist” version which focused its attention on human agency and interaction (Craib 1992: 152, 158; Seidman 2004: 120).

practices in the derivation of meaning from cultural artefacts (Goldstein 2005: 97). Of particular interest to cultural Marxists were the ways in which these interpretive practices are shaped by the institutional structures of society (Goldstein 2005: 103). There seems to be a general consensus among later Marxists that ideational influence is exerted through various state and non-state institutions including churches, schools, and the media (Althusser 1971: 154; Gramsci 1957: 74; Poulantzas 1969: 77; Spitzer 1975: 641). Collectively, these institutions provide a system of controls over individuals which help the ruling class preserve its hegemony and reproduce class domination (Althusser 1971: 146; Craib 1992: 150; Poulantzas 1969: 77; Spitzer 1975: 641). The education system, for instance, teaches individuals the skills, knowledge, and rules of behaviour which they need in order to be successful in the capitalist marketplace; however, this process also helps constitute those individuals as certain types of subjects and reproduces class submission (Althusser 1971: 132). Beyond simply asserting that the subordinate classes are under ideological control, cultural Marxism provided a theoretical framework through which the dynamics and functions of this control can be understood. People are not automatons that simply think what they are told to think – the reality is far more complex (Hall 1985: 96).

Ideologies are not monolithic structures imposing a “false” consciousness that supplies individuals with pre-fabricated opinions or beliefs, they are *paradigms* that operate at the “generative level” (Hall et al. 2013: 137) of thought within the mind of the individual, providing them with the essential conceptions which they develop into mental frameworks used to make sense of their lives and upon which they base their actions (Gramsci 1957: 58; Hall 1980a: 18; 1985: 99; Hunt 1993: 121; Purvis & Hunt 1993: 496;

Turner 2003: 19).¹⁶ Ideological paradigms include “the themes premises, assumptions, the ‘questions presuming answers’, the matrix of ideas, through which the variety of public ‘opinions’ [...] take coherent form” (Hall et al. 2013: 137). These ideological paradigms shape our understanding of the world, providing us with our most basic understanding of how society works, what our place is within it, as well as how we should behave (Hall 1985: 99). Together, these mental frameworks form a “world view” which becomes the terrain upon which all new information is considered and reasoned (Gramsci 1957: 59-60; Purvis & Hunt 1993: 496). Language and discourse play a vital role here. They do not reflect reality, but rather represent social relations in a way that allows them to take on a signifying value (Hall 1985: 98). This means that language and discourse serve as the vehicle or conduit for ideology, facilitating its transmission from person to person (Hall 1985: 99-100; Hall et al. 2013: 135). A discourse is made up of all the ways that we talk about something, but they are also much more than that (Hall 1997: 201). They become normative expectations that establish what can and cannot be legitimately said about that subject (Hall 1997: 201).

This understanding of ideology influenced Birmingham scholars to employ a Marxian immanent critique to examine the ideological understandings that pervade mass media and cultural representations, providing the ideational resources by which people construct meaning, as well as examine how these ideological definitions were enacted in

¹⁶ Drawing from Thomas Kuhn (1970: 10), we can understand paradigms as perspectives or ideas to which we subscribe and through which we make sense of new information. In *The Structure of Scientific Revolutions*, Thomas Kuhn (1970: 10) describes the central role that paradigms play in establishing what constitutes “normal science”, which he defines as being “research firmly based upon one or more past scientific achievements, achievements that some particular scientific community acknowledges for a time as supplying the foundation for its further practice”. Paradigms are essentially models or traditions that define the methods, theory, and research problems that constitute the mainstream in a given scientific field until a “scientific revolution” occurs and they are replaced by newer paradigms that have greater explanatory potential (Kuhn 1970: 10, 12, 23).

people's everyday lives through their practices and behaviours (Hall 1980a: 20; 1985: 100-103; Hall et al. 2013: 129; Pavlich 2001: 158-159; Seidman 2004: 137; Turner 2003: 19-20). It also convinced scholars like Hall (1985: 100) of the importance of deconstructing language and discourse to examine its effects on behaviour, in order to "decipher the patterns of ideological thinking which are inscribed in them". A classic example of the resulting cultural Marxist approach taken by Birmingham scholars is *Policing the Crisis: Mugging, the State, and Law and Order*, a landmark study which suggested that racial and class inequalities are rooted within the capitalist mode of production and that the negotiation of cultural signification through the media is a vitally important part of the maintenance of class hegemony (Hall et al. 2013: 337-339; Seidman 2004: 137-139).

The second notable "raid" by Birmingham School scholars that I will discuss introduced structural linguistics and semiotics into British cultural studies, particularly through the works of Ferdinand de Saussure, Charles Sanders Peirce, Valentin Voloshinov, Roland Barthes, Claude Lévi-Strauss, and Umberto Eco (Hall 1980a: 17, 60-61; 1990: 16; Hebdige 1979: 13; Seidman 2004: 136; Turner 2003: 10, 71). Up until Saussure, the study of linguistics had been diachronic, focusing almost exclusively on the history of changes that take place within a language, such as the evolution of English from Anglo-Saxon and its relation to other Indo-European languages for instance (Saussure 1968: 17-18; Manning 1987: 37). Instead of following this well-trod path, Saussure developed a synchronic study of linguistics, which was concerned with analyzing the universal structure of language, discovering its conditions of existence, as well as understanding its role in social life (Saussure 1968: 7; Manning 1987: 37). The premise of Saussure's (1968: 98-99; Chandler 2002: 14-15) theory is that language is a system of signs in which meanings are combined

with “sound-images”, both parts of which are psychological and which refer to an ontological reality. Signs are composed of a sound-image (e.g. the word “cat”), known as a *signifier*, which points to an underlying concept, known as the *signified* (i.e. the mental representation of the actual animal) (Barthes 1964a: 107; Chandler 2002: 14-15; Saussure 1968: 99).

One of the central tenets of Saussure’s (1968: 100; Chandler 2002: 22) original theory is that the relationship between a signifier and its signified is an arbitrary construction, rather than a natural relationship. For example, among English speakers the meaning of the linguistic signifier “cat” is the result of cultural convention alone, rather than any inherent connection to the animal it signifies. This also applies to phonetics, since there is no necessary connection whatever between the letters of the alphabet and the sounds that they have been associated with (Chandler 2002: 22). This means that signs are made up of constructed associations (Manning 1987: 39). However, the meaning of signs is subject to ongoing *semiosis*, a process by which signs make reference to other signs and together form *chains of signification* (Chandler 2002: 140; Manning 1987: 38). Over time, the social conventions which guide the expression and interpretation of these chains of signification gradually change, which in turn produces incremental changes in their meaning (Manning 1987: 38-39, 47). As a result, the meaning that individuals derive from signs is relative and any one sign can carry an infinite number of potential meanings—a concept known within semiotics literature as *polysemy* (Hebdige 1979: 117; Valverde 1991: 177).

Roland Barthes extended Saussure's original theory to suggest that signs fit together into complex and stratified systems of signification. As shown below in *Figure 1*, a sign, which itself is composed of a signifier and signified, can in turn act as a signifier pointing to a new signified, thereby forming a second-order sign (Barthes 1957: 216, 219; Potter 1998: 178; Silverman 1984: 26. Valverde 2006: 23-24). For example, the warning labels attached to most disposable coffee cups (e.g. "Attention: Hot") are communicative on several levels (Hermer & Hunt 1996: 472). Together, the label (signifier) and the communicated risk of injury (signified) form a first-order sign. However, this first-order sign can also suggest a disclaimer of liability on the part of the manufacturer in the case of personal injury due to misuse, creating a second-order sign (Hermer & Hunt 1996: 472). The first level, in which expression and content are combined in the warning label, is known as *denotation* (Barthes 1967: 38; 1971: 614). The second level, in which additional expressions and content are triggered in the mind of the viewer, is known as *connotation* (Barthes 1967: 38; 1971: 614; Chandler 2002: 140; Silverman 1984: 26). In order to explicate the difference between these levels of signification and how viewers navigate between them, Barthes (1957: 229) uses the analogy of looking through a car window – the viewer sees the surface of the window in front of them, while simultaneously being able to see beyond it to the scenery outside. Consider another example. The word "sweater" denotes a particular article of clothing, yet everyday use of this sign connects it with a number of additional second-order signs or connotations, like cold weather, long autumn walks, and so on (Barthes 1964a: 107). These connotations are not naturally connected to the word "sweater" or its denotative meaning, they are culturally and historically specific and depend on the viewer's understanding of certain sign relations (Barthes 1961: 135; 1964b: 42 Chandler 2002:

139).¹⁷ So, while there is arbitrariness to signs at the denotative level, signification at the connotative level is an intentional and motivated construction (Boer 2011: 219; Chandler 2002: 145).

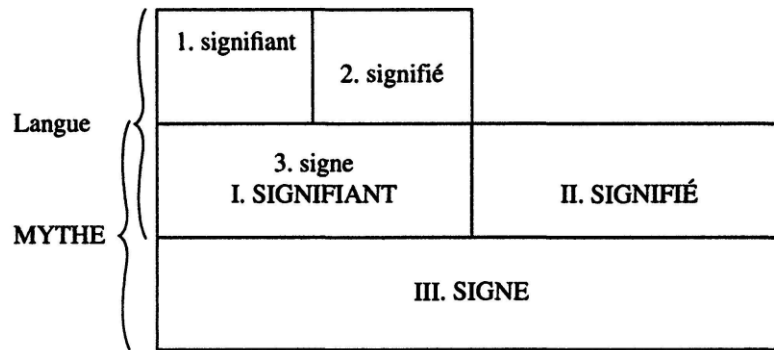


Figure 1: This illustration, provided by Barthes (1957: 187) in *Mythologies*, shows the way in which a signifier (1) and a signified (2), come together to form a first-order sign (3), as well as how this same first-order sign can become a new signifier (I) pointing to new signified (II) and together become a second-order sign (III).

One of Barthes' most valuable contributions is his explanation of how these second-order signs become myth. As illustrated in *Figure 1*, the transition between first-order and second-order semiological systems can transform the latter into *myth*. This occurs when connections between first-order signs (i.e. denotations) and second-order signs (i.e. connotations) become so familiar that they come to be seen as natural, self-evident (Barthes 1957: 81; 1971: 613), and are "so ingrained in a culture that they are no longer questioned" (Fry & Fry 1989: 187). Therefore, according to Barthes (1971: 613), myth is

¹⁷ Barthes (1964b: 41) provides an example of this in *La Rhétorique de l'Image*, in which he analyzes the mythic visual signification of an advertisement for Panzani pasta. He argues that the brand name, as well as the red, white, and green packaging are signs intended to carry connotations of "Italianicity" (Barthes 1964b: 41). Yet, he also observes that the "Italianicity" of the product is intended to be communicated to a French audience, for whom it would signify foreignness and authenticity, but that this signification would be lost on an Italian audience, for whom these connotations, that are largely based on tourist stereotypes, would be indecipherable (Barthes 1964b: 41).

the transformation of sign relations that are historical, cultural, social, and ideological, into “nature”. In *Mythologies*, Barthes (1957: 249) subjected his own cultural milieu to semiological analysis, revealing the presence of bourgeois and capitalist ideologies lurking just below the surface of the most revered elements of French culture, including wine, food, and even the Tour de France. His analysis reveals how something as seemingly innocent as children’s toys are infused with a variety of myths that essentially make them a microcosm of the adult world (Barthes 1957: 63). Toys marketed to boys, like GI Joes and fire trucks, prepare them mentally for war or for a role in the workforce. Similarly, toys marketed to girls, like dolls, prepare them for the role of motherhood (Barthes 1957: 63). Although they appear to be a completely normal and banal part of childhood, Barthes (1957: 64) suggests that these toys carry ideological connotations that are naturalized as myth and that support capitalist production by helping to transform children into consumers. Due to toys such as these that prepare children for different roles in the capitalist marketplace, “playtime” is no longer a wasteful and “non-instrumental activity” (Sears 2003: 195). By instrumentalizing childhood, consumer capitalist ideologies transmitted through toys transform today’s children into tomorrow’s workers (Sears 2003: 196). Thus, for Barthes, myths carry ideological meaning which is so naturalized by the myth itself that it appears already to be demystified (Chandler 2002: 144).

However, Charles Sanders Peirce, the American pragmatist philosopher, provided an alternative understanding of semiotics upon which the Birmingham School also drew. In contrast to Saussure’s dyadic model which sees signs as being composed of a signifier and signified, Peirce instead conceived of signs through a triadic model that adds another important dimension to the relationship between the form and content of signification

(Chandler 2002: 29; Fitzgerald 1966: 41; Yakin & Totu 2014: 6). Instead of being composed of *signifier* and *signified* as in Saussure's dyadic model, Peirce's triadic model is composed of *representamen*, *object*, and *interpretant* (Chandler 2002: 29; Fitzgerald 1966: 42; Yakin & Totu 2014: 7). The representamen is the form that the sign takes and it is described by Peirce (cited in Fitzgerald 1966: 42) as "something which stands to somebody for something in some respect or capacity". Stated differently, the representamen acts like a vehicle for meaning and is roughly equivalent to Saussure's signifier (Chandler 2002: 30; Peirce 1986: 67; Yakin & Totu 2014: 6-7). The interpretant, a second component of Peirce's triadic model, is the effect that is created in the mind of the individual perceiving the sign (Chandler 2002: 31; Fitzgerald 1966: 11, 40; Yakin & Totu 2014: 7). The third component of Peirce's triadic model, the object, is the thing that the sign makes reference to, which in Peirce's (1986: 67) model can be a material object existing in the real world or a concept existing in someone's mind (Chandler 2002: 29, 33; Fitzgerald 1966: 40; Yakin & Totu 2014: 7). While Peirce's work can at times be somewhat perplexing, his triadic model adds depth to the study of signs in that it considers the importance of the interpretive practices of individuals, something that Saussure's dyadic model does not.

Semiotics and structural linguistics brought the study of culture down to the level of everyday life and offered Birmingham scholars a ready-made conceptual framework and versatile methodology capable of facilitating an analysis of cultural representations of all kinds (Hall 1980a: 18; 1980b: 117; Turner 2003: 16). Understanding cultural representations as signs whose meaning is subject to ongoing change through semiosis opened culture up to analysis as never before, since scholars could now track how the meanings associated with cultural signs changed over time (Turner 2003: 14-15). In other

words, semiotics allowed Birmingham scholars to conceive of culture as itself constituting “a *signifying* practice” that determines meaning (Turner 2003: 18). Cultural Marxist and semiotic influences were combined by Birmingham scholars to produce a unique perspective on culture and signification. Their interpretation of the concept of *interpellation* serves as an example of this. According to Althusser (1971: 171), interpellation is the process by which ideology constitutes individuals as subjects. The identity of individuals is shaped by the continual barrage of pre-constituted and ideological social meanings to which they are subjected and of which they are not the authors (Althusser 1971: 172; Valverde 1991: 183). Althusser (1971: 174) explains how this is accomplished by using the analogy of a police constable “hailing” a passing pedestrian. If the pedestrian responds to the hail, it means that they have recognized and acknowledged the constable’s authority and legitimacy and have thereby constituted themselves as legal subjects (Althusser 1971: 174).

By approaching this concept from semiotics, which theorizes that signs are subject to an ongoing process by which they make reference to other signs and together form chains of signification (a process known as *semiosis*) (Chandler 2002: 31, 140; Manning 1987: 38), Birmingham scholars were able to conceptualize ideologies differently and better understand *how* interpellation occurs (Hall 1985: 104). From a semiotic perspective, ideology can be understood as embedded within chains of signification, which “hail” individuals through codes and connotations (Hall 1980b: 123; 1985: 102; Larrain 1991: 3). As Hall (1980b: 122) explains:

[s]igns appear to acquire their full ideological value—appear to be open to articulation with wider ideological discourses and meanings—at the level of their ‘associative’ meanings (that is, at the connotative level)—for here ‘meanings’ are *not* apparently fixed in natural perception (that is, they

are not fully naturalized), and their fluidity of meaning and association can be more fully exploited and transformed. So it is at the connotative *level* of the sign that situational ideologies alter and transform signification. At this level we can see more clearly the active intervention of ideologies in and on discourse...

These connotations or associative meanings are established through codes that are often learned at an early age (Hall 1980b: 121). So, for example, seeing someone use their napkin or correctly discern which fork is meant for which course of a meal can only signify their good breeding to someone who is already aware of the rules of proper dinner etiquette—in other words, if they have a code that allows them to correctly *interpret* what they have seen. Hall (1980b: 123) argues that these codes are essentially ideological fragments:

Codes of this order clearly contract relations for the sign with the wider universe of ideologies in a society. These codes are the means by which power and ideology are made to signify in particular discourses. They refer signs to the ‘maps of meaning’ into which any culture is classified; and those ‘maps of social reality’ have the whole range of social meanings, practices, and usages, power and interest ‘written in’ to them.

Therefore, for Birmingham scholars like Stuart Hall (1988: 60), signification is understood through a unique combination of cultural Marxist and semiotic influences that results in a conceptualization of cultural discourses (whether visual or linguistic) as battlegrounds in the struggle for power. Signs “hail” individuals by triggering associations and suggesting additional significations that are inherently ideological (Hall 1980b: 123).

However, there is no guarantee that these signs and codes, that are ideologically-laden, will be interpreted “correctly” in the manner intended. One of the advantages of Birmingham’s cultural Marxist approach is that it evades reductionist understandings of signification as a direct and determinist process. As I discussed earlier, there is a longstanding recognition within semiotics and structural linguistics of the concept of polysemy—that the ongoing process of semiosis, whereby signs point to more signs in a

potentially endless chain of signification, results in there being infinite potential meanings (Hall 1980b: 123; 1988: 59; Hebdige 1979: 117; Valverde 1991: 177). This makes it impossible to control or police the interpretive practices of the individual and enforce one particular interpretation of meaning over others. Similarly, Marxists like Gramsci and Althusser argued that ideology shaped the interpretive practices of individuals, rejecting the idea that they overrode individual agency altogether and imposed a false consciousness (Goldstein 2005: 97; Gramsci 1957: 58; Hall 1980a: 18; 1985: 99; Purvis & Hunt 1993: 496; Turner 2003: 19).

With respect to analyses such as *Policing the Crisis* for example, this intellectual heritage helped Birmingham scholars recognize that people are not robots who simply accept everything that the media tells them and are active in their interpretation of media messages (Seidman 2004: 137). Although the mass media is influential, it is not able to dictate what people think or endow them with a pre-fabricated ideological consciousness (Hall 1988: 59). Moreover, there is room for ideological struggle in the understanding of signification espoused by Birmingham School scholars. Hall (1980b:122) argues that cultural signs can be intentionally read with an “oppositional code”, which would produce an interpretation that differs from what is intended (Hall 1980b: 127). There is a “politics of signification”, an ideological struggle over meaning in which connotations are the deciding battle (Hall 1980b: 122, 127; 1988: 60; Hebdige 1979: 17). Signs can be reclaimed or “liberated” from the connotations or chains of signification they are associated with and can be joined to new ones (Hall 1988: 58). Dick Hebdige, another prominent Birmingham scholar, notes that the way some youth subcultures misuse language and appropriate controversial symbols to express “forbidden content [...] in forbidden forms” serves as an

example of the ideological struggle over signification that takes place through culture and style (Hebdige 1979: 91, 117). It is to Hebdige's landmark study of subcultural style that I now turn in the following section in order to further examine how the unique cultural Marxist and semiotic conceptualization of mystification as ideological signification developed by some Birmingham researchers produced demystifying scholarship.

3.3 Dick Hebdige and the Meaning of Subcultural Style

In *Subcultures: The Meaning of Style*, Hebdige's (1979) empirical referent is the unique styles that developed among youth subcultures and other marginalized groups in postwar Britain. He is especially interested in the "meanings" behind the dress, music, and cultural influences of groups that were seen as particularly subversive (Hebdige 1979: 2-3), including the "teddy boys", "mods", "punks", "skinheads", and so on. Like many of his contemporaries at Birmingham, he avoids the traditional functionalist, interactionist or aesthetic explanations of culture, opting instead for a theoretical framework that is informed by a semiotic and cultural Marxist orientation heavily indebted to Althusser, Gramsci, and Barthes. This theoretical point of departure is decisive in determining his understanding of his object of analysis. Based on this theoretical positioning, Hebdige (1979: 100-101) sees culture as being inherently ideological and this precludes him from seeing subcultural style as either innocent or meaningless. This theoretical positioning also means that, for Hebdige (1979: 127), a material object is a sign whose use constitutes a signifying practice. So, the garments, accessories, hairstyles, and so on, that make up a particular style are understood as having a significance attached to them that is actualized through the different ways that they are used by subcultural groups (Hebdige 1979: 126-

127). “Style” is about the way in which the signs associated with these material objects are used and become signifying practices.

In his review of the literature, Hebdige (1979: 75-76) observes that the then-current approaches to conceptualizing youth subcultures were dominated by the largely positivist tradition of urban ethnography developed by sociologists at the University of Chicago (Hebdige 1979: 75-76). Speaking of this tradition, he makes the following observation:

Participant observation continues to produce some of the most interesting and evocative accounts of subculture, but the method also suffers from a number of significant flaws. In particular, the absence of any analytical or explanatory framework has guaranteed such work a marginal status in the predominantly positivist tradition of mainstream sociology. More crucially, such an absence has ensured that while accounts based on a participant observation approach provide a wealth of descriptive detail, the significance of class and power relations is consistently neglected or at least underestimated. (Hebdige 1979: 75-76)

In contrast to these approaches that he considers to be largely a-theoretical, Hebdige’s (1979: 75-76) approach to the study of subcultures is informed by a sophisticated theoretical framework that attunes his analysis to “the significance of class and power relations” and, more importantly, sensitizes him to the presence of ideological paradigms that have become naturalized and taken for granted. Barthes’ influence is especially important in this respect. As noted earlier, Barthes (1957: 81; 1971: 613) argued that signs are elevated to the status of myth and take on an unassailable self-evidence when their historical, cultural, social, and ideological associations are erased, causing them to appear natural and become taken for granted. In other words, *myth* is a *mystification*. Therefore, Barthes’ (1957) method of countering myth’s mystification of everyday life, which he demonstrated in *Mythologies* and other works, involves de-mythologizing cultural objects – reversing the process of their naturalization by restoring the social, cultural, historical, and ideological connections that have been erased.

The strong influence of Barthes and cultural Marxism are clearly discernible in the language that Hebdige (1979: 13) uses to explicate the connections between ideological signification and myth and to highlight the value of semiotics as a tool capable of analyzing them:

Social relations and processes are then appropriated by individuals only through the forms in which they are represented to those individuals. These forms are, as we have seen, by no means transparent. They are shrouded in a 'common sense' which simultaneously validates and mystifies them. It is precisely these 'perceived-accepted-suffered cultural objects' which semiotics sets out to 'interrogate' and decipher. All aspects of culture possess a semiotic value, and the most taken-for-granted phenomena can function as signs: as elements in communication systems governed by semantic rules and codes which are not themselves apprehended in experience. These signs are, then, as opaque as the social relations which produce them and which they re-present. In other words, there is an ideological dimension to every signification...

The various signs that make up a subcultural style are understood therefore by Hebdige (1979: 14, 16) to be ideological "maps of meaning" that reproduce society through a process of mythic naturalization. The aspects of style that appear obvious and have become taken-for-granted, like the normalcy of mainstream clothing styles versus the seeming deviance of subcultural ones for example, are elements of myth that need to be challenged (Hebdige 1979: 9). In other words, for Hebdige (1979: 16) as for Barthes, the demystification of a particular cultural object (e.g. the style of a marginalized group) is best accomplished through a theoretically-informed semiotic analysis whose focus is the dismantling of the myths that surround that object and shape the signification process regarding it.

The key point here is that Hebdige's theoretical framework allowed him to examine the signification of subcultural style from a materialist perspective. Cultural Marxism endowed him with an understanding of the embeddedness of ideology in signifying practices in everyday life. Barthesian semiotics reinforced this and added to it an

understanding that style too is composed of signs that can become so familiar that they appear natural. Moreover, semiotics provided Hebdige with a methodology through which the ideological signs that make up a style could be “read”. So, as a result of this theoretical orientation, Hebdige was sensitized from the outset to the ideological content of seemingly innocent ideas and natural significations. This precluded him from making facile assumptions about the meaning of style and, importantly, drew his attention to the margins, to the naturalized and taken-for-granted ideas (i.e. myths) that mystify what we know about seemingly deviant styles. His resulting analysis is demystifying in that it subverts the idea that style is merely aesthetic and demonstrates that style is a signifying practice and that, in the case of so-called deviant subcultures, this signification is a form of resistance to ruling class ideology (Hebdige 1979: 133). However, as I will discuss in the next section, the theoretical and methodological orientation that allowed Hebdige and others from Birmingham to produce critical and demystifying scholarship was abandoned by many critical criminologists in the years that followed.

4. FROM RADICAL TO CRITICAL CRIMINOLOGY: EXTENDING THE BORDERS AND PURGING MARX

The evolution from a simple Marxism towards a more nuanced cultural Marxism exemplified by the Birmingham School meant that Marxist ideas remained a vibrant part of critical criminology until the late 1980s (Russell 2002: 113). Nevertheless, by the early 1990s even this Marxist tradition within criminology went into decline as scholars turned to new approaches that included feminist criminology, left realism, postmodern criminology, post-structural criminology, peacemaking criminology, cultural criminology,

anarchist criminology, victimology, and constitutive criminology (Barak 1998: 35; Brooks 2008: 53-54; Doyle & Moore 2011: 4; Michalowski 1996: 14; O'Reilly-Fleming 1996: 2; Ratner 2006: 654; Russell 2002: 113, 119-120; Stubbs 2008: 7; Wright & Friedrichs 1998: 214). According to O'Reilly-Fleming (1996: 2) Marxist criminology itself was to blame for its own demise in that it "managed through internal power struggles to mortally wound itself" and, as alternative critical perspectives became increasingly central to the discipline, Marxism was "bound for the scrap heap of history". As Hunt (1990: 511) puts it, Marxism was deemed to be "too encrusted with its history to provide contemporary inspiration".

Similarly, Russell (2002: 113), writing in the early 2000s and reflecting back on Marxism's decline in criminology, asserted that critical criminology evolved into "a series of 'new directions' [...] which have consciously excluded Marxism as being outdated". In his analysis of the reasons for this rejection of Marx among critical criminologists, Russell (2002) identifies several key factors. One such factor was the collapse of the Soviet Union, which prompted many criminologists to become disillusioned with and ultimately reject the Marxist ideas that had been inherited from earlier radical criminologists (Michalowski 2012: 37; O'Reilly-Fleming 1996: 2; Russell 2002: 120). He also suggests that this move away from Marx among criminologists had much to do with the growing influence of poststructuralism, which rejected the Marxist metanarrative (Russell 2002: 117-118). The linguistic turn, postmodernism, and poststructuralism had a significant impact on the discipline because these literatures suggested to criminologists that language was more than simply a means of communication, that it was in fact a powerful tool that could be utilized to create discourses that can enforce conformity and facilitate social control (Brooks 2008: 68; Milovanovic 2012: 151).

Ultimately, both “radical” and “critical” are umbrella terms referring to a number of different theoretical and methodological approaches. During the 60s and 70s, the “radical” label had applied to various criminologies of the left, whereas the more inclusive and less overtly leftist “critical” label gained popularity during the 80s as more theoretical and methodological approaches were included under this umbrella that were not derived from Marxism (Barak 1998: 35; Brooks 2008: 54; Doyle & Moore 2011: 4; Friedrichs 1998: 80; Kilty 2014: 2; Russell 2002: 114). Nevertheless, in spite of critical criminology’s theoretical and methodological diversity, there are a number of key concerns that these critical approaches share in common, many of which have been inherited from Marxist and radical criminologies (DeKeseredy & Dragiewicz 2012: 1). One of the most important of these is the commitment to challenge accepted knowledge and taken-for-granted assumptions wherever they are found (Carlen 2005: 85; Friedrichs 1998: 89; Kilty 2014: 2-3) and to continually “search for alternative ways of seeing, talking, and doing things” (Barak 1998: 35). This is the reason why the radical conceptualization of crime as a construct that has no ontological reality remains widely accepted within critical criminological scholarship and why it continues to emphasize the need to question established definitions of what constitutes crime, justice, and so on, recognizing that such definitions are a mystification (Box 1991: 12-14; Friedrichs 1980: 49; 1998: 81; McLaughlin 2011: 51-53). Critical scholars take it as their responsibility to question the status quo, question their own assumptions, question established authority (Barak 1998: 35; Brooks 2008: 53; Doyle & Moore 2011: 4; Kilty 2014: 4; Stubbs 2008: 8), and, ultimately, to challenge that authority by “speaking truth to power” (Carlen 2005: 84; McLaughlin 2011: 53).

Thus, contemporary critical criminologies retain the focus on mystification and the conviction that their scholarship should engage in the necessary work of demystification. However, in spite of the fact that (de)mystification remains a key concern animating critical criminological scholarship, the term itself is seldom used these days, perhaps owing to its pejorative Marxist connotations. Concepts like “ideology” and “hegemony” too have become passé and have been sanitized from much critical criminological work due to their pejorative associations to Marx and to a metanarrative that is seen as outdated and irrelevant (Eagleton 1991: xi; Hunt 1990: 511). As an unfortunate consequence of this, approaches like those pioneered at Birmingham seem increasingly like relics from a past before poststructuralism and other theoretical advances made all things Marxist obsolete. Yet, I argue that this jettisoning of all things Marxist has deprived many contemporary critical scholars of valuable theoretical and methodological tools that would help them achieve their goal of “speaking truth to power” (Carlen 2005: 84; McLaughlin 2011: 53). Birmingham scholars who incorporated cultural Marxism and semiotics were equipped with a theoretical framework and methodology that allowed them to accomplish the goals that many critical scholars have set for themselves—to question the status quo, question their own assumptions, and question established or accepted knowledge. What I argue in this chapter, and will seek to illustrate in the rest of this dissertation, is that the use of these tools, specifically Barthesian semiotics, to demystify recent Canadian criminal justice trends can help us to gain a better understanding of what they signify.

5. CONCLUSION

As I have shown, critical criminology represents an exceedingly diverse set of approaches within the contemporary discipline. Far from being what it once was, an “anti-criminology” practiced by a few isolated and marginalized radical scholars (Michalowski 1996: 35; Mooney 2012: 15; Platt 1974: 7; Ratner 2006: 652), critical criminology has become a dominant position in its own right (Carlen 2011: 98; Cottee 2004: 363; McLaughlin 2011: 53; Pepinsky 2002: 61).¹⁸ In spite of its diversity, today’s mainstream critical criminology has become recognizable by that which it opposes (Carlen 2011: 100; Carrier 2011: 331; Doyle & Moore 2011: 5) and it has become associated with several interrelated premises, such as the lack of an ontological reality to crime, the belief that criminalization serves the purposes of an authoritarian state, the necessity of partnering with the oppressed in the struggle against the state and its “conventional” criminologist allies, and the central importance of demystification in challenging accepted knowledge about crime and criminal justice (Barak 1998: 35; Box 1991: 12-14; Brooks 2008: 53;

¹⁸ Critical criminology’s emergence as the new disciplinary orthodoxy is odd, given that radical and critical criminologists dedicated themselves to the overthrow of mainstream and orthodox criminology (Carlen 2011: 100; Cottee 2004: 363). Pat Carlen (2011: 98) suggests that criminology’s evangelistic crusade to overthrow mainstream criminology was so successful in drawing adherents that it eventually became the new mainstream, all while maintaining its commitment to opposing a perceived conventional criminological mainstream. Critics of the new critical orthodoxy argue that its doctrinal assertions impose a theoretical and discursive closure which, when combined with its oppositional stance to other forms of criminological scholarship, stifles the open discussion of ideas that it seeks to encourage (Carlen 2011: 96, 103; McLaughlin 2011: 56). Critical criminology has also been critiqued for tending towards theoreticism and for producing scholarship that is empirically weak, ahistorical, and largely ignores political economy (Carlen 1998: 69; McLaughlin 2011: 57-58; Richards 1998: 131). It has also been suggested that the new critical mainstream can be as tyrannical as the positivistic mainstream it has replaced. For instance, some criminologists whose work does not conform to what has become the pattern or mold for critical criminological scholarship have found themselves isolated and marginalized by their more critical peers, resulting in the loss of opportunities for publication, employment, and tenure-track promotions (McLaughlin 2011: 54; Pepinsky 2002: 61). This experience of marginalization is mirrored in the accounts of early radical scholars, such as Ratner (2006: 651-652) for example, whose radical scholarship did not fit the mold of mainstream administrative criminology.

Carlen 2005: 85; Friedrichs 1998: 81, 89; Kilty 2014: 2-4; McLaughlin 2011: 51-53; Stubbs 2008: 6, 8).

This concern with demystification emerged out of the historical, cultural, and intellectual context in which early radical and critical criminologies developed. Marxist theory exerted a profound influence on early radical and critical scholars and it is chiefly within this influence that the origins of criminology's subsequent interests in demystification are to be found. Over the years, Marx's original formulation underwent modifications and revisions in the work of later theorists like Althusser, Gramsci, Lukács, Benjamin, and many others. During the latter half of the twentieth century, these theorists inspired scholars at the University of Birmingham to look at culture in radically new ways. The Birmingham School rejected functionalist ideas about a cohesive society as well as orthodox Marxist ideas about that society being dominated by a single ruling class that imposes a singular ideology and whose dominance goes unchallenged (Hall 1980a: 24). Instead, drawing on the new generation of Marxist theorists like Gramsci, they conceived of the ruling class as made up of multiple fractions, sometimes competing with one another and at other times forming alliances, using multiple ideological paradigms to mobilize consent as dominance is continually contested (Hall 1980a: 23-24; 1988: 59).

By drawing on Saussure's intellectual successors, particularly Barthes, scholars at Birmingham developed a view of signification that was able to account for the different levels at which signs are communicative. Moreover, the Peircean tradition contributed an added dimension to this by emphasizing the importance of the interpretive practices of individuals perceiving those signs. This unique combination widened the methodological

possibilities for Birmingham scholars, allowing them to study a diversity of cultural representations in social milieus of all kinds. The sophistication of the insights that their semiotic approaches have produced are discernible in a text like Dick Hebdige's (1979) *Subculture: The Meaning of Style*, which provides a rich description of the signifying practices of skinheads, mods, punks, teddy boys, and other postwar British youth subcultures. Moreover, by both retaining and building on the Marxist concept of ideology, the Birmingham School developed a sophisticated understanding of ideology's relationship to signification. The unique combination of Marxist influences from Althusser, Gramsci, and others with Saussurean and Peircean semiotics produced fresh understandings of both. The semiotic interpretation of interpellation as occurring through connotative associations or chains of signification, which I discussed earlier in this chapter, exemplifies this point. Therefore, the concept of ideology adds to signification an understanding of *what* is communicated and *why* it matters, while the semiotic understanding of signification illuminates *how* ideology is transmitted.

The scholarship produced by the Birmingham School represents a theoretically and methodologically robust tradition with a proven track record for engaging in the critical work of demystification. This is not coincidental, since the explicit aim of the Birmingham School was "to undertake a work of demystification" (Hall 1990: 15) with respect to culture. The many studies that the Birmingham School produced which still form part of criminology's "must-read" canon testify to the tremendous success of their endeavour. Unfortunately, the powerful analytic approach exemplified by Hebdige and others that is indebted primarily to Barthesian semiotics and cultural Marxism was abandoned and, consequently, has not been developed further within criminology. As a result, many critical

scholars seeking to demystify criminological issues, through a commitment to “speaking truth to power” for example, are left without valuable conceptual and methodological tools that could help them accomplish this very purpose. In the next chapter I explore these issues further through a discussion of recent exemplars of the critical criminological commitment to demystification, drawing particular attention to the tremendous value of recovering the concepts and methods utilized by Birmingham scholars which have been neglected and fallen into disuse.

Chapter 3 - Criminological Approaches to Myth and the Critical Work of Demystification

1. INTRODUCTION

According to a number of scholars (e.g. Russell 2002, Caputo & Hatt 1996, and O'Reilly-Fleming 1996: 2), critical criminology's Marxist roots have been suppressed or abandoned and its ability to analyze political economy has suffered as a result. Nevertheless, contemporary critical criminology's strong emphasis on questioning assumed truths, the status quo (e.g. institutional, disciplinary, etc.), and accepted knowledge about crime and criminal justice issues, is rooted in a Marxist influence that placed great importance on (de)mystification (Barak 1998: 35; Brooks 2008: 53; Friedrichs 1998: 89; Kilty 2014: 4; Stubbs 2008: 8). As I argued in the previous chapter, critical criminology has retained the emphasis on detecting and critiquing domination that was central to Marxist-inspired radical criminology, while largely jettisoning the theoretical and methodological tools that Marxists, including those known collectively as the Birmingham School, advanced in order to achieve this goal. In this chapter, I build on this discussion by examining a particular research interest in "myth" that has emerged in criminological literature in recent years, offering this as a contemporary example of the continued critical criminological focus on demystification in order to demonstrate the limitations of these efforts at demystification by comparison with an approach informed by Roland Barthes' semiotic theory.

Over the last few decades, criminology has taken an interest in myths that are believed to mystify knowledge about crime and criminal justice. As has often been the case

for our comparatively fledgling discipline, criminologists are late arrivals to a subject that has already held the attention of the social sciences and humanities for centuries. Yet it is only since the late 1970s that the word “myth” even appears in criminological literature and it is only since the 1990s that it has been gaining the interest of criminologists. Since then, only a few studies have been produced within criminology which, to varying degrees, give myth any serious consideration. These studies have generally sought to identify knowledge relating to law, crime, or the criminal justice system and its institutional structures as illusory and misleading and expose it to scrutiny. By seeking to identify and expose myths that obscure reality, these studies are attempts at demystification in that they question, challenge, and subvert the accepted knowledge that (re)produces dominant understandings of crime, law, and justice. In this chapter I will discuss six studies which exemplify this approach to demystification as they attempt to debunk criminological myths. These six studies include: Peter K. Manning (1977) and John Crank’s (1994) respective studies of the mythology of policing, David Garland’s (1996) study of the myth of state sovereignty over crime control, Victor Kappeler, Mark Blumberg, and Gary Potter’s (1996) study of the mythology of crime, Peter Fitzpatrick’s study of law’s mythology, and Mariana Valverde’s (2006) template for studying myth in cultural representations of crime.

I am interested in the way that the *concept* of myth is deployed in these studies and its level of theoretical development in the work of these scholars rather than their particular analyses or results. In other words, my interest in this chapter is the conceptual *form* that myth takes in these studies, not the *content* of the specific criminological myths they seek to expose. In order to assess the different conceptualizations of myth offered by these studies, I subject them to imminent critique. Immanent critique, as I explained in the

previous chapter, is a Marxian method of critique in which the researcher immerses themselves in a discourse, ideology, or argument in an effort to identify its inherent contradictions as well as disparities that exist between its promises and outcomes (Antonio 1981: 332; Pavlich 2001: 156; Sabia 2010: 687; Vincent 2008: 492; Wrenn 2016: 453). The purpose of immanent critique is to use these contradictions and disparities to challenge the self-evidence of ways of thinking that reproduce the status quo and demonstrate that alternatives to the status quo exist (Antonio 1981: 330; Pavlich 2001: 156; Wrenn 2016: 453). In this chapter, I argue that there are three separate conceptualizations of myth that appear in these studies: myth as primitive thought, myth as illusion or falsity, and myth as naturalized signification. The conceptualizations of myth as primitive or illusory lead to an understanding of demystification as a civilizing project that occurs through the dissemination of academic 'truths'. As I will show, this understanding of demystification can lead to profound ontological and epistemological contradictions. In contrast, the conceptualization of myth as naturalized signification evades these contradictions by virtue of beginning from a different theoretical premise.

Ultimately, all of these studies demonstrate that the concept of myth points to a particular form of signification that holds great promise for criminology, particularly for projects like mine that are focused on naturalized and taken-for-granted understandings of crime and criminal justice and exploring their relationship to legislative agendas and crime control strategies. However, with the exception of Mariana Valverde, who draws on a Barthesian semiotic conceptualization of myth, these studies leave the concept woefully undertheorized. As a result, in the years since it was introduced into criminology, this useful analytic concept has not had an impact on the discipline commensurate with its

potential. The central argument that is advanced in this chapter is that, in order for myth's potential as a criminological concept to be realized and become truly demystifying, a more complete conceptualization of myth can be developed by drawing on a theoretical framework informed by Roland Barthes' semiotics and strengthened with the important contributions to his demythologizing approach made by the Birmingham School and, more recently, by Mariana Valverde. As I will show, criminological approaches to myth tend to rely on a conceptualization of myth as illusion or as a primitive form of thought, which can produce theoretical blind spots that lead to ontological and epistemological contradictions. However, because Barthes begins from a different premise, his conceptualization of myth and his method for analyzing it facilitate the demystification of knowledge through the illumination of its social function, yet without falling prey to these contradictions.

I begin this chapter by outlining the predominant conceptualizations of myth as primitive thought or as illusion, identifying the ways in which they are (re)produced within Crank (1994), Kappeler et al. (1996), Garland (1996), and Fitzpatrick (2002), as well as the theoretical or philosophical traditions that they seem to be drawing from. Next, I provide the results of my immanent critique and identify the main contradictions to which I believe them to be prone and discuss the potential pitfalls that may result from relying on these conceptualizations to demystify contemporary criminological phenomena. I then present the alternative conceptualization of myth as naturalized signification as elaborated by Barthes and mobilized by Manning (1977) and Valverde (2006). Finally, I close with a discussion of the value of a Barthesian semiotic understanding of myth, supplemented by Birmingham and Valverde, for producing truly demystifying scholarship. The purpose of this chapter in my overall dissertation is to show that the recent interest that

criminologists have shown in identifying and exposing myths exemplifies the persistence of our discipline's radical and critical commitment to the demystification of knowledge, while elucidating the potential for Barthesian semiotics as a means of making this commitment a reality. This chapter is important for the rest of the dissertation, since the largely theoretical discussion offered here will serve as the basis for the Barthesian approach to demystification that I will illustrate over the next three chapters.

2. JOHN CRANK – THE MYTHOLOGY OF POLICING

The first criminological study of myth that I will discuss is John Crank's (1994) study of the mythology of policing. Crank (1994: 326) examines the development of community policing in the United States and finds that it has been facilitated by the construction of two myths—the myth of “the community” and the myth of “the watchman”. According to Crank (1994: 327), community policing developed as a response to a crisis that plagued American policing during the 1960s. The War on Crime initiated by President Nixon highlighted the inability of policing strategies to address the rising crime rate, while the responses to protesters and the numerous incidents of violence perpetrated against African-Americans by police led to a growing perception of police as ineffectual, corrupt, and abusive (Crank 1994: 328-329). These interconnected factors and the perceptions they influenced served to corrode the legitimacy and prestige of the American police throughout the 1960s (Crank 1994: 328-329). In fact, this cynical view of American law enforcement was officially endorsed by two separate Commissions in 1967, both of which were critical of the police's conduct and strategies (Crank 1994: 328). Crank (1994: 330-331) suggests that these problems caused the police to re-evaluate their self-concept or operating paradigm as a

professional para-military force and argues that the myth of community and the myth of the watchman were constructed at this time in order to help the police improve their public image.

The myth of community represents the idea of a shared moral community—a group of similar and like-minded people living in a shared space and sharing a common history and culture, as well as a set of shared values and norms (Crank 1994: 336). The myth of the watchman represents the stereotypical idea of a “friendly night watchman who served, in his walking beat, the immigrant masses and urban poor in the 19th century” (Crank 1994: 335). The watchman does more than simply enforce the law, however, as he is himself a member of the community and enforces public order on behalf of all of his fellow citizens (Crank 1994: 337). Crank’s (1994: 339) article suggests that these myths are still with us today. In fact, he argues that “Broken Windows” thesis is a contemporary example of the myth of the watchmen, since this theoretical perspective is premised on the idea that the presence of a watchman is necessary for the maintenance of order.

The brief conceptualization of myth provided by Crank (1994: 332) and his use of the concept throughout his article make it very clear that his understanding of myth is informed by the functionalist perspectives of Émile Durkheim and Bronisław Malinowski. Two of the most impactful functionalist accounts of myth can be found in the work of Durkheim, who addresses myth as part of a larger interest in the roots of religious belief, and Malinowski, an anthropologist greatly influenced by Durkheim whose years of field work with the inhabitants of the Trobriand Islands in Melanesia interested him in the structure and social importance of their myths. Durkheim (1995: 1-2) argued that religion was “a fundamental and permanent aspect of humanity” and that sociologists ought to

strive to achieve an understanding of the symbolic meanings expressed beneath its external reality. According to Durkheim (1995: 5-6), “lower” or “primitive” societies made the most illuminating case studies because their religious beliefs had not yet reached the level of elaboration or complexity of more advanced civilizations, which he believed made it possible for the social scientist to more easily examine those elements of ritual and myth that are universal and form an indispensable part of every system of religious beliefs. After having reviewed research gathered by other scholars about the religious beliefs of indigenous cultures in Australia and North America, Durkheim (1995: 34) concluded that the defining characteristic of all religious beliefs, including myths and legends, was their bifurcation of the world into the categories of sacred and profane (Craib 1997: 70).

These categories structure religious beliefs, which are collective representations that provide shared ways of thinking about the world and that are brought into the realm of lived practices through rituals and thereby contribute to a sense of social solidarity (Cohen 1969: 343; Craib 1997: 71; Crank 1994: 332; Durkheim 1995: 9, 34; Fitzpatrick 2002: 23). As to where religious beliefs originate, Durkheim’s functionalist explanation posits that religious beliefs arise and persist because they impart social cohesion to groups of individuals (Craib 1997: 72). Religious beliefs, myths, and rituals are a source of potentially intense collective feeling that makes people stronger, as individuals and as a society, giving them a greater endurance, resolve, and determination than they would otherwise have (Craib 1997: 70; Durkheim 1995: 419). This leads Durkheim (1995: 2; 419) to the conclusion that the power of religions is very real and, moreover, that there are no false religions since they all fulfill the same social function regardless of whether or not they are based on illusions (Craib 1997: 70).

Durkheim's ideas about the social function of myth had a particular influence on Bronisław Malinowski, one of the most prominent names in the study of myth during the early 20th century (Cohen 1969: 338; Strenski 1987: 42, 52). Years of ethnographic observation and interaction with the Trobriand islanders in Melanesia gave Malinowski the opportunity to study the role that myth in their social structure. Based on this extensive ethnography, Malinowski (1948: 79, 91) concluded that myth is not merely a form of storytelling based in idle fancy or day dreams, but rather that it is a lived reality and provides society with a charter of guiding principles that help ensure its smooth functioning. He noted that the mythical tales recounted by the Trobriand islanders functioned as the backbone of their society by providing a practical guide for living that explained their history, established a social ranking system, determined the appropriate use and ownership of natural resources, and resolved interpersonal conflicts between community members (Cohen 1969: 344; Malinowski 1948: 85, 91). While the study of myth has been taken up by a great many scholars in the fields of sociology and anthropology, I have chosen to focus solely on the contributions made by Durkheim and Malinowski because it is their functionalist theoretical perspective that seems to have informed John Crank's (1994) study of the mythology of policing, a study that is among the more recent discussions of myth found in criminal justice literature.

In accordance with Durkheim, Crank seems to understand myth as relating to a kind of metaphysical way of thinking and argues that it serves the vital function of legitimizing social practices and "establishes, maintains, and expresses social solidarity" (Crank 1994: 332). According to Crank (1994: 335), American police forces in the 1960s and 1970s were able to enhance their legitimacy by conforming to pre-existing myths that have shaped

public perceptions of what a “real” police force looks like. By fashioning themselves after these familiar and nostalgic myths about the community and policing, these police forces were able to connect themselves with an overarching collective understanding of policing and its relationship to the community (Crank 1994: 334, 336). Modern policing practices were validated by being linked with the myths of the watchman and community and this connection also enhanced the legitimacy and authority of the police (Crank 1994: 331, 334). Crank’s (1994: 347) argument that myths are powerful, not because they are historically accurate, but because they can “mobilize sentiment” by conjuring up evocative imagery, is notably Durkheimian. Malinowski’s influence is also discernible from Crank’s description of how the police appealed to myth in order to resolve their public image problems and to advance a new approach to policing. This suggests that, like Malinowski, Crank understands myths like those of the watchman or the community to function as a social charter that provides us with a set of guiding principles, settles disputes, and determines the appropriate course of action. So, Crank’s (1994) functionalist approach results in a conceptualization of myth as a kind of pseudo-religious thought whose role is the legitimation and validation of social practices that seems strongly indebted to Durkheim and Malinowski.

3. VICTOR KAPPELER, MARK BLUMBERG, & GARY POTTER – THE MYTHOLOGY OF CRIME

Kappeler, Blumberg, and Potter’s (1996) classic text, entitled *The Mythology of Crime and Criminal Justice*, has been revised and updated into newer editions over the years and is by far the most comprehensive criminological research on the various myths that pervade our contemporary conceptualization of crime and how these shape approaches to

crime control. While their entire book focuses on crime myths, it is their first and last chapters that provide the most comprehensive explanation of their understanding of myth and their use of it as an analytic concept. Kappeler et al. (1996: 2) specify that they opted for what they call the “common meaning of myth” which they define as “a traditional story of unknown authorship, with a historical basis, serving to explain some event”, though they offer no explanation of where this definition comes from or the reason for their use of it. These traditional stories generally contain some small element of truth which has been exaggerated and sensationalized to the point where it loses touch with reality (Kappeler et al. 1996: 2-3, 7). It is at this point, when the truthful core of a story is overshadowed by fictive elaboration as it is told and retold, that the story becomes myth (Kappeler et al. 1996: 2). As a result, they argue, myths do not merely transmit a reality, they create a new one based on false information (Kappeler et al. 1996: 22-23). This understanding of myth as something false and illusory produces a portrayal of myth as a kind of ignorant superstition which grows and spreads into those dark corners of our understanding that have not yet been enlightened by science, empirical evidence, and education (Kappeler et al. 1996: 4).

Kappeler et al. (1996: 3) argue that an entire network of individual and yet interconnected myths exist with regard to crime and justice and that this mythology sustains the common sense notions that surround these issues. By shaping the way that individuals think about crime and criminal justice, these myths exert a powerful effect on behaviour (Kappeler 1996: 4). Kappeler et al. (1996: 332) also point out that these myths also frame the thinking of criminal justice scholars, who can inadvertently have their empirical focus influenced by myths and subsequently conduct their research in such a way

as to reaffirm them. However, what makes myths even more nefarious is that, even after a myth has been debunked and the emotional atmosphere surrounding it has been dispelled, there remains a conceptual residue which continues to frame the issue and allows the myth to be revived or reinvented (Kappeler et al. 1996: 331). Therefore, old myths do not really die out, they simply merge into the myths of the present (Kappeler et al. 1996: 332). As a result of their embeddedness in our culture and hence on our thinking and behaviour, crime myths have had a tremendous impact on our criminal justice system and Kappeler et al. (1996: 14, 340-343) hold them partly responsible for the proliferation of punitive tough-on-crime policies and their disastrous outcomes in the United States.

Crime myths exist because of the sensationalizing discourses of various categories of “mythmakers”, including mass media and the government (Kappeler et al. 1996: 4). For example, a news media source can sensationalize and mythologize crime when it “discovers” a certain type of criminal activity (e.g. stalking) and reports on it, which often prompts other news media outlets to also pick up the story and sensationalize it further, leading to a media frenzy that elevates that criminal activity to mythic status (Kappeler et al. 1996: 6). Similarly, mass media that combine elements of fact and fiction, also known as infotainment (Surette 2011: 17-18), contributes to the further mythologizing of crime by supplementing the factual basis of the story with dramatic elements and fleshing out the unknown elements of the story with fictional details (Kappeler et al. 1996: 11-12). State agencies are often among the most powerful mythmakers since they often serve as the information source for news media, heavily influencing its content and guiding its sensationalizing activities (Kappeler et al. 1996: 8).

Kappeler et al. (1996: 6, 8) point out that these mythmaking activities are directed towards achieving a particular purpose for that group. In the case of mass media, the sensationalization of crime increased drastically after the 1960s, when news media sources discovered the immense profits that could be generated by sensationalizing crime news rather than reporting its more banal reality (Kappeler et al. 1996: 6, 334). This resulted in the commodification of crime media, a process whereby crime itself is viewed as a commodity that can be marketed and packaged for popular consumption (Kappeler et al. 1996: 6; Surette 2011: 21). In contrast, the government's mythologizing practices are often driven by more complex motivations, such as interest in maintaining the status quo of the criminal justice system, as well as managing public image and galvanizing voters through grandstanding about emotionally-charged crime myths (Kappeler et al. 1996: 8, 21-22, 334; Schlesinger & Tumber 1994: 15-16).

While Kappeler et al. make no such connection explicit in their work, there is a great deal of affinity between the conceptualization of myth that they advance and the philosophical humanist approach to myth exemplified by Ernst Cassirer and Paul Ricoeur. Ernst Cassirer was a German philosopher and anthropologist whose main contributions were concerned with ontology and epistemology and the philosophy of science, though he also wrote extensively about myth (Strenski 1987: 13), whereas Paul Ricoeur, through his interest in applying phenomenology to hermeneutics, produced a great deal of scholarship on religion and mythology, as well as textual analysis, literary theory, and narrative theory. For Cassirer (1963: 12), myths are archaic beliefs and ways of understanding the world which are based in emotion and are adhered to without valid reasons and despite being demonstrably false (Strenski 1987: 25). He discusses a wide range of examples from

cultures all over the world and their inclusion in his work suggests that he takes for granted as self-evident that “myth” refers to superstitions, religious beliefs, legends and other primitive narratives which belong to a premodern or pre-logical stage in man’s evolution (Cassirer 1946: x; 1963: 11, 24; Strenski 1987: 25, 38, 40). The language he uses to describe myth and the way in which he positions it as diametrically opposed to reason, suggest that Cassirer’s opinion of myth was decidedly negative. He argues that myth is a “disease” that has infected language and that it would never have survived were it not for mankind’s “primeval stupidity” (Cassirer 1946: 86; 1963: 4, 19, 22). Whereas scientific thought gained its coherence from logic and rationality, myth obtained its coherence from the emotions that it was able to stir up within the individual that gave people a shared sense of unity or community feeling (Strenski 1987: 31-32). Despite its primitive and archaic nature, mythical thinking arose from the universal human desire to explain things, to classify and categorize experiences, and make sense of reality (Cassirer 1963: 15). Myths persisted into the present, he argued, because people either wanted or needed to believe in them or were coerced to do so by others (Strenski 1987: 33). They were dangerous because, when acted upon through rituals for example, they became intoxicating and compromised the individual’s reason (Cassirer 1963: 286-287; Strenski 1987: 35). Nevertheless, Cassirer maintained a hope that reason would eventually triumph over myths (Strenski 1987: 28).

Like many of his neo-Kantian peers, Cassirer adhered to a humanist faith in mankind and in reason and logic that could be traced back to the Enlightenment (Strenski 1987: 30). As a result, we find in his work a conceptualization of myth as being the antithesis of logic, reason, and scientific progress (Cohen 1969: 339; Strenski 1987: 30). Cassirer (1963: 278-

279) argues that myths gain their greatest power over people when they feel threatened or in danger, since these are often times of desperation in which rationality can become compromised. In these moments, myth, which has remained in the background of the human psyche, reasserts itself (Cassirer 1963: 280). During these moments of crisis, politicians can manufacture myths “made according to plan” in order to serve their own purposes (Cassirer 1963: 282). This claim suggests that in many ways Cassirer equates myth with propaganda, suggesting that it is a weapon that is manufactured like any other. Citing the case of Nazi Germany, Cassirer (1963: 282-283) suggests that Nazi policies, such as German rearmament, were successful precisely because they began with the propagation and mobilization of myths that supported their agenda. He goes on to discuss how the Nazis accomplished this by using language as a vehicle for myth and by introducing a whole range of mythic rites, like making “Heil Hitler” a common everyday greeting for example, which could determine life or death within German society (Cassirer 1963: 284). This intellectual and socio-political context appears to have had a great impact on Cassirer’s understanding of (and opposition to) myth. His analysis of myth was partly a response to what he considered to be the irrational tendencies of an intellectual current in Germany that embraced anti-Semitism, folkish romanticism, and political radicalism and paved the way for the Nazi dictatorship (Strenski 1987: 14, 16).

Rather than focusing on the quality and characteristics of mythical thinking as Cassirer does, Ricoeur’s focus is vaguely functionalist in that his interest is the social function of mythical symbols. Ricoeur (1960a: 13; Malan 2016: 2) understood the original function of myth to be etiological and ontological in that traditional myths attempted to illustrate and explain humanity’s origins and purpose, as well as describe its essential

character and its conditions of existence. For example, he argues that the mythology of evil served the dual function of constructing a shared and idealized history that unified humanity, while also providing an explanation for humanity's existence and its lived reality (Ricoeur 1960a: 154-155). However, like Cassirer, Ricoeur (1960a: 13, 21; Malan 2016: 6; McGaughey 1988: 424) argues that contemporary myths no longer have this explanatory function because science has "demythologized" the primitive myths of the past. Nevertheless, the narrative form of myth remains an effective means of communicating symbolic meaning around etiology and ontology and, therefore, remains a powerful force within contemporary society (Ricoeur 1960b: 206; Malan 2016: 6). Myth has a vitally important role in contemporary society, in that its symbolic content serves as the foundation of a society's identity, providing it with an understanding of itself (Ricoeur & Kearney 1978: 112).

Ricoeur called this mythic sense of social identity its "mytho-poetic nucleus" and suggested that although invisible, it could be discerned and understood by looking at the social structure and institutions which are a reflection of it (Malan 2016: 3; Ricoeur & Kearney 1978: 113). Although hidden, this mytho-poetic nucleus was believed to determine "the distribution of transparent functions and institutions such as the politics, economics, and law of any culture" (Malan 2016: 3). During times of crisis, these mythic symbols act as both grounding and point of origin for society's identity by supplying answers to questions like "where do we come from?" and "where are we going?" (Ricoeur & Kearney 1978: 114). However, according to Ricoeur, there is a dark side to mythical symbolism as well. Since myths serve as the foundations for a community, they are also at the root of the negative things that are present within a community, such as sexism and

racism (Ricoeur & Kearney 1978: 115). One of the observations made by Ricoeur is that myth can be appropriated, manipulated, and distorted so that it serves the ideological aims of a particular social group (Malan 2016: 3; Ricoeur & Kearney 1978: 114). He argues that this is why symbolism and myth have formed such a fundamental part of many fascist ideologies (Ricoeur & Kearney 1978: 114).

So, Ricoeur's (1960a: 12-13, 25; Malan 2016: 2), conceptualization of myth, like many of his contemporaries including Malinowski, emphasized that myth is a particular form of storytelling or narrative structure which, far from being idle entertainment, forms the ideational bedrock upon which society and human rituals are founded. According to Ricoeur (1960a: 157-158; 1960b: 201), a myth is created when existing symbols are arranged into narrative form through language, which essentially demotes myth to a second order function of symbols. Symbols were considered by Ricoeur (1960a: 157, 222; McGaughey 1988: 423) to be all important because "the symbol gives rise to thought" (1960a: 323), opening up to us a dimension of thought and experience that would otherwise remain closed to us and thereby mediating our experience of the world around us. Nevertheless, despite the primacy of the symbol, myth serves an important function in that the presentation of symbols through the narrative structure of myth serves to give symbolic meaning added depth (Ricoeur 1960b: 201). According to Ricoeur (1960b: 206), "[i]f thought fails to seek nourishment from myth, reflection withers". Thus, for Ricoeur (1960a: 158; 1960b: 201; McGaughey 1988: 424) a narrative is rendered mythical as a result of the symbols that it develops and communicates.

Like Ricoeur, Kappeler et al. understand myths to be narrative structures through which we explain things to ourselves and which gradually become a reality of their own.

Like Cassirer and other philosophers inspired by Kant, they understand myth to be something false or illusory, a result of superstition and ignorance that can be dispelled only by the light of reason and scientific discovery. Myths are understood by Kappeler et al., just as they are by Cassirer and Ricoeur, to exert a powerful influence on how individuals think and, consequently, on their behaviour. Like Cassirer and Ricoeur, they view this combination of myth's falsity and its powerful influence over individuals as something threatening. Myth is understood as a nefarious form of ignorance that can be exploited for political advantage. This understanding of myth places Kappeler, Blumberg, and Potter's work on myth squarely in the camp of neo-Kantian philosophers like Ricoeur and Cassirer.

4. DAVID GARLAND – THE MYTH OF STATE SOVEREIGNTY OVER CRIME CONTROL

Like Kappeler et al. (1996), David Garland provides us with another example of the use of myth that equates it with illusion or falsehood that is exploited for political advantage. In the mid-1990s, Garland (1996: 459) asserted that crime control was "beyond the state". Garland argued (1996: 446-447) that high crime rates, the breakdown of traditional social ties, the omnipresent threat of victimization, the growing political pessimism and disillusionment stemming from the welfare state's failure to reduce recidivism and lower crime rates, and other socially destabilizing aspects of modernity had jeopardized the self-evidence of the state's sovereign power. Contemporary society is pervaded by the perception that crime is an ever present threat and, according to Garland (1996: 448), this emphatically demonstrates that the state's sovereignty over crime control, in other words, its self-professed ability to uphold its end of the social contract by keeping the public safe from criminals, is nothing more than a myth. Garland (1996: 448) argues that the origins of the myth of the state's sovereignty of crime control date back to

the first European monarchs, who claimed authority over all aspects of social life and, in return, guaranteed the public's protection from external threats (e.g. invasion) as well as internal threats (e.g. crime). Over time these monarchies were replaced by modern nation-states and sovereign authority over social life was passed to a highly bureaucratized state which, like its predecessor, claimed a monopoly over the exercise of violence (Garland 1996: 448; Held 1997: 71; Weber 1954: 14). By then, the promise of "law and order" had been invoked so often that the notion of law enforcement had become virtually inseparable from the idea of political rule (Garland 2001: 29; Pratt 2000: 41). However, according to David Garland (2001: 109), the idea that "the sovereign state was ever capable of delivering 'law and order' and controlling crime within its territorial boundaries" was nothing more than a reassuring lie perpetuated in order to maintain the state's legitimacy and prestige.

However, Garland (1996: 459) says, crime's perceived omnipresence in contemporary society has created a serious political dilemma for the state. In light of the state's obvious failure to deliver on its crime control promises, modern politicians are now faced with two options. The first option is to accept the state's limitations and make more realistic campaign promises, which would be politically disastrous (Garland 1996: 460). The second option is to deny these limitations and symbolically reassert the myth of sovereign state control over crime by taking action in order to demonstrate that "something is being done and lawlessness is not tolerated" (Garland 1996: 460; 2001: 132-133). Just as it did in the age of monarchy, the state has turned to "strategies of denial"—highly expressive and emotive forms of punishment that "repress any acknowledgement of the state's inability to control crime to acceptable levels" (Garland 1996: 460). Garland (2001: 133) argues that

the contemporary equivalent of torture is mass incarceration and says that it is just as archaic as its 18th century counterpart and, ultimately, just as ineffective in controlling crime. He goes on to suggest that the imposition of increasingly punitive laws, the use of demonizing descriptions of offenders, and the appeals to emotions of fear, anger and insecurity in political rhetoric, all constitute attempts to symbolically repair and re-establish the myth of the state's sovereignty over crime (Garland 1996: 460-462).

Nowhere in his article does Garland explain what he means by "myth", nor does he give any indication from which sources his theoretical understanding of this concept is derived, though there are notable similarities between his use of the term and Cassirer's conceptualization of myth. Judging from his usage of the concept, it appears that myth for Garland is essentially a politically-motivated deception that has become central to governance because of its ability to beguile people and mobilize their consent, though Garland does not provide much insight into the degree to which this is an intentional strategy. The myth of state sovereignty is described as a kind of fairy tale that provides people with reassurance and comfort from the harsh realities of life. As such, there is an implication that it is associated with a primitive thinking or ignorance through which people are manipulated. Garland's implicit conceptualization of myth as primitive ignorance and as something that imposes a false perception of the world that furthers political ends most resembles Cassirer's position. Cassirer believed that myth is an intoxicating propaganda that facilitates ideological manipulation by exploiting a primitive, ignorant, and ultimately stupid mentality. Garland does not argue, as Cassirer does, that mythic deception is a completely intentional strategy. In fact, Garland's article seems to imply that those who seek to re-assert the myth of state sovereignty over crime control

may themselves be under the illusion of this myth themselves. However, Garland does seem to share Cassirer's belief that it is when people are desperate or find themselves in threatening situations that they are most susceptible to the irrationality of mythic beliefs. Furthermore, both seem convinced that it is in this threatened and irrational state that people are the most susceptible to ideological manipulation, whether intentioned or not. For Cassirer, this is best exemplified by the way that economic and political instability in postwar Germany led to an irrational mythic nostalgia that the Nazis subsequently took advantage of. For Garland, this is best exemplified by the way that the rising awareness of a criminal threat is destabilizing the myth of sovereignty, yet is also opening avenues for political advantage by those who seek to re-invigorate the myth through heightened punitiveness.

5. PETER FITZPATRICK – LAW'S MYTHOLOGY

As we have seen so far, the dominant ways of understanding myth that have been mobilized within criminology appear to be based either in a sociological functionalist tradition or a philosophical humanist tradition. However, Peter Fitzpatrick's approach to myth comes from the completely different scholarly tradition of post-structuralism which, as we shall see, results in a rejection of the conceptualization of myth as primitive thinking. Yet, in spite of the seeming differences, his conceptualization of myth as illusory thinking resembles the other criminological studies of myth described above. In *The Mythology of Modern Law*, Fitzpatrick builds on Derrida's notion of myth and explores the mythic origins and content of the Western legal tradition. Derrida, one of Paul Ricoeur's pupils, has advanced a notion of myth that differs from that of Ricoeur, one that is much more abstracted and vague, which seems characteristic of his intentionally enigmatic writing

style. Derrida's interest in myth differs from that of his peers and predecessors because instead of studying myth directly, Derrida's discussion of myth is related more broadly to his attack on the Enlightenment foundations of western philosophy (Petrović 2004: 90; Seidman 2004: 168). Derrida differs from these aforementioned scholars because he seeks to expose the mythic elements present in the foundations of western philosophy that continue to pervade the thinking of contemporary scholars and which are reproduced through their work. One of the best examples of his critique of western philosophy's mythic foundations is contained in his article entitled "White Mythology: Metaphor in the Text of Philosophy".

As the title indicates, the article focuses on the use of metaphor within philosophy, which Derrida considers to be connected to a variety of mythic elements of western metaphysics (i.e. higher questions regarding the nature of being, knowing, and so on) (Harrison 1999: 505; Lawlor 1991: 286). Derrida's primary objection to "metaphor" is that it is placed in binary opposition to "concept", which has the effect of ascribing reality and verisimilitude to concepts and mere semblance to metaphors (Harrison 1999: 513). Therefore, the use of metaphor in metaphysics produces a language which gives the impression of stability and certainty in meaning and that philosophical theorizing can produce accurate representations of a higher reality or attain metaphysical "truths" (Harrison 1999: 512). Another binary opposition that Derrida considers to be indefensible and yet serves as the foundation of western philosophy is between "speech" and "writing", which Derrida argues inevitably leads to the privileging of one over the other (Petrović 2004: 89-90). A privileging of speech (i.e. phonocentrism) obscures the importance of written language in making our thoughts and speech intelligible, whereas a privileging of

writing (i.e. logocentrism), which Derrida argues is the tendency within western philosophy, perpetuates the myth of the “transcendental signified”—the illusion that there are certain concepts whose meaning is fixed and invariable (Derrida 2005: xvi, 354; Petrović 2004: 90).

Derrida (1974: 11) argues that an example of this logocentrism within Western philosophy is the way in which it has equated its own understanding of metaphysics with reason. Moreover, he criticizes the way in which Western philosophy uses its own mythological origins to supply the metaphors through which its philosophy is elaborated (Derrida 1974: 11). All of this leads Derrida (1974: 11) to conclude that metaphysics is nothing more than a “white mythology which assembles and reflects Western culture”. The Western world has simply taken its own origins and its sense of reason as universal, rather than recognizing that they are situated in a particular context and are therefore relative (Derrida 1974: 11; Harrison 1999: 508). Cassirer’s (1963: 4, 296) argument that myths exemplify humanity’s “primeval stupidity” and that they represent the antithesis of reason and scientific knowledge serves as an example of what Derrida calls the “white mythology”. According to Derrida, this type of logocentrism, which imposes a timeless certainty on reason, has a tyrannical potential because all that does not conform is marginalized as opposing reason (Wolfreys 2010: 56).

Derrida’s notion of myth is inextricable from his broader critique of western philosophy. Instead of being an analytic concept that Derrida applies in his work, “myth” simply serves as a way for him to make a larger point about the hypocrisy of scholars who condemn a mythic way of thinking while falling prey to it themselves. As a result, there is virtually no explanation of myth as a concept in Derrida’s work. Of the scholars already

mentioned in this chapter, Derrida's implied conceptualization of myth bears the most similarity to Ricoeur, with whom he shares the recognition of the important role that myth plays in shaping our thinking and in self-identification practices. However, there are also vast differences between these two scholars. An important difference is that Ricoeur is interested in how individual societies use myth to form their social or communal identity (e.g. nationality, ethnicity, etc.), whereas Derrida is more interested in how myth has been used to develop its philosophical identity. However, the seemingly vast distance between Derrida and the other scholars discussed in this chapter is greatly reduced when we consider that, beneath the complexity of his argument and prose, Derrida understands myth to be a kind of illusion or falsehood that is unquestioningly taken to be fact.

Fitzpatrick (2002: 32) draws on Derrida's notion of the white mythology and argues that Western law typifies this logical fallacy. Much like Derrida, Fitzpatrick (2002: 13, 32) is critical of Western rationalities which suggest that modernity constitutes the absence of myth. Fitzpatrick (2002: 44-45) traces this rationality back to the Enlightenment, which produced a disenchantment with the world and a rejection of superstition and fanciful ideas that included mythology. He suggests that, during the Enlightenment, Europeans sought an explanation for the differences that existed between themselves and primitive cultures, given that they shared a common ancestry (Fitzpatrick 2002: 14, 71). Unlike other cultures which conceived of themselves as being descended from gods, the Enlightened West understood itself as having risen above a savage and primordial past (Fitzpatrick 2002: 63). Consequently, the notion of social progress became defined as moving away from this primitiveness (Fitzpatrick 2002: 51, 133). These ideas were important in shaping the philosophical identity of the West during the Enlightenment (Fitzpatrick 2002: 63,

104). According to Fitzpatrick (2002: 71, 89), this produced an understanding of social progress as following clear stages by which “savage” life gave way to civilization, an understanding which just happened to correspond with the West’s experience. Ultimately, the Enlightenment recast myth negatively as an assortment of fantastic tales about lost paradises, monsters, and heroes belonging to our pre-modern progenitors—in short, of being linked to a stage in social evolution that Europeans had outgrown (Fitzpatrick 2002: ix).

According to Fitzpatrick (2002: 14, 17, 28), this is still reflected in contemporary scholarship, where the term “myth” is most often used as the antonym of others like “reason”, “modernity”, “science”, and “history”. The essence of the Enlightenment project was the systematic demystification of the world, a process which necessarily involved the destruction of myth and disruption of the superstition and delusions which it fosters (Fitzpatrick 2002: 27, 44; Horkheimer & Adorno 2002: 1-2). Fitzpatrick (2002: 51) demonstrates that the opposite is true—rather than destroying myth, the Enlightenment simply supplanted one set of myths for another. Modern law was one of the new myths that grew out of the Enlightenment project’s attempt to demystify the world (Fitzpatrick 2002: 44-45). The notion of a superstitious, pre-civilized, and natural state of savagery served as the intellectual backdrop against which Thomas Hobbes and other Enlightenment thinkers conceptualized the necessity of a commonwealth based on a social contract between citizens and a sovereign which was enforced by law (Fitzpatrick 2002: 73-74). Fitzpatrick (2002: 1, 11, 202) argues that, although founded within an intellectual tradition that was premised on a denial of mythical delusions, modern law derives its legitimacy, authority, and coherence from myth. He points out that modern legal mythology “is every bit as

sociologically elaborated as that which supposedly bound the primitives and the ancients” and even shares a similar “quasi-religious transcendence” (Fitzpatrick 2002: x, 2).

Fitzpatrick’s work stops short of developing a theoretically robust conceptualization of myth. In fact, the precise definition of myth in his work is never elaborated, though he cites Derrida’s notion of the white mythology. Although Fitzpatrick (2002: 32) claims that his theoretical approach is informed by Derrida, his usage of the term myth implies a conceptualization that is in fact most reminiscent of Malinowski and the Durkheimian functionalist tradition. Like Malinowski, Fitzpatrick (2002: 19, 24) understands myths to function as an “elaborate guide to life” which determines the nature and dynamic of social relations and legitimizes social and cultural practices. He suggests that modern legal mythology provides an operative reality, serving as an exemplar and guide against which social relations and practices are evaluated and from which they derive their validity (Fitzpatrick 2002: 22, 42). This assertion bears a great deal of similarity to functionalist assertions that myths legitimize, guide, and validate social practices. He concludes that myths remain an extremely important part of modernity, as evidenced by the fact that the law itself functions as a mythical narrative. Fitzpatrick draws on Derridean theory by offering law as an example of Derrida’s white mythology. Like Derrida, he uses the concept of myth to criticize the assumptions upon which Western philosophy is based, but he too offers no real conceptualization of myth. The implied conceptualization of myth that is present in Fitzpatrick’s work and which he attributes to Derrida actually comes from the ideas of other scholars that were implicitly drawn upon in Derrida’s work. Specifically, it is Malinowski, the Durkheimian functionalist, which Fitzpatrick’s usage of myth most resembles. Having outlined the dominant conceptualizations of myth that have been

mobilized within criminological research in recent years, the next section discusses the inherent contradictions and inadequacies of these conceptualizations.

6. CIVILIZING THE SAVAGE BY MASTERING TRUTH?

Although they seem to arrive to myth through divergent theoretical traditions (i.e. Durkheimian functionalism, Kantian humanism, and Derridean poststructuralism), each of the four studies summarized above reproduces two implicit ways of thinking about myth—as primitive thought and as an illusion or falsehood. As I will show in this section, contradictions underlie both implicit conceptualizations of myth that limit their potential as means of producing demystifying criminological scholarship. Both of these ways of understanding myth are based in and inherited from earlier scholarship on myth. According to Strenski (1987: 2), the leading scholars on myth in the 19th and 20th centuries, including Durkheim, Malinowski, Cassirer, and Ricoeur, had so great an impact that they essentially manufactured our understanding of myth. As a result, most of what today is considered to be common sense about myth, like its primitiveness, its explanatory function, its falsity, or its opposition to logic, are beholden to the theoretical perspectives of these scholars. So, whether Crank, Kappeler et al., Garland, and Fitzpatrick intended to or not, their work reproduces two of the most dominant and commonsensical ways of understanding myth that are founded in these earlier works.

The notion of myth as a primitive form of thought originates in the work of scholars who studied cultures, either past or present, that they deemed to be primitive, some through direct ethnographic observation (e.g. Malinowski) and others through the ethnographic accounts of others (e.g. Durkheim, Cassirer, etc.). One of the earliest critics of

this understanding of myth as primitive or pre-logical thinking comes from Claude Lévi-Strauss, another highly influential scholar on myth. Like many of his predecessors and contemporaries within anthropology, Lévi-Strauss developed his theory of myth in relation to the narratives and stories of ancient or primitive cultures. However, in many ways, Lévi-Strauss' theory of myth seems to reveal his own distaste for and reaction against the approaches to myth taken by his contemporaries. Lévi-Strauss conceptualized myth as a highly structured narrative and it is in his work where we begin to see the structural linguistic study of mythology emerge. By the time Lévi-Strauss (1955: 428) began writing on the subject, in the mid-1950s, the study of mythology had begun to languish. Myths were thought of within traditional scholarship as either a rudimentary means for primitive people to speculate about things they could not explain (e.g. nature, the cosmos, etc.), or simply as stories told for entertainment which expressed common values or universal human experiences and emotions (Lévi-Strauss 1955: 428-429).

In his writings, myth takes the form of stories whose events are set in the distant past, yet whose lessons are universal and apply equally to the past, present, and future (Lévi-Strauss 1955: 430). However, unlike his peers, Lévi-Strauss (1955: 431) drew from the study of linguistics and the semiological theory of Ferdinand de Saussure. This influence gave him an interest in the composition of mythological stories and led him to develop a method for analyzing them that breaks them down into their constituent units and reassembles them into bundles of similar relations (Lévi-Strauss 1955: 431). According to Lévi-Strauss (1955: 431), it is the combination of these units which produces meaning and imparts to the narrative the mythological quality that gives it universal application to the

past, present, and future. His chief example is the ancient Greek myth of Oedipus.¹⁹ This method of analysis revealed the intricacy and complexity of ancient myths like the story of Oedipus and led Lévi-Strauss (1955: 444; Lagopoulos 2016: 12) to conclude that the mind which produced them was in no way inferior or more “primitive” than the modern scientific mind. While their intellectual pursuits were different, Lévi-Strauss (1955: 444; Lagopoulos 2016: 12) argued that ancient and modern minds were equally intellectually driven. This represented a marked departure from the views of functionalists like Durkheim and Malinowski, who conceived of primitive thinking as more basic and unrefined than modern rational thought (Lévi-Strauss 2005: 5). In contrast, Lévi-Strauss (2005: 5) argued that these so-called primitives who were believed to be unable to lift their thinking beyond the immediacy of their basic biological needs were in fact driven by an intellectual curiosity which, although pursued through mythology, was no less advanced than our own.

More recently, the notion of myth as representative of a primitive way of thinking that is contrasted against the logic and reason of modern thinking has been directly challenged by Jacques Derrida and Peter Fitzpatrick. Derrida’s critique of the foundations of Western mythology, summarized earlier in this chapter, demonstrates that the same philosophical scholarship that condemned the primitiveness of mythic thinking in order to reify and legitimize the superiority of reason and scientific knowledge simply exchanged

¹⁹ In this myth, Oedipus receives a prophecy that he will kill his father, the king of Thebes, and marry his mother (The Encyclopedia of Ancient Myths and Culture 2004). Sadly, Oedipus’ attempts to prevent the prophecy from coming true end up being instrumental in bringing it to pass and he meets with a tragic end (The Encyclopedia of Ancient Myths and Culture 2004: 98). Lévi-Strauss (1955: 432, 436) selects this myth because he believed it to be one that would be well-known to his audience, either from having heard the myth recounted or from the Freudian psychoanalytic theories that it inspired. By regrouping elements of the myth based on their common features, Lévi-Strauss (1955: 433-434) concluded that the myth’s central issue is the valuation of blood relations.

one mythology for another. Pursuing Derrida's critique still further, Fitzpatrick demonstrates how this took place through law. Fitzpatrick shows that legal discourses and the practices based on them are just as mythic as the superstitious beliefs that supposedly primitive cultures held and which the Enlightenment was meant to eradicate. Together, Lévi-Strauss, Derrida, and Fitzpatrick offer compelling reasons why we should be wary of any conceptualization of myth as primitive or pre-logical thinking. This conceptualization is premised on a racist and Euro-centric "us vs them" comparison that, as Derrida and Fitzpatrick show, took shape in the Enlightenment and entrenched an understanding of progress and civilization as the certain and gradual triumph of reason over superstition that persists into the present. Lévi-Strauss, Derrida, and Fitzpatrick undermine the racist and xenophobic othering that served as the premise for this conceptualization of myth. Lévi-Strauss does so by demonstrating that there is nothing inferior or primitive about what is often pejoratively assigned the label of myth, whereas Derrida and Fitzpatrick do so by deconstructing the illusion of superiority inherited from the Enlightenment. Although Lévi-Strauss, Derrida, and Fitzpatrick all vehemently reject the notion that mythic thinking is a primitive artefact from our primordial and pre-logical past, all three of them reproduce and leave unquestioned the idea that myth is illusion and falsehood, which is the second implicit meaning of myth that pervades the studies that I summarized earlier.

There are several problematic implications of these conceptualizations of myth. If we understand myth as a primitive form of thinking that is the antithesis of logic and reason, then the task of demystification for the critical scholar becomes a kind of civilizing project. Moreover, if we understand myth as popular illusion, then this civilizing project is to be accomplished by dispelling these illusions through exposure to "truths" derived from

scientific knowledge. This is reflected in Kappeler et al. (1996), for example, whose book seems intended to challenge the common sense views about the criminal justice system reflected in popular discourses using empirical evidence. However, it is also reflected in the aims of recent streams that have developed within the discipline, such as newsmaking and public criminologies. These criminologies take as their primary objective, among other things, the education of the general public about the realities of crime control, justice, and the penal system by engaging directly in mass-mediated debates about these issues and using them as venues for the dissemination of criminological knowledge (Barak 2007: 192; Crépault 2017: 793; Currie 2007: 178; Loader & Sparks 2010: 776; Uggen & Inderbitzen 2010: 726, 738). A key premise underlying this objective is the persistent and highly paternalistic belief “that the general public constitutes an ignorant mass who uncritically absorb information about crime and criminal justice issues from television, the Internet and other forms of reality distorting media, ultimately leaving them misinformed and making them easy prey for ideological manipulation” (Crépault 2017: 793). By disseminating their knowledge and expertise in ways that are both publicly accessible and will be easily understood by non-experts, newsmaking and public criminologists hope to counter what is perceived to be a rising tide of ignorance and misinformation by helping to foster the development of a well-informed and critical-thinking public.

In other words, public criminologists are dedicated to the demystification of criminological knowledge, just as their critical and radical predecessors were. However, the idea that the public is essentially primitive, by virtue of their ignorance and adherence to illusions, and in need of exposure to a truth that is uniquely available to an enlightened few is problematic. As a number of scholars have shown (see Ruggiero 2012, Turner 2013,

Carrier 2014, Piché 2014, and Crépault 2017 for example), this unrealistically constitutes the academic scholar as a “master of truth”, which compromises academic reflexivity and obscures the fact that knowledge is constructed and therefore necessarily subjective in nature (Crépault 2017: 800; Tonry 2010: 786; Turner 2013: 163). Taking the view, as Kappeler et al. (1996) and others do, that myths are illusory or false thinking that must be eradicated by being exposed to the truth of academic knowledge leads to serious epistemological and ontological contradictions (Crépault 2017: 800-801). This understanding is incompatible with the many non-positivist epistemologies and ontologies that suggest that knowledge is fallible and that truth claims are untenable (Crépault 2017: 800-801; Frauley & Pearce 2007: 13; Rigakos & Frauley 2011: 249-250). So, ultimately, an immanent critique of the four criminological studies of myth conducted by Crank (1994), Kappeler et al. (1996), Garland (1996), and Fitzpatrick (2002) reveals that they are all based on two essential conceptualizations of myth as either primitive or illusory thinking. Both of these conceptualizations are plagued by contradictions that render them impracticable as a means of producing demystifying scholarship. However, immanent critique is not merely about identifying contradictions or logical inconsistencies. Immanent critique is meant to be transformative and is therefore also about coming up with an alternative possible means by which these contradictions can be evaded or resolved (Antonio 1981: 332, 334; Pavlich 2001: 156, 158; Wrenn 2016: 464). In the next section, I introduce the conceptualization of myth developed by Roland Barthes, which evades the contradictions inherent in conceiving of myth as primitive thinking or illusion and of demystification as a civilizing project involving “truth mastery”.

7. ROLAND BARTHES – MYTH AS NATURALIZED SIGNIFICATION

In the previous chapter, I described Barthes' (1957: 81; 1971: 613) understanding of myth as a form of signification in which a sign's connotations are taken for granted as natural, instead of being recognized as ideological associations that have a history and context. In *Mythologies*, he describes the semiological inner workings whereby the connotative meanings associated with signs are naturalized and become myth. As a result of approaching myth through semiotics, Barthes (1957: 218, 223) begins from the understanding that myth represents a parallel system of signification which depends upon the linguistic signification system for its raw material. A lateral shift takes place when a first-order linguistic signifier is appropriated into a new mythic system of signification where it is associated with a new second-order signified (Barthes 1957: 222-224). Essentially, what happens in myth is that an existing signifier is "hijacked" and used to communicate something altogether different (Barthes 1957: 232). As shown below in *Figure 2* for example, the words "black cat" are signifiers which, at the linguistic level, simply denote an animal of a particular colour. However, this becomes myth when a lateral shift takes place and these signifiers are used to point to a new signified, such as the concept of "evil" or "misfortune" for instance. When this lateral shift occurs, the linguistic signifier (i.e. black cat) enters the new signification with a pre-existing meaning (i.e. animal and colour) which must be suppressed in order to facilitate the superimposition of a new mythic concept (Barthes 1957: 229).

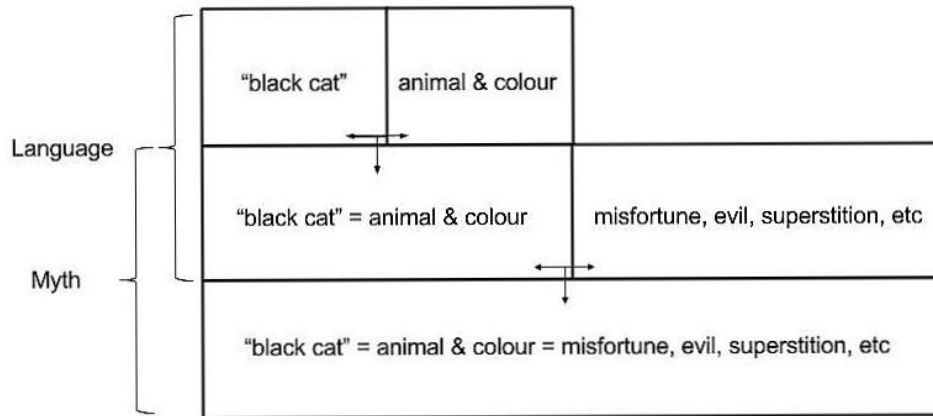


Figure 2: This modification of Barthes' (1957) original illustration replaces his semiotic terms with a more relatable example in order to more clearly demonstrate the relationship between first and second-order signs and the transition from linguistic to mythic signification.

As a result, the signifier's original pre-mythic meaning is distorted, but not destroyed (Barthes 1957: 227-228). The two become a symbiotic unit, coexisting as a new mythic sign (Barthes 1957: 227). Thus, within the newly created mythic signification, the words "black cat" would simultaneously refer to an animal of a certain colour as well as the concept of evil or misfortune. This co-existence is the reason why these signs become so familiar and naturalized and why their associations become taken for granted (Barthes 1957: 238). The linguistic signs which allow us to communicate are learned in early childhood and continually strengthened throughout adolescence and adulthood, making them like the rules of a game or a social contract that we all enter into, which gives them a taken-for-granted factuality (Barthes 1964: 93; Saussure 1968: 31). Through its parasitic relationship with existing signs, myth is able to attach new meanings to familiar pre-existing signifiers and the result becomes just as natural and familiar as the original sign (Barthes 1957: 222; Boer 2011: 216). According to Barthes (1957: 238), the consumer of myth is completely unaware of the constructed nature of the connection between the signifier and signified,

which to them appears completely natural. This naturalization, Barthes (1957: 268; 1971: 614) argues, makes myth a pervasive and inescapable thread running through every aspect of our lives. Myths are essentially ideologies in disguise and they are everywhere and solicit people incessantly (Barthes 1957: 268; Boer 2011: 217).

In Barthes' work, myth becomes a usable analytic concept. It becomes a conceptual tool with which we can analyze a whole range of discourse, whether verbal or textual or visual. This is not the case with the other conceptualizations of myth discussed in this chapter. Barthesian semiotics is a proven methodology for analyzing the symbols of state authority, whose manipulation for ideological purposes is, according to Garland (1996: 460), a characteristic feature of tough-on-crime politics like those that are believed to have recently intensified in Canada. By seeking to disrupt the naturalization of myth within chains of signification, the reading of myth from a semiotic framework derived from Barthes necessarily attunes the researcher to the ideological content of myth. This makes a semiological approach ideal for the analysis of the symbols of state power, as well as how they are manipulated and how their ideological content is elevated to myth. The other conceptualizations of myth discussed in this paper either do not mention myth's ideological significance (e.g. Durkheim and Malinowski) or they allude to myth's ideological function without pursuing this analysis further (e.g. Kappeler et al. and Fitzpatrick). A further advantage of Barthes' (1957: 225) framework is its tremendous versatility, which allows us to understand myth both in terms of the functioning of individual signs as well as the more complex configurations of multiple signs. In the Saussurean semiotic tradition, signs were always proportionate, meaning that one signifier was only ever associated with one signified at any one time. However, Barthes (1957: 225), demonstrates that *mythic*

signification is not bound to the same rules as *linguistic* signification and that, consequently, a cluster of signifiers can make reference to a single signified mythic concept. This insight in Barthes' work facilitates analysis of individual signs that have been elevated to mythic status, as well as more complex arrays of interconnected signs which cumulatively take on a mythic significance.

As a result, Barthes' semiotics provides a far more complete understanding that allows us to account for and even reconcile conceptualizations of myth as symbolism (e.g. Ricoeur's "mytho-poetic nucleus") with those of myth as narrative structure (e.g. the origin myths studied by Malinowski). According to Barthes (1957: 228), a myth is created when an existing signifier (e.g. a picture of a soldier) is "stolen" and used to point to a new signified (e.g. patriotism). Yet this model can be used to explain the functioning of classic or ancient mythology as well. Within these myths, a verbally transmitted story, which itself is already a set of linguistic signs, is made to carry a different meaning, which we sometimes call the moral of the story. So, for example, what makes the story of Hercules a myth from Barthes' perspective is not the narrative describing his extraordinary adventures. Rather, it is the higher meaning that is superimposed over the narrative. As pointed out by Ricoeur, one of the original functions of the ancient stories which were passed down as classic myths was to communicate values and mores to the next generation (e.g. Aesop's fables teach children behaviour norms) or served as explanations for the natural world (e.g. the story of Thor's hammer explains the existence of thunder) (Ricoeur & Kearney 1978: 114). Even with this conceptualization of myth we see that beneath the surface there is an ideological message which the myth helps deliver and naturalize. For instance, Aesop's fables naturalized certain forms of behaviour and social conduct which likely supported the

hegemony at the time. Therefore, Barthesian semiotics can facilitate an understanding of even the most complex myths as well as reconcile disparities between the various alternative conceptualizations of myth. This is because semiotics allows the researcher to move freely between levels of signification, focusing on individual signs, as well as on how multiple signs can fit together into a complex web that itself becomes a signifier (Barthes 1957: 225).

Importantly, Barthes' conceptualization of myth is immune to the contradictions that plague the conceptualizations of myth as primitive and as illusory. The key differences between Barthes and the other scholars discussed so far are based in the fact that, although they are all interested in myth, their objects of analysis were dissimilar. Most of the original scholars on myth, like Durkheim, Malinowski, Cassirer, Ricoeur, and Lévi-Strauss, studied what is generally referred to as mythology—tales of gods and goddesses, of monsters and the exploits of heroes, of creation and life and death, and so on. This object of analysis and its context facilitated the conceptualization of myth as both primitive and illusory. This conceptualization survived and was translated into criminology through the work of Crank, Garland, Kappeler et al., and Fitzpatrick. However, Barthes begins from a peculiarity of naturalized signification that he identifies in the present of his socio-cultural context and that he calls myth. Consequently, his object of analysis (i.e. naturalized signs) has nothing to do with the so-called primitive cultures of the past or present and nothing to do with what is generally referred to as mythology, though as I have shown above, Barthes' framework can be used to analyze this too. So, no association between myth and primitive thinking exists in his work. But Barthes (1957: 236) avoids the second pitfall too by focusing his method of analysis on the *social function* that myths or naturalized signs have

in the present. It is what myths do, like what social practices they influence for example that interests Barthes. Because his focus is on the social function of myth, the question of whether it is true or false is sidestepped as irrelevant, since naturalized signs have an effect on the process of signification, and by extension on lived practices, regardless of their veracity (Barthes 1957: 236).

While the twin conceptualizations of myth as primitive and illusory can result in a problematic approach to demystification that is focused on mastering truth and mobilizing it to civilize people and their savage opinions and beliefs, Barthes' conceptualization of myth as naturalized signification can result in an approach to demystification that resembles Loader and Sparks' (2011: 124) notion of the "democratic under-labourer" (Crépault 2017: 802). According to Loader and Sparks (2010: 778), the role of the publicly engaged scholar is to challenge and critique those positions that are taken-for-granted as fact in order to intensify or "heat up" the debate, not "to engineer outcomes, end political discussion, and trump the ill-informed concerns and perspectives of others". In other words, they advocate the use of a critical perspective to enhance the quality of the debate by exposing the implicit ideas and assumptions that lie beneath the surface, rather than advocating normative positions on specific topics (Crépault 2017: 802; Loader & Sparks 2010: 777). Barthes' critical approach to myth is based on the demystification of the common sense and taken-for-granted forms of naturalized signification that pervade everyday life and, therefore, provides the theoretical and analytical tools that can be used as a means of democratic under-labouring (Crépault 2017: 802).

Yet, despite all of these advantages and strengths, Barthes has been critiqued because the Marxism that characterises his early work suffers from some of the determinism and

reductionism that ultimately led to Marxism's decline. It is clear from these critiques that some augmentation or refining of Barthes' theoretical framework is necessary in order to apply his theory and method of demythologization. However, the groundwork for this adjustment and refining of Barthes' framework has already been laid, though, as I argued in the previous chapter, it has been neglected and has fallen into disuse. One of the outcomes of the Birmingham School's strategy of raiding other disciplines for useful analytic tools was the combination of a more nuanced Althusserian and Gramscian Marxist understanding of ideology and hegemony with the highly detailed conceptualization of signification and robust methodology offered by Barthesian semiotics. As I showed in the last chapter, the usefulness of this approach for producing demystifying scholarship was demonstrated in Dick Hebdige's study of subcultural style. Hebdige's semiotic and cultural Marxist approach to style as ideological signification can be utilized as a template for a Barthesian analysis of myth that evades the reductionism of Barthes' early work. But Birmingham scholars were not the only ones who saw value in Barthes' approach. In fact, Barthes' semiotic conceptualization of myth as a naturalized signification has been applied within criminology on two notable occasions—by Peter K. Manning in the late 1970s and more recently by Mariana Valverde. It is to these studies and their application of Barthes' conceptualization of myth to criminology that I now turn in the next two sections.

8. PETER K. MANNING – THE POLICE MYTH

Peter K. Manning is among a very few criminologists who have utilized Barthes in order to study myths associated with crime and the criminal justice system. In *Police Work: The Social Organization of Policing* (1977), he explores the everyday realities of policing as well as its symbolic dimension. Manning approaches the study of policing through

dramaturgy, a theoretical perspective developed by Erving Goffman (Craib 1992: 89) that “refers to the *selective presentation of behaviours for public view and the symbolizations referring to those behaviors that can be interpreted as conveying a message or set of messages about the meaning of those behaviors*” (Manning 1977: 23 – original emphasis). Stated more plainly, dramaturgy examines how symbols and rhetoric are manipulated in such a way as to persuade and impress an audience (Carter & Fuller 2016: 937-939; Craib 1992: 89; Meltzer, Petras, & Reynolds 1975: 69). The central problematic that Manning (1977: 16) grapples with in this voluminous text is the seeming contradiction between the growth of the police both in terms of reach and authority and their complete inability to control crime. Since, in Manning’s (1977: 16) estimation, the police have nothing to show for their efforts except “false accomplishments”, he argues that “their legitimation rests on beliefs derived from inadequate or controlled information”.

It is this interest in the dramaturgical aspects of policing practices—that is, in the way that police forces have sought to control the manner in which they are perceived by the public—that leads Manning to the concept of myth. He notes that:

The entire panoply of police activity is rationalized to the public and to officers themselves in terms of what I call the *police myth*. Suffice it to say here that the concrete rationalizations (what Mannheim called partial ideologies) of the police are subsumed by an unconsciously adhered to total ideology properly viewed as myth. It roots and existentially supports the microworld of policing, grants it coherence and rationality, and converts the potential chaos of policing into something one does a day at a time. It does not rationalize facts, it creates, orders, and makes salient all that is taken to be fact. It cannot be disproved, for it is the unseen framework against which other claims are assessed. It does not necessarily make sense to others, for it is that which makes sense. (Manning 1977: 35)

This suggests that, for Manning, myth is more than simply an illusion that is presented to individuals through a particular narrative structure (e.g. a story or legend) as scholars like Malinowski or Cassirer would suggest. Myths are paradigms that influence and shape an individual’s thinking towards something, not as a kind of deterministic false consciousness

that turns individuals into robots, but as a subtle ideological influence that promotes or favours certain interpretations of meaning over others (Manning 1977: 322). This understanding of myth comes from Barthes' *Mythologies*, which Manning (1977: 320-321) references very briefly in chapter 9 of *Police Work*. Barthes' influence on Manning's conceptualization of myth is discernible from the way in which the latter seems to understand how myth's naturalizing function mystifies policing. By naturalizing the idea that police work is more than a job, that it is a kind of altruistic higher calling to keep society safe, myth imposes a mystification that obscures the personal and group interests that are central to the everyday reality of policing (Manning 1977: 325).

For Manning, augmenting his conceptualization of myth with Barthes results in a far more sophisticated understanding of *what* myth is, as well as *how* its ideological content is signified and how this signification mystifies knowledge about the criminal justice system. However, Barthesian semiotics is not Manning's methodological approach in *Police Work*, nor does it form a significant part of his theoretical framework. It simply provides him with a way to understand the symbolic signification that surrounds police work's dramaturgical dynamics. The main theoretical influence on Manning's understanding of police work is Erving Goffman. In fact, Barthes' appearance in Manning's study is so brief that it seems to have been entirely overlooked by reviewers of the book, both during the release of the first edition in 1977 and the substantially revised second edition that was released in 1997. No one at that time or since then seems to have pursued the Barthesian conceptualization of myth discussed in *Police Work*, including Manning himself. In 2001, he wrote *Theorizing Policing: The Drama and Myth of Crime Control in the NYPD*, an article in which he returned to the study of policing myth and focused on a particular subtype of it which he calls the

“command and control” myth (Manning 2001: 316, 334). In the 2001 study, however, his approach is uniquely a dramaturgical one informed by Goffman and he opts for a more simplified definition of myth as “counterfactual beliefs with an unexamined status” instead of the more detailed Barthesian conceptualization that appears in *Police Work* (Manning 2001: 318). While there is no mention of this, it seems possible that this disappearance of Barthes from Manning’s research on police myth relates to the overall decline of Marxist theorizing that occurred within critical criminology through the 1980s and 1990s. So, although Manning’s early incorporation of Barthes, slight as it was, showed promise, it was not been developed to any great extent. As I will show in the next section, a far more developed and comprehensive usage of Barthes’ conceptualization of myth has appeared in the work of Mariana Valverde.

9. MARIANA VALVERDE – MYTH AND CULTURAL REPRESENTATIONS OF CRIME

Mariana Valverde is among those criminologists who in recent years have taken an interest in criminological myths and, importantly, she is one of the very few who have done so using a Barthesian conceptualization of myth. Yet, unlike any of the other criminological studies that have been discussed so far, Valverde seems less interested in the *content* of specific myths as she is in *how* they are studied. In the introduction to *Law and Order: Images, Meanings, Myths*, Valverde (2006: 1-2) addresses the frustrations that many criminologists feel about not being listened to by mass media or public policy makers with regard to “the truth” about criminal justice issues. She notes that criminologists often complain that the “facts” produced by their research efforts are drowned out by cultural representations of crime that “fill people’s heads with false fears, myths and misleading, simplistic solutions” (Valverde 2006: 1). This is a complaint that has become a theme

characteristic of the newsmaking and public criminology literatures to which I made reference earlier (see Barak 1988, Currie 2007, Uggen & Inderbitzen 2010 for example). Valverde (2006: 4-5, 7) traces this contempt for sensational or anecdotal knowledge and the concomitant praising of academic and scientific knowledge among scholars to the Enlightenment, arguing that its influence has rendered illegitimate non-academic accounts of criminal justice issues in the eyes of criminologists. However, sensational cultural representations of crime, she argues, are not going anywhere because they are “too deeply rooted in our collective psyche to be displaced by a few facts” (Valverde 2006: 9). This being the case, she sides with Barthes in considering any question about whether or not a given cultural representation is accurate or truthful to be entirely irrelevant and argues that the more important question is what they signify. She argues that criminological urban legends that persist, like the infamously over-exaggerated threat of razorblades in Halloween candy, need “to be taken seriously and analyzed in [their] mythical and psychological dimensions” instead of being merely criticized by criminologists (Valverde 2006: 9).

Approaching myth through Barthes allows Valverde (2006: 25) to evade the traditional understanding of myths as illusions or misrepresentations because, first and foremost, she understands myth as something that exists and has a signifying value regardless of whether or not what is signified is objectively true. Through this introduction, Valverde establishes that it is the social effects of cultural representations that she is interested in, rather than the content of specific myths, and the remainder of the book is devoted to developing and illustrating a template based on Barthes and social semiotics that facilitates this type of analysis. Valverde paves the way for this template in the second

chapter of *Law and Order* by offering an explanation of the basics of semiotics and of Barthes' conceptualization of myth. There are two elements of his conceptualization that she considers particularly important for studying the social effects of mythic cultural representations of crime. The first is that, while there are innumerable signs, the number of cultural myths is actually quite limited (Valverde 2006: 26). She notes that the same basic cultural myths, like the classic "David vs. Goliath" scenario for instance, become mythic through sheer repetition as they are presented and reinvented again and again through different signs (e.g. as a Bible story, as a Hollywood movie, as a metaphor in a newspaper article, and so on) (Valverde 2006: 26-27). This makes myth a powerful ideological tool, since virtually anyone can increase the appeal of the meanings they wish to convey through cultural representations by linking them with these myths (Valverde 2006: 26). This linking of signifying practices with existing cultural myths will be discussed in more depth in chapter 5. A second feature of Barthes' conceptualization that Valverde (2006: 27) considers to be particularly important is the erasure of history that takes place when something is elevated to mythic status. She uses the example of the marketing of commodities like chocolate and diamonds to show how these two facets of myth, functioning together, can allow people or corporations to connect their ideas to myths in ways that appear natural rather than by design (Valverde 2006: 27).

Valverde's (2006: 28) template for the analysis of mythic cultural representations involves a three-pronged consideration of *content*, *format*, and *context*. By "content", Valverde (2006: 34) refers to what is present or absent within the given cultural representation. "Format" in her template refers to all of the elements that go into how signs communicate meaning, including things like cinematic techniques, genre, sequence, and so

on (Valverde 2006: 42-43, 47). Finally, “context” refers to all of the elements that make up the before-and-after of the cultural representation. In other words, contextual analysis in Valverde’s (2006: 56) template takes into consideration the process of production as well as the “the context of reception or consumption” of mythic cultural representations. However, this three-pronged template points to a key difference that exists between Valverde and Barthes. Whereas Barthes saw myths as ideologies in disguise and demythologization as the means by which to expose and challenge them, Valverde is far more circumspect about the usefulness of ideology as a concept. She expresses a skepticism about the usefulness of seeking to expose the truth of the representations that we study in terms of the political and economic interests that they support (Valverde 2006: 36). Instead, as noted above, she advocates a focus on the social effects of cultural representations, which she argues will result in a deeper understanding of mythic cultural representations (Valverde 2006: 37). In spite of what I believe to be its tremendous analytic potential, Valverde’s approach to myth in *Law and Order* does not seem to have been drawn upon as a means of critically engaging with and demystifying cultural representations of crime.

Yet, as Valverde (2006: 25) reminds us, there is no such thing as a “total method” and the Birmingham School too has been critiqued for its own limitations and theoretical blind spots. Valverde (2006: 38) points out that, despite their best efforts to advance a more theoretically sophisticated Marxism, traces of orthodox Marxism’s reductionism and determinism can still be found in Birmingham scholarship. In Hall et al.’s (2013) *Policing the Crisis* for example, Valverde (2006: 38) finds that the researchers focused almost exclusively on the content of media communications and neglected the importance of

format and context, resulting in a conceptualization of the media as simply a conduit for ideology – a view that resembles orthodox Marxism’s conspiratorial understanding of mass media. She argues that this theoretical blind spot led to, among other things, an inability to distinguish between types of readers and consider how different perspectives among readers may have produced alternative understandings of the events being reported (Valverde 2006: 38). In *Law and Order: Images, Meanings, Myths*, Valverde (2006) seeks to rectify this limitation to Birmingham by advancing a template for the study of myth that emphasizes the importance of *format* and *context* and not *content* alone. Taken together, Barthes’ work on myth and the elaborations and extensions of his work provided by Hebdige (1979) and Valverde (2006) offer a very promising theoretical framework and methodology through which the meaning or signification of recent criminal justice trends in Canada can be critically examined, without falling prey to the problems and limitations to which Barthes’ early work and Birmingham scholarship were prone.

10. CONCLUSION

The studies of myth discussed in this chapter exemplify our discipline’s longstanding critical commitment to demystification in that they seek to reveal different areas of criminological knowledge where false beliefs and misinformation have taken hold and have perpetuated. This commitment remains central to criminology today. Writing in 2016, Lois Presser (138) states:

Myth is a foremost preoccupation of criminologists. Most often we engage with myths as parcels of inaccurate public opinion in need of our brand of correction, the dissemination of research derived evidence. Some of us thematize myths, demonstrating that they animate politically charged campaigns in the name of justice – for example, against drug users and minority youth and for militarized school security. On this view, myths are erroneous ideas to which other people subscribe.

Presser's (2016: 138) assertion confirms that criminologists are still highly interested in identifying and challenging myth as a unique signifying practice that is a form of primitive ignorance in that it imposes "incorrect and deformed interpretations of reality" (Rock 2002: 66). However, myth remains under-theorized and despite being, as Presser (2016: 138) claims, "a foremost preoccupation" of criminology, the approaches taken have not significantly advanced our understanding of how myth produces a mystification of knowledge.

As I suggested in the last chapter, there is little question that the recent shifts in Canadian criminal justice policy signify something. All sides seem to agree on this point, yet the debate rages on about exactly *what* is being signified by these recent trends. Webster and Doob (2015), for example, argue that these trends signified a shift towards a more symbolic function of crime policy. They suggest that the ultimate goal of the Harper Conservatives was not punishment for its own sake, but rather the use of tough-on-crime policy as "a mechanism to reinforce conservative values related to individual responsibility in *all* aspects of life" (Webster & Doob 2015: 317 – *original emphasis*). One of the arguments that has been repeatedly raised in these debates (and it is a familiar one to criminologists) is that Canadian criminal justice policy decisions are being made based on erroneous and inaccurate information, rather than empirical data and reliable facts. Although other Canadian governments have not been immune to this particular accusation, it was one that was frequently levelled at the Harper Conservatives, whose tough on crime agenda and political rhetoric were believed to be based on erroneous assertions about the catastrophic extent and severity of crime in Canada, despite an abundance of evidence to the contrary (Boyce 2015: 5; DeKeseredy 2013: 21; Jeffrey 2015: 215; Mallea 2011: 32;

Prince 2015: 62-63). This is precisely what Presser (2016), Kappeler et al. (1996), and others define as the kind of myths that criminological research ought to expose. So, exploring the signifying value of criminal justice policy trends necessitates wading into the various myths believed to be muddying the waters of public knowledge about criminal justice issues. As I noted in the previous chapter, there is a long tradition of critical scholarship within criminology that focuses on “speaking truth to power”. Despite the limitations noted in this chapter, this scholarship can provide an important and necessary counterbalance to the truth claims made by politicians or state institutions about criminal justice issues.

However, as Valverde (2006: 9) has argued convincingly in *Law and Order: Images, Meanings, Myths*, the conflation of myths with illusions and criminologists’ subsequent efforts to expose and replace them with our discipline’s truths often ignores the fact that even false beliefs can continue to influence people’s thinking long after they have been denounced as such. So, there is value in embracing a conceptualization of demystification that extends beyond trying to distinguish between truth and falsity and that offers a means of exposing myth’s social effects and interrupts its naturalization by shedding light on the socio-historical context that produced it and which has been effaced in its ascent to the status of taken-for-granted factuality. This is what is currently absent from critical criminology but is offered by Barthes’ work. In contrast to the other conceptualizations of myth as primitive or illusory discussed in this chapter, Barthes provides a theoretically and methodologically robust approach to the study of myth capable of getting beyond questions about the truth or falsity of cultural representations of crime and exposing their ideological significance. When strengthened with Hebdige (1979) and Valverde’s (2006)

complimentary contributions, Barthes' framework is less prone to reductionism or determinism and becomes capable of shedding light on the social effects of myth's ideological mystification in addition to laying bare its process of signification. The Birmingham School, particularly the work of Stuart Hall and Dick Hebdige, contributes to Barthes' framework a more complex understanding of ideological conflict. Borrowing from Gramsci, Birmingham brings to Barthes' work a more complex understanding of the ruling class as composed of fractions, different groups whose interests are sometimes aligned and at other times are conflicting and competing (Hall et al. 2013: 202, 213; Hall 1980: 23-24; 1988: 59). So, while Barthes' work helps us to conceptualize the inner workings of myth as a particular taken-for-granted form of signification, Birmingham contributes to this the understanding that myths are continually being fought over. Valverde (2006: 42, 56) completes the picture by helping us to understand how mythic content can be transmitted through different media or formats of signification (e.g. parliamentary debates and social media images) as well as the context in which these are produced and consumed. The analysis of format and context, instead of only content, provides a greater analytic depth into myth and its social effects (Valverde 2006: 36, 42).

In other words, instead of identifying the assertions that support punitive policies in Canada as being either true or false, which is a recurring theme within the debates summarized in chapter 1, Barthesian semiotics can move the discussion towards a productive examination of how these myths (re)produce certain responses to crime, and how they influence public debates surrounding criminal justice issues and the process of law-making and governance. In the coming chapters, I will analyze the myths that appear in Canadian parliamentary debate transcripts regarding marijuana in order to illustrate the

potential of Barthes' conceptualization of myth and semiotic methodology as a means of producing demystifying criminological scholarship.

Chapter 4 - Canada's History of Parliamentary Discourse on Marijuana as Myth-(Re)Making

1. INTRODUCTION

"[P]olice records indicate that the smoking of cigarettes made from Cannabis Sativa leaf has been the cause of many sex crimes, murders, robberies, and other crimes".

—James Horace King, Liberal Senator, March 10, 1938

"What we are talking about is the use of [marijuana] to relieve pain in those who are suffering. I think that is very commendable. We are not talking about the legalization of the product for recreational or casual use."

—Greg Thompson, Progressive Conservative MP, March 4, 1999

"When it comes to the matter of cannabis, we have made it very clear that we are going to legalize access to cannabis, but we are going to do so in a strict regulatory regime to keep marijuana out of the hands of children and the profits out of the hands of criminals."

—Jane Philpott, Liberal Minister of Health, February 2, 2017

Each of the statements that make up the above epigraph were made in Canada's Parliament in the course of debates about marijuana over the last century. They are an extremely small cross-section of the innumerable and extremely diverse political commentaries on marijuana made in our houses of government since 1891. The divergence of these opinions gives rise to what I believe to be an important question—what conceptualizations of marijuana have been conveyed by politicians over the years and how have these produced such conflicting views as those above? Semiotics is a theoretical framework and methodology made up of powerful analytic tools that can equip us to answer questions about the ideas associated with certain signs and how these change. The concept of semiosis is particularly helpful in this respect. Semiosis refers to the way that signs point to other signs in a potentially endless chain of signification (Chandler 2002: 31, 140; Hall 1980: 123; 1988: 59; Hebdige 1979: 117; Manning 1987: 38; Valverde 1991:

177). But all semiotic activities including the process of semiosis are subject to the passing of time (Hodge & Kress 1988: 35). According to Hodge and Kress (1988: 35) the expression of a sign relation is a particular moment in the transformation of that sign from what it meant in the past to what it will mean in the future. Consequently, understanding the chronological progression in the signification of signs is vital to interpreting what they refer to (Hodge & Kress 1988: 35). So, the concept of semiosis also accounts for the fact that, over time, the ideas associated with specific signs as well as the sign assemblages or chains of signification through which people communicate undergo incremental change (Chandler 2002: 31, 140; Hodge & Kress 1988: 35; Manning 1987: 38-39, 47). As the Birmingham School demonstrated in *Policing the Crisis*, the concept of semiosis makes it possible to use semiotics to track evolutions in the signification of signs, like the word “mugging” for instance (Turner 2003: 14-15).

The earliest mention of marijuana that I could find in Canadian parliamentary discourse was in 1891.²⁰ From then until today, the attention given to marijuana in parliamentary debates has been steadily increasing. As a result, marijuana has been subject to a great deal of semiosis and the signification associated with it has evolved significantly, as the epigraph clearly shows. In this chapter, I present an analysis of this change and I present a taxonomy whereby marijuana’s political history in Canada can be better understood. I argue that Canadian parliamentary discourse about marijuana can be categorized into eight distinct historical periods, beginning from the late 19th century when

²⁰ By “parliamentary discourse” I am referring to the speeches, comments, questions, and so on, that appear in the official Hansard transcripts of House of Commons and Senate debates, as well as House of Commons committee meetings. Utilizing the search functions of four separate online databases, I was able to find a total of 7560 results for key words that included “marijuana”, “cannabis”, as “hashish”, as well as common misspellings such as “marihuana”, “canabis”, and “hasheesh”, spanning from August 4, 1891 (the date of the earliest mention in parliament) to June 21, 2018 (the date that legalization legislation received Royal Assent).

marijuana was virtually unheard of and through its prohibition in 1923 and continuing to the time of this writing, when legislation to legalize marijuana has been implemented nation-wide. In all of the historical periods I have identified in this taxonomy, parliamentary political rhetoric continually associates marijuana with a number of threats or potential problems facing Canadian youth, while also constructing legislative responses intended to address or manage the risks associated with these problems.²¹

This chapter is structured chronologically and organized so that each section discusses one of the eight temporal periods that comprise my taxonomy. In each section, I outline some of the main themes in the debates of that period, while also providing historical or contextual background information wherever needed, and identifying the overarching conceptualizations of marijuana and how these related to those that came before and influenced those that were to come. As I will show, each of the historical periods in my taxonomy represents a very particular construction of “marijuana” as a discursive object. So, in effect, my analysis does not deal with marijuana as a single object of analysis, but rather eight different objects that are all called marijuana. As we move from one period into the next, we move discursively from one object to the next and encounter within the debates different attempts to mobilize law in order to address these discursive objects. Thus, the history of marijuana regulation and parliamentary debate is the history of the transformation of several different discourse objects all called marijuana. In order to understand these debates and attempts to regulate marijuana, we need to understand the

²¹ By “youth” I am referring to the stage of development between early childhood and adulthood. Although in some cases parliamentarians refer to this group of individuals using different terminology, including “kids”, “children”, “teenagers”, “youths”, “young people”, “adolescents” and so on, I have chosen to use the term “youth” because it is the most frequently used term in the debates and because it subsumes all of these other terms for the different stages of development between childhood and adulthood.

process of production of these different discursive objects. Semiotics can facilitate this by offering tools to help us identify their qualities and characteristics, as well as how they intermingle with others and evolve over time, producing new and emerging objects. The development of such tools is valuable not only with respect to parliamentary debates about marijuana, they are equally applicable to other debates and discourses, like the punitive turn discussion that I summarized in chapter 1.

It is worth noting that this chapter is primarily descriptive of my periodization and analysis results. I chose to focus this chapter exclusively on descriptive analysis to illustrate the complexity of “marijuana” as a concept by charting the numerous changes in its conceptualization and symbolic function over time. Beginning with this description was important in order to do justice to the depth and breadth of my sample, which encapsulated 127 years’ worth of parliamentary discourse about marijuana as well as some archival newsprint sources. Consequently, the substantive interpretation, discussion, and argumentation of my results follow in chapters 5 and 6.

2. THE AGE OF INNOCENCE (1891 – 1937)

“There is only one addition to the schedule: Cannabis Indica (Indian Hemp) or Hasheesh, or its preparations or compounds or derivatives, or their preparations and compounds.”

—Raoul Dandurand, Liberal Senator, May 3, 1923

“It is one form of the drug used in India which, I believe, goes under the popular name hashish. Probably hon. members have read about it. There is no objection to the use of it, and therefore permission will hereby be granted for its use.”

—Murray MacLaren, Conservative MP, March 4, 1932

Mentions of “marijuana”, “cannabis” or “hashish” in Canadian parliamentary debates during the late 19th and early 20th centuries were few and far between.²² I have entitled the period between 1891 and 1937 “The Age of Innocence” because it was a period during which marijuana was virtually unknown within parliamentary debate. The earliest mention of marijuana in parliament that I was able to find was on August 4, 1891, when Sir Wilfred Laurier suggested that a rival Member of Parliament (MP) was misleading Canadians by trying to “show everything under rosy colours, and to drug the people with some hashish or some potion the effect of which would be to create in them illusive sensations” (HC Deb 4 August 1891). While Sir Wilfred Laurier and a few other MPs and senators were apparently aware of the existence of hashish and the “illusive sensations” that it afforded users, parliamentary discourse during the late 19th and early 20th centuries suggests that marijuana had not previously been problematized at the federal level.

Yet the later years of Canada’s Age of Innocence with regard to marijuana were characterized by a distinct contradiction between the drug’s legal status and the way it was discussed in parliamentary debates. This contradiction is exemplified by the two quotations in the epigraph above. The first, by Senator Dandurand, was made in reference to the inclusion of marijuana to the list of prohibited substances under the Opium and Narcotic Drug Act in 1923. This inclusion criminalized the use, possession, sale, importation and exportation of marijuana. The second quotation, by MP MacLaren, was

²² It should be noted at the outset that words such as “cannabis”, “marijuana”, and “hashish” are often used interchangeably in some parliamentary debates, particularly during the late 19th and early 20th centuries. While “marijuana” and “cannabis” are used to refer to the plant itself as well as the buds that are dried and smoked, “hashish” refers to a resin that is derived from the cannabis plant and used as a drug in much the same way as the dried cannabis buds. For the sake of clarity and consistency, I have opted to use the term “marijuana” whenever possible because, although “cannabis” is the scientifically correct term, “marijuana” is the most commonly used name for the drug.

made nine years later in reference to some proposed amendments to the Act. Although the relaxation of the marijuana prohibition that MacLaren recommends in this statement never materialized, his statement seems to sum up the political attitude towards marijuana at the time. There is nothing in the record of parliamentary debates that would indicate that marijuana was considered to be problematic during this period. This raises the question – how are we to understand and reconcile marijuana’s prohibition in 1923 with the seeming lack of concern that parliamentarians had about marijuana both before and after prohibition went into effect?

The 1923 prohibition of marijuana in Canada has greatly puzzled scholars, particularly because no reason was ever provided for this decision and there is no evidence of any problems relating to marijuana in Canada at that time (Carstairs 2006: 31; Spicer 2002: 16). Nevertheless, on April 23, 1923, marijuana was added to the list of proscribed drugs. What is remarkable about this addition is that this change in Canadian law is almost imperceptible even in the official transcripts of the House of Commons debate where it occurred. The Liberal Minister of Health, Henri Sévérin Béland, simply indicated to his fellow parliamentarians that “[t]here is a new drug in the schedule” without even bothering to provide its name (HC Deb 23 April 1923). This decision was never debated, nor was any objection raised. Senator Dandurand’s corresponding announcement to the Senate regarding marijuana’s prohibition, which appears in the above epigraph, also garnered no debate or comment from other senators. Yet, paradoxically, not a single negative word was spoken about marijuana in either the House of Commons or the Senate prior to 1937 and what little parliamentary commentary does exist about marijuana during this period is either ambivalent or suggests that it is not particularly harmful. An examination of

Canadian news articles published at the time of marijuana's prohibition provides no further insight into the reasons behind changing the law.

One of the hypotheses that has developed to explain marijuana's prohibition is that the publication of *The Black Candle* by Emily Murphy in 1922 was influential in changing how people thought about marijuana use (Carstairs 2006: 31). In a very short chapter entitled "Marihuana—The New Menace", Murphy (1922: 332-333) describes marijuana as an exceedingly harmful and addictive substance that makes its users, among other things, immune to pain and turns them into "raving maniacs [...] liable to kill or indulge in any form of violence to other persons, using the most savage methods of cruelty without [...] any sense of moral responsibility". According to Murphy (1922: 337), the abuse of this menacing drug ends only in "a direful trinity": insanity, death, and "abandonment". It has been argued that the publication of *The Black Candle* in 1922 caused the Canadian public to become concerned about marijuana and they subsequently pressured the government to respond with prohibition in 1923 (Martel 2014: 131). However, this explanation has been challenged by Catherine Carstairs (2006: 21-22), who has pointed out that "Murphy's importance has been overstated both by herself and by subsequent drug scholars". She argues that Murphy was not a particularly influential figure in Canadian politics and, moreover, that she was not well respected by Canadian drug authorities (Carstairs 2006: 21-22). Instead, Carstairs (2006: 31) suggests that a more likely explanation for the 1923 marijuana prohibition was Canada's participation in international drug conferences where marijuana was discussed and its eventual prohibition by Canada's international allies (especially the United States and the United Kingdom) became clear, prompting the Canadian government to pre-emptively prohibit the drug in Canada (Carstairs 2006: 32).

As will become clearer in the next section, Catherine Carstairs' argument about the importance of international influences does indeed correspond to the parliamentary discourse I have analyzed. However, it is also worth noting that many of the ideas about marijuana that appear in *The Black Candle* were not unique to Murphy (1922). Newspapers from the late 19th and early 20th centuries periodically ran articles about marijuana consumption, a drug whose effect was considered to be "similar to that caused by opium, but milder and [...] less dangerous" (The Globe 10 July 1852). Among the more frequent types of articles about marijuana were first-hand accounts from individuals who had experimented with the drug and described its effects in vivid detail. These were generally stories that focused on the hallucinations that were experienced as "absurd imaginings" (The Globe 10 August 1883), "strange and wild fancies" (New York Times 14 September 1874), "terrors" (The Globe 8 October 1883), "horrors" (The London Journal 22 February 1902), and so on. These appear to be included as cautionary tales offered by those fortunate enough to have survived the drug's effects.

In addition to these first-hand accounts were stories about other people who had not been so lucky. For example, an article published on December 4, 1858 in The Globe (the predecessor of the Globe and Mail) discusses the case of a young man who, after reading a first-hand account of hashish consumption like those mentioned above, decided to experiment with the drug for himself. Things turned out badly when "while under its influence, and imagining [...] that he had been sentenced to be hung and appointed his own executioner, he endeavoured with his neckerchief to carry out the insane project" (The Globe 4 December 1858). Another article, which appeared in The Globe on February 8, 1892, attributes the "mental alienation" and "suicidal mania" suffered by Guy de

Maupassant, the famous 19th century French author, to the fact “that Maupassant [...] was a slave to hashish”. From these articles, which significantly predate *The Black Candle*, we can see that marijuana already held a reputation, at least within some press publications, as a drug that was “one of the most fertile causes of insanity” (The Lancet 20 May 1899). So, while it is unlikely that Murphy’s book single-handedly triggered concerns about marijuana which led to its prohibition, as some have suggested, there is evidence enough to suggest that by the 1920s there was already a cultural narrative that linked marijuana with other drugs like opium that were already considered to be dangerous.

My analysis also suggests that by the early 1920s there were well-established racial and ethnic connotations to the use of marijuana in Canada which likely played an important role in its prohibition. A repeated association between marijuana and the Orient appears in Murphy’s (1922: 332) *The Black Candle*, in which she claims that marijuana or “Indian hemp is used chiefly in Asia Minor, India, Persia and Egypt, but is being increasingly used on this continent, particularly by Mexicans”. Citing a purported authority on the drug’s effects, Murphy (1922: 335) claims that those under the influence of marijuana entered into a trance-like state that was at once euphoric and filled with “unimaginable horrors”. The drug produced hallucinations that “took on Eastern themes”, like flying on magic carpets, being buried alive in stone sarcophagi among mummies, and so on (Murphy 1922: 335). For Murphy (1922: 335), part of what made marijuana threatening was that its use “makes both the Syrian and the Saxon Oriental”. Here as elsewhere, the ideas that appear in Murphy’s (1922) book are a recapitulation of ideas about marijuana that were already well-established in the press in Canada as well as in the United States and in Britain.

An examination of news coverage about marijuana from the late 19th to early 20th century suggests that marijuana had a long-standing discursive connection with the Orient, both as a generalization for an exotic and faraway place as well as with specific countries in South Asia, North Africa, and the Middle East. Many of the first-hand accounts that I mentioned previously, in which adventurous persons experimented with marijuana and publicized their experiences or were interviewed about them, took place in the exotic locales where marijuana consumption was believed to originate. These stories describe the consumption of the drug as part of the overall experience of visiting countries like India, Egypt, Syria, Algeria, and so on. In these stories, exclusively written by (white) Europeans and North Americans, the experience of using the drug, one that is often equal parts euphoric and terrifying, becomes a quintessential aspect of the experience of those foreign and exotic cultures. In one article that appeared in *The Globe* on July 10, 1852, the experience of eating hashish seems to complete one traveler's voyage of Egypt as much as being "rowed down the Nile" or visiting the Pyramids. Similarly, in another article that appeared in *The Globe* on October 8, 1883, no further details seem necessary to explain an American traveller's choice to experiment with eating hashish than the fact that he had "spent several years in India".

Conversely, whenever the discussion in news articles from this period focuses on the consumption of marijuana by foreigners, the connection between marijuana and violence intensifies. In some cases the violence of foreigners under the drug's influence is connected to the threat of colonial insurrection. For instance, articles from 1857 covering the Indian Rebellion against British rule note the role played by "bhang", an intoxicating beverage made from a marijuana paste. Describing one particular attack, one article

describes the rebels as “having probably spent the day drugging themselves with bhang for their intended revenge” (The Globe 14 November 1857). Another article, describing an attempted assassination of a British officer by an Indian subordinate, notes that at the time of the attack the would-be assassin was “mad with bhang” (The Globe 19 October 1857). In other cases, the violence of foreign marijuana users is connected to religious fanaticism. For example, several articles from the late 19th century and early 20th century link hashish with an ancient and secretive cult of Syrian Muslim assassins. During the Crusades, this cult’s mysterious leader was believed to have “sent fanatical [...] religious murderers drugged with hashish to win paradise not by material gain but by the meritorious act of killing an infidel crusader” (New York Times 18 November 1923). According to these articles, the drug was prized by these assassins because it “stifles conscience, and bestows insensibility to pain and danger” on its users (New York Times 18 February 1872).

In comparison with these newspaper articles, Canadian parliamentary debates during the Age of Innocence were nowhere near as dramatic and were silent about political violence and religious extremism. Nevertheless, an association appears within parliamentary debates during the Age of Innocence between marijuana and “the Orient” generally and with India specifically. For example, Senator Dandurand’s 1923 comment on marijuana’s prohibition refers to it specifically as “Indian Hemp” (SOC Deb 3 May 1923). Similarly, MP MacLaren’s above recommendation to relax marijuana’s prohibition also noted that it was a drug used in India (HC Deb 4 March 1932). In other cases, marijuana is associated more vaguely with foreign people and places. In 1894, during a debate about alcohol prohibition, an MP comments that a “desire for stimulants” is universal and that “we find amongst those nations to whom distillation is unknown a system of intoxication

produced from the steeping and drinking of the juice of hashish and other herbs” (HC Deb 7 May 1894).

While mentions of marijuana by parliamentarians during the Age of Innocence do not share the overt racism or xenophobia towards “the Eastern races” that appeared in contemporaneous sources like Murphy’s anti-drug literature or newspaper articles, the association between marijuana and the Orient is nevertheless clear in parliamentary debates during this period. It has already been well-documented by legal scholars, sociologists, and historians that Canada’s opium prohibition was premised on the drug’s association with Chinese immigrants and that the 1922 amendments to the Opium and Narcotic Drug Act were intended to facilitate their deportation (Anderson 2008: 132; Carstairs 2006: 19). It is significant that although there were only four mentions of marijuana in parliamentary debates between 1914 and 1932 all of them occur within broader discussions about opium. As I noted earlier, a connection between opium and marijuana was also established in news articles and anti-drug literature of the period, where the two substances were regularly compared in terms of their effects, origins, uses, and so on. To be clear, I am not claiming that marijuana’s racial connotations were the only cause for its prohibition in 1923. However, I do suggest that a racist and xenophobic cultural narrative already existed in Canada that associated marijuana with the Orient and, by extension, with violence, insanity, and so on. As these connections were increasingly naturalized, marijuana, regardless of whether it was referred to as “bhang”, “hashish”, or “Indian hemp”, came to represent the most bizarre, malignant, and unsettling aspects of the Orient. When combined with the intensive anti-Chinese sentiments surrounding drug issues in Canada and the seeming inevitability of marijuana prohibition internationally, the

naturalized association between marijuana and the Orient probably made the 1923 decision to add it to *Schedule of the Opium and Narcotic Drug Act* that much easier. Moreover, this may also help explain why there was no debate or objection to its prohibition.

During the early 20th century, xenophobia and racism towards Asian immigrants was fueled by the fact that they were competitors in the employment market and because their association with drugs like opium incited fears about the corruption of white youth and miscegenation (Carstairs 1999: 79; 2006: 20). Prohibition became the legal mechanism of choice to respond to this perceived threat. The 1922 amendments to the *Opium and Narcotic Drug Act* strengthened the government's ability to exclude Chinese immigrants from Canadian society and facilitated a stronger and more punitive response to the drug problem by increasing the minimum and maximum sentences for use, possession, and trafficking (Anderson 2008: 132; Carstairs 2006: 19, 30). As Kay Anderson (2008: 132) notes in *Vancouver's Chinatown*, those excluded for being "Chinese" were not solely from China:

'Chinese' signified non-white, non-Christian, and non-Canadian. This classification overrode, among other possible criteria of self-definition, those of nationality, birthplace, gender, and adopted country of residence. In short, "Chinese" signified an essence that was eternal and foreign.

Marijuana's association with the mythic threat of "the Orient" seems to have helped link it in practical terms with the prohibition policy agenda with respect to opium. The move to strengthen the opium prohibition in 1922 and 1923 in order to better respond to the perceived Oriental threat, as well as the perceived pressure from the United States, is likely, in my estimation, to have influenced the prohibition of marijuana despite the lack of harm associated with the drug at that time.

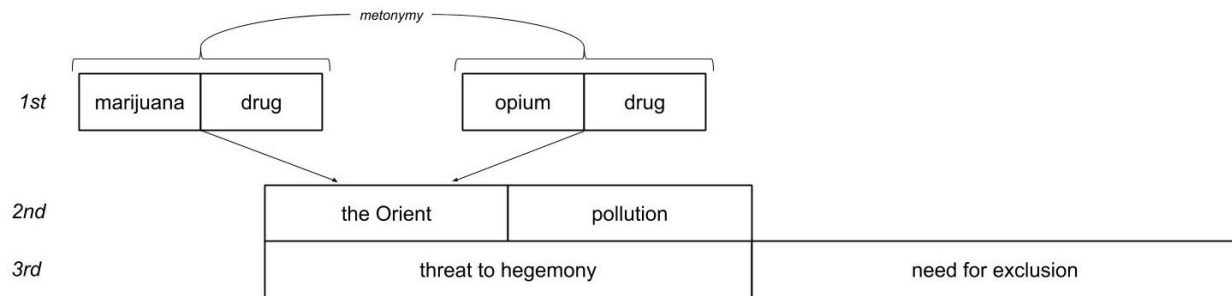


Figure 3: A metonymic connection was established through political and journalistic discourses between marijuana and opium, both of which were connected with Oriental origins. The Orient carried pejorative connotations of pollution connected with racist and xenophobic sentiments. This pollution signified a threat to hegemony and, in turn, a need for the exclusion of the source of the threat.

Ultimately, the Age of Innocence is somewhat of an anomaly compared to the remaining history of Canadian parliamentary marijuana debates. While there is no discussion of youth whatsoever during this period, I suggest that a connection between marijuana and youth exists nonetheless through an indirect form of signification known as *metonymy*—a particular semiotic exchange that occurs when signs are placed together such that one takes on the connotative significance of the other (Chandler 2002: 129-130, 253-254; Manderson 1997: 391; Otnes & Scott 1998: 43; Valverde 2006: 22). Advertisers exploit metonymy regularly in order to, for example, cause corporate logos to “represent” different values or concepts that will appeal to consumers (Otnes & Scott 1998: 43; Valverde 2006: 22). In his study of drug symbolism, Desmond Manderson (1997: 391), for example, shows how “the opium dens of Sydney or Melbourne came to stand for, to symbolize, the very presence of the Chinese in Australia” and “their dirtiness, their polluted nature”. The association between racism and marijuana and its articulation through the metaphor of pollution is discussed in greater depth later in this chapter. I tentatively argue that the discussion of marijuana and opium, two “Oriental” drugs, within parliamentary debates as well as within cultural representations like *The Black Candle* and the period’s

news media, would have allowed for marijuana to become associated with some of the connotations that were already associated with opium at that time, including its corrupting influence on white youth, without those connections needing to be made explicit in parliament. Based on my analysis, I believe that a metonymic association between opium and marijuana paved the way for marijuana's vilification during the Reactionary Period (1938-1960) which began in the late 1930s.

3. THE REACTIONARY PERIOD (1938 – 1960)

"It seems to me that very severe penalties should be imposed for production or sale of this drug. The eradication of it is certainly a necessary. If there are no good purposes to which it can be put, [...] steps should be taken to eradicate it entirely, because it is something that could undermine the youth of the country."

—Alfred Johnson Brooks, Conservative MP, February 24, 1938

"I am convinced that special legislation should be passed so that this abominable practice which threatens the future of our nation and the welfare of our children will cease."

—Romuald Bourque, Liberal MP, May 20, 1958

Unlike the Age of Innocence, during which marijuana had been prohibited but not problematized at the federal level, the Reactionary Period (1938-1960) in parliamentary discourse is characterized by a sudden and intensive concern among some parliamentarians about marijuana and its harmful effects. This begins suddenly in 1938 when Liberal Minister of Pensions and National Health Charles Gavan Power proposed to the House of Commons that the 1929 *Opium and Narcotic Drug Act* should be amended in order to prohibit the production and cultivation of marijuana in Canada (HC Deb 24 February 1938). Power argued that marijuana was a "new menace to the youth of the country" which, although "known as far back as the days of Homer", had "only been drawn to the attention of the people of Canada within the last three or four years" (HC Deb 24

February 1938).²³ Power's motion to amend the Act was premised on the argument that marijuana "is exceedingly stimulating" and "extremely harmful if smoked" and that "evil results from its use" (HC Deb 24 February 1938). This motion to amend the Act triggered a debate, in which marijuana was presented as a drug of Eastern origin now growing wild in Canada, unbeknownst to the many innocent Canadians who cultivate it for commercial purposes. Marijuana is described as "habit forming", "dangerous", "deleterious", "demoralizing", and "something that could undermine the youth of the country" because it corrupts morals and will "break down our [Canadian] manhood" (HC Deb 24 February 1938).

Judging by the 1938 debate, this sudden reversal in marijuana's perceived harmfulness is attributable to the influence of the political and cultural tenor of the United States at the time. Minister Power explains that the United States "has taken an extremely serious view" of the drug and, in response to questions from other MPs about how the Americans are responding to this "marijuana menace", he explains that they have imposed a prohibition of their own on marijuana cultivation and production that is similar to what he is proposing for Canada (HC Deb 24 February 1938).²⁴ There are references to American opinions regarding marijuana, such as the American Commissioner of Narcotics' claim that marijuana is the greatest menace that the United States has ever faced and that it is "the assassin of youth" (HC Deb 24 February 1938). The consensus among MPs in this 1938

²³ This assertion in 1938 that the "marijuana menace" had become known to Canadians only in the last few years lends credence to Catherine Carstairs' (2006: 21-22) claim that the reach and influence of Emily Murphy's anti-drug literature has been overstated. Murphy, it will be remembered, had written about the same "menace" in 1922, sixteen years before Minister Power brought knowledge of this supposedly new menace to parliament's attention.

²⁴ The United States' prohibition on marijuana cultivation and prohibition, to which Power refers, was implemented on October 1, 1937, just five months before Power's similar motion in the House of Commons on February 24, 1938.

debate is that Canada does not yet have widespread marijuana use, but that the problem in the United States is “very serious” and that measures need to be taken in order for Canada to stay “well ahead of the problem” (HC Deb 24 February 1938). Therefore, the suddenness of the concern about marijuana in the Canadian Parliament in 1938 seems to have been connected to the American experience of the “marijuana menace” and specifically the idea that the Americans had found themselves unprepared to deal with the danger until it had already overtaken them. The extension of marijuana prohibition in Canada to include cultivation and production was intended as a preventative measure.

Over the course of the next 20 years, marijuana continued to be discussed periodically in both the House of Commons and the Senate, though not in as much detail as in the 1938 debate to amend the Opium and Narcotic Drug Act. Overall, the number of mentions of marijuana in parliamentary debates doubled during the Reactionary Period (1938-1960) compared with the Age of Innocence (1891-1937), though with fewer than 20 total mentions over a 20 year span, it would seem that marijuana remained a marginal issue for all but a few parliamentarians during this period. However, what is significant about these mentions of marijuana during the Reactionary Period (1938-1960) is that they are all in agreement that marijuana use is harmful, habit-forming, and poses a significant risk to Canadian youth. Throughout the 1940s and 1950s, the idea that marijuana is a drug chiefly used by youth is often repeated and reinforced. Marijuana was described by parliamentarians during the Reactionary Period (1938-1960) as exceptionally dangerous, not only because of its addictiveness, but also because it inevitably led to the use of other addictive drugs and had been known to lead to the commission “of many sex crimes, murders, robberies, and other crimes” (SOC Deb 10 March 1938).

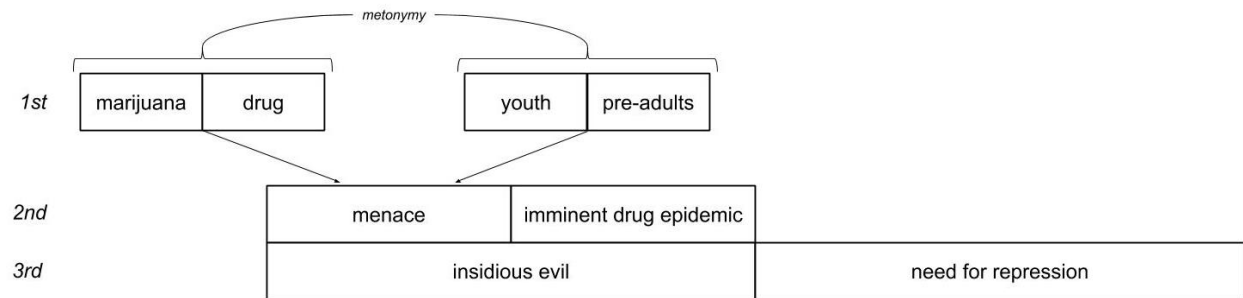


Figure 4: During the Reactionary Period (1938-1960), a metonymic connection between marijuana and youth was reinforced and came to signify the menace of an imminent and dangerous drug epidemic. This took on connotations of an evil that was hidden and potentially omnipresent within Canadian society, which signified the need for a repressive strategy to target the drug's production, traffic, and consumption.

However, it was acknowledged by parliamentarians from 1938 all the way to the late 1950s that Canada did not have a serious addiction problem and that marijuana use was not widespread. Nevertheless, the potential for marijuana to become a major problem in Canada was taken seriously because of the American experience as well as the broader mythology of danger, violence, and insanity that was present in news media accounts. It was believed that the American experience with marijuana as a destructive menace would soon reach Canada. Marijuana was believed to be growing wild across the country in unwitting farmers' fields, vacant lots, and so on, in addition to being brought into Canada from other places. This looming danger to the nation's youth triggered a response from a number of politicians, who argued that Canada must do more to prepare for the arrival of the pending marijuana menace by strengthening the prohibition of the drug, elevating sentences for users and traffickers, educating youth about the drug's harmfulness, and physically eradicating the drug wherever it was found to grow.

There are significant changes that occur in the myth surrounding marijuana during the Reactionary Period (1938-1960). While traces of the old mythology remain, like the

association between cannabis and the ever-mysterious Orient, the idea that marijuana was a harmless drug used only by dangerous foreigners and a few eccentric adventurers and reprobates virtually disappeared. Instead, marijuana became an insidious evil that could be anywhere lying in wait to destroy the country's youth. The Reactionary Period (1938-1960) helped to naturalize the idea that prohibition and the application of criminal law can be used to control the consumptive practices of citizens, especially youth, and prevent future social problems.

4. THE SOCIAL DECAY PERIOD (1961 – 1969)

"[S]cientists agree that a person does not become addicted to marijuana. That does not say for one minute that I believe young people should be using it. I think that it is eroding the moral fibre of young people who are using it or even contemplating using it."

—Eldon Woolliams, Progressive Conservative MP, November 2, 1967

"Our young people ask me about marijuana laws, liquor laws and sex laws. To the older generation, these are the defending bastions of our moral standards; to our youth they are the hypocritical licenses of permissiveness for the older generation. We must have failed terribly, Mr. Speaker, in offering our youth so few worthwhile challenges that many have seen fit to turn to drugs, violence, revolution and anarchy for substitutes."

—Jean Roy, Liberal MP, October 30, 1969

By the early 1960s, the conversation among parliamentarians regarding marijuana begins to show signs of change. One of the most obvious indications of this change is that politicians are no longer unified in the belief that marijuana is inherently harmful and addictive. This idea, which had been naturalized and become taken-for-granted in the Reactionary Period (1938-1960), begins to lose some of its obviousness in the Social Decay Period (1961-1969). Overall, there is still a great deal of concern over the harmful effects of marijuana, such as damage to the brain, and its potential as a gateway to other types of drug use. However, some politicians, particularly in the House of Commons, begin to question some aspects of the marijuana mythology inherited from the Reactionary Period

(1938-1960). For example, some MPs begin to argue that “marijuana is not an addictive drug” (HC Deb 30 May 1961), while others challenge the idea “that from marijuana one frequently graduates to the traditional narcotics” (HC Deb 26 March 1968), while still others argue that marijuana “is not as harmful as alcohol” and “is probably not much more harmful than smoking tobacco” (HC Deb 12 February 1969). There is also a growing recognition during this period that “[v]ery little research has been done on marijuana” (HC Deb 12 February 1969) and that lawmakers have access to “remarkably little medical literature about its effects” (HC Deb 20 November 1968).

This dissent, based on a mobilization of different associations, gives rise to other challenges to the status quo inherited from the Reactionary Period (1938-1960). For a very few politicians, it is the prohibition of marijuana that has failed and needs to be reconsidered. As one Progressive Conservative Senator put it,

We have had all kinds of rules and regulations to control these things, LSD, marijuana and alcohol, and yet where do we stand today? The only thing we have done in this country is to have jacked up the price of these drugs to a level which makes them virtually unobtainable, and the dope addicts who need them will do anything to obtain them, no matter what the cost. So that is all the regulations have accomplished. They have not solved the problem. (SOC Deb 28 January 1969)

This quotation is unique in that it is the first in parliamentary debates to suggest that prohibition may actually be worsening the situation by compounding the problems associated with drug use rather than resolving them. However, for the vast majority of parliamentarians during this period, the prohibition of marijuana was still seen as the answer and its punitive enforcement still seen as necessary, it was only the target of punitive enforcement that needed to be amended. By the late 1960s, some MPs begin to reason that there is “no point at all in giving a person a prison sentence for using marijuana

if it is not detrimental to his health or to society in general" (HC Deb 26 March 1968) and that "it might be a good idea not to punish the users of marijuana as severely as the pushers who traffic in the drug for profit" (HC Deb 20 November 1968).

A Progressive Conservative MP, speaking about drug traffickers in a 1969 House of Commons speech, concludes:

"these people should be given a life sentence. I am sure we would all be happy to know that the real traffickers, the adults, the senior people who are making large profits selling drugs of all descriptions to our youth are destroying the moral fibre of our nation, received this type of sentence" (HC Deb 4 November 1969).

This statement is particularly telling because it summarizes a number of intersecting aspects of the assumptions and naturalized facts surrounding marijuana that characterize the Social Decay Period (1961-1969) and which both distinguish it from and connect it to the Reactionary Period (1938-1960). The association between marijuana *consumption* and *youth* which emerged in the Reactionary Period (1938-1960) is reproduced in the 1960s, but this association is also extended because the *production* of marijuana becomes associated, not merely with adults, but more specifically with *traffickers*—organized criminal networks or syndicates of individuals bent on profiting from human vice and misery.²⁵ As we shall see, this association will be regularly reproduced over the decades to follow.

²⁵ Although "organized crime" had long existed in many different forms, it was during the late 1940s and early 1950s that the existence of "a nationwide crime syndicate known as the Mafia" and its involvement in criminal activities like drug trafficking first came to the attention of the American public (Woodiwiss 2001: 244). As Woodiwiss (2001: 8) points out, the threat posed by the illegal activities of such groups in the United States had been "magnified out of all proportion" as a result of racism and xenophobia towards foreigners and inflammatory press coverage, with a result that a "Mafia mythology" was born. As we saw in the Reactionary Period (1938-1960), the influence of American politics and policies vis-à-vis the drug menace were strongly felt in Canada. This influence makes it possible and even plausible that the sudden concern about organized crime in Canadian political discourse is related, at least in part, to the sudden increase in concern about the mafia in the United States that

Yet, the above statement also touches on another notable link in marijuana's chain of signification during this period. Throughout these debates and the various specific disagreements about marijuana that occurred between parliamentarians in the 1960s, the concept of *morality* remained a central underlying theme throughout this period.²⁶ The concern over morality that emerges, particularly in the latter years of the 1960s, is twofold. First, there is a concern that marijuana exerts a corrupting influence on the morality of individuals, especially youth. During this period, it is believed by many that marijuana use "divorces the mind from reality" (HC Deb 17 October 1968) and induces "personality changes" that include "slowed speech, lethargy, lowered inhibitions and loss of morality" (HC Deb 29 January 1968). Marijuana's corrosive influence on the morals of youth purportedly posed a serious threat because, in the absence of the inhibitions that morality provides, young people may "become suddenly violent without apparent provocation" and many will embark on a life of crime "without a moral qualm" (HC Deb 29 January 1968). However, as Eldon Woolliams' quotation suggests in the opening epigraph to this section, it is not merely the use of the marijuana that is the problem, since even the mere contemplation of marijuana use erodes the moral fibre of Canadian youth.

Whereas the first concern about marijuana-induced moral decay is individual, the second is national. Throughout the late 1960s, marijuana and the increasingly tolerant

was stirred up in the 1950s and 1960s through highly publicized events such as the Kefauver Committee's investigations into labour racketeering, as well as by the mass media coverage that helped fuel the "Mafia mythology".

²⁶ The morality of marijuana use was an issue that concerned Canadian parliamentarians on both sides of the political spectrum. Nevertheless, the most outspoken voices on the subject of moral decay in Parliament during the 1960s were Progressive Conservative MPs and especially those from Alberta. It is worth noting that a significant portion of the traditional voting base of western Canadian and conservative politicians have been Protestant and evangelical Christians, resulting in a tendency towards moral populism among these politicians (Laycock 2005: 173, 178; Sawyer & Laycock 2009: 140, 148).

attitudes of many Canadians towards it were associated with a general moral decline in Canada. As the following two examples show, marijuana use was often associated with other indicators of moral decay such as abortion, homosexuality, and divorce:

Consider for a moment, Mr. Speaker, what kind of society we shall have if we introduce relaxed divorce laws, if we permit abortions to take place, the smoking of marijuana and homosexuality. Why, it will be just one long swinging ball. But do you build a nation and defend freedom by lowering the barriers against vice? (HC Deb 2 May 1969)

The government holds the distinction of liberalizing divorce, permitting homosexuality in private places between consenting adults, and allowing abortion under certain conditions. How wide are we going to open this door to the permissive society? The Minister of National Health and Welfare (Mr. Munro) has gone on record as favouring a greater degree of permissiveness in narcotics regulation, particularly with regard to marijuana... (HC Deb 24 January 1969)

As I mentioned earlier, the 1960s brought a questioning of the old arguments about marijuana and, in many ways, a less hysterical view of its use. However, both of these statements show that, by the late 1960s, permissiveness with regard to marijuana, lumped in with homosexuality, abortion, and divorce, was seen by some parliamentarians as representative of a dangerous moral decline. Even some politicians who did not see marijuana as inherently addictive or hazardous expressed concerns that a permissive attitude towards marijuana would engender permissiveness towards other vices. As a signifier, vice carries connotations of wickedness, sin, and damnation, the answer to which is self-denial and the cultivation of piety.

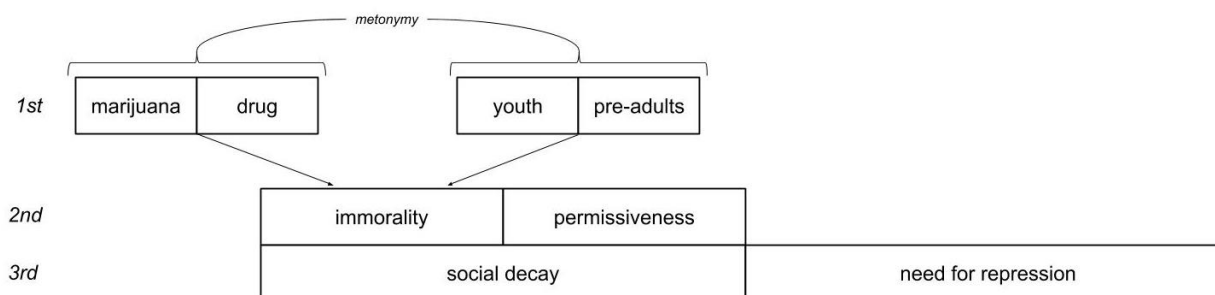


Figure 5: Marijuana and, by metonymic extension, youth, became signifiers of immorality and permissiveness during the Social Decay Period (1961-1969). As the period's designation suggests, this immorality and permissiveness became a signifier of social decay, which signified a need for the repression of marijuana consumption, production, and trafficking in order to slow or reverse the moral decay.

In order to deal with this twofold threat to “the moral fibre of our nation” (HC Deb 4 November 1969), two legal remedies were debated in parliament. First, as I noted above, the focus of punitive enforcement of the marijuana prohibition shifted away from marijuana users to distributors. While there was disagreement about many other aspects of the marijuana issue, parliamentarians seemed largely in agreement that “very heavy penalties” should be imposed on “the distributors and syndicate agents” seeking to turn a profit on the moral corruption of Canadian youth (HC Deb 17 October 1968). Second, in order to counteract the atmosphere of permissiveness and slow the rate of moral decay, some parliamentarians turned their attention to mass media influences. There was a flurry of concern in the late 1960s over the effects of television shows and movies depicting the use of drugs such as marijuana and LSD. Regardless of whether these depictions were real or dramatized, they were deemed problematic because it was believed that they would normalize drug use, misleading youth to think that these practices were socially acceptable, while perhaps even unwittingly instructing young Canadian viewers on how to use drugs. However, at a higher level of signification, this is really a concern for the souls of youth, since corrupting media content will encourage vice and wickedness while eroding the value of self-denial. These concerns led some MPs to advocate that action be taken to protect Canadian youth from the morally corrupting influence of drug-related media by increasing the government’s control over the drug-related content that media outlets could disseminate.

5. THE ANTI-CRIMINALIZATION PERIOD (1970 – 1979)

"A young man may have been smoking marijuana. He may be placed in prison in association with other young men who have run afoul of the law. As a result, we are manufacturing crimes. This is the breeding ground of criminal activity."

Eldon Woolliams, Progressive Conservative MP, January 13, 1971

"Because our approach to marijuana has been characterized by emotionalism, irrationality and hypocrisy—I am using these words deliberately—we have antagonized millions of our young people—I am referring not only to Canada—who have seen through our stupidity and our hypocrisy. [...] In so far as marijuana is concerned, our laws are indefensible on moral, medical, and social grounds. In fact, in their injustice and inhumanity, they are doing infinite harm to our young people."

—Frederick William Rowe, Liberal Senator, March 14, 1973

During the 1970s, a time that I have identified as the Anti-Criminalization Period (1970-1979), the total number of mentions of marijuana in the House of Commons and Senate nearly doubled in comparison with the Social Decay Period (1961-1969). One of the reasons for the drastic increase in attention given to marijuana in Parliament in the 1970s was the release of the official report by the *Commission of Inquiry into the Non-Medical Use of Drugs* in 1972. As I noted in the last section, one of the themes in parliamentary debates of the Social Decay Period (1961-1969) was the lack of reliable scientific and medical evidence regarding marijuana, especially concerning its addictiveness and harmfulness. Several research studies, some governmental and some organized by groups like the Ontario Centre for Addiction Research got started in the late 1960s and early 1970s. The appointment of the Le Dain Commission in 1969 to examine the illicit drug situation in Canada is one such example. As a result, much of the parliamentary debate about marijuana in the early 1970s centered on how such research should be conducted. Concerns were voiced, for example, about how researchers would produce the marijuana used in government-funded research studies and about the security of the facilities in which the cultivation would take place. There was also debate about the manner in which marijuana

testing would proceed. Many MPs expressed concern about testing marijuana on human participants and or had questions about whether these volunteers would be paid for their participation or whether they would be in danger of prosecution for smoking marijuana as part of government-funded experiments.

The findings produced in these various marijuana research studies gave parliamentarians even more marijuana issues to discuss in the House of Commons and Senate. The Le Dain Commission in particular, which released its findings in 1972, came to conclusions and made policy recommendations about marijuana that were controversial. For example, one of the Le Dain Commission's most controversial findings was that Canada's prohibition of marijuana and its criminalization of marijuana users was more harmful than the drug itself and, therefore, that the legal response to drug use was counterproductive (Hyshka 2009: 74; MacKay & Phillips 2016: 6; Nolin & Kenny 2002: 35). This led to debates about whether or not the prohibition of marijuana should be abandoned in favour of either legalization or decriminalization. However, these debates about decriminalization and legalization largely stalled and the only legislative change that occurred was the lowering of the 7-year mandatory minimum sentence for importing marijuana into Canada.

The issue of morality, which had been a defining feature of the marijuana debates in the Social Decay Period (1961-1969), gradually became less important in the Anti-Criminalization Period (1970-1979). During the 1960s, marijuana use, divorce, homosexuality, and abortion had been signs of a descent into an ever-increasing social permissiveness; however, by the 1970s this view was condemned by a number of

parliamentarians as hypocritical. One of the reasons for this is that, during the 1970s, research became increasingly available that undermined the certitude of marijuana's dangerousness, an assumption that had served as the basis of the punitive prohibition-based approach. A number of politicians in both the Senate and House of Commons began to point out to their peers that marijuana, as far as recent evidence was concerned, was no more harmful than the legal "highs" enjoyed by law-abiding society, such as alcohol, tobacco, and pharmaceutical drugs, and that in many cases marijuana was actually less harmful than legal alternatives. Therefore, opposing marijuana on moral grounds while ignoring or justifying the use of legally-permitted highs was deemed a hypocritical position from which many politicians distanced themselves. As one Progressive Conservative MP commented, "[y]ou cannot expect children to give up marijuana if the parents will not give up the afternoon cocktail" (HC Deb 9 March 1971).

This statement also reveals the unquestioned association between marijuana and youth. This connection had already been established in previous decades; however, it was greatly strengthened during the 1970s and took on some new connotations. As I discussed earlier, youth in the Reactionary Period (1938-1960) had been described mainly as victims of the marijuana menace, whereas in the Social Decay Period (1961-1969) this myth had been elaborated and the focus became the damage that marijuana use had on the moral fiber of youth. However, during the 1970s the association between marijuana and youth revolved around two separate and yet interconnected understandings of marijuana consumption as either innocent experimentation or youthful rebellion. It was believed that most youth drug use was simply "attributable to boredom, to peer pressures [...] and perhaps most commonly, merely to a desire for experience" (HC Deb 18 June 1971).

Political discourse at this time differentiated between habitual marijuana consumption, which was still understood as a gateway to crime and addiction to other drugs, and infrequent marijuana consumption, which was understood as experimentation and carried connotations of normalcy, innocence, and harmlessness. These contrasting views of marijuana use are exemplified clearly in the two statements below, both made by Liberal Senator Lorne Bonnell:

To get money for his [marijuana] habit he had to resort to crime, he had to find some fast way of making a buck. (SOC Deb 19 December 1974)

Now, it is obvious that a single experiment with marihuana is neither going to damn a person's immortal soul nor destroy his health. We do not know what damage might result from its continuous use, but we do know that one single experimentation is not going to do anybody any real damage. (SOC Deb 11 June 1975)

This is a notable departure from the rhetoric of the Social Decay (1961-1969) and Reactionary (1938-1960) periods, both of which had suggested that even a single marijuana use was damaging, both physically and morally, as well as being potentially addictive. Instead, we see in the Anti-Criminalization Period (1970-1979) a sense that experimentation with marijuana is morally unproblematic and perhaps even normal despite its health risks.

One of the reasons that experimentation is not considered as serious as habitual use during the Anti-Criminalization Period (1970-1979) is that it is understood to be part of a developmental phase that youth will soon grow out of, rather than being seen as a descent into a deviant lifestyle. Here is an example of this type of understanding of youthful experimentation:

Mr. Speaker, young people today are seeing society in a way far different from our day. They are doing things they do not believe to be wrong. They are smoking marijuana, engaging in protests and doing many things which lead to difficulties. I expect that in five years they will grow up and have the

same outlook as you and I. If youth were not impetuous I would be very scared for youth. But thousands and thousands of our young people will have records which they will carry with them for the rest of their lives. (HC Deb 12 May 1970)

According to this MP, and many others like him, smoking marijuana is understood to be an impetuous decision that, although regrettable, should be understood as an essentially normal behaviour for Canadian youth. It is something that youth will soon grow out of as they mature. The above quotation also points clearly to the second significant connotation that marijuana took on in the Anti-Criminalization Period (1970-1979), which is the association with youthful rebellion. The parliamentary discourse of the 1960s had made it seem as though society's moral fabric was coming apart and that youth were the *victims* of this process. However, in the 1970s there is a sense in the parliamentary debates that youth are actively rebelling against the mainstream beliefs and values of the older generation and are creating their own counter-culture. Just as in the 1960s marijuana use had been one example of the moral decline of a permissive society, along with divorce, abortion, and homosexuality, in the 1970s marijuana use becomes one example of youth rebellion, along with "engaging in protests and [...] many other things that lead to difficulties" (HC Deb 12 May 1970).

Politicians responded by seeking to identify and address the roots of this rebellion. An MP in a 1972 debate, commented that there was a pressing need "to make a major assessment as to why people, especially younger people, are social dropouts, why there is a cynicism among the younger generation, why they reject the values which have been established and built up over the years and why they turn away from the realities of life and substitute the intake of a chemical [...] in order to create for themselves some kind of subculture within which they feel comfortable" (HC Deb 29 March 1972). While marijuana

consumption is identified by some parliamentarians as a *symptom* of youthful rebellion, it is also cited by others as being the *cause* of it. According to one Senator, the “widespread resentment” and “widespread rebellion” present among Canada’s youth were attributable to “a discriminatory and hypocritical approach by the older people of Canada to this matter of marihuana” (SOC Deb 10 June 1975). Canadian youth were portrayed in the debates of this period as rejecting the anti-drug rhetoric that they had received from their parents about the effects of marijuana and they were represented as rebelling against the double standard that the older generation established towards their own preferred substances of abuse, such as alcohol, tobacco, and pharmaceuticals. The older generation’s “failure to tackle these other problems” was believed by many politicians to have engendered resentment among the nation’s youth causing them to reject the values of the older generation (SOC Deb 11 June 1975).

Both of these representations of marijuana use—as youthful experimentation and as youthful rebellion—were associated with a strong opposition to the criminalization of marijuana use and possession. It is this opposition to the criminalization of marijuana users that comes to define the period and from which it derives its name. The harsh enforcement of punitive sentences for marijuana offenses like possession came to be seen as destructive and counter-productive because they irreparably compromised the futures of Canada’s promising youth.²⁷ Whereas in earlier decades youthful marijuana users were construed as potentially dangerous and violent criminals, during the Anti-Criminalization Period (1970-

²⁷ Opposition to the criminalization and incarceration of youth was not limited to drug offences. As I noted in chapter 1, it was generally accepted by Canadian lawmakers as far back as the late 1930s that incarceration was psychologically damaging to the individual and that criminalization was a source of social stigma and, consequently, that lawmakers had a responsibility to minimize these harms wherever possible (Archambault 1938: 100; Lowman & MacLean 1991: 136; Webster & Doob 2015: 305).

1979) they were construed as curious experimenters or impetuous rebels. During the 1970s, these connotations of innocent and yet impulsive and defiant adolescence overshadowed older connotations of addiction, moral corruption, and criminal deviance. Therefore, equipped with this new interpretation of the drug and its users, many MPs and Senators began to actively oppose criminalization for marijuana offenses such as possession. While this ostensibly applied to users of all ages, the anti-criminalization argument always centered on youth. According to this perspective, criminalization was problematic because it was incarcerating youth who would not otherwise ever come into contact with the criminal justice system. Youth would be forever tainted by carceral experiences that would turn them into hardened criminals.

One Senator, relating the story of a young man charged with bringing marijuana across the Canadian border and who had been given the minimum sentence of 7 years in prison, commented that “unless he is a superman he will come out skilled, qualified and oriented towards every conceivable crime in the book” (SOC Deb 19 December 1974). This view was only possible because the idea that marijuana led to violence and made people criminals had declined considerably by the 1970s and been replaced by the view that marijuana users were harmless experimenters or rebels who would soon grow out of it. Consequently, the idea of punishing people severely for something that was innocent, or at the very least, no worse than alcohol, came to be seen as barbaric and unjustifiably draconian. However, long prison sentences were not the only problem. Even those who managed to avoid punitive sentences, such as the dreaded 7-year minimum for importation of marijuana, still faced the irreparable ruination of their futures due to their criminal record. Story after story, some hypothetical and some about real events, were related by

parliamentarians to show their peers how badly a promising future could be destroyed, not by an impetuous and irresponsible experimentation with marijuana, but by the injustice of the legal response. The argument here was essentially that the cure administered by the justice system was far worse than the disease of marijuana crimes.

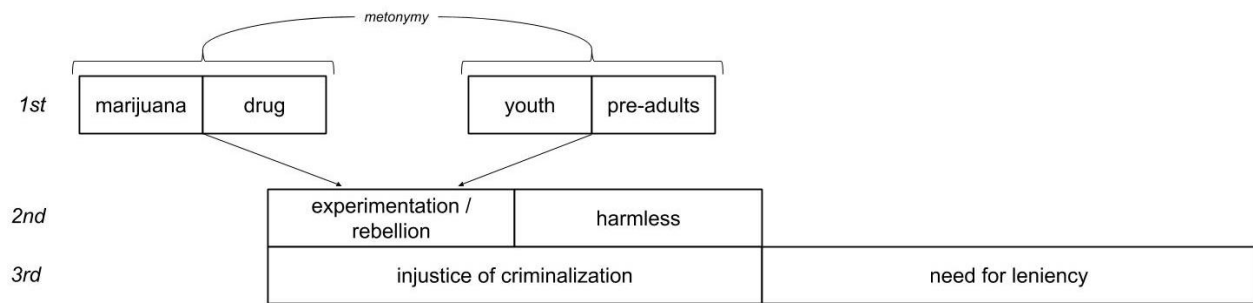


Figure 6: During the Anti-Criminalization Period (1970-1979), marijuana consumption and youth carried connotations of experimentation and rebellion against authority that was harmless because it was part of an immature stage of development that would soon be outgrown. The harmlessness of this experimentation and rebellion signified the injustice of criminalizing young marijuana users, which in turn signified the need for leniency towards them.

Therefore, the overarching problem that marijuana represented during this period was not in marijuana use itself, but rather in the brutality and injustice of a legal response that permanently stigmatized otherwise innocent young Canadians. Importantly, it has been noted by Martel (2014: 133-134) that this opposition to the authoritarian enforcement of marijuana prohibition only became an issue of concern when it began to criminalize white, middle class adolescents. In response to this problem, politicians in both houses spoke out about the need to extend understanding to Canadian youth and to oppose their criminalization, though as I noted earlier this led to very little legislative action. However, it is worth noting that the opposition to criminalization only extended as far as marijuana users. Traffickers of marijuana, on the other hand, were still described as a “menace” (SOC Deb 18 June 1975) and a threat to innocent Canadians because they made

“substantial incomes by trafficking in human misery” (SOC Deb 5 June 1975). While marijuana use was being portrayed as either teenage experimentation or rebellion, trafficking was considered a criminal enterprise engaged in by knowing adults. It was characterized by one parliamentarian as the “commercial exploitation of human weakness” (SOC Deb 5 June 1975) and by another as “an indirect form of manslaughter” since the drugs sold destroy lives, “leading to suicide, or to the complete destruction of mind and body” (SOC Deb 4 June 1975). As far as most parliamentarians were concerned, these parasitic criminals should be prosecuted to the full extent of the law.

From all this, it becomes clearer that the chain of signification linking youth with marijuana consumption underwent a shift during the Anti-Criminalization Period (1970-1979). Instead of being mere victims of a drug menace, young Canadians were described as active and purposive consumers of marijuana, albeit too immature and irresponsible to have their political views taken seriously. Youth was portrayed as a normal, albeit regrettable, stage of development into responsible full (i.e. adult) citizenship. This stage of development carried connotations of mental, emotional, and behavioural immaturity which made young people less capable of thinking through their decisions and making responsible choices and more prone to mistakes. Over the course of the 1970s, marijuana use became intricately associated with this stage of development. Framed in these terms, adolescent marijuana users became a group for whom politicians, even those who vehemently opposed marijuana use, could express sympathy and compassion. The underlying rationale expressed by many politicians during this era was essentially that everyone was young once and that all make mistakes in that hormone-filled time in which we are maturing and developing. This myth of youth as a pre-logical stage on the road to

adulthood helps explain the strong paternalism that appears in these parliamentary debates. This is why marijuana consumption by young Canadians, while acknowledged by parliamentarians as problematic, is often shrugged away as mere childishness that will soon be outgrown. Often, the same view is taken of the radical values, opinions and behaviors that rebellious youth manifest through their drug use. Youth marijuana users were infantilized, allowing politicians to dismiss their lifestyles, their values, and their political activism against the status quo as childish and therefore illegitimate. This paternalistic perspective towards young Canadian marijuana users is another myth of the Anti-Criminalization Period (1970-1979). Many politicians during this period seemed to take for granted that part of their role as parliamentarians was to help raise young Canadians into responsible adult citizens by protecting them from the consequences of their own poor judgement, just as a parent might do for their own sons or daughters.

6. THE COMMUNICATION PERIOD (1980 – 1989)

"[I]t is very important that the public know the federal government does not condone the use of marijuana but realizes that it is a fact of life in the country."

—Douglas Frith, Liberal MP, July 6, 1981

"Once again I call upon the Government to recognize its responsibility, not only to wage war on drugs but to take preventative action by educating Canadians on the effects of a wide range of drugs including marijuana"

—Svend Robinson, New Democratic Party MP, October 6, 1986

The 1980s were a period in which Canadian parliamentary debate about marijuana focused on the message being communicated to youth. The above epigraph by MP Frith is representative of the views of a number of parliamentarians who, by the 1980s, had reconciled themselves to the fact that marijuana use was “a fact of life in this country” (HC Deb 6 July 1981). It was widely acknowledged that marijuana’s prohibition was “a

disrespected law in its current form” (HC Deb 17 October 1980) and that Canadian youth should “not be faced with the spectre of a criminal record for experimenting with a habit which has received tacit approval from certain sectors of our society” (HC Deb 17 April 1980). The early debates of the 1980s suggest awareness within Parliament that Canadian youth are going to smoke marijuana regardless of what anyone thinks about it and regardless of the law. Consequently, many conclude that it is counterproductive to punish youth for it. However, while the continued criminalization of marijuana users was seen as counterproductive, so too were alternatives such as decriminalization or legalization. During the Anti-Criminalization Period (1970-1979), some opponents of criminalization had argued that to do less than decriminalize marijuana use, in light of evidence that it was no more harmful than alcohol and tobacco, would be hypocritical and undermine respect for the law and the government among Canadian youth. Yet, many parliamentarians were very hesitant about supporting any relaxation in the law regarding marijuana.

This reticence to entertain any change in marijuana’s legal status seems related to changing perceptions with respect to the drug’s harmfulness. In the early 1980s, parliamentarians began citing “a developing trend of evidence pointing to the harmful effects of marijuana” (HC Deb 11 December 1981) that controverted earlier findings from the 1960s and 1970s. This medical research indicated that marijuana use leads to “brain dysfunction, significantly increases the risks of emphysema, chronic bronchitis, and lung cancer, and has a detrimental effect on hormone production” (HC Deb 27 May 1981). Evidence of marijuana’s harmfulness to users, like its “devastating and irreparable damage to brain cells” for example, were made all the more alarming by suggestions that “genetic damage” from smoking marijuana was also passed down to the children of marijuana users,

which made the drug's health effects suddenly span generations (HC Deb 15 June 1981). This led some politicians to conclude that "these effects make the user harmful, not only to himself or herself but to the community at large" (HC Deb 27 May 1981).

Although in the 1970s it had been argued that marijuana was no more harmful than tobacco, new evidence was now available to suggest that marijuana contained "50 per cent to 100 per cent more cancer producing drugs or chemicals" than tobacco and that "5 marijuana cigarettes do as much damage as 112 ordinary tobacco cigarettes" (HC Deb 6 July 1981). Research was also cited suggesting that marijuana use resulted in severely impaired driving abilities. In addition, concerns resurfaced about the addictiveness of marijuana, bolstered by new research findings:

While marijuana is not physically addictive, there develops a more subtle but no less real psychological dependence that is a formidable obstacle to discontinuance of its use. So although we may believe that occasional smoking of marijuana is harmless in that we will not become addicted, it is very important to remember that cannabis is a habit-forming substance capable of producing dependence of a psychological nature. (HC Deb 11 December 1981)

Instead of being physically addictive, marijuana now represented a potentially more subtle and perhaps more sinister form of addiction in that it was hidden in the mind of the user rather than being observable from physical withdrawal. According to this same MP, the psychological influence of marijuana meant that "[t]he marijuana user is under the influence of the drug even between highs" (HC Deb 11 December 1981).

This new understanding of marijuana's harmfulness, which revived and bolstered some of the fears of the Reactionary (1938-1960) and Social Decay (1961-1969) periods, made many parliamentarians "feel very strongly about any move towards leniency in the law where marijuana and other such drugs are concerned" (HC Deb 11 December 1981). In

addition to this section's epigraphs, the following statements highlight the pervasive concern over the message that would be communicated by any such move towards leniency:

I for one do not believe that the government should take any steps which might lead Canadians to believe that this House supports the use of marijuana. (HC Deb 17 April 1980)

By relaxing the law, the government is giving the impression that it no longer considers the issue as serious. The interpretation of this by youth is that marijuana is okay. (HC Deb 11 December 1981)

As I noted above, many parliamentarians agreed that marijuana use was occurring among Canadian youth regardless of prohibition and punitive sentencing. Yet even the slightest relaxation of this punitiveness, let alone decriminalization or legalization, was deemed problematic by some parliamentarians because it would send the message to Canadian youth that marijuana use was safe, acceptable, and condoned by the government.

In the seeming absence of a viable option for altering marijuana's legal status, the efforts of many politicians were instead focused on asserting control over the information being communicated to Canadian youth about marijuana. Attempts by Parliament to control the message took two forms: eliminating the "wrong" message and promoting the "right" message about marijuana. Eliminating the wrong message included avoiding any accidental miscommunication by politicians, but it also included attempts to censor pro-marijuana messages. During the mid to late-1980s legislation was proposed in order to prohibit the sale of pro-drug literature as well as drug paraphernalia. Promoting the right message was to be achieved by using part of the government's advertising budget to launch an "information and education program on the dangers of marijuana" aimed largely at youth (HC Deb 12 June 1981). This "preventative action" (HC Deb 6 October 1986) would "warn people against developing a harmful habit" (HC Deb 12 June 1981) by showing them

that the “abuse of the body, of the self or of the mind is wrong” no matter what substance causes it (HC Deb 11 December 1981).

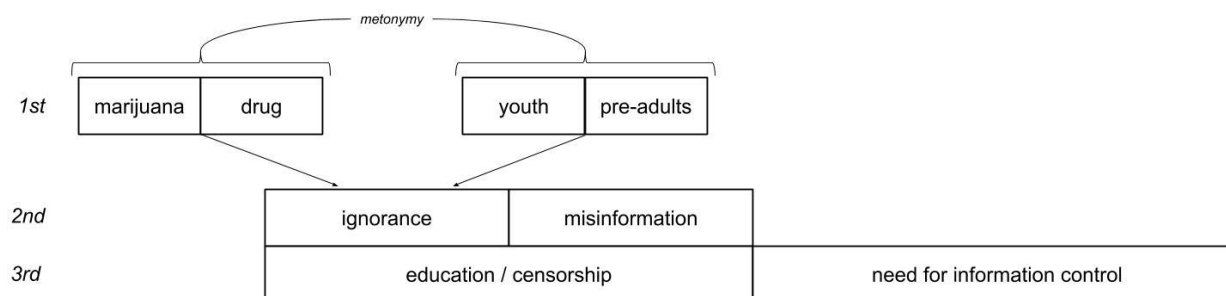


Figure 7: During the Communication Period (1980-1989), marijuana and youth came to signify ignorance and a misinformation about the dangerous realities of the drug's consumption. This signified a need for public education in order to enlighten marijuana users about the dangers to their health, as well as the need for censorship and suppression of information that might encourage youth to consume marijuana. Together, these associations signified the need for the government to assert control over public information about marijuana.

Thus, the major marijuana threat facing Canadian youth during the Communication Period (1980-1989) was perceived to be misinformation. The messages that youth were receiving about marijuana were considered particularly significant because it was believed that they would determine the course of marijuana consumption among youth. False information about marijuana, like the implication that it was non-addictive or that the government would soon decriminalize it, posed a threat because it would lead more youth to begin experimenting with drugs. As a result, more Canadian youth would suffer the disastrous health effects being identified by researchers. However, it was believed that accurate information based on new findings about marijuana's toxicity and addictiveness could reduce the drug's use among Canadian youth. So, parliament's response to this threat was to utilize the parliamentary process itself, as well as specific pieces of legislation, in order to assert control over the information being communicated to Canadian youth about

marijuana. As I noted earlier, the myth of young marijuana users in the Anti-Criminalization Period (1970-1979) had suggested that marijuana use among young people is predicated on their immaturity and poor decision-making abilities. In the Communication Period, (1980-1989) this myth is elaborated with the assumption that this handicap can be overcome if young people are provided with correct information and educated. Equipped with the right knowledge about marijuana, and protected from misinformation and negative influences, young people will be diverted away from experimenting with it.

7. THE RE-EVALUATION PERIOD (1990 – 2000)

"We have the parliamentary secretary standing up taking a hard line and we have the two leading candidates for Prime Minister of this country who have said, quite honestly, that they smoked cannabis. We have the President of the United States who smoked but did not inhale. We have the U.S. Vice-President who smoked but inhaled. I would hate to do an informal poll of this House of Commons. Let us cut the hypocrisy. Let us change these laws and update these laws."

—Ian Waddell, New Democratic Party MP, May 6, 1993

"We are on the horns of a classic dilemma. We have a legally restricted activity, a social wrong that was created by law, yet a humane need to ease suffering."

—Peter Mackay, Progressive Conservative MP, May 25, 1999

"Perhaps we should stop making a distinction between hard and soft drugs. For example, while, 100 years ago, cannabis was considered a soft drug, it now has a hallucinogenic content 7 to 30 times greater than the cannabis that was being sold in the 1970s. Therefore, we can no longer talk about a soft drug. All drugs are becoming hard drugs."

—Yvan Loubier, Bloc Québécois MP, April 5, 2000

Between 1990 and 2000, several key discussions about marijuana took place in Parliament, most of them involving a re-evaluation of previously held views about marijuana. One of the issues of note during the early 1990s, which had carried over from the 1980s, was the perception of a growing incompatibility between the modern reality of marijuana use and a prohibition-based legal framework that had not been much altered

since the 1930s. Commenting on Canada's antiquated marijuana laws during a 1993 House of Commons debate, one MP noted that since marijuana's prohibition in 1923 the penalties have only increased, "to the point that some marijuana offences now carry life imprisonment as the sanction" (HC Deb 21 April 1993). He goes on to point out that this is "the strongest sanction outside Malaysia and Thailand where people are executed" (HC Deb 21 April 1993). A number of politicians sought to bring this discrepancy to light in both the Senate and House of Commons. The opening statement in this section's epigraph is one such example. By the early 1990s it had become increasingly common for politicians to admit to having experimented with marijuana in their youth. A few parliamentarians, like MP Ian Waddell in the above example, pointed out that while marijuana consumption among Canadian youth was pervasive enough to become a relative banality, even among prominent politicians in their own youth, Parliament had taken no steps to modernize Canadian's legal stance on marijuana. Political inaction with respect to marijuana was characterized by some parliamentarians as profoundly hypocritical, since those politicians who had admitted to a marijuana-related indiscretion in their youth were continuing to enforce the criminalization on others which they themselves had been spared. By the mid-1990s the conversation about marijuana in Parliament focused on the *Controlled Drugs and Substances Act*, an attempt to "respond to the need for consolidation and modernization of the existing drug control legislation" (HC Deb 20 June 1996). Harm reduction began to feature in parliamentary debates as an alternative approach to the prohibition framework, one which treats the use of drugs like marijuana as a "health and social issue" rather than a criminal justice issue (HC Deb 20 June 1996).

While there is an acknowledgement among some parliamentarians during the Re-Evaluation Period (1990-2000) that “a large number of Canadians are at least tolerant of soft drug use” like marijuana (HC Deb 30 October 1995), there is also a growing perception that marijuana itself has changed in ways that make its potential harmfulness greater than ever before. These fears focus on the elevated potency of modern marijuana as compared with what was available in previous decades:

Attitudes of many Canadians toward marijuana were developed many years ago when many failed to realize the technology of breeding plants has allowed producers to drastically increase the potency of marijuana by increasing its THC content, tetrahydrocannabinol. Marijuana is about 15 times more potent today than it was 10 years ago. Marijuana today is as potent as cocaine was 10 years ago. Let there be no confusion, marijuana is a harmful drug which can have serious health impacts. (HC Deb 30 October 1995)

Framed in these terms, marijuana and its main psychoactive ingredient, tetrahydrocannabinol, were understood to be dangerous. The idea that the highly potent modern marijuana is incomparable with the relatively innocuous marijuana that parliamentarians may have experimented with in their youth dramatically shifts the conversation about the drug’s potential harms. For example, it reintroduced the possibility that marijuana was a highly addictive drug. As I noted previously, the idea that marijuana was *physically* addictive had been largely debunked by the 1970s and by the 1980s the concern had become that marijuana was *psychologically* addictive. However, new scientific revelations about modern marijuana’s elevated THC content challenged previous assumptions about the drug’s addictiveness. Suggestions like the one in the above statement that modern marijuana is as addictive as the cocaine of the previous decade gave new life to old arguments about marijuana’s severe addictiveness, its connection to criminal behaviour, and devastating impact on users. This shows that chains of

signification, like this one about the harmfulness of marijuana, are never fixed. They are continually evolving through a process of semiosis as they are (re)interpreted, (re)made, manipulated, and incrementally transformed (Chandler 2002: 31, 140; Manning 1987: 38-39, 47; Peirce & Houser 1998: 10).

The danger posed by modern marijuana's elevated potency was inextricably linked with organized crime—another perceived risk to Canadian youth that emerged in the parliamentary debates about marijuana in the late 1990s and early 2000s. Beginning around 1996 the conversation about marijuana in Parliament almost invariably touched on the drug's connection with organized crime. Taking a punitive approach towards marijuana traffickers, who were almost always depicted as operating within organized criminal networks, had been part of the marijuana debates since the 1950s. However, thanks largely to the efforts of a few Bloc Québécois MPs, addressing the problem of organized crime became an issue of unprecedented importance in the House of Commons during the late Re-Evaluation Period (1990-2000). This intense new concern about organized crime was driven by two occurrences. First, in August 1995 a car bomb exploded in a residential neighbourhood in Montreal, killing a 26-year-old drug trafficker affiliated with the Hells Angels motorcycle gang, as well as an 11-year-old boy who was struck by shrapnel while playing with a friend near to where the explosion occurred (Cherry 2005: 82; Katz 2011: 240). The violence of the event and its tragic consequences for such a young and innocent bystander brought renewed attention to an ongoing conflict between rival motorcycle gangs and galvanized MPs to deal with the threat posed by organized crime (Cherry 2005: 82; Katz 2011: 240). In the months that followed, Réal Ménard, the Bloc Québécois MP in whose riding the explosion had taken place, introduced anti-gang legislation intended to

give law enforcement “the necessary tools to fight organized crime” and “bring crime bosses before the courts” (HC Deb 6 May 1996). Over the next several years, the ongoing violent conflict between rival gangs in Quebec ensured that organized crime continued to feature prominently in parliamentary debates about drug trafficking.

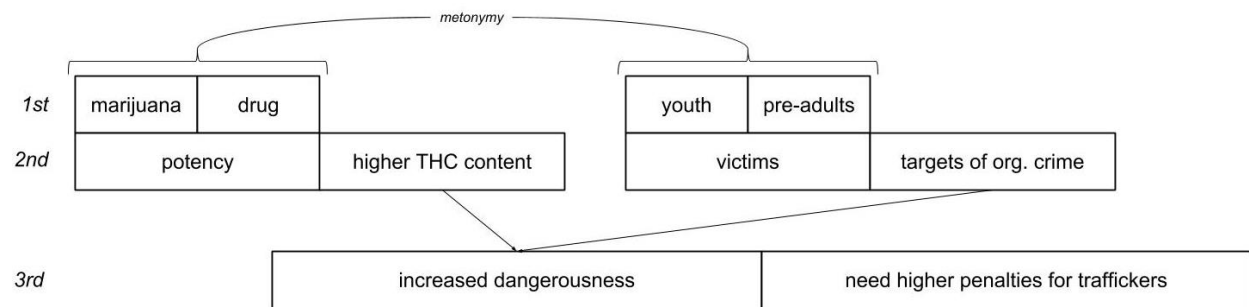


Figure 8: As the name suggests, the Re-Evaluation Period (1990-2000) was a time when the signification surrounding marijuana was re-appraised. Instead of being the relatively harmless substance it had been in the previous decade, marijuana came to signify a potent drug with a much higher THC content than ever before. Similarly, youth were re-appraised. Instead of being rebels and experimenters, youth came to signify victimhood and targets of organized crime. These 2nd order signs, high potency marijuana and youth as victims of organized crime, were continually associated with one another such that a metonymic connection was formed. Both came to signify the increased dangerousness of marijuana consumption and signified the need for higher penalties targeting the source of this dangerousness: traffickers.

Second, Yvan Loubier, a Bloc Québécois MP, began a campaign in 1999 to bring the plight of farmers in his riding to the attention of the House of Commons. According to Loubier, the danger of organized crime was not only found in urban centers like Montréal, but was also present in rural communities where organized criminal gangs were using farmers’ fields to camouflage their own marijuana grow ops. Loubier expressed how this “high jacking” of their properties for trafficking affected innocent farming families:

That feeling of terror sets in every year as criminals confiscate certain plots of farmland in May, at the beginning of the farming season, to prick out cannabis seedlings and let them grow until late fall. During that period, not only thousands of farm families throughout Canada live in terror, but they can no longer enjoy their property. These farmers receive death threats. They are told their children

could be harmed. They are told they themselves could be physically harmed should they venture too close to the cannabis planted by these criminals. (HC Deb 5 April 2000)

After having brought organized crime's "reign of terror" (HC Deb 5 April 2000) to the attention of the House of Commons, Loubier himself was the subject of "death threats" (HC Deb 8 June 2001). The threats made against Loubier and his family, as well as their subsequent placement in police protection and Loubier's continued campaign on behalf of farming families exploited by traffickers, galvanized the House of Commons to respond to the threat posed by biker gangs specifically and organized crime networks more generally. Taken together, the violence of the Quebec biker war and its civilian casualties as well as the death threats made directly to an MP for opposing organized crime, served to inextricably link marijuana *production* and *trafficking* with organized criminal groups like the mafia and Hells Angels and by extension to the violence they are responsible for. By the late 1990s and early 2000s, it was no longer the drug itself nor the individual user who was considered to be the main threat, but rather the organized networks of traffickers who made lucrative profits from highly potent and dangerous strains of marijuana and who used those profits to fund "murders", "arson", "bombings", and other "acts of violence related to control of the drug trade" (HC Deb 5 April 2000).

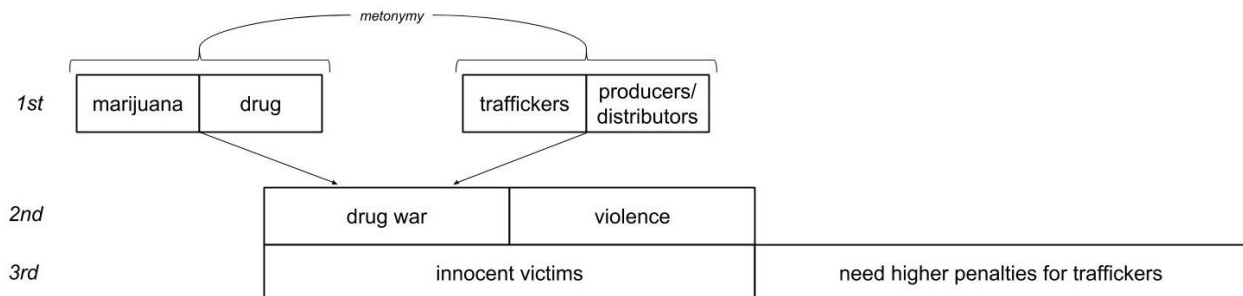


Figure 9: A metonymic connection was made during the late 1990s and early 2000s between marijuana and organized criminal traffickers. These both came to signify the

violent “biker war” being fought in Quebec. This in turn came to signify the innocent victims of this conflict and the need to respond to this threat by creating higher penalties for drug traffickers.

While the production and traffic of marijuana by organized crime was being re-evaluated, so were the effects of the drug itself. In the late 1990s, Bernard Bigras, a Bloc Québécois MP began to draw attention to the “therapeutic effectiveness of THC [...] to relieve symptoms that are not controlled by existing medication” (HC Deb 4 March 1999) and introduced a motion in the House of Commons to initiate a process to legalize marijuana use for medicinal purposes. Unlike recreational marijuana users, who had been associated with youthful experimentation, rebellion, and so on, medicinal users were portrayed as law-abiding Canadians “forced to use an illegal drug” (HC Deb 4 March 1999) and who “are frustrated at being in a situation where the only source of relief from their illness comes from smoking a substance that carries many extremely harmful side effects” (HC Deb 4 March 1999). Here are a few more statements that show the compassionate view that many MPs took towards the issue of medical marijuana use, as compared with recreational use:

In my view, if somebody is dying they should be able to participate in whatever it takes to relieve their suffering as long as it does not hurt anybody else. (HC Deb 25 May 1999)

We cannot make criminals out of those needing our compassion or those who are trying to ease suffering. (HC Deb 25 May 1999)

What we are talking about is the use of a drug to relieve pain in those who are suffering. I think that is very commendable. We are not talking about the legalization of the product for recreational or casual use (HC Deb 4 March 1999)

Framed in these terms—as a means of showing compassion to a group of otherwise law-abiding Canadians and sparing them from further criminalization by giving them a legal

means to alleviate their suffering—an increasing number of parliamentarians supported changing the law to permit medicinal uses of marijuana.

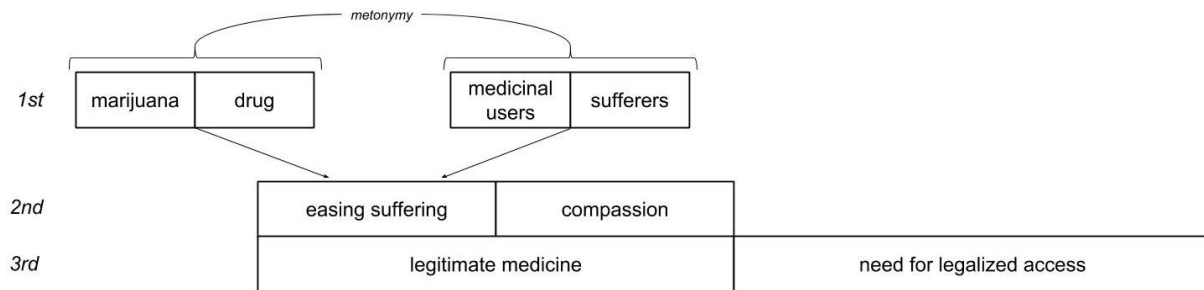


Figure 10: During this era of re-appraisal, a metonymic connection was also forged between marijuana and medicinal users suffering from chronic illnesses. This signified the need to balance the drug prohibition with the need to ease suffering and have compassion. Together, these signified that marijuana was not only a street drug but also a legitimate medicine, which signified the need for changes to be made in order to give legitimate medicinal users access to this new “medicine”.

Overall, what unites the various issues that make up the marijuana debate in this period is an ongoing process of re-evaluation. New evidence of the increased potency of modern marijuana led many politicians to re-examine their previous assumptions that marijuana was not physically addictive. On the other hand, new evidence suggesting that marijuana use could alleviate the symptoms of some illnesses triggered a re-evaluation of marijuana as a purely recreational drug. This re-evaluation ultimately led to legislative action that gave some Canadians legal access to medicinal marijuana. Traffickers and organized crime groups were re-evaluated too in light of their escalating boldness and violence and became the main marijuana-related problem of the period and the response from Parliament was to propose tough new legislation intended to facilitate their incarceration. As in previous periods, the chains of signification linking young Canadians to marijuana consumption evolved and changed during the Re-Evaluation Period (1990-2000). The excessive focus on organized crime in the Re-Evaluation period re-naturalized

the idea of young marijuana users as being passive victims. This had been one of the key assumptions of the Reactionary Period (1938-1960), though it had gone into decline since the 1970s, when marijuana use had become associated with youth experimentation and rebellion, which naturalized the idea that young people were active, albeit misguided, participants in these activities. However, this changed in the Re-Evaluation Period (1990-2000) as the activities of marijuana traffickers and organized crime became the focus of debate. This re-cast young marijuana users as the unwitting victims of organized crime, from whom they obtained dangerously potent marijuana and through whom they came into contact with a potentially lethal criminal underworld.

8. THE REFORM PERIOD (2001 - 2012)

"The war on drugs is not working. There are a half million people in American jails as a result of the unfair and destructive war on drugs. I hope we in Canada can join with a number of other jurisdictions in recognizing that this is a health issue."

—Svend Robinson, New Democratic Party MP, February 18, 2002

"Decriminalization of marijuana, especially without an effective national drug strategy in place, will undoubtedly result in increased use, especially among young people."

—Gurmant Grewal, Conservative MP, November 15, 2004

"The only way to stop it is to send people to jail. This is a good start, with minimum sentencing."

—David Wilkes, Conservative MP, November 23, 2011

Shifting opinions about marijuana in the Re-Evaluation Period (1990-2000) led to concerted reform attempts over the course of the next decade. Re-evaluations of the drug problem led to radically different conclusions about marijuana, as the statements in the epigraph show. These contrary perceptions of marijuana led to two diverging and often conflicting reform agendas—decriminalization and increased punitiveness. Support for the decriminalization of marijuana had been present among parliamentarians for decades,

having been fueled over the years by research findings as well as parliamentary reports that included the Le Dain Commission report in 1973 and a *Senate Committee Report* on cannabis in 2002. Prior to 2001, however, support for decriminalization never went beyond words, likely as a result of countervailing concerns about marijuana's harmfulness and its links to criminal behaviour, other forms of drug use, addiction, and so on. It was not until 2001 that a private member's bill was introduced in the House of Commons by a Canadian Alliance MP which proposed to decriminalize the possession of small amounts of marijuana. This decriminalization legislation was ultimately defeated, only to be reintroduced twice by the Liberals in 2003 and 2004 and defeated twice more. Between the early and mid-2000s, these attempts to introduce decriminalization dominated the marijuana debate in both parliamentary houses.

At its core, the argument in support of decriminalization was that the evidence of the last several decades proved that "the problem is not the substance" but rather "the prohibition of that substance" (SOC Deb 13 May 2010). It was argued, among other things, that it was hypocritical to criminalize marijuana and not more harmful substances like tobacco and alcohol, that the war on drugs had been "an abject failure in every sense of the word", and that "the issue of drug use should be dealt with as a health issue and not a criminal issue" (HC Deb 18 February 2002). Moreover, as it had been for decades previous, one of the main arguments in favour of decriminalization was that it would stop criminalizing Canadian youth and unnecessarily destroying their otherwise bright futures. Opponents of decriminalization re-iterated the familiar message of the Communication Period (1980-1989)—that relaxing drug laws would send the wrong message to young people that drug use was harmless and acceptable and that this would lead to disastrous

consequences (HC Deb 9 May 2003). The following statement by MP James Lunney exemplifies this view:

I am concerned that the attitude the House would be projecting if we approve the bill would be to encourage young people, to say that drugs are okay, it is not a big problem, to use marijuana, but if it does not give them the high or costs a little too much or is a little hard to get, to try crystal meth. Once people cross that barrier of indulging in mood altering substances, it is a slippery slope with very nasty consequences. (HC Deb 10 October 2003)

As Lunney notes, the concern was not merely that marijuana use would increase exponentially as a result of decriminalization, but also that this would lead to a culture of liberality towards drug use and that youth would soon turn to other more dangerous substances. Concerns were also raised that decriminalizing possession of marijuana would actually help organized crime groups because “youth will smoke even more marijuana” (HC Deb 6 November 2003) while also making it more difficult for police to apprehend traffickers.

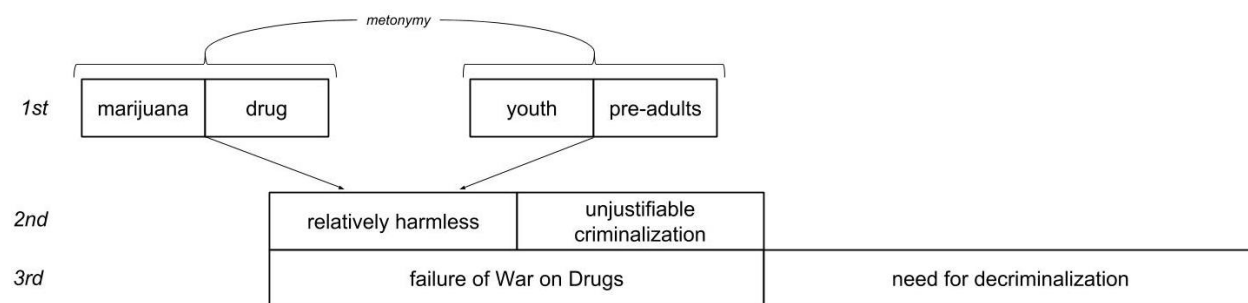


Figure 11: The metonymic association between marijuana and youth became associated with connotations of relative harmlessness during the Reform Period (2001-2012), which made the continued criminalization of young marijuana users unjustifiable. This signified the failure of the War on Drugs, of which criminalization had been characteristic, and the need for decriminalization.

One of the issues that emerged as an offshoot of the decriminalization debates in the early 2000s was drug-impaired driving. Here as elsewhere the debate was bifurcated and

parliamentary opinions and the evidence they were based on seemed to diverge considerably:

[C]annabis by itself makes its users, if anything, more cautious, partially because they are consciously aware of their deficiencies and they compensate by reducing their speed—sometimes to absurd rates—and by taking fewer risks, but the combination of marijuana and alcohol causes an exponential increase in the risk of impaired driving and ought to be treated with great seriousness. (SOC Deb 28 October 2003).

We have found that very few people actually drive under the influence of this particular drug because it is a drug that decreases motivation so that one tends to want to sleep, as far as I have heard from all of the addictionologists, rather than go out and do any kind of activity at all, never mind drive a car. (HC Deb 2 November 2004)

A British medical journal study of over 10,000 fatal car crashes showed that drivers who tested positive for marijuana were more than three times as likely to be responsible for a deadly accident. A New Zealand study showed that habitual marijuana users were nine and a half times more likely to be involved in car accidents, showing that both acute and chronic drug use can alter perception in crashes. (HC Deb 2 June 2009)

For decades, marijuana users, who were virtually always described as “youth”, had received a great deal of sympathy from politicians in both houses and on both sides of the political spectrum. This sympathy had only increased over the years leading up to Re-Evaluation (1990-2000) and Reform (2001-2012) periods. However, marijuana users were represented very differently where driving was concerned. Much like drunk drivers, “drugged-drivers” were considered dangerous and there was very little sympathy among parliamentarians towards those who made the decision to smoke marijuana and get behind the wheel of a car. None of the customary rhetoric about the impetuosity of youth or of marijuana use as innocent experimentation appears in these discussions. Instead, what is emphasized is the risk that these individuals pose to others and the overall tenor of these discussions is that the government “must therefore come down very hard on those who contemplate driving under the influence of drugs” (HC Deb 8 March 2004).

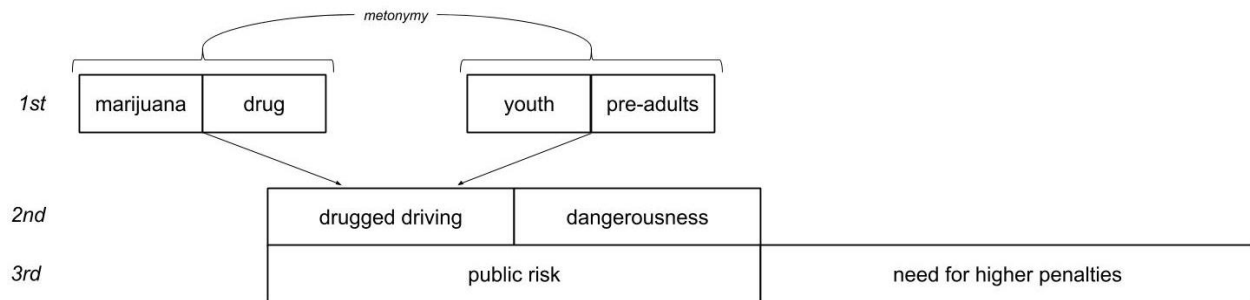


Figure 12: During this period, marijuana and youth also became associated with drugged driving. This act of driving under the influence of marijuana by youth signified a particular form of dangerousness and public risk that necessitated higher penalties. This was a notable departure from the chains of signification from previous decades in which youthful marijuana use signified harmlessness and is reminiscent of the chains of signification that characterized the Reactionary Period (1938-1960), which associated youthful marijuana use with dangerousness and violence.

The punitive sentiment that appears in these discussions of drugged-driving is a significant undercurrent of much of the discussion of marijuana during the Reform Period (2001-2012). As I noted in the previous section, one of the outcomes of the Re-Evaluation Period (1990-2000) was a reconsideration of the role of organized criminal groups in marijuana production and trafficking, the result of which was that organized crime became the single biggest marijuana-related risk to Canadian society as far as most parliamentarians were concerned. As the following two statements demonstrate, this carried on into the Reform Period (2001-2012). Marijuana was understood to be connected to criminal organizations, who in turn were connected with violence and other criminal acts:

The link between marihuana cultivation and organized crime cannot be overemphasized, and neither can the consequences for society. The huge profits associated with grow operations are used by many criminal groups to purchase other much more harmful drugs or even weapons, and finance various illicit activities. (HC Deb 8 March 2004)

The greatest irony of our current reality is that individuals are now being shot to death over the trade in cannabis, but it is almost impossible to die from consumption of the drug itself. (HC Deb 26 March 2009)

By the end of the 2000s, a well-established connection between marijuana consumption and organized crime and other criminal enterprises continued to be invoked and re-affirmed. Marijuana traffic became naturalized in the minds of many parliamentarians as “the oxygen that drives the criminal industry” (HC Deb 2 June 2009). In the Reform Period (2001-2012) the chains of signification linking marijuana with organized crime became associated with a new signifier of dangerousness—laced marijuana.

Fears about marijuana’s toxicity and addictiveness, after having gone into decline beginning in the 1960s, had been renewed in the 1990s when it was discovered that the THC content of modern marijuana was higher than ever before. These concerns intensified during the Reform Period (2001-2012) when it was revealed that marijuana was “also being mixed with other more lethal drugs [...] that make it even worse” (HC Deb 8 March 2004). Once again, when faced with new evidence of modern marijuana’s elevated toxicity, most parliamentarians held organized criminal traffickers responsible and insisted that steps be taken to “get tough” on these “gangsters” (HC Deb 29 September 2011). Increasingly, “children” begin to appear in these discussions as the potential target of this new marijuana menace, as opposed to “youth” only:

That is what we are seeing happening on the streets and in the schoolyards in our ridings where the marijuana is being laced by methamphetamine, which is a very addictive product. I am no expert, but the professionals tell me that of people who use this twice, over 92% become addicted. (HC Deb 5 April 2005)

I have young children. I would hate to think that somebody could go onto the school grounds and start peddling a cigarette or a marijuana cigarette laced with methamphetamine. That is what get the kids addicted and gets them hooked. This is how these things happen. Those are the people we have to go after. (HC Deb 4 February 2008)

Kids wonder what the harm is when they buy a marijuana cigarette in front of the school. They fail to realize that it might be laced with ecstasy. Some drug dealer may get some other kids in the class to sell a little piece of crack cocaine. There is the real cost. The real cost is the ruination of lives. (HC Deb 25 October 2009)

The prospect of marijuana laced with drugs like methamphetamines and ecstasy was considered particularly dangerous because it was believed to exponentially increase marijuana's addictiveness, as well as its damaging health effects and its potential as a gateway to other forms of drug use. These excerpts from parliamentary debates highlight the perception among parliamentarians that organized crime groups are lacing marijuana with drugs like methamphetamines with the specific intent of targeting children and getting them addicted to their product.

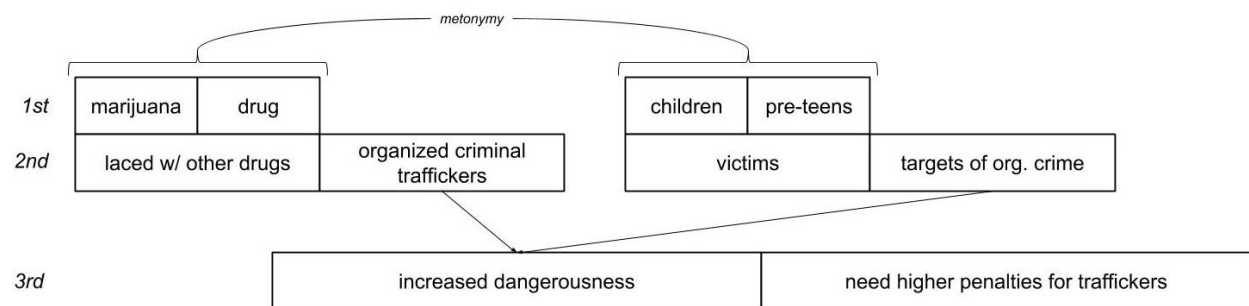


Figure 13: One of the most prominent chains of signification during the Reform Period (2001-2012) associated marijuana with connotations of being laced with other drugs, which signified the involvement of organized networks of drug traffickers. This was connected via metonymy to children, who signified victimhood as targets of organized crime. Together, these groups of metonymically-connected signs signified an increase in the dangerousness of marijuana use and the need for higher penalties targeting the traffickers responsible for this new dangerousness.

During the Reform Period (2001-2012), legislation was introduced “substantially increasing the penalties” for marijuana traffickers (HC Deb 31 October 2003). This legislative focus began under the Chrétien and Martin Liberal governments and then intensified under the Harper Conservatives who, as I described in chapter 1, campaigned on promises to fix Canada’s “broken” criminal justice system and protect the Canadian public by getting “tough on crime” (HC Debate 21 September 2011; HC Debate 29 November 2011; Mallea 2011: 14-15; Roberts 2009: 539; Sprott, Webster, & Doob 2013:

280). According to supporters, tough new laws, like mandatory minimum sentences and other deterrent sentences, were necessary to ensure that drug-dealers no longer “get away with a slap on the wrist and go through the revolving door right back out of the courtroom, right back to work [...] preying on our young children” (HC Deb 8 March 2004). As it had during the Communication Period (1980-1989), the government sought to utilize legislation to send out “a very clear message” to drug traffickers:

We understand these people very well and we are sending out a very clear message to them. If they want to get into that business, if they want to exploit children or they decide to get into a new business cultivating marijuana plants in their living rooms and dining rooms, we are sending out a message to them as well. Do not go into that business, but if they go into that business, they can expect jail. (HC Deb 15 April 2008)

This idea of deterrent legislation sending a message is reminiscent of the Communication Period (1980-1989) and the idea that Parliament and the House of Commons in particular are a kind of communications array capable of reaching would-be violators of the law and transmitting a message that will deter them. Opponents of this punitive agenda argued, among other things, that punitiveness achieved through mandatory minimums would “not really have any positive impact on the use, production, sale and trafficking of drugs”, that punitiveness was simply a partisan strategy “designed to appeal to the core conservative base”, and that it was “just too draconian” (HC Deb 15 April 2008). The overarching association with marijuana throughout the Reform Period (2001-2012) remains the naturalized connection with youth. Marijuana consumers continue to be portrayed as youth, though the assemblage of signs linking “youth” to “marijuana” again undergoes an evolutionary change. The depiction of young marijuana users as victims is extended even further as they go from being adolescents and teenagers to children, constructing them as the ultimate innocent victim.

9. THE LEGALIZATION PERIOD (2013 – 2018)

"Nobody here denies that there are problems associated with marijuana use. However, by taking a very narrow view and carefully selecting a few witnesses who support their hard-line position, the Conservatives are preventing us from seeing a bigger picture and taking a more sensible approach that could prevent drug abuse."

—Raymond Côté, New Democratic Party MP, June 2, 2015

"There are winners and losers in this battle. The winners are those involved in organized crime. Organized crime is profiting from the abysmal record this country has on the war on drugs. The losers are kids, who are using marijuana at a higher rate than anywhere else in the developed world, and taxpayers, who are paying for the resources within the legal and law enforcement systems, the prosecutors, and the judges. They are the losers."

—Sean Casey, Liberal MP, June 2, 2015

"[T]his law will give the minister the power to set the price for various products and services provided for under the legislation. That means that the minister will become the leader of the new Liberal biker gang. His crest will be a nice marijuana leaf with the Liberal Party logo, and his motto will be 'just one little joint'. It is always good to dream big."

—Joël Godin, Conservative MP, June 2, 2017

In 2013, Justin Trudeau, the new leader of the Liberal Party, announced his support for legalizing marijuana in Canada. This announcement, made within days of his admission to having smoked marijuana at a dinner party while a sitting MP in the House of Commons, generated significant controversy and attention in the media and among politicians. This began a new period in the history of Canadian parliamentary rhetoric about marijuana, focused largely on debating the various implications of the legalization of marijuana. It should of course be noted that legalization was not a new idea in Canada in 2013. It had been advocated by politicians in the past and had been recommended by several studies of marijuana policy, not least of which was Senator Pierre Claude Nolin's 2002 Senate report, entitled "Cannabis: Our Position for a Public Policy". However, Trudeau's announcement in 2013 was the first time that the leader of a major Canadian political party came out in support of the legalization of marijuana and made it clear that this would be part of the party's official political platform.

Although this is the smallest temporal period in my taxonomy, it is by far the largest in terms of the quantity of debate surrounding marijuana that it contains. More has been said about marijuana in Parliament within the last six years than at any other time in Canadian parliamentary history. In fact, the amount of marijuana discussion in Parliament between 2013 and 2018 exceeds the cumulative total of the previous 122 years. Trudeau's announcement of the Liberal Party's intention to pursue legalization, as well as his controversial admission of having broken the law by smoking marijuana even after becoming an elected official, triggered an intensive politicization of the marijuana issue in the House of Commons. This hyper-politicization began in 2013 and continued until the October 2015 federal election. During this initial hyper-politicized phase of the Legalization Period (2013-2018), the various marijuana problems that had been debated over the course of the previous century, such as its harmfulness, its connection with organized crime, and so on, became rhetorical weapons that were mobilized in a partisan conflict that took place within the House of Commons debates.

The main belligerents in this political conflict were the Conservative Party and the Liberal Party, with the former being, by far, the more aggressive and energetic of the two. In 2013, in the months following Trudeau's marijuana confession and announcement of his support for legalization, Conservative MPs went on the offensive using personalized attacks against Trudeau. Conservative MPs claimed or insinuated, among other things, that the psychological effects of Trudeau's habitual use of marijuana could be the only reason for his advocacy of a legalization agenda that would put youth in danger. One Conservative MP even took to referring to Trudeau within the House of Commons debates as "the Pied Piper of pot", possibly in order to dramatize his view that Trudeau was leading Canadian youth

astray (HC Deb 5 May 2014). Here are a few examples of Conservative attacks on Trudeau and the Liberals over their support for legalization:

While the Prime Minister successfully travels the globe promoting trade and Canada's values, the Liberal leader parades around Canada promoting marijuana growth, including to school kids. (HC Deb 22 November 2013)

Our government is interested in free trade that would create jobs in this country. It is not interested in the drug trade, as the Liberals are, to promote marijuana smoking. Our government is interested in free trade for jobs; their party is interested in smoking marijuana. (HC Deb 3 December 2013)

The Liberal leader should apologize to Canadians for his role as the Pied Piper of pot for our youth and abandon his reckless policy. (HC Deb 5 May 2014)

Our Conservative government will continue to crack down on criminals and drug dealers, unlike the leader of the Liberal Party, who continues to try to push dangerous and illegal drugs on our children. (HC Deb 19 June 2014)

We know that the Liberal Party wants to legalize marijuana; it wants to make money by collecting taxes on marijuana, just as many dealers do. (HC Deb 21 April 2015)

There are several rhetorical similarities between these statements. One similarity is that these attacks often attribute intentions and motives to the Liberals that are morally reprehensible. In the above examples they are described as “interested in smoking marijuana” and in promoting marijuana use among children in order to make lucrative financial profits, making them no better than the drug traffickers that the Conservatives want to incarcerate. These attacks often include drawing a contrast to suggest that while Trudeau and the Liberals are busy trying to sell drugs to children, Harper and the Conservatives are getting on with the real business of government. These attacks almost always invoke youth or, more often, children as the real victims of the Liberals’ legalization plans. This is a powerful rhetorical strategy because a mythology has already been constructed around youth and children in the marijuana debates over a period of decades which represents them as vulnerable and needing Parliament’s protection against the danger posed by marijuana and those who produce and sell it. This has the effect of making

the supposed Liberals' plan to exploit children for profit all the more monstrous. Similarly, these attacks draw on the mythology surrounding parasitic traffickers who prey on the weak and vulnerable. By drawing a parallel between the Liberals and traffickers, Conservative comments such as these have the effect of ascribing the mythic connotations of traffickers directly to the Liberals. This is yet another example of metonymy.

For their part, the Liberals responded in kind, though far less frequently than their Conservative opponents. They argued, among other things, that Conservative MPs were essentially puppets of the Harper administration who received their talking points directly from the Prime Minister's Office and that the Liberal plan to legalize marijuana was backed by sound evidence. Here are a few examples of Liberal attempts to defend their legalization agenda and counter Conservative attacks:

The leader of the Liberal Party comes out with an announcement that is going to take tens of millions of dollars, if not hundreds of millions, out of the pockets of these gangs, but the Conservatives want to support these gangs receiving this illegal money. (HC Deb 22 November 2013)

[T]he leader of the Liberal Party is not, absolutely not, promoting marijuana. He is not promoting that at all. That is the deception they try to go with over there. (HC Deb 17 February 2015)

In my view, we should legalize the product, [...] rather than, as the current government is doing, ensuring that all the profits go to the criminal trade and not doing anything about addictions. (HC Deb 17 February 2015)

It is time for an adult conversation in this country about marijuana usage. We know that the Conservatives have a bit of an aversion to adult conversations. [...] The approach of the Liberal Party is one that respects evidence and respects Canadians. It is not one that is oversimplified, which is what we are hearing in the talking points from the other side. Canadians are ready for an adult conversation. (HC Deb 2 June 2015)

As there were with the Conservative attacks, there are commonalities in the Liberal counterattacks. One is that they frequently adopt a moral high ground. For example, the Conservatives are accused of deliberately misrepresenting the Liberal agenda and leadership in order to gain a political advantage. There is also an implication of

Conservative immaturity in the assertions that the Conservatives are incapable or unwilling to engage in a productive discussion of marijuana policy based on an honest appraisal of the evidence. The Liberals also attempted to counter the Conservatives' claims that they want to enrich themselves with marijuana profits by arguing that the Conservatives would prefer that those profits stay in the hands of organized crime. As I noted above, the semiotic effect of such a suggestion is to ascribe the pejorative connotations of the marijuana trafficker mythology to the Conservatives who are being portrayed as on their side instead of on the side of law-abiding Canadians.

This intensely partisan conflict over marijuana that began with Trudeau's 2013 announcement of support for legalization changed considerably in October 2015 when the Liberals won the federal election and Trudeau became Prime Minister. From the beginning of their government mandate the Liberals made clear their intention to follow through with their campaign promise to legalize marijuana. In April 2017 they introduced the *Cannabis Act* (Bill C-45) in the House of Commons intended to legalize marijuana, as well as a companion legislation (Bill C-46) intended to change the criminal code provisions for impaired driving. On June 21, 2018, after over a year of intensive debate in both the House of Commons and Senate as well as several amendments, both legislations received Royal Assent.

After the 2015 election, the Conservatives seemed to have reconciled themselves to the fact that marijuana's legalization was inevitable. In post-election debates, the Conservatives remained outspoken opponents of Liberal plans to legalize marijuana; however, they mostly abandoned personalized attacks in favour of critiques of specific

aspects of the Liberals' proposed regulatory framework. For example, one of the main Conservative challenges to the *Cannabis Act* has been that it will increase the accessibility of marijuana to young children. This is considered a significant problem because the consensus in parliament, based on recent evidence, is that "marijuana is linked to serious health concerns, both mentally and physically, especially for our young people under the age of 25" (HC Deb 21 April 2016). The Liberals have argued that the imposition of a regulatory framework in which only adults are eligible to legally purchase marijuana is the most effective means of minimizing the drug's accessibility to children. Challenging this argument, the Conservatives have suggested that legalization can only increase marijuana's accessibility to children, since the new legislation will allow people to grow marijuana in their homes, thereby making "homegrown marijuana more accessible to children" (HC Deb 30 May 2017).

In addition, many Conservatives objected to the government's legalization agenda on the grounds that it provides tacit approval for marijuana that will normalize its use in Canada, leading to a greater acceptance of other forms of drug use and to an increase in addiction among youth. This concern over the normalization of drug use resulting from marijuana legalization is a new feature of the marijuana debates, yet at its core it is based on much older concerns that marijuana use is a gateway to other forms of drug use and that permissive policies will have catastrophic consequences. Conservative MPs have also argued that no reliable technology yet exists that would facilitate roadside testing for THC, something which is a necessity in order for the Liberals' impaired driving legislation to be effective. The Conservatives have also called on the government to delay its marijuana legislation until this technology becomes available, arguing that to continue to move

forward in its absence would irresponsibly endanger Canadian lives. Conservative and Bloc Québécois MPs have also made allegations of corruption and cronyism against the Liberals regarding financial connections between party members and corporate interests who stand to make “billions in cannabis sales” once the law changes (HC Deb 30 May 2017).

Although the New Democratic Party have long supported marijuana’s legalization, they emerged as ardent critics of the Liberal legalization agenda. In particular, the NDP were highly critical of the fact that the Liberals refused to decriminalize the possession of marijuana in the interim before the *Cannabis Act* came into force. As the Conservatives had before the election, the NDP have invoked Trudeau’s past marijuana use after his election in order to discredit the Liberal legalization agenda:

The Prime Minister himself admitted that he has used marijuana, smoked a joint. He was lucky he was not arrested. He does not have a criminal record or stains on his record, which allows him to be a minister. Not every Canadian is that lucky. (HC Deb 9 March 2016)

[T]housands of mostly young adults who will have criminal records for the rest of their lives because the Prime Minister did not respect his promise to legalize marijuana as soon as he took office. (HC Deb 13 June 2016)

However, unlike the Conservatives, the NDP did not cite Trudeau’s experience with marijuana in order to discredit the soundness of his thinking or his abilities as a politician in a leadership position. Instead, they emphasized that he was fortunate not to have been criminalized for it in order to make the point that it is hypocritical for him to do nothing while an unjust system continued to criminalize Canadian youth until the law officially came into force on October 17, 2018.²⁸

²⁸ Although Bill C-45 and Bill C-46 received Royal Assent on June 21, 2018, the government delayed its official implementation until October 17, 2018. This delay seems to have been a concession to those who criticized the government for not giving the provinces enough time to prepare themselves to implement a legalized regulatory framework.

Like the Conservatives, NDP MPs were very vocal about the problems with the lack of a reliable technology or law enforcement training to conduct roadside testing in cases of suspected marijuana-impaired driving. However, while the Conservatives were more concerned with how this would impede the ability of law-enforcement agencies to ensure the safety of Canadian roads, the NDP were more concerned that this lack of technology would invest discretionary power in law enforcement who are untrained in its use. They argued that in the absence of technological means of ascertaining impairment, police officers will be forced to do so based only on their own opinions. This would, they argued, have problematic implications in terms of the constitutionality of roadside stops and exacerbate existing problems that plague the use of discretionary power by law enforcement, such as racial profiling. According to Don Davies and other NDP MPs, the result will be that Bill C-46 will have a “disproportionate impact [...] on marginalized groups like racialized Canadians, young Canadians, indigenous Canadians, and poor Canadians” (HC Deb 27 October 2017).

Since its election, the Liberal government’s response to these challenges to its legalization agenda has been to continually re-iterate that the harms associated with marijuana, including health risks, organized crime profiteering, accessibility to children, and so on, can only be minimized by legalization and an effective regulatory framework. They have argued that prohibition and the War on Drugs have utterly failed and that “the very harsh and draconian, very old-fashioned and outdated punishments and criminal records that accompany possession” have been worse than the negative effects of the drug itself (HC Deb 6 June 2016). By legalizing marijuana, they argued, greater control will be established over the production, sale, and use of marijuana, which will greatly mitigate the

worst risks, like the negative health effects of unregulated marijuana, the dangers of children accessing marijuana, the involvement of organized crime in the drug trade, the dangers of drug-impaired driving, and so on. Moreover, in response to NDP challenges, they have argued that decriminalization, even if only temporary, would be a counterproductive “half-measure” that would open the door to all of the harms associated with marijuana, including dangerous forms of marijuana, accessibility to children, and so on, while providing none of the protections of a regulatory framework, and that it would make it more difficult for a workable regulatory framework to be established (HC Deb 9 March 2016). The Liberals have argued that, although maintaining the status-quo of youth criminalization was regrettable, the prohibition of marijuana must remain in effect and the law needed to be respected until the new legislation comes into force in October 2018.

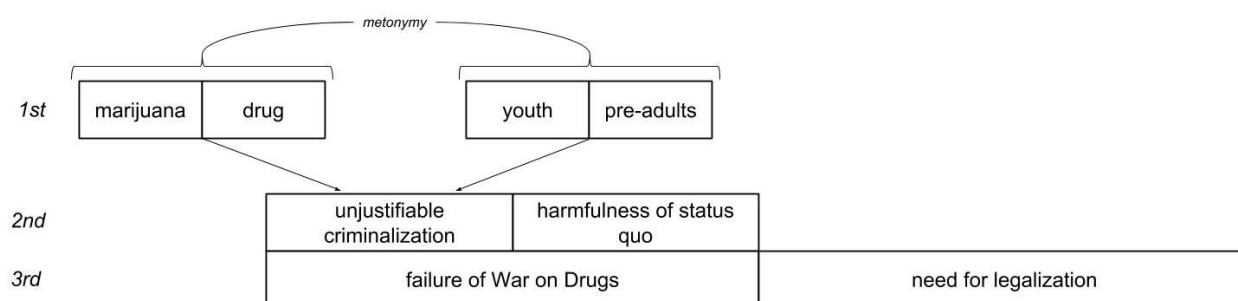


Figure 14: In recent years, during the Legalization Period (2013-2018), the now-familiar metonymic connection between marijuana and youth became associated with the unjustifiability of criminal sanctions targeting marijuana use and the harmfulness of the status quo that is the result of criminalization. This, in turn, signifies the failure of the War on Drugs and the need for legalization.

For its part, the Senate touched on all of these issues to one extent or another in their committees and debates on Bills C-45 and C-46. However, by virtue of being ostensibly non-partisan, the focus of some of these issues was slightly different than in the House of Commons. The licensing of marijuana producers and the financing of marijuana-

related companies is one such example. By February and March 2018 many parliamentarians, especially in the Senate, became alarmed about the enormous investments being made into existing and emerging companies positioning themselves to participate in the legalized marijuana market. The reason for this alarm was the possibility, real or imagined, that these companies and those investing in them may include members of organized crime. In response, an amendment to Bill C-45 was proposed in the Senate, but ultimately rejected by the Liberal government, that would have made obligatory the disclosure of the names of investors in companies involved in the legalized marijuana market. Moreover, one of the issues that was frequently debated in the Senate was legalization's future "impact on the Aboriginal population of Canada" and the necessity of "taking into account the plight of Aboriginal youth, especially the high level of suicide rates on reserves and so on, and the plight of the health condition of Aboriginal people, Aboriginal women especially" (HC Deb 6 February 2018). The extensive examination of the bills in the Senate resulted in over 40 amendments that included the imposition of a maximum THC content on certain cannabis products, a ban on the promotion of cannabis products through "giveaway" items like hats and clothing, and the imposition of limitations on the promotion and advertising of cannabis products.

As the preceding paragraphs demonstrate, a great many potential dangers relating to marijuana were debated during the Legalization Period (2013-2018). However, the potential danger underlying parliamentary debates about marijuana during the Legalization Period (2013-2018) was not related to the pharmacological properties of the drug, nor was it related to organized crime or youth criminalization. The risk during this hyper-politicized period came from politicians and policies within Parliament itself, rather

than from than from toxic substances or dangerous people outside of it. The Liberals and the Conservatives, as well as the NDP to a lesser degree, represented their political rivals and their marijuana policy agendas as posing a danger to Canadian youth and children. To the Liberals, the problem was the Harper Conservatives' escalation of the War on Drugs through punitive prohibitionist policies, which they argued had been an utter failure. They argued that the only winners of the war on drugs were "those involved in organized crime" and that there were many losers in the War on Drugs, not least of whom were Canadian "kids, who are using marijuana at a higher rate than anywhere else in the developed world" (HC Deb 2 June 2015). To the Conservatives, the risk was that the Liberal legalization plan would mean "abandoning the health and welfare of Canadian youth" (HC Deb 14 September 2014) and that instead of trying to protect them, the Liberals were instead trying "to push dangerous and illegal drugs on our children" (HC Deb 19 June 2014) so that they can profit financially from "the new Liberal gold rush" (HC Deb 2 February 2018). To the NDP, the danger was that the Liberal legalization plan allowed the needless prolongation of a prohibitionist status quo and that, as a result of the Liberal failure to keep their promises, "thousands of mostly young adults [...] will have criminal records for the rest of their lives" (HC Deb 13 June 2016). Moreover, the Liberals' driving legislation, according to the NDP, means "giving the police [...] new powers to pull someone over on a whim" (HC Deb 20 October 2017), thereby aggravating existing problems of police profiling of youth and minorities. Each party responded to the perceived danger by engaging more fervently in the parliamentary process. Political opponents were denounced and, where possible, discredited. Scientific evidence was cited in order to controvert or undermine threatening policy agendas. Stock answers to frequent challenges were developed and invoked in order

to silence opposition. Amendments were suggested in order to minimize the damage of what was considered by many to be a bad legislation.

10. CONCLUSION

Ultimately, the preceding analysis leads me to conclude that the parliamentary debates about marijuana have centered on the drug's association with youth. As the preceding sections showed, the connection between these two signs has remained constant for the 127-year period covered by my analysis. Over the years, these signs and their connection to one another have been subject to ongoing semiosis as they are reproduced in the parliamentary discourse. While the central association between marijuana and youth has remained constant, the chains of signification, or to put it another way—the assemblage of signs, that link “marijuana” and “youth” have undergone significant change and evolution over the years, with the result that each period has focused on altogether different discursive objects that all bear the name “marijuana”. This can be seen from the different threats, problems, risks, or dangers that are discursively constructed and drove legislative responses in each period. For example, during the Age of Innocence (1891-1937) the connection between marijuana and youth was closely associated with other signs like “opium” and “India”, whereas during the Communication Period (1980-1989) this connection was more closely associated with signs like “education” and “information”. Yet, all of this description of the interconnections between marijuana and youth over the last 127 years has not yet delivered on the promise to explicate the myths that underlie this debate. This surface description, however, is necessary in order to set the stage and bring my analysis to a point at which real demythologizing can begin.

The next two chapters discuss these results in more depth. Having set the stage in this chapter by demonstrating the persistence of the connection between marijuana and youth and the different significations this connection has generated over the course of the last 127 years, I begin in chapter 5 by identifying and exposing the myth that underlies and animates this connection in parliamentary discourse. Chapter 5 also provides an analysis of visual signifying practices engaged in by the Liberals, Conservatives, and NDP with respect to marijuana legalization in order to demonstrate how myths are continually (re)articulated and (re)transmitted as part of ideological struggles over signification that Birmingham scholars called “politics of signification” (Hall 1980: 122, 127; 1988: 60; Hebdige 1979: 17). Chapter 6 begins by shifting the focus slightly from the parliamentary discourse about marijuana and onto the regulatory strategies developed in order to address the perceived threats or problems that the drug represented. I discuss attempts to criminalize, decriminalize, and legalize marijuana as indices of a process of juridification that is entrenching regulation into increasingly new areas of Canadian life. Having done so, I go on to explore the interconnections between signification and regulatory practices through an analysis of Health Canada’s proposed packaging for legal cannabis products, highlighting the ways in which regulatory practices and signifying practices can further juridification while also (re)producing myth.

Chapter 5 - Exercising Paternal Power and Protecting Children: Examining the (Re)Making of Myth through Canadian Political Discourse

1. INTRODUCTION

Marijuana has garnered a great deal of attention in both the Senate and House of Commons. From the earliest mentions of hashish and Indian hemp over a century ago to the recent debates about medical marijuana and legalized cannabis products, this attention has been steadily increasing. This diversity of terms used to refer to marijuana shows that, over the years, it has taken on a diverse signification. In the previous chapter I traced these in detail using a semiotic approach and presented a typology or periodization made up of eight temporal periods reflecting the different versions of “marijuana” as a discursive object that emerged in the parliamentary debates. In this chapter, my focus shifts to explaining what these results mean and their broader significance as a politics of signification.

Next, following a brief theoretical recapitulation of essential Barthesian semiotic concepts that inform and guide my interpretation of the results of my analysis, I offer my reading of the mythology that underlies the recurring connection in parliamentary discourse between marijuana and youth. I argue that both signs become signifiers of impairment and irresponsibility and that these, in turn, are rooted in an Enlightenment philosophy that conceived of humans as rational calculators, capable of weighing the consequences of their actions and governing their behavior accordingly. According to this 19th century philosophy, the individual’s inability to engage in rational calculation, regardless of the reason, signals their inability to responsibly engage in society and thereby

legitimizes their strict regulation and domination by the state (Locke 2010: 19-20; Hobbes 1999: 30, 100; Rousseau 1964: 178). I argue that this understanding of the failure of rational calculation as a legitimation of what Locke (2010: 19) called *paternal power* has become myth. The roots of this understanding are in what may appear to be an antiquated philosophical perspective, yet it is this philosophical perspective that has served as the foundation of many of our contemporary social institutions including law and its notion of “reasonableness” (Hamilton 1997: 22). As I will show in chapter 6, this myth continues to animate and guide the Canadian state’s regulatory strategies with respect to marijuana. In the fourth section, before continuing with my examination of *what* was being signified about marijuana in the debates, I discuss uses of humour, jeering, heckling, and boasting as peculiar rhetorical strategies that exemplify *how* this signification sometimes occurred.

Following this discussion of my results I return briefly to the theoretical and explain in more depth my understanding of myth and the ways in which it is manipulated and (re)produced. I argue that while the relationship between signifier and signified is the result of cultural convention and is therefore unmotivated, signifying practices involve a great deal of intentionality, as examples of politics of signification clearly demonstrate, and that myth can be intentionally invoked as part of these signifying practices. So, connotations associated with different political parties, like those of progress, regress, liberality, or punitiveness discussed in chapter 1, are neither natural nor haphazard but are in fact part of intentional and often contested signifying practices. I further argue, however, that although references to myth can be part of intentional signifying practices, the (re)production of myth is largely an unintended byproduct of these practices. I then provide an analysis of the visual signifying practices of three Canadian political parties

regarding marijuana in order to illustrate this argument. This visual analysis shows politics of signification in action—how motivated and purposive signifying practices were carried out by political parties. Each of the three parties sought to connect their party and its agenda to the myth of protecting children in such a way as to enhance their legitimacy, prestige, and persuasiveness, all while contesting the signifying practices of their rivals.

In so doing, all three parties inadvertently (re)produced and (re)transmitted the myth of protecting children, as well as the myth of the failure of rational calculation and the need for paternal power. Finally, I end the chapter with a brief examination of the function of myth, something that both Barthes and Valverde believed to be an indispensable component of effective demythologization.

2. DENOTATION, CONNOTATION, AND MYTH: CLARIFYING BARTHES' ORDERS OF SIGNIFICATION

Before proceeding with this demythologization, it is necessary to reintroduce some essential theoretical concepts from Barthesian semiotics that appeared in chapters 2 and 3. *Denotation* is the literal meaning attached to a signifier as a result of cultural convention (Barthes 1964: 93; 1967: 38; 1971: 614; Chandler 2002: 137; Turner 2003: 14). As children we are taught, for example, that the word “airplane” denotes a particular object. This denotative level of signification is what Barthes (1967: 38; 1971: 614) elsewhere refers to as *first-order* signification (Chandler 2002: 140). *Connotations* are the additional meanings with which signifiers become associated through signifying practices (Barthes 1967: 38; 1971: 614; Chandler 2002: 138, 141; Turner 2003: 14-15). For example, our exposure to the everyday use of the word “airplane” teaches us that the word and the object to which it

refers are also connected to other concepts like “travel”, “flight”, “transportation”, and so on (Chandler 2002: 139). Barthes (1957: 217-219; 1971: 615) explained this by theorizing that signs formed hierarchical relationships—that a first-order sign, composed of a signifier and signified, could also act as a signifier in its own right, pointing to a new higher level signified (Chandler 2002: 140; Potter 1998: 178; Silverman 1984: 26; Turner 2003: 15). This connotative level of signification is what Barthes (1957: 218; 1967: 38; 1971: 614) identifies as *second-order* signification (Chandler 2002: 140).

Barthes (1957: 218-219, 236, 238, 253; 1971: 613-614) also theorized that, in some cases, the relationship between denotations and connotations, or to put it in semiotic terms—between first and second-order signifieds—could become so familiar that they ceased to be recognized as constructions rooted in a social, historical or ideological context and instead appear to be natural, at which point they became what he called *myth* (Chandler 2002: 143-144; Fry & Fry 1989: 187; Valverde 2006: 27). To illustrate the point, we can think of a simple chain of signification in which sign A is linked to sign B, which is linked to sign C and then to sign D and so on. The more this association is repeated, the more familiar it becomes and the faster the mind can run through the chain of signification from sign A to B to C to D and onwards. Eventually, these connections become so familiar that they begin to appear natural. So, signifier A becomes tied to signified D such that one invokes the other without having to pass through B or C. One of the consequences of this process is that the original context in which signs A, B, C, and D were first connected is erased and replaced only with a seemingly natural connection between signs A and D. Marianna Valverde (2006: 27) offers the example of diamond engagement rings to explain this process. Through what can only be considered a wildly successful marketing campaign,

the De Beers diamond company created an association between their product and marriage proposals in the United States during the 1930s and 1940s (Otnes & Scott 1998: 35; Valverde 2006: 27). The connection was popularized and was reproduced over the years while the involvement of the De Beers company was obscured, with the result that the giving and receiving of diamonds has become a seemingly natural part of the myth surrounding the ritual of getting engaged (Otnes & Scott 1998: 35; Valverde 2006: 27).

3. READING THE MYTHOLOGY OF MARIJUANA CONSUMPTION

Having reviewed and re-established the theoretical foundation for my approach, I now turn to the application of Barthes' method of analysis to the Canadian parliamentary debates about marijuana. Barthes' theoretical and methodological framework pushes us beyond the limits of traditional methods like content analysis or discourse analysis. The former is concerned with what meanings are explicitly present in text as well as those that are implied (Julien 2008: 121; Valverde 2006: 28), whereas the latter adds to this an awareness of the importance of the audience, the process of production, silences in the discourse, indications of authorial intent, and so on (Cotter 2015: 809-810; Shuy 2015: 827; Tonkiss 2012: 414-416; Wilson 2015: 782). While these are the terminus for these methodologies, they are the beginning of Barthesian semiotic analyses (Chandler 2002: 222; Valverde 2006: 28) and that is Barthes' real contribution. So far, a discourse analysis could have led me to the same result that I summarized in the first paragraph of the previous section—that the most significant theme in parliamentary discourse about marijuana has been the drug's association with youth and that over the years this connection has been continually (re)articulated as representing various risks, threats, or

dangers that have been the driving force behind marijuana policy and legislation. Instead of stopping here, a Barthesian framework encourages us to pursue the analysis further. Barthes (1957: 225) suggests that the regularity and persistence with which signs like “youth” and “marijuana” appear together is valuable to the mythologist because it can indicate the presence of an underlying myth. In this case, a Barthesian framework encourages us to not only ask what youth and marijuana signify individually as signs and what they signify in relation to one another, but also what meanings and associations have been naturalized through the (re)articulation of these signs over the years. This is the line of questioning that allows for an analysis of the *myths* present within higher orders of signification. It is to this line of questioning that I will turn in this section.

I proceed first with a more in-depth examination of each sign individually, in order to show that, as is depicted in *Figure 15* below, at the second-order level of signification marijuana is associated with cognitive impairment and irresponsibility. Marijuana is, first and foremost, considered to be an intoxicant. It is a source of cognitive impairment like alcohol and other drugs, yet its semiotic associations as compared with these other substances are unique. The introduction of marijuana into the body produces an effect on the brain, the experience of which is often called a “high”. This suggests that the drug produces an elevation, perhaps mental and perhaps emotional, above and beyond the everyday. In fact, many cultures globally, both past and present have utilized marijuana for precisely this purpose (Spicer 2002: 4, 7, 10). There is a mysticism associated with marijuana that is nowhere present with alcohol for example. The high that it produces is sometimes represented in mystical terms, as a kind of spiritual experience in which you enter a higher plane of existence. In *The Black Candle* for example, the marijuana high is

presented as an exotic journey. The drug promised its users an escape from white, Anglo-Saxon hegemonic morality into a hedonistic Orient within themselves where everything was possible and permissible. Over the years, the association with a mythical and mystical Orient diminished, yet the association between marijuana and an impairment that offered a hedonistic escape from reality grew stronger. It is this hedonism associated with marijuana impairment that triggered concerns over the decaying moral fabric of youth and by extension the decay of civilized society itself that began to increase during the Reactionary Period (1938-1960). They reached an apex in the Social Decay Period (1961-1969) and then went into decline during the Anti-Criminalization Period (1970-1979).

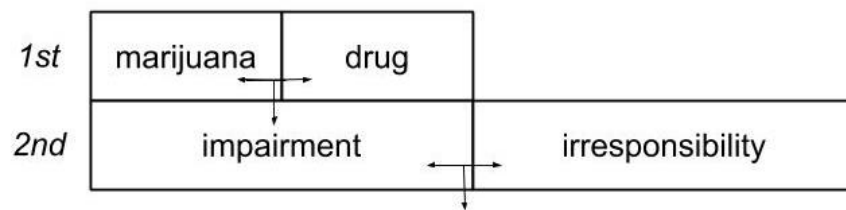


Figure 15: At the first level of linguistic signification, 'marijuana' signifies a plant-based drug. Together, the mental concept of 'marijuana-as-drug' signifies impairment. As a second-order signifier, impairment points to irresponsibility, which as we shall see below, creates a new second-order signified that points to a failure of reason.

However, the hedonism produced by marijuana is only part of the problem. Marijuana not only gets people "high", it also gets them "stoned", which suggests that the drug makes its users unfeeling, unresponsive, and otherwise disconnected from the quotidian human experience. It is worth noting that this characteristic of marijuana's effects, its ability to divorce the mind from reality is precisely why it is prized by the medical community and by those who use it to alleviate chronic pain. Marijuana offers sufferers a temporary escape from a sensory reality in which they experience pain. This

disconnection between the mind of the person who is high or stoned and reality, whether sought out for recreational or medical reasons, nevertheless signifies that the individual is unable to function on the level of consciousness and cognition at which society operates. A marijuana user's perceptions of sights and sounds, their reflexes, their attention and responsiveness, and so on, are all affected by the drug. As a result, they are deemed incapable of fulfilling basic responsibilities like performing a job, attending school, or driving a car. This understanding is reflected in legal discourse that, according to Lacey (2016: 547), conceives of intoxication as a "volitional defect" that "undermines the power of self-direction".

So, being stoned becomes a signifier for being insensible and unresponsive to real life, which in turn becomes a signifier for being irresponsible. At best, this renders the marijuana user a nuisance (e.g. teenage dropouts), but at worst this renders the marijuana user a potential liability and even a direct threat to the safety of the community (e.g. "drugged drivers"). This association is behind a great many concerns about marijuana use that emerge in the parliamentary debates. During the Reactionary (1938-1960) and Social Decay (1961-1969) periods, this chain of associations appeared as an outworking of the concerns about the potential violence of marijuana users. When they are stoned, marijuana users are insensible to human moral feeling. They are unable to responsibly weigh the consequences of their actions. They are incapable of exercising self-control and this makes them a dangerous liability. Perhaps the best contemporary example of this association between marijuana, youth, impairment, and irresponsibility is the ongoing concern about "drugged driving" which increased during the Re-Evaluation (1990-2000) and Reform

(2001-2012) periods and was further intensified during the Legalization Period (2013-2018).

All of the above suggests that marijuana, as a sign, is very different from other substances like alcohol for example. Alcohol, at least in the West, has a very different signification than marijuana. Although long prized for its ability to numb the senses and produce intoxication, alcohol is much more than a means of impairment. In the culinary world, for example, wine is important as an ingredient in many dishes as well as an accompaniment to the meal. Barthes (1957: 80) calls wine a substance of conversion, saying that it can make the weak strong or the quiet suddenly talkative. It has an enlivening effect, but it is also a means of calming nerves or even of dulling wits (Barthes 1957: 80). There are also important and long-standing health associations. In the New Testament the apostle Paul admonishes Timothy to “drink a little wine for the sake of your stomach” (Holy Bible, New Living Translation, 1 Timothy 5:23). The modern equivalent of this Biblical admonition are studies, often shared and re-shared on social media, which boast of wine’s antioxidant properties and encourage us to drink a glass of red wine for our cardiovascular health. Socially, alcohol is prized as a means of producing camaraderie, not only because it is supposed to elicit gregariousness but also by its ability to bring people together. Alcohol has also long been used as a cleaner and as an anti-septic, which associates it with cleanliness and, by extension, godliness.

Of course, what I have included above only scratches the surface of alcohol’s vast and complex mythology. My point is that alcohol, as a sign, is connected to diverse chains of signification that extend far beyond only impairment and intoxication. In this respect, in

terms of their semiotic associations, alcohol and marijuana are completely dissimilar. As a sign, marijuana consumption in the contemporary West remains almost exclusively associated with its inebriating abilities. While there are different uses for marijuana (e.g. recreational, medicinal, religious, etc.), most revolve around the drug's intoxicating properties. In this we see another crucial difference in the signifying values of these two substances—alcohol can be used in moderation whereas marijuana cannot. This understanding is reflected by Senator David Tkachuk, who remarked during the Senate debates on Bill C-45 that “[m]ost people drink without the intention of getting drunk, while marijuana intake is the opposite of that: People smoke to get high” (SOC Deb 19 June 2018). Someone who is drinking alcohol can stop before reaching a point of intoxication and still derive all of the benefits (e.g. health, social, etc.) thereof. This is because alcohol intoxication is popularly understood to be a continuum; someone starts out being sober, proceeds through a period in which they are “tipsy”, before eventually becoming drunk. In contrast, marijuana intoxication is popularly understood as a zero-sum game; one either is or is not stoned based on whether one has or has not consumed the drug. While in actual practice there may be degrees of intoxication with marijuana, as there are believed to be with alcohol, they are of no importance semiologically because, as a sign, marijuana has become the very essence of impairment and disconnection with reality. This transformation and elevation of a concept into “an abstract, purified essence” (Barthes 1957: 224) is characteristic of myth.

This association between marijuana and impairment was continually reinforced in the parliamentary debates. However, a metonymic connection, visually represented below in *Figure 16*, was routinely established between “marijuana” and “youth” within the

parliamentary debates. Yet, in addition to the frequent recurrence of the connection between marijuana and youth, an association between youth (signifier) and impairment (signified) was also present and routinely reinforced through the parliamentary discourse. “Youth”, as a signifier for all of the stages of development preceding adulthood, is an impaired cognitive state. As I noted earlier, youthfulness is associated with an impetuous, pre-logical, and therefore irresponsible nature. Young people are believed to be immature because they do not consider the consequences of their actions. This is deemed to be a natural consequence of the fact that their brains are still developing. They are biologically incapable of responsible civic engagement or of making good choices in their personal lives. Even separate from their identities as marijuana consumers, children and youth carried connotations throughout the parliamentary debates about marijuana of stupidity, gullibility, naïvety, vulnerability, irresponsibility, and poor decision-making. The fact that they smoke marijuana simply aggravates their existing cognitive impairment. These connotations linking youth with biological cognitive impairment can be observed clearly during the Anti-Criminalization Period (1970-1979). The movement to reverse the criminalization of youth, which defined that era of parliamentary debate about marijuana, was predicated on the presumption that youth needed to be protected from the consequences of the poor choices they made based on a childish lack of reason that would soon be outgrown. More recently, during the Reform (2001-2012) and Legalization (2013-2018) periods, the association between youth and impairment can be seen in the way that marijuana users were increasingly constituted as “children” in “schoolyards” who are the witless and unsuspecting dupes of organized crime groups and drug traffickers. As a result of metonymy, the repeated association of marijuana and youth in chains of signification

within the parliamentary debates helped to reinforce the association of both signs with impairment.

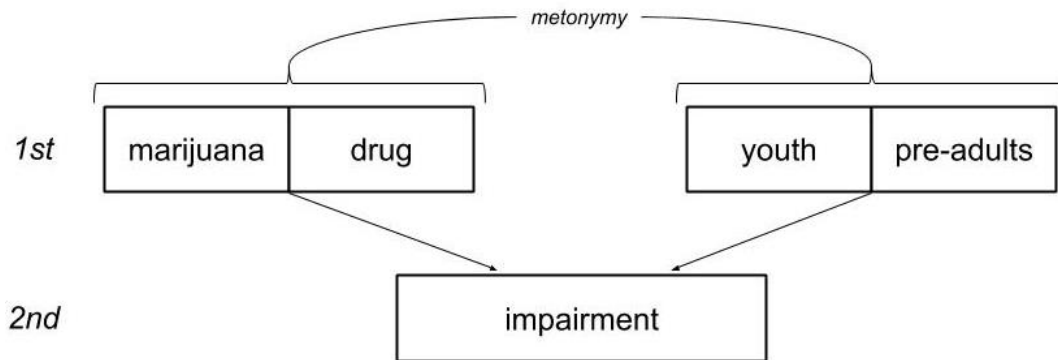


Figure 16: Marijuana and youth have been discursively linked throughout the last century of parliamentary debate. At the first-order level of signification, “marijuana” signified a drug derived from the cannabis plant, whereas “youth” signified individuals at stages of development that precede adulthood, particularly childhood and adolescence. The continual appearance of these signifiers together produced a metonymic effect within the discourse whereby they shared connotative associations. In the parliamentary debates, both marijuana and youth became signifiers of “impairment”.

So, the marijuana-consuming youth who are central to these parliamentary debates are, in a sense, doubly impaired and doubly irresponsible. They cannot be trusted to drive safely, stay away from organized crime, use marijuana safely, make good decisions, etc. As shown below in *Figure 17*, impairment and its resultant irresponsibility are connected to the broader notion of a failure of reason or unreasonableness, which is itself connected to a complex network of foundational myths upon which much of contemporary Western culture rests. According to Chandler (2002: 144), rationality and reason are connected to the idea of objectivism, “a pervasive myth in Western culture [that] allies itself with scientific truth, [...] accuracy, fairness and impartiality and is reflected in the discourse of science, law, government, journalism, morality, business, economics and scholarship”. The myth of reason is rooted in Enlightenment philosophy which, among other things,

emphasized the superiority of logic and reason as ways of organizing knowledge and judging experience over traditional means like faith or superstition that were based in a primitive ignorance (Hamilton 1997: 23, 37). “Critical rationalism” was a mode of thought developed during the Enlightenment and premised on the application of logic and reason to every aspect of social life, including politics, law, and the economy (Hamilton 1997: 22). Enlightenment philosophers understood reason or rationalism to be an important means by which human society would be able to rise above its historical pattern of ignorance and barbarism and move “onwards and upwards to a more enlightened and *progressive* state” (Hamilton 1997: 37). The impaired and therefore unreasonable marijuana user is incapable of participating in the upward, progressive, and emancipatory trajectory of human society.

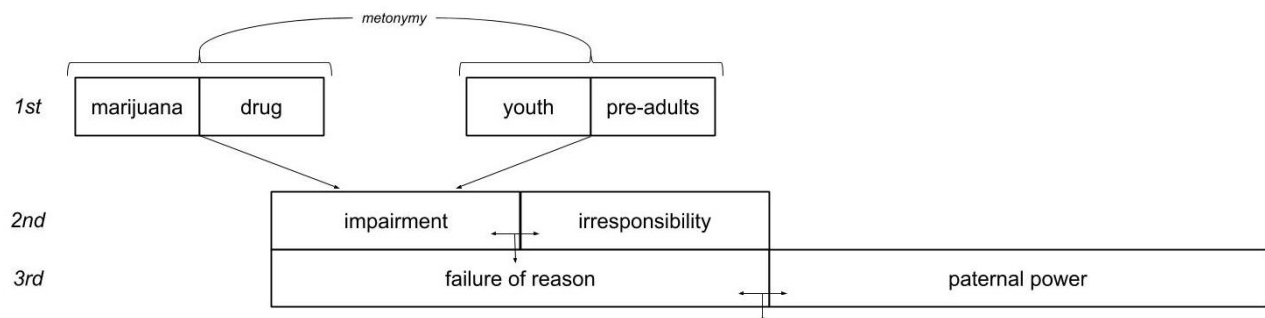


Figure 17: This figure shows the continuation of the semiotic chain depicted in Figure 16. Connected via metonymy, both marijuana and youth signify impairment. Impairment and irresponsibility are connected to the failure of reason and to a well-established mythology about human reason that emerged in Enlightenment philosophy and remains an important myth underlying many institutional pillars of Western society, including law, science, economy, business, and government (Chandler 2002: 144). As a third order signifier, the impaired, irresponsible, and unreasonable young marijuana consumer signifies the necessity of what Locke (2010: 19) referred to as “paternal power”.

All of this Enlightenment philosophy is premised on the rational calculation of the individual. Yet, the doubly-impaired and doubly-irresponsible youthful marijuana user is incapable of such rational calculation. They cannot fulfill or even fully appreciate their

responsibilities to the community, nor can they obey the law, nor can they understand the consequences of violating the law, all of which are vital components of how the responsible legal subject continues to be conceptualized in contemporary legal discourse (Lacey 2016: 544). Enlightenment philosophers like Thomas Hobbes (1999: 30, 100), John Locke (2010: 19-20), and Jean-Jacques Rousseau (1964: 178), argued that some individuals in a society, most notably children and the mentally ill, are unable to engage in rational calculation and that this justifies their domination by others. This domination is what Locke (2010: 19) refers to as paternal power. Although Enlightenment philosophers postulated that the ability to reason was natural to all human beings, they also believed that this ability developed through experience and was not fully formed at birth (Hobbes 1999: 30, 100; Locke 2010: 20). As a result, they argue, “children, fools, and madmen that have no use of reason” (Hobbes 1999: 100) need to have their actions governed by parents or guardians who are able to exercise reason on their behalf (Locke 2010: 19-20; Rousseau 1964: 178).

The exercise of paternal power over unreasonable individuals is especially important to ensure their physical health and, in the case of children, their mental development into reasonable adults (Locke 2010: 22). Speaking of children, Locke (2010: 20—original emphasis) says that

while the individual is in a condition in which he hasn’t enough understanding of his own to *direct* his will, he isn’t to *have* any will of his own to follow. The person who understands for him must will for him too; that person must prescribe to his will and regulate his actions [...].

Under normal circumstances, paternal power ends when the individual reaches a “state of maturity”, or in other words, when their natural ability to use reason and engage in rational calculation has sufficiently developed to allow them to conform to the responsibilities of

citizenship and to the laws of society (Locke 2010: 20). Yet Locke (2010: 21) goes on to say that

if, [...] someone never achieves a degree of reason that would make them capable of knowing the law and so living within the rules of it, he is never capable of being a free man, he is never allowed freely to follow his own will (because he knows no bounds to it, doesn't have the understanding that is the will's proper guide), but continues under the tuition and government of others for as long as his own understanding is incapable of taking over.

At face value, this domination of the reasonless individual seems like an obvious infringement of the personal freedom and right to liberty that liberal philosophers like Locke, Rousseau, and Hobbes held in such high esteem. However, for Locke (2010: 22) no contradiction exists, since he conceives of liberty and reason as intrinsically linked such that the former does not exist without the latter. The ability to reason is considered to be inseparable from our humanity, which means that the individual who lacks this ability is not just in a "wretched" state that requires extra supervision, they are "sub-human" (Locke 2010: 22). Consequently, reasonless individuals do not have any natural right to liberty and Locke (2010: 22) argues that to grant liberty to such individuals when they are unable to use it responsibly is a disservice that amounts to abandoning them to the animal kingdom. This part of Locke's argument is notable because implicit in his assertion that when reasonless individuals are not governed they become like animals is the presumption that it is their governance by reasonable individuals that makes their continued presence within human society tolerable.

There are important similarities between Locke's (2010) concept of *paternal* power and Foucault's concept of *pastoral* power, though the two remain distinct. Whereas paternal power is a duty of care that a parent or guardian holds over a child (or other

reasonless person) by virtue of a “natural” responsibility for their physical and mental well-being (Locke 2010: 19-20), pastoral power is a duty of care that a Christian pastor holds over those within his congregation by virtue of his responsibility for their spiritual well-being (Foucault 1982: 783). They are similar in that both require that the individual doing the governing be self-sacrificial towards the individual being governed (Foucault 1982: 783; Locke 2010: 20). They are different in that paternal power is meant to be temporary, lasting only until such a time as the individual is able to exercise reason to govern their actions appropriately (Locke 2010: 19), whereas pastoral power is meant to endure throughout the individual’s entire lifetime (Foucault 1982: 783). Nevertheless, as I mentioned above, Locke (2010: 21) acknowledged that in some cases a permanent paternal power is justified over individuals considered incapable of ever developing reason. Foucault (1982: 784) argues that the modern state inherited the responsibility of exercising pastoral power that used to reside exclusively with religious institutions. Importantly, this “new pastoral power” wielded by the state became focused on what he calls the more “worldly” objective of ensuring the health, security, protection, and adequate standard of living of individuals (Foucault 1982: 784). Although Locke (2010: 25) does not go quite as far as Foucault in drawing this connection, he does argue that paternal power “laid the foundations for *kingdoms*—whether hereditary or elective—with various kinds of constitutions and procedures”. As I shall discuss further in chapter 6, the paternal or pastoral power inherited by the state serves as an ideological underpinning to many important debates, not merely about the economy, welfarism, neo-liberalism, and so on, but also about crime, justice, and penalty.

When the chains of signification that link marijuana and youth are followed, this is one of the myths at which we arrive. As a third-order mythic signifier, the impaired, irresponsible, and unreasonable young marijuana consumer signifies the necessity of a paternal power to govern their actions (Locke 2010: 19). It may seem to some like a stretch to draw a connection between Canadian political discourses about marijuana consumption and an 18th century philosophical perspective. Nevertheless, the continued significance of that philosophy cannot be understated because it created the liberal ideational context that shaped our political, economic, and legal institutions (Chandler 2002: 144; Hamilton 1997: 22). But over time these ideas including those about reason and rationality, impairment, irresponsibility, and the necessity of paternal power that were foundational to so many institutions were naturalized. Their historical origins in the works of Enlightenment scholars like Locke, Hobbes, Rousseau, and others, were effaced and what remained were the ideas themselves, which now liberated from their history have come to appear so natural that they no longer draw much attention. This mythology operates in the background of our thinking and it continues to shape and influence social practices. As I will show in the next chapter, the application of paternal power against marijuana consumers has been actualized through a number of seemingly disparate regulatory strategies.

The reason that a myth like this, rooted in the late 18th century, is able to continue to influence our thinking and our lived practices is because of the manner in which myths are produced and reproduced. Barthes (1957: 222-223, 239-241) argued that myth was parasitic, that it could only signify its own meaning by attaching itself to or high-jacking an existing sign (e.g. a word, image, etc.) and using that sign's meaning as a vehicle for its own.

This is the reason why Barthes' approach involves looking at the different orders of signification or, to put it another way, the multiple layers of meaning that are conveyed by a single sign. Myth's parasitic function, the way it high-jacks existing semiotic systems, provides important insight into how myths are reproduced and why they can persist even for centuries after their initial creation. In the next section, I will discuss three examples of how this mythic content was transmitted through rhetorical strategies employed throughout the debates.

4. HUMOUR, HECKLING, JEERS, AND BOASTING: EXAMINING THE PECCADILLOES OF PARLIAMENTARY DEBATE AS RHETORICAL STRATEGIES

The verbosity and gravity of Parliamentary debates is interspersed with a variety of short and often pithy comments that inject the discourse with small doses of humour, boasting, heckling, or jeering. These are peccadilloes in the sense that they are slight infractions or indiscretions that can and often do rupture the civility and decorum of parliamentary discourse, yet they are generally tolerated nonetheless. They can seem tangential to the debate, particularly when they are non-serious in nature, giving them the appearance of being insignificant. However, as I will show in this section, these comments can be understood as rhetorical strategies that actually signify much more than they appear to.

The issue of heckling has garnered much attention in news media in recent years, largely as a result of Speaker Geoff Regan's attempts to address what many perceive to be a lack of civility in the House (see for example Grenier 2016, Grenier 2017, Scotti 2017a, Scotti 2017b, and Wherry 2017). Heckling, which Grisdale (2011: 39) defines as "[calling]

out in the chamber of the House of Commons without having the Speaker's recognition to speak" has a long history in Canadian politics. For over a century it has become common practice within the House of Commons for MPs to talk over one another and to disrupt what their opponents are saying, particularly during Question Period. This practice goes back as far as Confederation, when MPs were said to have gone as far as playing musical instruments, making animal noises, and setting off firecrackers in an effort to disrupt their opponents' efforts to speak (Grisdale 2011: 38; Morden 2017: 6). Within the marijuana debates, heckling most often took the form of simple comments like "[g]o and have a smoke", "[a]re you stoned" (HC Deb 28 May 1981), and "[a]re you high?" (HC Deb 25 February 2004) that seem intended to interrupt and discredit the MP currently addressing the Chair. However, on other occasions heckling comments were interjected in order to more specifically deride what an opposing MP was saying. For example, in response to a question by Progressive Conservative MP Eldon Woolliams regarding government experiments involving marijuana, an anonymous MP was recorded as suggesting that MP Williams' reason for asking the question is that he "wants to take a trip" (HC Deb 25 October 1975).

During a 1987 speech in which a New Democrat MP was citing his farming experience and mentioned having "a 20-acre farm on which we had some...", a Liberal heckler finished his sentence with the suggestion "[m]arijuana plants" (HC Deb 30 April 1987). Another characteristic example of this common form of heckling is the comment "[w]hat did you do, pull up a chair?" (HC Deb 10 October 2003) directed towards an MP who was recounting a story about being at a community event in his riding during which he could smell marijuana being smoked. Similarly, in a 2007 debate, in response to a Liberal

MP's assertion that the THC content of marijuana was so low in the 1970s that it was possible to smoke a field of it and not get high, a Conservative MP noted that this must be "[t]he voice of experience" (HC Deb 6 February 2007). As a rhetorical strategy, the purpose of heckling comments like these appears to be to disrupt the flow of what someone else is saying or attempt to discredit them by making that individual or what they are communicating seem idiotic, foolish, frivolous, irresponsible, immoral, and so on.

Closely related to heckling is what I refer to as jeering. The content of jeering is often very similar to heckling, typically revolving around the insinuation that rival MPs are marijuana users. However, there is a notable difference in that jeering is offered by those whose turn it is to speak, whereas heckling is an interruption offered out of turn by those who have not been recognized by the Speaker as holding the floor. Here are a few characteristic examples of jeering:

I think the honourable senator must have been smoking marijuana himself, when he makes a statement like that. (SOC Deb 10 December 1974)

[Y]esterday the Minister of Health announced a new policy to allow for the medicinal use of marijuana on a pilot project basis. I am curious if the Reform Party caucus might not be one of the first pilot projects. (HC Deb 4 March 1999)

Mr. Speaker, I half expected the Liberal member, who had quite a bit of time to finish her speech, to stand up first, but I guess Monday mornings come too early for those who support the use of marijuana. I should not say that. (HC Deb 18 February 2002)

The Liberals are desperate to show they can keep a promise after all. "Look at me" the PM will say on July 1, hiking up his pants to show off his socks with marijuana leaves. He is going to spark up the first ceremonial doob on Parliament Hill, and run around taking selfies with those lighting up. No doubt, the clever Liberal marketing machine will say the PM just happened to be running by, shirtless no doubt, and a crowd toking up. Of course, his official photographer will just happen to be there taking some pictures. No doubt they will come up with some clever tag about the PM and hashtag it that he was "photobonging" some group. (HC Deb 21 November 2017)

Can the Prime Minister at least guarantee one thing, that no pot will be grown at 24 Sussex? (HC Deb 14 June 2018)

These quotes suggest that the main purpose of jeering and heckling is to undermine the legitimacy of what rival politicians are saying, which can be accomplished in a few ways. One method, for example, is to suggest that a rival MP's idea or question was so absurd and outlandish that it could only have been conceived under the drug's influence, which negates its validity. Another is to associate the MP with the habitual consumption of recreational marijuana in order to discredit them entirely, casting all of their motivations and ideas into doubt. In some cases, this is accomplished by making an unsubstantiated insinuation to this effect, whereas in other cases this is accomplished by invoking an MP's past admissions to marijuana use and embroidering them with implications that were not part of the original admission.

Among the best recent examples of jeering are those directed towards Justin Trudeau after his 2013 admission to having used marijuana while being an elected Member of Parliament. In the quote below for example, Conservative MP Paul Calandra makes a jeering comment that references Justin Trudeau's past admission to marijuana use while at a dinner party while also elaborating on that admission so as to sarcastically suggest that this might be the origin of the Liberals' legalization agenda:

The Liberal leader was elected in April and was going to bring so much hope to the Liberal Party. Liberals waited and waited and waited. Canadians waited with bated breath. Then, how was his first policy formulated? He was having a dinner party at his house with his friends and maybe his advisers; I do not know. They pulled out a joint and started talking about things, and the idea that maybe they should legalize marijuana came up. Now, there was a good policy. (HC Deb 5 November 2013)

This jeering comment offers an alternative interpretation of the legalization agenda than the one offered by the Liberals. From the beginning, the Liberals have sought to portray their legalization agenda as the logical, responsible, and correct conclusion to a careful and

lengthy consideration of all of the facts. However, this comment suggests that it might have all been the result of an evening that the Liberal caucus spent smoking marijuana, which undermines the Liberals' claims about themselves, their policy agenda, and the motivations behind it. There is a subtle insinuation that Trudeau may have conceived of legalization in order to justify and legitimize his own personal marijuana use. Invoking factual details of Trudeau's admission lends some credence to this alternative version, which are then embroidered with suppositions that implicate other unnamed Liberals. One of the notable features of jeering as a rhetorical strategy in the marijuana debates is that it ascribes all of the pejorative connotations associated with marijuana consumption, including irresponsibility, irrationality, recklessness, etc., to the politician in question. Yet, regardless of the manner in which the rhetorical strategies of heckling and jeering are deployed with respect to marijuana, they seem to be overt attempts to undermine the legitimacy of rival politicians and their communications.

In contrast with heckling and jeering, both of which appear to be relatively straightforward, boasting and uses of humour are far less clear in terms of their aims and function as rhetorical strategies. Boasting appears with much less frequency compared with heckling and jeering, yet it is far more uniform and subject to much less variation. Here are some typical examples of what I have identified as the rhetorical strategy of boasting:

The cannabis produced here is of such a high quality that it is often—and in fact increasingly so—traded for the same quantity of cocaine or heroin, for example on American markets. (HC Deb 30 November 1999)

We are famous for marijuana growth in the Slocan Valley. (HC Deb 24 March 2003)

What we see today coming out of British Columbia, what is known as B.C. bud, has THC levels of 35%. That is an enormous increase in the toxicity and the potency of this particular drug. What is also clear is that this is like the crack cocaine of marijuana. (HC Deb 2 November 2004)

I'm from the west coast, marijuana central... (HC Com 6 November 2014)

I understand that the best bud in the world comes from British Columbia. (HC Deb 9 November 2017)

In all of the comments of this type, MPs made reference to their riding or home province as producing either a large quantity or a high quality of marijuana. In each case, these comments seemed to have been included by the speaker in order to enhance the legitimacy of their own contributions to the marijuana debates. Such comments were generally used as a preface to their comments that more or less established their credentials. This form of boasting seemed based on an implicit belief that coming from a particular geographical area in which marijuana is more potent or plentiful translates into greater knowledge or expertise about the drug. I found 11 such comments, all between 1999 and 2018, which suggests that this rhetorical strategy has been used much more parsimoniously than heckling or jeering for example, which appeared a combined 53 times between 1969 and 2018.²⁹ What is notable about boasting comments is that all but one of them were made by politicians from British Columbia. Yet, while there is a clear geographic pattern to the use of this rhetorical strategy, there is none with respect to political affiliation. These

²⁹ I found 38 examples of jeering in the parliamentary debates about marijuana but only 15 examples of heckling. However, the few heckling results are likely a consequence of the way in which the Hansard record is produced and should not be taken as an indication of the infrequency of heckling in these debates. In fact, a 2017 study found that 60% of the Canadian MPs surveyed admitted that they heckle at least once a week (Morden 2017: 8). Most examples of heckling are booing or groaning noises or comments that contribute to a general cacophony but are too indistinct or muffled to be picked up by the recording devices (Grisdale 2011: 38). This general cacophony is generally included in Hansard only as "Oh, Oh" and is attributed to "Some Hon. Members" (Morden 2017: 5). The microphones and cameras that Hansard relies on to produce the official transcript focus on the individual who is addressing the Speaker, which makes it much more likely that individual heckling comments will either not be registered by these devices or will not be attributable to a specific MP (Morden 2017: 22).

comments were made with almost equal frequency by NDP, Conservative, Canadian Alliance, and Liberal MPs.

Humour was an even more rare and enigmatic rhetorical strategy that appeared in the marijuana debates. From 1938 to 2018 there are 10 instances in which an MP or Senator injected humour into what was otherwise an overwhelmingly serious topic. In some cases the use of humour appears to be a less antagonistic version of heckling. Humour is sometimes injected in a way similar to heckling in that it is offered as an interruption of what someone was saying. For example, during a particularly serious marijuana debate that took place at the beginning of the Reactionary Period (1938-1960), an MP responded to the assertion that marijuana had been known since the days of Homer with the question “[i]s that the reason Homer nodded?” (HC Deb 24 February 1938). This comment played on an expression that would have been familiar to the audience of the day, the gist of which is that everyone makes mistakes sometimes, including the poet Homer. Similarly, in a 1972 parliamentary debate focused on the growing of marijuana by the government for the purposes of scientific experimentation, an anonymous MP cheekily asks “[i]s there any left over?” (HC Deb 17 May 1972). In cases like these, the addition of a humorous comment has the effect of undermining the gravity and seriousness that someone is trying to establish with respect to a particular issue like marijuana. In the case of the first example that I noted above, the MP who had been interrupted by being asked whether marijuana was the reason that Homer nodded tried to preserve the seriousness of issue by responding that, on the contrary, the drug “was probably why there was an attack on Troy” (HC Deb 24 February 1938). Instances like these suggest that one of the uses of humour as a rhetorical strategy is to undermine the tone that someone is trying to

establish towards a particular issue as well as disrupt their delivery of their speech, making it a type of heckling.

Yet these light-hearted versions of heckles are few and far between. For the most part, marijuana-related humour in the debates takes the form of puns, which have increased in frequency during the Legalization Period (2013-2018). Here are a few examples of the marijuana-related puns that have recently begun to appear in the debates:

If members will pardon the pun, it is high time the government brought in legislation of this nature giving our law enforcement officials the tools they need to fight drug-impaired driving. (HC Deb 15 November 2004)

Yes, it could be a...joint committee. (HC Com 26 February 2016)

There is never smoke without fire. I should say there is never smoke without pot. (HC Deb 26 November 2016)

Mr. Speaker, we are just trying to weed out the truth here. (HC Deb 29 November 2016)

Here is the thing. We need to admit that this legislation is only half-baked, and the last thing the Liberals should be doing right now is pursuing a political buzz by letting Canada go to pot. Let us end on a high note. Let us roll up this legislation and let us get out of this joint today. (HC Deb 1 June 2017)

Mr. Speaker, this is exactly what the government is doing. Pardon the pun, it is sucking and blowing on this particular bill... (HC Deb 9 November 2017)

The purpose of such humour as a rhetorical strategy appears to be to cut the tension in debates whose tone was overwhelmingly grave and severe. However, unlike humorous heckles, these puns were made without any direct attempt to undermine the opposition, suggesting that their purpose might be more conciliatory than adversarial. The extreme parsimony of this rhetorical strategy in the debates is likely due to the risk incurred by those who use it. Attempting to add levity to a debate that was characterized by lengthy discussions of issues like addiction, death, crime, and so on, is politically risky, especially in

debates whose climate was often highly tense, adversarial, and antagonistic and in which any missteps could be capitalized on by political opponents.

What is peculiar about heckling, jeering, boasting, and humour as rhetorical strategies is that they only appeared in reference to marijuana. Since marijuana was often discussed in the context of other substances like alcohol and tobacco as well as illicit drugs like opium, heroin and cocaine, there was a great deal of debate about these other substances that was included in my sample. However, it is notable that none of these rhetorical strategies appeared in relation to any of these other substances. There were no instances included in my sample where a substance other than marijuana was the subject of humour, or where an MP was heckled for their use of a substance other than marijuana, or where an MP boasted about coming from an area in which any of these other substances are produced. These four rhetorical strategies only appeared in relation to the consumption of marijuana. This demonstrates the point that I made in the previous section, that marijuana consumption is surrounded by semiotic associations that give it a unique signifying value compared with other licit or illicit substances. This signifying value and the mythic underpinnings that I described in the last section are discernible in the use of these rhetorical strategies.

The myth of irrationality and paternal power that underlies marijuana consumption also underlies these rhetorical strategies. Beneath attempts to discredit or undermine a rival politician or their ideas, through heckling or jeering for example, is the naturalized association between marijuana consumption, cognitive impairment, and the failure of rational calculation. Hecklers, both the malicious and humorous kind, as well as jeerers

gain an advantage from the association of these naturalized chains of signification with their political rivals. MP Calandra's jeering comment about a supposed dinner party in which Justin Trudeau, then the leader of the opposition party, and members of the Liberal caucus smoked marijuana and then devised a national legalization strategy is an ideal example of how heckling and jeering comments can be used to cast doubt on a politician's leadership, ideas, or motivations. But this would not be possible without the presence of the underlying mythology that I discussed in the previous section. It is the underlying mythology of irrationality and paternal power that gives these heckling and jeering comments their persuasiveness and renders them effective as rhetorical strategies.

However, while this holds true for jeering as well as heckling in both its malicious and humorous forms, it is unclear how the use of puns relates to the mythology of irrationality and paternal power. Puns and other non-heckling examples of humour in the marijuana debates appear to relate to a different and as-yet unexplored aspect of marijuana's mythology. From the 1960s onwards there seems to have been a change in some of marijuana's signification that resulted in it being seen by many in a more innocent way. Examples of this include light-hearted references to marijuana rendering its users sleepy, forgetful, hungry, and so on, as well as invoking references to marijuana that originate in popular culture. For example, during one of the final Senate debates prior to Bill C-45 receiving Royal Assent, Liberal Senator Jim Munson noted that it was time to "pass the bill" and then added "pass the dutchie to the left-hand-side" (SOC Deb 19 June 2018), making reference to a reggae song by Musical Youth that is about marijuana use. What makes this example even more interesting is that it was part of a poem describing Bill C-45's journey through Parliament that Senator Munson presented to his fellow Senators in

order to “add a little light-hearted levity to the end of [the] debate” (SOC Deb 19 June 2018). In addition to these kinds of comments, there were also times when MPs made reference to their own past marijuana use with what seemed like nostalgia. This kind of light-heartedness and nostalgia do not appear to correspond to the myth of irrationality and the necessity of paternal power. This demonstrates that there is still more unexplored terrain in terms of marijuana’s mythic signification beyond the little that I have discussed in this chapter. Nevertheless, the use of the rhetorical strategies of heckling, jeering, boasting, and humour all serve to (re)produce aspects of marijuana’s mythology. The same Barthesian semiotic method that I have demonstrated could be used to illuminate these other myths that underlie marijuana’s complex and diverse signification, as well as how they are (re)produced. In the next section, I will explain in more depth how the production and reproduction of myth takes place.

5. THE (RE)PRODUCTION OF MYTH

In order to understand the process of myth’s (re)production, it is necessary to come to an understanding about the intentionality of signifying practices. The previously discussed example of the De Beers advertising campaign demonstrates that the signification of connotative meaning is certainly motivated and intentional (Boer 2011: 219; Chandler 2002: 145). Valverde’s (2006: 27) engagement ring example demonstrates how connotations can be deliberately invoked and associated with commodities and consumer products and exploited for commercial purposes. In *Mythologies* Barthes (1957: 176-178) provides an analysis of electoral photography, showing how different photographic effects were utilized in order to ascribe certain connotations to the

candidates. Similarly, in another chapter he describes how the hairstyles of the actors in the 1953 film *Julius Caesar* were used as visual signs intended to convey connotations of “Romanness” to viewers (Barthes 1957: 29). If, however, connotations are intentional and motivated signifying practices, then they are also subject to contestation (Hall 1980: 122, 127; 1988: 60; Hebdige 1979: 17). According to Birmingham scholars like Stuart Hall (1980: 122, 127; 1988: 60) and Dick Hebdige (1979: 17), ideological struggles are often acted out as struggles over connotative meaning, which they refer to as the “politics of signification”.

The politics of signification can be seen in a variety of everyday signifying practices. Examples abound in the realm of advertising, in which rival corporate entities compete to connect their products to different second-order signs. The political field is another site of struggle over connotative meaning. In the case of marijuana debates during the Legalization Period (2013-2018) each major Canadian political party actively sought to configure and control the connotative meanings associated with their own party and their policy agenda, as well as those associated with their political rivals based on their own interests. Heckling and jeering are one notable example of this politics of signification, though others will be discussed in more depth later on in this chapter. But before doing so it is important to clarify what is an essential point that will guide my discussion moving forward—that while signifying practices involve a great deal of intentionality, as struggles over connotative meaning clearly demonstrate, the (re)production of myth is essentially an unintended byproduct of these practices.

It must be remembered that myth is the *form* and not the *concept* communicated (Barthes 1957: 211; Boer 2011: 215; Fry & Fry 1989: 186; Gaines 2001: 6). Myth is neither object, nor idea, nor is it an association of signs; myth is the articulation of an association of signs in a way that makes that association appear natural and innocent (Barthes 1957: 211, 252-254; 1971: 613; Conrad 2016: 16). Although connotations can become mythic, they are not so automatically (Barthes 1957: 256; Gaines 2001: 6). Some connotations become mythic, but others do not (Barthes 1957: 256; Gaines 2001: 6). This is an important distinction to make because in its absence it would be easy to fall into erroneous and reductionist thinking. To conflate connotation or second-order signification with myth could, for example, lead to the presumption that myths are purposively manipulated, manufactured and contested in the same way that connotations are, but this would oversimplify matters considerably. I will briefly return to the aforementioned example of the De Beers diamond cartel's advertising campaign in order to show how myth (re)production can occur as a byproduct of purposive signifying practices.

While the practice of giving diamond rings for engagements had already existed in the late 19th century, it had essentially come to an end by the 1930s as a result of the Depression (Otnes & Scott 1998: 35). Seeking to revive this practice in order to sell more diamonds, the De Beers cartel created slogans like "a diamond is forever" (Denasi 2013: 471; Otnes & Scott 1998: 35). At the denotative level, this slogan connects diamonds with the concept of eternity. However, at the connotative level, this slogan connects the giving of a diamond ring with "permanent romantic bonds" (Otnes & Scott 1998: 35). Here is another example of a metonymic effect. In a geological sense, diamonds do represent what we might call an "eternity" in that they are formed over millions of years and are one of the

most durable substances on earth. Associating love and marriage relationships with diamonds has the effect of imparting the connotative associations of the latter (e.g. permanence, eternity, durability, etc.) to the former. So the message of the slogan becomes, essentially, “if you want your love to endure and the marriage to last, give them a diamond ring”. Yet, this is as much an admonition as it is a warning. Implicit within this message is another message that those who would hesitate or be too frugal to heed this advice may find that their love and their relationship will not last. These are just some of the connotations of the De Beers slogan.

However, the slogan and its connotative meaning are also premised on a pre-existing myth that is central to capitalism. For lack of a better term, I will call this the myth of “limitless commodification”. Since diamonds are “forever”, the slogan and the advertisement it appears in offer the potential consumer an opportunity to purchase a kind of immortality, an extension of the love they experienced during their own short lives. In other advertisements, De Beers promoted the idea that the only reasonable way to dispose of a diamond was to pass it on within the family, a strategy that was devised in order to maintain De Beers’ control over the supply of diamonds (Otnes & Scott 1998: 35). The buyer of a diamond is purchasing eternity in the sense that the object itself will last forever, but also in the sense that the diamond will make love last forever in the life of the original owner and all of their descendants to whom it is passed. The slogan reproduces the myth that in a capitalist marketplace there are no limits to commodification. Anything and everything is subject to commodification in a capitalist economic system and can be purchased for the right price. The underlying value that is being exchanged for money is not the product sold but rather what that product represents. In this case, what is being

offered to consumers is an eternal and enduring love that bestows a fragment of immortality. Advertising is replete with examples of other intangible and ephemeral qualities that are commodified and sold through consumer products.

The point is that each time that a myth like “limitless commodification” is invoked in an advertisement like De Beers’, it is reproduced. Because signs are subject to an ongoing evolution in meaning known as semiosis, the re-transmission of myth through signifying practices inevitably results in an incremental evolution of myth over time (Chandler 2002: 31, 140; Manning 1987: 38-39, 47). So, the De Beers slogan helped to both reproduce the myth of limitless commodification while also slightly modifying that myth by adding associations to it which were not there previously. Yet De Beers’ advertising campaign also led to the creation of a new myth because, over time, the association between diamond rings, engagements, and eternal love became naturalized and emptied of its history. Its historical origin as a rather shrewd marketing strategy has been effaced and the practice of giving diamond engagement rings now appears as an innocent and natural means of expressing and making a commitment to share love’s eternality with another person (Valverde 2006: 27).

But while the De Beers example shows how purposive signifying practices can lead to the reproduction of a pre-existing myth and the creation of a new myth, I think it highly unlikely that either of these outcomes were intended by De Beers. As Valverde (2006: 36-37) suggests, we must be careful not to infer too much about the intentionality of signifying practices, particularly where myth is concerned. The communication of myth, its invocation as part of signifying practices, can be either intentional or unintentional (Valverde 2006:

25). When it is intentional, it is generally in order to enhance the legitimacy or persuasiveness of signifying practices. The above example shows how this can take place through advertising. As I will discuss in more depth in the next section, political rhetoric also regularly communicates myth and this occurred a great deal during the debates about marijuana in Canada's Parliament over the years. Yet when politicians (or anyone else for that matter) connect their signifying practices to myth in order to be persuasive, it does not necessarily mean that they see through myth or that they are invoking it in some conspiratorial way in an attempt to fool people. Barthes (1957: 238) reminds us that one of myth's defining characteristics is that it is both communicated and "experienced as innocent speech". So there is no reason to conclude that those who (re)produce myth through their purposive signifying practices are aware that this is the outcome of those signifying practices. It would be a mistake to assume that those who (re)produce myths are positioned outside of myth and see through its natural and innocent veneer. It is far more likely that those who intentionally draw connections to myth to make their signification more persuasive do so without questioning the naturalness of myth.

This is an important consideration because it can help us to avoid thinking of myth as a kind of false consciousness, a pre-fabricated misrecognition of the way things really are that one group of people (e.g. a ruling class) purposively creates and imposes on another group of people in order to protect their hegemony. These are important distinctions that will guide my discussion of the results of my analysis in the remainder of the chapter and will also guide subsequent discussions in the upcoming chapters. In the next section I will develop this idea further by analyzing how myth (re)production

occurred through the purposive visual signifying practices of three political parties with respect to the legalization of marijuana.

6. THE POLITICS OF SIGNIFICATION: EXAMINING CANADIAN POLITICAL RHETORIC AS MYTH-(RE)MAKING

In chapter 1, I noted how the misleading punitive/non-punitive dichotomy has been reproduced through discourse about criminal justice trends. However, it is certainly not the only misleading dichotomy that has been discursively reproduced. Criminalization and legalization form another binary that is often discussed as though the two modes of regulation were on opposite ends of a spectrum of punitiveness that begins with criminalization as the most punitive possibility, followed by decriminalization, legalization, and ends with the absence of regulation. Within recent parliamentary debates and Canadian criminological literature, criminalization often carries connotations of regression, retribution, inefficiency, and pending catastrophe (e.g. the idea that the Harper Conservatives were repeating the mistakes of the Reagan and Clinton governments in the United States). As a result of their frequent association with criminalization and with policies deemed to be punitive, like their imposition of mandatory minimum sentences for marijuana cultivation for example, the Conservative Party under Stephen Harper took on regressive, ineffective, and retributive connotations in news media and some criminological literature (see Mallea 2011, Comack et al. 2015, Harris 2015, and Youssefi 2015 for examples). But as I will show, these are far from being the connotations that they themselves sought to associate with their policy agenda. Legalization, on the other hand, often carries connotations of progress, liberality, reform, and civilizing of the criminal

justice system. As a result of their association with purportedly non-punitive policies like the legalization and decriminalization of marijuana, the Liberals under Justin Trudeau's leadership took on connotations of liberality, reform, and progress in news media following their election (see Harris 2015, Harris & Crawford 2015, and Youssefi 2015 for examples).

Yet, as I will show in this section, political parties are not simply the passive recipients of connotative meaning applied to them by others, whether by news media or criminal justice scholars or other politicians. Signification is never so static. If we think of myth as something that is created once and then stands eternal we risk reproducing the kind of determinist thinking for which early interpretations of Marxism were criticized. Rather, politicians are continually engaged in what the Birmingham School called "the politics of signification" (Hall 1980: 122, 127; 1988: 60; Hebdige 1979: 17). As part of their struggle over connotative meaning, politicians often drew on myth in order to enhance the legitimacy and persuasive force of their signifying practices. In so doing, they engaged in what I call "myth-(re)making"—the continual and yet unintentional reproduction and incremental transformation of myth by connecting it to different configurations of signs.³⁰ In other words, the way that politicians present themselves and articulate their legislative agendas in Parliament and to the public through forums like social media, as well as the way they represent their political opponents and rival policy agendas, is a process in which myths are continually being mobilized in the furtherance of partisan agendas and they are reproduced and modified in the process. Though, once again, as I noted earlier in chapter, this (re)production of myth through signifying practices is an unintended consequence.

³⁰ According to Barthes (1957: 226) ugly neologisms like this one, while regrettable, are often a necessity to the mythologist because they facilitate the identification of concepts that are deciphered beyond the resources that the dictionary offers.

Connotative meaning is, as I discussed earlier, a site of energetic contestation in parliamentary debates. While *denotation*, (i.e. the literal meaning of a sign), operates according to cultural rules that are more or less fixed and beyond individual control, *connotations* are constructed associations that are culturally and historically specific, which means that the meaning that they signify is always intentional (Barthes 1961: 135; Boer 2011: 219; Chandler 2002: 145; Zhang & Liu 2012: 159). Connotations are more fluid than denotations and are subject to negotiation and contestation (Barthes 1961: 135; Hall 1980: 122). As I pointed out in chapter 4, the parliamentary debates about marijuana during the Legalization Period (2013-2018) have largely revolved around attempts made by the Liberals, Conservatives, and New Democrats to modify the connotative signification of legalization. Liberals sought to connect legalization to the prospect of increased governmental control over marijuana, Conservatives sought to connect it to the endangerment of children, and the New Democrats sought to connect it to the Liberal failure to end criminalization in the interim before the law changed. This political conflict over the meaning of marijuana legalization is but one example among many suggesting that parliamentary debates and the rhetoric used to frame marijuana issues are about “politics of signification” (Hall 1980: 122, 127; 1988: 60; Hebdige 1979: 17). These debates are essentially ideological conflicts in which the belligerents, whether they be individual politicians or political parties, compete to define the connotative associations, which Hall (1980: 123) calls “maps of meaning”, by which they are perceived and by which issues like marijuana will be understood.

During the debates surrounding marijuana, parliamentarians routinely sought to police the meanings, both denotative and connotative, about themselves and their policies

while challenging and trying to subvert those constructed by their political rivals. The Trudeau Liberals, for example have actively sought to associate the *Cannabis Act* and their government with the idea of forward progress, as the following examples show:

Mr. Speaker, over the last 10 years, we have seen a Conservative government that has wanted the status quo, with no changes or anything of that nature. It just wanted to leave it as it is. In a very progressive fashion, we came out with what I believe is a responsible approach. (HC Deb 13 June 2016)

[T]his next step in progressive policy is welcomed by many Canadians. (HC Deb 4 April 2017)

This idea that the *Cannabis Act* represents progress in drug policy that is long overdue was repeated by the Liberals during the Legalization Period (2013-2018). This message of legalization's progressiveness was disseminated through multiple formats. As *Figure 18* clearly shows, the Liberals' attempts to style themselves and their marijuana legalization agenda as progressive were not limited only to parliamentary debates, but were also visually communicated through their social media presence:



Figure 18: This image appeared on the official Twitter account of the Liberal Party on October 11, 2015, during the federal electoral campaign that resulted in Justin Trudeau's election as Prime Minister. It was tweeted along with the caption: "Criminals benefit

from illegal marijuana. Legalize it. Control it. Keep it away from kids."

This image visually communicates the idea that the legalization of marijuana will result in a concomitant reduction in crime. The text at the top ties the legalization of marijuana and the resultant decrease in crime to the idea of progress. The notion of progress carries connotations of human achievement, betterment, and civilization, which are reinforced visually with the upward arrow and connected to marijuana legalization. The contrasting colouring of the two arrows invokes familiar connotations of light and darkness, of good and evil. The text at the bottom provides a message that is at once empowering and responsabilizing. It communicates that the progress represented by marijuana's legalization is important and can be achieved, but that realizing this progress depends on the voting choice of the viewer. Captions further guide a viewer's comprehension of the intended meaning behind an image and limit the potential for alternative interpretations by focusing the viewer's perception onto specific elements within the image (Barthes 1961: 127; 1967: 26; Fairclough 1989: 28; Zhang & Liu 2012: 159). In this case, the caption extends the visual message by adding to it the ideas of enhanced control and the protection of children, both themes which have recurred throughout Liberal rhetoric in parliamentary debates.

Part of the intended reading or desired interpretation of the message is that the Liberal Party represents this progressive policy agenda. This is a message that the Liberals continually repeated and reinforced throughout the Legalization Period (2013-2018). Yet, this attempt by the Liberals to associate themselves and their legalization agenda with progress was far from uncontested. The New Democrats, for example, accused the Liberals of using "the word 'progressive' as a convenient bumper sticker [...] for electoral purposes"

(HC Deb 13 June 2016). Seeking to undermine the Liberal claim to progressiveness, New Democrat MPs pointed to the fact that “the Liberals voted with the Conservatives to introduce mandatory minimum sentences for cannabis-related offences” in 2009 and that this was “not a sign of a very progressive party” (HC Deb 13 June 2016). As further evidence of the Liberals’ lack of genuine commitment to a progressive agenda, the NDP also repeatedly pointed out that the Liberals were “continuing to hand out criminal records to Canadians for simple cannabis possession”, which they argued was not an approach that would be expected for a “supposedly progressive” government (HC Deb 3 April 2017). Like the Liberals, the New Democratic Party re-iterated this message visually through social media as well, as *Figure 19* shows:

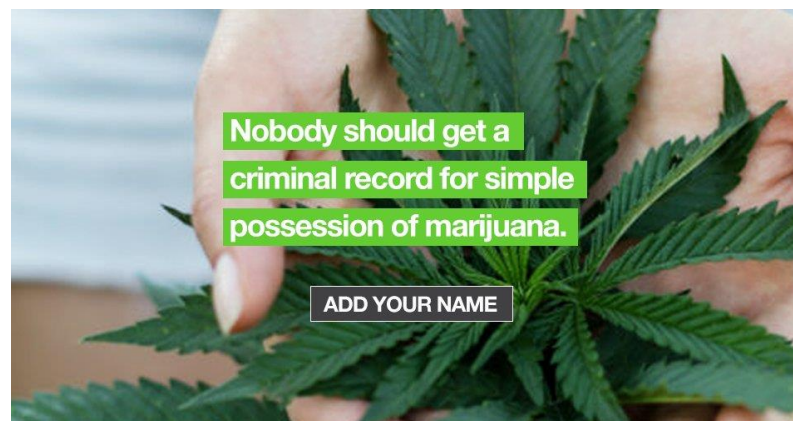


Figure 19: This image appeared on the official Twitter account of the New Democratic Party on May 24, 2016. It was tweeted along with the caption: “Nobody should get a criminal record for simple possession of marijuana. Sign here: <http://ndp.ca/decriminalization> ... #cdnpoli”.

In this image we see a pair of hands holding marijuana leaves. The way the leaves are arranged, the rich green colour, and the patterns in the leaves’ surfaces makes them aesthetically beautiful. A deep green colour, especially in a plant, signifies that it is natural, wholesome, healthy, safe, and pure. This is at odds with how marijuana has typically been

characterized in Canada historically—as an insidious evil, something dangerous and toxic, a source of addiction, misery, degradation, and so on.

The leaves are presented in a flower-like arrangement and are gently cradled, which reinforces the idea that this plant is delicate, beautiful, and safe. This is not the way that someone would be expected to hold something dangerous or toxic, as marijuana's reputation suggests. The hands extend this plant towards the viewer, as though presenting the leaves for the viewer's inspection, inviting them to see for themselves that it is safe and that its bad reputation is undeserved. The hands are clean, well-manicured, and somewhat feminine, suggesting someone who is healthy, responsible, nurturing, and trustworthy. The hands contradict stereotypical notions of drug users. They are not yellowed from nicotine, nor are there sores, scars, broken fingernails, or other evidences of someone who is unhealthy, irresponsible, addicted, and so on. The image invites us to change the way that we think about marijuana and about those who consume and possess it. The textual message takes this visual message even further. In this image, the figure holding the leaves in their hands is, technically, in possession of marijuana. As a result, the person in the image personifies the “nobody” referred to in the textual message and tweeted caption. We are being invited to recognize that this person is not a criminal and does not deserve a criminal record, based on the connotations of safety, innocence, trustworthiness, etc., that the visual message already establishes towards the marijuana leaves and the person holding them.

The image's racial and gendered connotations are significant in this respect. The hands are Caucasian and feminine, which stands in contrast to the myth of crime as being

perpetrated chiefly by males from visible minority communities. The effect of this signification is to further underscore the idea that this person in possession of marijuana is not a criminal and does not deserve a criminal record. The unstated implication that continues from this chain of signification is that innocent “nobodies” like the person pictured here are being given criminal records and that the government is responsible for this injustice. The second part of the textual message contained in the image builds on this by challenging and responsabilizing the viewer to do something about it. “Add your name” here is both an invitation and an imperative to viewers to join the NDP in rectifying this injustice by signing a petition. However, by mentally adding their name in the space provided in the image, the text and the noble sentiment that it conveys becomes a quotation or epigraph that the viewer can attribute to themselves. This visualization and the identification with the sentiment expressed in the text that it encourages, reinforces the need to follow the link to the actual petition provided in the image’s caption. In sum, the image and its associated text help to reinforce the interpretation of the Liberal legalization agenda that the NDP sought to normalize during the parliamentary debates of the Legalization Period (2013-2018), as perpetuating the injustices of criminalization. Both the rhetorical expressions in parliamentary debates and the visual/textual expressions on social media are intended to normalize this interpretation can be understood as examples of politics of signification.

The Conservatives too, for their part, have engaged in their own politics of signification with respect to marijuana. More than any other political party, the Conservatives have tied their policy agenda with regard to drugs with the protection of children. During the three successive Harper governments from 2006 to 2008, 2008 to

2011, and 2011 to 2015, the Conservatives regularly invoked the notion of protecting children in relation to their tough-on-crime approach to drug policy:

Drugs and drug-related violence pose a threat to our communities, our children and our law enforcement officers. I get tired of hearing people criticize government for wanting to punish drug users, growers and dealers. (HC Deb 29 May 2006)

Drug dealers are manufacturing marijuana and crystal meth in increasing quantities. These drugs make their way into the hands of children and teens. This is a classic example of the need for mandatory minimum prison sentences. Criminals engaging in organized crime with such disregard for the safety of children should not have the opportunity to reoffend or continue to plague our streets. The budget will allocate desperately needed resources to help the RCMP fight a new war on drugs. (HC Deb 29 May 2006)

[W]e are sending out a very clear message to [traffickers]. If they want to get into that business, if they want to exploit children or they decide to get into a new business cultivating marijuana plants in their living rooms and dining rooms [...] they can expect jail. (HC Deb 5 April 2008)

Figure 20, included below, shows that, like the Liberals and New Democrats, the Conservatives' attempts to construct and naturalize associations about themselves and their policy agenda were not limited to parliamentary debates but also included visual communication through social media. This particular example reiterates the link between the Conservatives' drug policy and the protection of children:



Figure 20: This image appeared on the official Twitter account of the Conservative Party of Canada on August 11, 2015 during the federal electoral campaign. It was tweeted along with the caption: "ICYMI @pmharper announced steps to protect children and neighbourhoods from illegal drugs."

The textual message in this image is composed of several parts. The main part of the textual message is the quote, which claims that drugs are dangerous, that they pose a threat to Canadian children and neighborhoods, that we have a responsibility to protect our children, that this responsibility represents the morally correct thing to do, and that this is not a point of debate. The implication is that then-Prime Minister Harper is above the petty politicizing of his political opponents and that for the Harper Conservatives the issue of drugs in Canadian communities and their accessibility to children is not a pawn to be played for some strategic political gain.

The composition of this image is highly important to its signification. Harper stands in the foreground with a group of seven people, all seemingly visible minorities, standing in the background. The group includes one child and three seeming adolescents, as well as three adults, one of whom is a woman. Their proximity and placement in relation to one another suggests a familial relationship between at least some of those pictured. According to Valverde (2006: 36), whether this is factually true or not is irrelevant because it is the social effect produced by the representation that matters. In this case, the positioning of these individuals together leaves open the possibility that the "family" connotation will be invoked in the mind of the viewer. The composition of the image suggests that Harper and the Conservative Party stand between the scourge of drugs and innocent families like the one appearing in the background. The eye is naturally drawn to Harper's hand, which

becomes the focal point of the image. An upturned hand positioned in this way is a familiar signifier for “STOP”. In this case, what is being stopped or opposed is the threat faced by innocent children and families like the one pictured, but the hand also symbolically puts a stop to all debate on the issue. Taken together, the visual and textual elements are meant to reinforce the slogan that appears at the bottom (“Proven leadership for a safer country”). This is the preferred reading. The Tories want to emphasize that Harper is the best choice because he can be trusted to prioritize the safety of Canadians above political gain, unlike his opponents.

Both the NDP and Liberals have contested the Conservatives’ attempts to constitute themselves as the only party intent on protecting children and families. One of the ways in which this Conservative rhetoric has been contested is by arguing that their tough-on-crime drug strategy is not an effective means of protecting children. As one New Democrat MP stated, “[i]f the [Harper] government really cared about the vulnerable in our society, children in schools and those who are susceptible to the temptations of drugs and alcohol, it would bring back an affordable national housing program so the homeless and low income families would no longer face a lack of decent housing” (HC Deb 16 April 2008). The Conservatives’ political rivals have sought to undermine the Conservatives’ myth-making practices by claiming the “protector-of-children” association for themselves. During the Legalization Period (2013-2018), this was something that the Liberals did consistently. As I noted in the previous chapter, the Trudeau Liberals regularly argued that legalizing marijuana and subjecting it to a strict regulatory framework was the only effective means of protecting children because it will reduce their access to the drug and eliminate the dangerous presence of organized crime in the drug’s production and distribution. To do

otherwise is, in the words of Parliamentary Secretary to the Minister of Justice Bill Blair, to “leave the health and safety of our children up to criminals” (HC Deb 30 May 2017). The Liberals also invoked the myth of protecting children in order to counteract the NDP’s attacks on their legalization agenda. Defending the government’s decision not to decriminalize marijuana in the interim before legalization became official, Bill Blair commented:

Decriminalization would only achieve one thing. It would make it easier for the police to enforce the existing sanctions against the possession of marijuana. It would do nothing to protect our children. It would do nothing to keep marijuana out of the hands of our kids, and this is a serious health and safety problem in our communities. (HC Deb 21 April 2016)

These Liberal attempts to align themselves with the myth of the protection of children in order to support their legalization agenda were, in turn, challenged by their political opponents. For example, since the Trudeau government was elected and introduced the *Cannabis Act*, the Conservatives’ have argued that it will only increase children’s access to the drug because marijuana plants will be legally grown in some of their homes and these children will “become the drug mules at the school” (HC Deb 30 May 2017), supplying it to their underage peers.

In all of these examples we see law-making being pursued as a “politics of signification” (Hall 1980: 122, 127; 1988: 60; Hebdige 1979: 17), an ideological conflict played out through signifying practices. In the case of the marijuana debates during the Legalization Period (2013-2018) this conflict involved the construction and contestation of connotative meanings, as well as attempts to align these signifying practices with the myth of protecting children. The protection of children or youth is a myth that predates the marijuana debates, but its connection to marijuana has been invoked so often in the

parliamentary debates about marijuana over the course of the last century that it is virtually impossible for politicians to debate a change in law whether it be criminalization, decriminalization, or legalization, without discussing how this legislative change will increase or decrease the protection of children and youth. Examining the different (re)articulations of the myth of protecting children by different political parties reveals that myths are far from being fixed. They are not monuments to signification that, once established, are permanent and unchangeable. On the contrary, myths are continually being invoked through signification and, as a result, they are fluid and undergo incremental change over time. Examining how myths are invoked in Parliament reveals how they are mobilized in conflicting ways by the different political interests engaged in the debate, sometimes in order to legitimize a party or particular policy agenda and at other times in order to critique the opposition. Importantly, this renders the political parties and their seemingly disparate policy agendas virtually indistinguishable one from another. As I will show in the next chapter, all of the major political parties were proponents of expanding law's reach into Canadian society, regardless of whether they advocated for criminalization, decriminalization, or legalization, and all of these parties (re)produced the myth of protecting children through legislation as well as through their own signifying practices. So, when the parliamentary marijuana debates are examined through a Barthesian framework, the differences between these political parties becomes superficial and the debates themselves are revealed to be politics of signification in which myths are continually invoked and inadvertently (re)made and (re)transmitted.

7. CONCLUSION: EXAMINING THE FUNCTION OF MYTH

In this chapter I have discussed two myths that were (re)produced through Canadian political discourse about marijuana. As I showed, each of the three major Canadian political parties sought through verbal and visual signifying practices to connect their political party and its agenda to the myth of protecting children, while also seeking to undermine their opponents' attempts to do the same. It is important to note that it was the *positioning* of myths within chains of signification that was being contested in these parliamentary debates and through social media and *not* the myths themselves. The debates over the meaning of legalization as a policy agenda show this clearly. As I showed, the NDP, Liberals, and Conservatives all tried to create different chains of signification linking themselves and their agendas, as well as their opponents and their opponents' agendas, with the myth of protecting children. Each party sought to configure chains of signification to suit their own purposes by favourably connecting their party and its proposed response to marijuana (e.g. legalization for the Liberals, criminalization for the Conservatives, and interim decriminalization for the NDP) with the mythic ideal of protecting children, while creating unfavourable connections between this myth and their opponents and their rival agendas. However, myth itself was never subject to contestation. The idea of protecting children by increasing law's presence within Canadian social life was never questioned and remained a naturalized and taken-for-granted myth throughout the recent debates of the Legalization Period (2013-2018), just as it had throughout the previous century of parliamentary debates. This myth provides an insightful case study of the ways in which purposive signifying practices that intentionally invoke or make reference to myth can unintentionally (re)produce and (re)transmit those myths.

But I would like to return to the other myth that I discussed earlier in the chapter, which I believe to be far more important in determining the course not only of the marijuana debates, but of the legislation and policies that have shaped the Canadian state's approach to marijuana over the last 127 years: the myth of the failure of reason and the necessary exercise of paternal power. It is important to recognize that ideas about reason, rational calculation, social responsibility, and paternal power, although rooted in 18th century Enlightenment philosophy, remain embedded within the very institutional structure of our contemporary society. Much has changed since they were first postulated in the 18th century, yet these taken-for-granted ideas, these myths from our past, continue to form the ideational backdrop against which our present thinking takes shape. This is why myth is so potent. The idea that marijuana and youth would be connected to impairment and irresponsibility seems self-evident. So too does the association between these signs and unreasonableness. The connection between the absence of rational calculation and a paternal power is equally obvious, though in our contemporary context it is never articulated using these terms. Consider, for example, the advertisement campaign launched in 1983 by the Ad Council in the United States that for decades communicated the message that "friends don't let friends drive drunk" ("Drunk Driving Prevention" 2018). In essence, these ads encouraged people to appropriate paternal power over their intoxicated friends by preventing them from driving drunk, either by confiscating their car keys, calling them a taxi, or providing them with a place to sleep ("Drunk Driving Prevention" 2018).

This responsabilization campaign and others like it are predicated on the myth of rational calculation and the necessity of invoking paternal power in order to assert control over the actions of those whose rational calculation is compromised and whose behaviour

therefore represents a threat to themselves or others. While all of these associations may appear self-evident, this is precisely due to the fact that they have become myth. Myths are obvious, they are not hidden from view and their meanings appear to be common sense or doxa, but what is not obvious is their origin, the socio-historical circumstances that produced them because it is in the obscuring of their history that they become seemingly natural (Barthes 1957: 227, 236; 1971: 613; Boer 2011; 217, 222; Gaines 2001: 8). Over the centuries in which the ideas of rational calculation and paternal power have been rearticulated their historical roots in the Enlightenment and elsewhere have been obscured and effaced. As a result, these myths are no longer recognized as constructed ideological paradigms but instead are simply “experienced as the evident laws of a natural order” (Barthes 1957: 250).

The idea of paternal power is not new within criminology. Kelly Hannah-Moffat (2001: 22), for example, discusses the concept of “maternal power”, which she defines as “power based on an ethic of care that relies on a mother’s duty and obligation to do whatever she can within her power to protect her child and ensure the production of a healthy obedient citizen”. My analysis suggests that this is a myth that has been continually reproduced and has shaped parliamentary debates about marijuana. But simply identifying rational calculation and paternal power as elements of myth that both underlie and are reproduced through marijuana debates in Parliament does not go far enough. The real task of demythologizing does not lie in exposing myth or trying to unmask an ideological intention behind its construction (Barthes 1957: 235-237; 1971: 614; Valverde 2006: 36). As I discussed in chapter 3, the real task of the mythologist is to explicate what myth “does”—its social *function* (Barthes 1957: 236; Valverde 2006: 36). In light of this, the

question of whether or not a myth is true or false should be set aside, because it is not relevant to the goal of illuminating myth's social function (Barthes 1957: 236; Valverde 2006: 36). As Valverde (2006: 8) points out, a "false" discourse can have just as much influence as one that is "true". Similarly, Barthes (1957: 236-237) encourages the mythologist to avoid the question of myth's veracity altogether and instead focus on the way in which myth, regardless of whether it is true or untrue, distorts signs and how it is experienced as natural by the consumer of myth. So, heeding their advice, I will forego exploring whether or not there is truth to these connections between marijuana, youth, impairment, rational calculation, and paternal power. Instead, my attention as I move forward into the next chapter will be on the social function of this mythology in terms of its effects and consequences.

As I will show in the next chapter, this myth has had and continues to have important ramifications in the world outside of discourse and has been a kind of invisible hand shaping and guiding law and policy with respect to marijuana. I will show that the primary function of this myth over the last 127 years has been to legitimize law's expansion into increasingly more diverse areas of Canadian life. This expansion has occurred through three modes of regulation (criminalization, decriminalization, and legalization), that seem disparate but are actually all part of an overall process of juridification. Law's expansion through these modes of regulation is intended to assert greater control over the consumption of marijuana and, importantly, over the risks that this activity has been semiologically associated with. However, if, as I contend, the expansion of legal regulation is a primary social function of the myths of rationality and paternal power, then my findings would appear to conflict with what the literature

suggests about how neoliberal states should operate. I seek to theoretically resolve this seeming contradiction in chapter 6 by showing that, contrary to what many scholars suggest, an expansion of regulation is not incongruous with neoliberalism and that the reason that it is not incongruous in the case of marijuana is the presence of the myth of rational calculation and the myth of paternal power.

Chapter 6 - Extending Law's Empire: Juridification and the (Re)Making of Myth

1. INTRODUCTION

Marijuana consumption has been deemed problematic for youth ever since marijuana came to the attention of Canada's Parliament over a century ago. As I showed in chapter 5, both marijuana consumption and youth signify unreasonableness, a potentially dangerous failure of rational calculation, which invokes the necessity of a paternal power capable of asserting governance in order to minimize the threat to the social body that the failure of rationality represents. Over the years, the creation and enacting of new legislation has been the primary means by which Canadian Members of Parliament and Senators have sought to exercise paternal power and govern youthful marijuana users. This pattern of seeking to resolve perceived problems with the creation and expansion of law corresponds to Habermas' (1985) conceptualization of *juridification*.³¹ Juridification is a process whereby state control becomes increasingly present in social life, diminishing the individual's personal autonomy and agency (Blichner & Molander 2008: 42-43; Hunt 1997a: 105; Loick 2014: 760-761; Smart 1989: 17, 20; Teubner 1998: 389), which Habermas (1985: 371) referred to as "the colonization of the lifeworld". The "growing legalization of everyday life" (Smart 1989: 8) through the proliferation and "diversification of the forms of legal regulation" (Hunt 1997a: 105, 113) is the primary mechanism through which juridification takes place (Habermas 1985: 357; Loick 2014: 760; Magnussen &

³¹ I specify here that I am drawing particularly on Habermas' conceptualization of juridification because, although there is a great deal of scholarly literature on "juridification", there is very little consistency about what the term refers to. Lars Blichner and Anders Molander (2008: 36) count no fewer than six different conceptualizations of juridification that appear in scholarly literature, of which Habermas' is but one. Other conceptualizations, for example, suggest that juridification refers to the growth of "the sphere of influence of the judiciary" (Bevir 2009: 493), or that it refers to the monopolization of law by lawyers, judges and other legal professionals (Blichner & Molander 2008: 36). To further confuse matters, "juridification" is sometimes used interchangeably with other legal terms like "legalization" and "judicialization" (Blichner & Molander 2008: 36).

Banasiak 2013: 325). This proliferation is supported by a presumption that law can resolve social problems (Hunt 1997b: 54; Loick 2014: 762; Smart 1989: 12-13, 20). For example, law's expansion into the workplace over the last century has, among other things, resulted in the creation of legally enforceable safety standards that help keep employees safe as well as formal means of dispute resolution that helps protect employees from arbitrarily losing their jobs (Braithwaite 2008: 14; Debaenst 2013: 247-248; Hunt 1997b: 58; Teubner 1998: 398). Social security laws that protect the sick and elderly are another example of law's expansion into social life in order to protect the socially disadvantaged (Habermas 1985: 362; Loick 2014: 761).

Of those scholars whose work incorporates Habermas' conceptualization of juridification, Alan Hunt's is particularly applicable to the results of my analysis. According to Hunt (1995: 456), the process of juridification whereby law becomes increasingly present in social life is driven by a particular political rationality that constructs law as the solution to most problems:

This comforting presence of law is conjured up in the rhetoric of politicians and policymakers whereby law is persistently called on to regulate an ever expanding range of aspects of life that appear troublesome, unpredictable, or somehow dangerous. Yet when laws already exist and do not seem to work, we are reluctant to question the regulatory impulse, but instead seek to make further laws to the detriment of the laws already in place.

This claim that law offers a comforting and reassuring presence against dangerous or threatening aspects of social life is understood by Hunt (1995: 456) as driving the process of juridification. John Pratt (2000: 46-47) argues that this is a characteristic of modernity. As social life is seen to become more threatening, politicians and policy-makers seek to extend the law and mobilize legal responses in order to govern those considered to be dangerous (Pratt 2000: 46-47). Hunt (1995: 456) suggests this expansion of law into every

facet of social life continues unabated even when its intervention proves ineffective. Rather than recognizing law's failure to address the source of uncertainty or threat, the tendency is to double down by creating new regulations that are added to the old, thereby reaffirming the notion of law's sovereignty and furthering the process of juridification. This connects with David Garland's (1996: 459-460) argument that faced with an increasingly apparent failure to control crime, contemporary states are resorting to "strategies of denial" that include "increasingly hysterical" displays of punitiveness in an effort to restore the illusion of state sovereignty over crime.

Regulation is the chief means by which juridification takes place (Hunt 1995: 456). Regulation is understood by Hunt (1993: 314) and Smart (1989: 6-14) as the intersection of power, law, and knowledge. Hunt (1993: 314) says that "[r]egulation involves the deployment of specific knowledges encapsulated in legal and quasilegal forms of interventions in specific social practices whose resultants have consequences for the distribution of benefits and detriments for the participants in the social practices subject to regulation". Thus, regulation is a mechanism of control that is not merely about rules, although rules do enter into regulation, but involves a kind of negotiation with the individual in which they receive something (e.g. belonging to a group, privileges, rights, etc.) under certain conditions (Hunt 1993: 315; Purvis 2002: 30; Walby 2007: 556-557). What makes this different than a mere system of rules is that the negotiation with the individual involves and implicates them in the process of regulation (Hunt 1993: 315). Law is composed of multiple intersecting and overlapping *modes of regulation*, that are integral to governance, the processes whereby individuals or groups in a society are governed (Hunt 1993: 306-307, 313; Smart 1989: 17; Walby 2007: 557).

According to Hunt (1997a: 117; 1993: 316), there are no natural or ready-made targets of governance. For something to become a governable *object of regulation*, it must first become known in terms of what it is, how it functions, and so on (Hunt & Wickham 1994: 89; Smart 1989: 7; Walby 2007: 558, 565). In other words, it must first become the subject of *regulatory knowledge* (Hunt 1997a: 117; 1993: 317; Walby 2007: 558, 565). The answering of basic questions like these is what opens up the possibility of establishing governance by “quantifying and objectifying aspects of social life so that they can be rendered amenable to observation, surveillance, processing, and thus regulation” (Hermer & Hunt 1996: 460). This knowledge can be formally communicated through officials or experts like physicians, psychiatrists, police officers, social workers, etc., or it can be communicated informally through mass media or everyday social interactions with friends, coworkers, and so on (Garland 1997: 179-180; Hermer & Hunt 1996: 460; Hunt & Wickham 1994: 89; Valverde 1996: 370). In addition, this knowledge can be rational (e.g. empirical or scientific) or irrational (e.g. superstition) (Hunt & Wickham 1994: 99). Whatever its basis or source, regulatory knowledge facilitates the selection of *regulatory strategies* (e.g. tax, legislation, statutes etc) as well as *regulatory agents* (e.g. police, civil servants, administrators, etc) (Walby 2007: 558, 566) responsible for “the collection and recording of information, inspection, surveillance, reporting, initiation of enforcement action, and a host of other activities” (Hunt 1993: 316, 319). Once they are implemented, regulatory strategies generate further knowledge about the object of regulation, thereby rendering that object subject to further regulation (Hunt 1993: 317; Hunt & Wickham 1994: 110; Walby 2007: 559). One reason for this is that the implementation of a regulatory strategy requires that further knowledge be generated in order to assess the

efficacy of that strategy (Hunt 1993: 317). This can lead to the “discovery” of a previously unknown social problem which also becomes subject to governance through an expansion of regulation (Hunt 1993: 316). To exemplify this, Hunt and Wickham (1994: 88) point out that inflation was only discovered as a result of the regulation of the economy and that this discovery triggered further regulation to control inflation. Thus, regulation advances the process of juridification of the social sphere (Hunt 1993: 317; Hunt & Wickham 1994: 110; Walby 2007: 559).

In this chapter, I mobilize the Habermasian understanding of juridification in more depth by relating it to Canadian parliamentary discourse about marijuana. My analysis of marijuana’s appearance in parliamentary debates over the last 127 years reveals a persistent semiotic association between marijuana and youth that served as the basis for the expansion of legal regulation, based on the presence of a naturalized association between both youth and marijuana and a myth of irrationality and of the necessity of a paternal power. This pattern is a compelling example of the Habermasian conceptualization of the process of juridification, particularly the process described by Hunt in the above quotation. From the very beginning of marijuana’s appearance in parliamentary debates in 1891 and continuing right up to the present, law’s hegemony over marijuana issues has only increased. In this chapter I also discuss the two seeming contradictions to the juridification argument with respect to marijuana policy: decriminalization and legalization. At face value, both the unrealized attempts to decriminalize marijuana and the currently proposed legalization agenda appear to be attempts to diminish law’s hegemony over marijuana issues in Canada. After all, both decriminalization and legalization imply the cancellation of the longstanding marijuana

prohibition on the production, sale, possession, and use of marijuana. However, as I show in this chapter, both the decriminalization attempts and the proposed legalization agenda reaffirm the juridification thesis rather than contradict it.

All three modes of regulation that Parliament has debated with respect to marijuana (i.e. criminalization, decriminalization, and legalization) demonstrate the political rationality described by Hunt (1995: 456) above, whereby the proliferation of law is continually reaffirmed as the solution to “an ever expanding range of aspects of life that appear troublesome, unpredictable, or somehow dangerous”. The reproduction of this rationality in Canadian parliamentary debates about marijuana has continually yielded legislative agendas designed to *expand* law’s reach into social life rather than limit it. Underlying this process of juridification is the myth of irrationality and the necessity of asserting paternal power that I described in the previous chapter. As I will show, in the case of criminalization, this occurred through the gradual elaboration of a prohibitory framework that over the course of more than a century grew to encompass an increasing range of activities, such as trafficking, production, importation, driving, and so on as signifying practices. In the case of decriminalization and legalization, I argue that although both would abolish some aspects of the current criminalization framework, these would in both cases be replaced by a much more elaborate and complex regulatory framework through which the state would attempt to assert paternal power over those who consume marijuana. In so doing, the reach of state regulation will be greatly extended through a number of new regulatory agents.

But law and regulation are communicative. They have a signifying function, which suggests that this expansion of legal regulation signifies something. I explore the interconnections between regulation and signification, arguing that the articulation of regulation as well as the regulations themselves can be understood as having a signifying value. In this chapter I analyze an example that demonstrates both—the standardized packaging for legal cannabis products devised by Health Canada. I chose to examine this particular object because the question of how legalized marijuana would be packaged and sold was an important issue that emerged in both the House of Commons and Senate debates during the Legalization Period (2013-2018). The question of appropriate product packaging became representative of a number of different concerns around which the debates revolved, including the safety of children, the harmfulness of the drug, the commodification and marketization of marijuana, the elimination of black market marijuana, etc. Thus, Health Canada's proposed packaging represents a regulatory practice that attempts to satisfy the diverse and yet intersecting concerns about legalized marijuana that were raised by parliamentarians. As I will show, this proposed packaging constitutes a regulatory practice that acts as a vehicle for that signification to be carried into the private spaces of individuals who become the targets of further regulation. However, it is also composed of a variety of regulatory signs that are signifying and invoke myth in order to communicate a moralizing message about the dangerousness of marijuana *consumption*, yet do so alongside other signs that facilitate and encourage the *sale* of marijuana as a commodity. Finally, this chapter ends with a discussion of the ways in which my results appear to contradict the traditional understanding of how neo-liberal states should behave. I argue that when the conventional understanding of neo-liberalism is supplemented with a

more nuanced one, these seeming contradictions disappear and the compatibility of neo-liberalism with the myth of irrationality and paternal power becomes clear.

2. CRIMINALIZATION: THE DEFAULT POSITION

This understanding of law as governance can help us understand marijuana's history as a subject of debate in Canada's Parliament, which is chiefly one of progressive criminalization. Criminalization is a mode of regulation that is based on the application of negative legal sanctions in response either to actions that are prohibited or omissions of required actions (Hörnle 2016: 302, 304; Simester & von Hirsch 2011: 3-4). Criminalization seeks to regulate behavior by inducing compliance with the law through the enforcement of punishments that act as disincentives to infractions of the law (Simester & von Hirsch 2011: 18). According to Nicola Lacey (2016: 554), criminalization is not merely a set of practices or a mode of regulation, it is also a set of aims and a rationale that are "fundamental to the way in which criminal law understands and, conceptually, constructs its subjects", much like the notion of rationality and its connection to paternal power raised in the previous chapter. Criminalization is a dominant mode of regulation because what Lacey (2016: 554) calls the rationale of criminalization and Simester and von Hirsch (2011: 7) similarly call the paradigm of criminalization is central to the legal understanding of the relationship between the state and its subjects based on how the nature of those subjects is understood. This rationality or paradigm is essentially what other scholars in the "law and society" tradition would refer to as regulatory knowledge (Hunt 1997a: 117; 1993: 317; Hunt & Wickham 1994: 89; Smart 1989: 7; Walby 2007: 558, 565).

The criminalization of marijuana in Canada was made possible by the construction of regulatory knowledge about the drug and its effects. Although there was a great deal of news media about marijuana circulating during the Age of Innocence, between 1891 and 1937, there was little mention of it by Canadian politicians in either the House of Commons or Senate. The few references to it that exist in this period suggest that a few politicians were aware of the drug's Indian origins and that even fewer were aware of how it was used and what its effects were. Nevertheless, these sparse and often vague references demonstrate that marijuana was becoming known to politicians in Canada, which allowed for it to become subject to formal legal regulation through the 1923 prohibition of the sale, importation, exportation, and possession of marijuana. From 1923 until today, prohibition was concretized as the preferred mode of regulation for marijuana. This began in earnest in the late 1930s, when regulatory knowledge about marijuana grew through Canadian parliamentarians' exposure to American mass media and political opinions about the "marijuana menace". This knowledge, much of which seems to have been informal and irrational, often being anecdotal or derived from sensationalized mass media accounts, introduced Canadian politicians to new risks posed by marijuana, including health harms, addictiveness, and its tendency to incite users to violence.

Consequently, parliamentarians during the late 1930s, deeming the current extent of legal power applied to marijuana to be inadequate, extended the prohibition to include the drug's cultivation and also heightened the minimum prison sentences for violators. Over the next 70 years this pattern identified by Hunt, in which regulation produces knowledge leading to the discovery of new social problems requiring further regulation, was repeated several times with respect to marijuana. In the Social Decay Period (1961-

1969) for example, it was discovered that organized marijuana traffickers were responsible for the moral corruption of Canadian youth, leading parliamentarians to advocate the intensification of enforcement against them. Similarly, during the Reform Period (2002-2012) the discovery that organized crime groups were lacing marijuana with dangerous drugs like methamphetamine led to the expansion of criminalization through the introduction of mandatory minimum sentences for trafficking offences. Throughout marijuana's history as a subject of debate in Canada's Parliament, addressing the perceived problems related to marijuana through the application of criminal law was naturalized as an appropriate response until it became the default status quo.

Although there have been periods in which criminalization was questioned, I argue that the underlying assumption that criminalization could effectively address the problem has survived through each of these periods intact. For example, one of the most significant challenges to criminalization with respect to marijuana emerged in the early 1960s, when politicians were beginning to question the appropriateness of criminal sanctions in response to marijuana consumption. As I showed in the previous chapter, this opposition was based in the perception that marijuana consumers were adolescents who would not otherwise come into contact with the criminal justice system and that giving them prison sentences and lifelong criminal records would destroy any hope they might have of a law-abiding and productive future. Opposition to the criminalizing of youth for marijuana use also gained significant momentum during the Anti-Criminalization Period and remained a significant part of the parliamentary debates right up to the present time. However, this has not challenged the centrality of criminalization as a primary taken-for-granted response to the various problems that marijuana represented.

In fact, over the years the anti-criminalization rhetoric of parliamentarians has simply shifted the target of criminalization to different groups, from marijuana users to marijuana traffickers and also to the organized criminal groups to which they are believed to belong. So, while the criminalization of marijuana consumers has steadily declined, support for the criminalization of the drug's producers and distributors has steadily increased. This shows that although the status quo of criminalization has undergone some slight evolution over the years, it has remained unchallenged as an automatic response to the discovery of new problems or risks that have emerged in the course of the drug's regulation. It is also important to note that legalization will *not* challenge criminalization's dominant place in the criminal justice system and it will remain a favoured means of addressing marijuana-related problems even under the new regime. Legalization will only end the criminalization of marijuana production and sale for those individuals whose activities conform to the regulatory framework imposed by the government, while strengthening the criminalization of those whose activities fall outside of the regulatory framework. Transgressors of the new legal regulatory regime, such as "drugged drivers", underage users, black market traffickers, and unlicensed commercial growers, will remain targets of criminalization (Mallea 2014: 161). Canada's history of criminalizing marijuana reveals an underlying process of juridification. Criminal law has continually been called upon to address the risks or rectify the problems posed by marijuana and, even at times when it seemed as though the impulse to criminalize was being questioned, the main result of this questioning has been the reorganization and expansion of law in new directions.

3. DECRIMINALIZATION: THE FAILED PROJECT

Unlike criminalization, decriminalization seems incompatible with the idea of juridification because it appears to imply the retraction or negation of law rather than its expansion. Paula Mallea (2014: 153), for example, refers to decriminalization as “prohibition lite” because it leaves the core elements of prohibition in place while essentially suspending its punitive enforcement. Marquis (2011: 225) describes decriminalization as a “de-escalation” of prohibitionist policy. A similar understanding appears in the parliamentary debates about marijuana, particularly during the Legalization Period (2013-2018), in which decriminalization is described as “removing the criminal penalties” (HC Deb 13 June 2016). According to a 2002 *Senate Special Committee Report*, decriminalization involves the “[r]emoval of a behaviour or activity from the scope of the criminal justice system” (Nolin & Kenny 2002: 3). This same Senate report stipulates that there are two types of decriminalization—“*de jure* decriminalization, which entails an amendment to criminal legislation, and *de facto* decriminalization, which involves an administrative decision not to prosecute acts that nonetheless remain against the law” (Nolin & Kenny 2002: 3). It is true that, had they been successful, the decriminalization efforts of the Reform Period (2001-2012) would have changed legislation such that criminal sanctions would have been eliminated for the possession of small amounts of marijuana (Hyshka 2009: 75). However, it was also acknowledged by the 2002 Senate report that a decriminalization framework does not necessarily diminish law’s role in regulating the activity being decriminalized, since other regulatory strategies like fines are often used in place of criminal sanctions (Nolin & Kenny 2002: 3).

This was the case with all three major attempts to establish *de jure* decriminalization of marijuana in Canada. The first of these attempt was Bill C-344, which was introduced by a Canadian Alliance MP in the House of Commons in 2001 (Hyshka 2009: 75; Lemoine 2018: 89; Mackay, Phillips, & Tiedmann 2017: 3-4). Under the C-344 provisions, “[a] person found to be in possession of marijuana would receive a fine of \$200, \$500 or \$1,000 depending on whether it was their first, second or third offence” instead of receiving a criminal conviction and facing a potential custodial sentence (HC Deb 7 November 2001). Similarly, the second attempt, Bill C-38, was introduced by the Chrétien Liberals in 2003 (Hyshka 2009: 78-79; Mackay et al. 2017: 4) and proposed to impose ticketing as the punishment “in all cases where the amount involved is not more than 15 grams [...] as an alternative to a criminal charge” (HC Deb 6 November 2003). However, the Liberals were careful to point out in parliamentary debates that possession of any amount of marijuana would remain illegal under Bill C-38 and that, under the circumstances, “depenalization” would be a more accurate description of the bill than “decriminalization”, given that the purpose was only to eliminate the possibility of receiving a custodial sentence for possessing a small amount of marijuana (HC Deb 6 November 2003). Under Bill C-38, the decriminalization of marijuana would have applied only to possession of under 15 grams and, even in those cases, criminal charges could be applied at a police officer’s discretion (HC Deb 6 November 2003). Bill C-38’s progress through the House of Commons came to an end when Parliament was prorogued in November 2003, but was re-introduced by the Martin Liberals in February 2004 as Bill C-10, only to “die on the Order Paper” once more in May 2005 when Parliament was prorogued once again (Hyshka 2009: 78-79; Mackay et al. 2017: 4).

While the underlying rhetoric of decriminalization debates in Parliament, as I discussed in the previous chapter, often focused on the need for leniency towards marijuana users and finding alternatives to criminalization, these principles do not inherently correspond to decriminalization as a mode of regulation. Neither Bill C-344 nor Bill C-38 would have eliminated the possibility of criminal sanctions for marijuana users. As Paula Mallea (2014: 153-154) points out, under a decriminalization framework “the default position in the event of failure to comply with any ticket or fine is still criminal prosecution”, which means that in the end “the hammer of the criminal justice system still hangs over this system”. Furthermore, according to Hyshka (2009: 77), the Chrétien government intended decriminalization to *increase* penalties against marijuana users and hoped that this would have a deterrent effect, reasoning that “[i]f minor possession were made a non-criminal, ticketable offence, [...] police officers would be more willing to reprimand users”. It is also significant that some decriminalization frameworks are intended to increase legal regulatory control over drug users rather than decrease it (Mallea 2014: 154). For example, Mallea (2014: 154) points to a report published by the United Nations Office on Drugs and Crime suggesting that the threat of criminal prosecution can incentivize successful participation in treatment (Gerra & Clark 2009: 5).

Despite the parliamentary rhetoric, it does not appear that any of the attempts to decriminalize marijuana possession in Canada would have liberalized marijuana policy by making it more lenient on users.³² In the end, neither of the two major attempts to

³² A brief review of the literature on other models of marijuana decriminalization, such as the Dutch “coffee shop model”, suggests a similar tendency towards juridification. The Netherlands is perhaps the most famous example of the adoption of decriminalization, but other examples include Italy, Spain, and Portugal (Hall & Weier 2015: 607; Jacques, Rosenfeld, Wright, van Gemert 2016: 849; Mackay & Philips 2016: 15; Reinerman 2016: 885). The Dutch model of decriminalization, sometimes also referred to as *de facto* legalization, allows for small amounts of

decriminalize marijuana in Canada would have reduced legal attempts to assert control over marijuana. In fact, both pieces of legislation would have increased legal regulations intended to control marijuana by leaving the existing prohibition in place, though without enforcement for some offences, while creating new forms of non-criminal regulations like fines. As I noted in the introduction to this chapter, this tendency to “make further laws to the detriment of the laws already in place” is a characteristic feature of juridification according to Hunt (1996: 456). So, Canada’s abortive attempts to implement decriminalization reaffirm the juridification thesis and demonstrate that law only moves in one direction—forward—as it replicates itself and expands into new areas of social life.³³

marijuana to be sold through government-licensed “coffee shops” despite the fact that the drug remains officially illegal (Crépault 2014: 14; Hall & Weier 2015: 608). However, this model is founded on a regulatory regime that the Dutch government implemented in an effort to minimize the harms of marijuana use. This regulatory regime imposes a number of restrictions on marijuana sales that include as a 5 gram maximum per transaction, as well as an absolute prohibition on advertising, the sale of hard drugs, and the sale of marijuana to minors (Hall & Weier 2015: 608; Mackay & Philips 2016: 15; Reinerman 2016: 889). In addition to the strict regulations imposed by the government, the Dutch model also allows local municipalities to create additional rules and parameters to govern the decriminalized retail sale of marijuana (Mackay & Philips 2016: 15). As it would have in Canada, decriminalization in the Netherlands involves a significant degree of criminalization. The sale, possession, production, or importation of marijuana outside of the confines of licensed coffee shops remains punishable by a term of imprisonment of up to 6 years and fine of up to €67,000 (Jacques et al. 2016: 851). As a result, some drug policy scholars such as Reinerman (2016: 889) have argued that the Dutch model supports the conclusion that decriminalization or de facto legalization results in an increase in social control. Here again we see that rather than being a negation of law, decriminalization regimes have tended to involve the extension or elaboration of legal regulation.

³³ While I argue that Canada’s decriminalization proposals would have tended towards the proliferation of law and towards juridification, it does not necessarily follow that all instances of decriminalization would inevitably result in law’s proliferation and in juridification. One potential alternative form of de facto decriminalization that might not result in juridification involves the simple non-enforcement of legal prohibitions without the creation of new legal regulations. For example, Overdose Prevention Ottawa, an advocacy group that seeks to raise awareness about the lack of adequate response to the ongoing opioid crisis, has recommended that the Ottawa Police Service adopt a policy of non-attendance to incidents of non-fatal drug overdose (Overdose Prevention Ottawa 2018). They argue that the fear of criminal prosecution is a potent reason that many drug users avoid or delay contacting emergency services and that police non-attendance in these cases would increase access to emergency services (Overdose Prevention Ottawa 2018). Such an alternative to traditional decriminalization approaches like those proposed in Canada or those implemented in some European countries would indeed lessen the likelihood of a proliferation of law and subsequent juridification. However, in the case of marijuana, the potency of the myth of irrationality and of the resultant necessity of paternal power described in the previous chapter presents a significant challenge to the widespread implementation of such an alternative because this myth naturalizes the need for an increased assertion of state control.

4. LEGALIZATION: THE MORE “BALANCED” APPROACH

Of the three modes of regulation discussed in this chapter, legalization has been the subject of fewer legislative initiatives in parliament, yet the amount of debate about legalization far exceeds the debate surrounding decriminalization or criminalization. This debate surrounding legalization comes mostly out of the Re-Evaluation (1990-2000) and Legalization (2013-2018) periods. Advocacy for the legalization of marijuana has existed since the 1960s, but this advocacy consisted mainly of brief mentions that were sporadic and came from only a few isolated politicians. Legalizing marijuana never formed part of any mainstream party's political agenda nor was any action taken to introduce legalization in Canada until 1998, when an MP from the Bloc Québécois introduced a motion in the House of Commons to legalize marijuana for medicinal purposes. Here as in other instances, changes in regulatory strategies were made possible by the availability of regulatory knowledge. By the late 1990s, a growing body of literature existed suggesting that marijuana consumption could help manage pain and alleviate the symptoms of some illnesses in ways not possible with existing pharmaceutical medications (Mallea 2014: 88-89).

This medical knowledge recast marijuana in a new light in parliamentary debates, giving it a different connotative significance. Instead of being understood as a purely recreational drug whose consumption was “always an abuse and a vice” (SOC Deb 7 April 1954), marijuana consumption by those with serious illnesses began to be viewed “through the lens of compassion” (HC Deb 4 March 1999) as a means “to relieve pain in those who are suffering” (HC Deb 4 March 1999). As a result, a drug whose effects had once been

denounced by parliamentarians as inciting “evil” (HC Deb 24 February 1938) began to be lauded for its “therapeutic effectiveness” (HC Deb 4 March 1999) and “sedative virtues” (HC Deb 7 November 2001). This combination of official knowledge (i.e. new research findings about marijuana) with unofficial knowledge (i.e. connotations of morality, compassion, and so on) created a previously non-existent distinction between *medicinal* and *recreational* marijuana consumption. Importantly, it also created a distinction between two different types of consumers—those who “are trying to ease suffering” (HC Deb 25 May 1999) and those who simply want to get “stoned” (HC Deb 1 May 2014).

As I noted in the last chapter, recreational consumption of marijuana signifies hedonism and escapism, both of which are associated with irresponsibility and irrationality. In contrast, medicinal use carries connotations of medicine, disease, health, vitality, debility, and so on. Caring for one’s own health by consulting a physician or other health professional and following a prescribed course of treatment is a responsible and rational course of action. Therefore, unlike recreational use, medicinal use is a responsible choice that is rendered legitimate by the authority of a medical expert. Of course, once someone has become a consumer of medicinal marijuana, they are impaired and become irresponsible and irrational. In this respect, the recreational consumer and the medicinal consumer become alike in the end and both require an application of paternal power to bring them under control. However, the key difference is that the consumer of medicinal marijuana has already voluntarily subjected themselves to paternal power by placing themselves under the authority of some kind of medical professional, whereas the recreational consumer rebels against and attempts to evade paternal power. This is why recreational consumption was constituted as problematic and risky while medical

consumption was not. Overall in the parliamentary debates, recreational users continued to be considered reckless youth engaged in wrongful and harmful conduct who needed protection from the consequences of their actions (e.g. criminal records, damage to lungs, etc.), whereas medicinal users were considered to be an otherwise law-abiding group of responsible adults forced to break the law in order to ease the suffering related to chronic or terminal illnesses. I argue that the difference lies in a slight bifurcation in the underlying mythic signification of these consumptive practices as a result of the emergence of a new body of regulatory knowledge in the form of medical research about marijuana.

This new body of regulatory knowledge and the important distinction that it created between medicinal and recreational marijuana, which was based in the myth of paternal power, facilitated an expansion of law into the lives of Canadians in new ways. Armed with this new knowledge, a number of MPs and Senators began to champion the legalization of medicinal marijuana on compassionate grounds. Yet, in spite of this support, no legislation to legalize medicinal marijuana was proposed in Parliament. It was the Ontario Court of Appeal that initiated the change in law by ruling in a 2000 possession case that, by prohibiting access to marijuana for medicinal purposes, the *Controlled Drugs and Substances Act* infringed *Charter* rights (Spicer 2002: 18). This placed the government in the position of having to revise the law in order to provide a solution to the problems identified by the Ontario Court of Appeal. In 2001, the government introduced a complex regulatory framework to allow access to marijuana for certain medicinal purposes (Mallea 2014: 84; Spicer 2002: 18). Where once there had been an absolute prohibition on marijuana consumption, there now emerged a legally sanctioned exception that was both complex and strictly regulated. According to the recently revised *Access to Cannabis for*

Medical Purposes Regulations, medicinal marijuana users must obtain authorization from a physician, submit an application to Health Canada, and obtain a certificate of registration from Health Canada that attests to their exemption from the legal prohibition on possession and production of marijuana (Health Canada 2016). Once these requirements have been met, medicinal users are subject to a complex regulatory framework that stipulates the very precise conditions that must be met in order for their activities to be exempt from prosecution (Health Canada 2016). This includes regulations about the acceptable means by which marijuana is bought, sold, produced, stored, possessed, transported and so on (Health Canada 2016).

In contrast to medicinal consumption, it is only within the last few years that legalizing recreational consumption has received any considerable support within Parliament. It was not until 2013, when Liberal leader Justin Trudeau announced his intention to make it part of the Liberal Party platform, that legalization was legitimized as a viable mode of regulation championed by a major political party. Since Trudeau's announcement, more has been debated about marijuana than at any time previous. As in the case of medicinal marijuana, the change in regulatory strategies was made possible by the availability of new regulatory knowledge. The scientific and medical research cited in Parliament about marijuana suggested that, in terms of its harmfulness and potential addictiveness, the drug was relatively safe for consumption by adults over 25 years of age and highly dangerous for those below that age "because adolescence is a critical time for brain development" and "[h]aving THC in the brain at such a critical time can [...] increase the risk of triggering a psychotic episode or a mental illness such as schizophrenia" (HC Deb 13 June 2016). New evidence was also cited suggesting that other modes of regulating

marijuana were ineffective. The longstanding criminal prohibition was denounced as “a clear failure” that had “been more harmful than the substance itself” (HC Com 2 October 2017). Similarly, evidence was cited to suggest that decriminalization would “make extremely difficult the implementation of an effective regulatory regime that would enable [the government] to control the production, distribution, and consumption of marijuana” (HC Deb 21 April 2016) while leaving the harms associated with its consumption and prohibition unaddressed.

During the Legalization Period (2013-2018), Liberal Party arguments in favour of marijuana legalization have continually associated legalization with the ideas of “strict control” and “regulation”.³⁴ Rather than being construed as a means of liberalizing or relaxing control over marijuana, legalization has been represented as a means by which *more effective* control over marijuana can be exerted by the government. The Liberals have argued that a legalized regulatory framework will increase the government’s ability to control the ways in which marijuana is consumed, produced, distributed, etc., which in turn will allow the government to eliminate or mitigate longstanding marijuana-related risks and problems, including dangerous THC levels, access to marijuana by children, the criminalization of children and youth, and the involvement of organized crime networks in the drug trade. Opponents of legalization like the Conservative Party have contrastingly argued that “the government’s proposal [...] will make the possession of cannabis by children incredibly difficult to control and make it harder to prevent distribution of this thought-impairing drug by criminals” (HC Deb 29 September 2017). This conflict over the

³⁴ See for example Liberal MP Bill Blair’s comments in the House of Commons on May 6, 2016 at 11:51 and Prime Minister Trudeau’s comments in the House of Commons on June 14, 2017 at 14:59.

connotative meaning of legalization is yet another example of what is referred to by Birmingham scholars as the “politics of signification” (Hall 1980: 122, 127; 1988: 60; Hebdige 1979: 17). These attempts by the Liberals to “liberate” (Hall 1988: 58) legalization from existing chains of signification that associate it with permissiveness and reduced governmental control, as well as the Conservatives’ resistance to these attempts, show how political debates about different policy agendas are not merely partisan nor are they ideological in an abstract sense. Once again, this reaffirms one of the arguments that I presented in chapter 5—that, at their core, parliamentary debates are conflicts over *signification*. As in this example, they are battles over the connotative meaning attached to the objects and strategies of regulation. This suggests that signification is of central importance to regulation, a subject to which I will return later in this chapter.

This new body of regulatory knowledge regarding legalization, which includes both official knowledge (e.g. empirical evidence, statistics, etc.) and unofficial knowledge (e.g. connotative associations with increased control, etc.) elements, facilitated an extension of law through the creation of a regulatory framework, just as it did in the case of medicinal marijuana. On April 13, 2017 the Liberal Party introduced Bill C-45, the *Cannabis Act* (2017: ii), in the House of Commons, an Act which makes the consumption, sale, production, and possession of marijuana legal in Canada under certain conditions. As it did with medicinal marijuana, the legalization of recreational marijuana replaces the prohibition (i.e. criminalization) of these activities with a complex regulatory framework that increases the presence of law in Canadian social life by permitting, proscribing or guiding a greater range of social practices relating to marijuana than ever before. For example, whereas under the *Controlled Drug and Substances Act* the sale of marijuana for

recreational use was entirely prohibited, the *Cannabis Act* (Bill C-45 2017: ii-iii) allows for certain persons to be authorized to legally sell marijuana, provided that they abide by the regulations that the Act establishes for this activity, which precisely stipulate how the drug may be legally promoted, packaged, labelled, displayed, sold, and distributed.

As I noted earlier in this chapter, the legalization of marijuana will in no way diminish the importance of criminalization, it will simply refocus these efforts elsewhere. Criminalization will remain an indispensable mode of governance with respect to marijuana, it is only that the targets of criminalization will be different. This fact was not lost on some parliamentarians, as the following quotes demonstrate:

I, along with millions of other Canadians, was somewhat surprised to read the fine print of Bill C-45 only to discover that it is not legalization at all, but would just make cannabis less illegal. The proposed legislation would create a litany of new cannabis-related criminal offences, most of which carry a maximum sentence of up to 14 years in prison. (HC Deb 22 November 2017)

There is still a lot of criminalization in the legislation. (SOC Deb 30 May 2018)

Instead of targeting everyone, criminalization under a legalized regulatory framework will be focused on those who operate outside of the legally established framework. For example, the Act is explicit about the fact that it “establishes criminal prohibitions such as the unlawful sale or distribution of cannabis, including its sale or distribution to young persons, and the unlawful possession, production, importation and exportation of cannabis” (Bill C-45 2017: ii). The Act also establishes ticketing, makes provisions for the confiscation of marijuana or property in instances where the regulatory framework is contravened, and other “measures to deal with non-compliance” (Bill C-45 2017: ii). As these examples show, criminalization will remain a vital part of attempts to control marijuana even under a legalized regulatory framework. As the legalized regulatory

framework governing marijuana is expanded in the coming years, criminalization must necessarily expand proportionately with it. By defining social practices as legal under certain conditions, the law also necessarily identifies those which fall outside of the legal framework and therefore remain prohibited. This characteristic of juridification—its expansion through legalization—exists because it is inscribed in the very Enlightenment philosophy that forms the basis of law as an institution. According to Locke (2010: 20), there can be no liberty without law because the legal authority exercised by the sovereign is the only guarantor of individual rights and liberties, which means that any extension of those rights or liberties requires a corresponding and proportionate extension of law in order to protect them.

Bill C-46, which the Liberal government introduced on April 13, 2017, the same day as the *Cannabis Act*, effectively demonstrates this. This Act modifies existing impaired driving legislation in order to “strengthen the legislative provisions relating to driving while impaired by drugs, including cannabis” and increases many of the maximum sentences for these offences (Charron-Tousignant & Valiquet 2017: 1). Under the Act’s provisions, operating a vehicle with a THC content of 5 nanograms per milliliter of blood can result in a minimum sentence of 30 days in custody or a \$1000 fine and a maximum sentence of 10 years in prison (Charron-Tousignant & Valiquet 2017: 2, 9). The introduction of Bill C-46 alongside the *Cannabis Act* seems to have been intended to form part of the Liberals’ more “balanced” (HC Deb 30 May 2017) approach to marijuana regulation, one that offers equal parts legalization and criminalization. This suggests that, rather than being opposites, criminalization and legalization form a symbiotic relationship. Understood in this way, the transition of a social practice like marijuana consumption from

illegality to legality does not signify a retreat of law from that area of social life so much as the translation of a legal problem into a different type of legal problem.

The still-unfolding Legalization Period (2013-2018) and the development of a legalized regulatory framework intended to increase the government's control over marijuana clearly demonstrates a process of juridification. The ruling government has found the wholesale prohibition of recreational marijuana, which has been the default position on the issue since 1923, to be counterproductive because they believe the harms of marijuana's prohibition (e.g. criminalization) to be worse than the harms of marijuana consumption (e.g. negative health effects, potential addictiveness, etc.). Yet, neither the Liberals nor any other party have questioned what Hunt (1996: 456) calls "the regulatory impulse". The Liberals' development of a complex legal regulatory framework intended "to regulate an ever expanding range of aspects of life that appear troublesome, unpredictable, or somehow dangerous" conforms exactly to the political rationality that Hunt (1995: 456) identifies as being a driving force in juridification. It was only by developing a plan for a "strict regulatory regime" that (ostensibly) will allow the government to exert *more* control over marijuana and thereby allow it "to keep marijuana out of the hands of children and the profits out of the hands of criminals", that the Liberal Trudeau government has been able to make progress towards the "liberalizing" of Canada's marijuana laws (HC Deb 2 February 2017).

Under a criminalization mode of regulating marijuana, law enforcement personnel and criminal justice professionals were the primary regulatory agents. Both will remain invaluable regulatory agents under legalization because criminalization will continue to

underlie and enforce the legalization framework. However, by elaborating the social practices that are to be precisely regulated with regard to marijuana's consumption, production, sale, and so on, the proposed legalization framework necessitates the involvement of new regulatory agents beyond those that would have been implicated in either a decriminalized or criminalized mode of regulating marijuana. The proposed legalization of marijuana will greatly expand the roster of regulatory agents tasked with enforcing the new regulatory regime to include new state actors (e.g. civil servants, trade officials, employees of state-sanctioned dispensaries, etc.) as well as non-state actors (e.g. parents, teachers, employers, landlords, etc.). Therefore, the legalization of marijuana which the Trudeau Liberals officially brought into force in October 2018 do not signify the *end* of legal attempts to control marijuana but rather their *culmination*.

5. LAW AS GOVERNANCE: THE VALUE OF EMBRACING A BROADER PERSPECTIVE

Through the years, each time that marijuana was constituted as a risk for Canadian youth, parliamentarians have sought to address it by further extending law's dominion over social life. Criminalization, decriminalization, and legalization can be understood as modes of regulation and, although they seem disparate, each is a vehicle for law's expansion into new areas of life. Yet, if we were to interpret the history of marijuana debates in Parliament according to the punitive turn literature for example, we would likely come to very different conclusions. As I described in chapter 1, this literature tends to define punitiveness based on limited criteria, like the number of arrests, incarceration rates, and so on, which reproduces an oversimplified punitive/non-punitive binary that fails to adequately account for the diversity of penal outcomes. Based on these limited

criteria, we might interpret Canada's lengthy criminalization of marijuana as having been punitive, since parliamentarians regularly sought to increase sentence severity in order to deter people and enforce the prohibition of marijuana.

Conversely, based on this binary, attempts to decriminalize marijuana during the early 2000s by Reform and Liberal MPs would undoubtedly appear to be non-punitive steps in the right direction, since reducing the rate of incarceration for marijuana offences, especially for youth, was one of the stated aims of decriminalization efforts. The tough-on-crime agenda pursued by the three consecutive Harper governments between 2006 and 2015 was pointed to as evidence of Canada's own tendency towards increased punitiveness (see Webster & Doob 2015, DeKeseredy 2013, and Zinger 2016 for example). This tough-on-crime agenda included the creation of mandatory minimum sentences for trafficking and cultivation of marijuana (Dawe & Goodman 2017: 134; Doob & Webster 2016: 401). As I observed in the conclusion to chapter 1, the marijuana legalization agenda of the new Trudeau government has been taken as evidence of the Liberals' commitment to "a less 'punitive' approach to criminal justice" (Harris & Crawford 2015). Certainly, legalization would seem to fit within the non-punitive side of the binary, since it will eliminate criminal sanctions for a range of marijuana-related activities including possession, trafficking, importation, and so on. From this perspective, it would be reasonable to share Doob and Webster's (2016: 415) optimism that Canada may have "weathered the Conservative storm" and interpret the transition from the criminalization of marijuana to its legalization as evidence that less punitive days are ahead.

The latter interpretation is based on a reductive punitive/non-punitive binary that fails to recognize that the regulation of marijuana has been continually moving in the direction of more law. However, the former interpretation that sees criminalization, decriminalization, and legalization as modes of regulation, all of which are expanding law's presence in social life, is based in a broader and more inclusive conceptualization of law as a central component of overarching processes of *governance* (Hudson 1998: 555; Hunt 1993: 305-306; Hunt & Wickham 1994: 99; Rose & Valverde 1998: 543, 550; Walby 2007: 557). Drawing from Foucault and from the law and society field, the law as governance perspective suggests that jurisprudence has long been trapped in reductionist thinking that conceives of law as a unitary set of rules (Smart 1989: 4; Walby 2007: 556-557) that are "applied by specialized personnel (lawyers) in specialized institutions (courts) that impose sanctions that are ultimately backed by the coercive capacity of the state" (Hunt 1993: 301). The law as governance perspective eschews this dominant paradigm by instead focusing on law's interconnectedness with other social phenomena (Hunt 1993: 303; Hunt & Wickham 1994: 102; Smart 1989: 14-15; Walby 2007: 557). Far from being a singular and unitary body of rules that is autonomous from social life, law can only be understood as inextricably linked with a variety of other forms of knowledge and social processes (Hunt 1993: 303; Rose & Valverde 1998: 543; Smart 1989: 4, 14-15; Walby 2007: 557). Law is both "the medium of an ever-expanding state" as well as "an increasingly detailed and particularistic regulation of ever more specific situations and relations" (Hunt 1993: 307-308).

A law as governance approach shifts the focus away from the traditional realm of law (i.e. courtrooms, lawyers, judges, etc.) to the ways in which legal regulation governs

social relations (Hunt 1993: 328). Law is not simply a set of rules that guide social actors (Walby 2007: 556-557); it is “part of the routine practice of daily life” (Hunt & Wickham 1994: 102). This broader perspective has the added advantage of revealing how “the creeping hegemony of the legal order” (Smart 1989: 5) is enlarged not only through familiar means, such as the creation of new statutes or legislation, but also through a variety of regulatory experiences that are trivial and mundane (Hermer & Hunt 1996: 478; Hunt & Wickham 1994: 102). For example, in their analysis of regulatory signage in Canadian public spaces, Hermer and Hunt (1996: 465) show that legal regulation occurs through a range of prohibitions, warnings, directions, advisories, alerts, and notifications that are omnipresent in public spaces and increasingly prevalent in private spaces as well. These forms of “official graffiti”, which include everything from “no smoking” signs to directions on consumer products, constitute attempts to regulate the conduct of individuals (Hermer & Hunt 1996: 466). These mundane and trivial examples of everyday governance reveal how pervasive the presence of legal regulation is in contemporary social life and how it mediates everyday social reality (Hermer & Hunt 1996: 475).

Thus, state law is only one of many forms of legal ordering that come into view when we consider law more inclusively as a form of regulation involved in overarching processes of governance, rather than simply as a set of rules enforced by agents of the state (Hunt 1993: 321). Moreover, as Rose and Valverde (1998: 546) point out, the regulatory authorities who are the driving force behind governance through different modes of legal regulation may have no direct connection to the state or to the law whatsoever. They may, for example, be physicians, psychiatrists, bureaucrats, and so on (Rose & Valverde 1998: 543-546). This broader conceptualization of law makes it possible to understand

marijuana's 127-year journey from criminalization to legalization as an ongoing process of juridification that is integrating and embedding legal regulation ever more deeply into Canadian society. Moreover, it facilitates an understanding of how this process of juridification has been made possible through the political rhetoric of parliamentary debates, which continually invokes law as a solution to the various problems marijuana has been believed to pose to Canadian society.

As law has expanded through the different modes of regulation intended to govern marijuana, so too have the different regulatory agents tasked with enforcing it. For instance, the legalization of marijuana for medicinal consumption transformed physicians, Health Canada employees, and other health-care professionals into regulatory agents. Similarly, the legalization of marijuana for recreational uses invests regulatory authority in the hands of an even more diverse new generation of regulatory agents that will include parents, teachers, landlords, employees of state-approved marijuana dispensaries, as well as government workers and civil servants working in the areas of transport, trade, revenue, agriculture, and so on. The law as governance perspective opens us up to a diverse set of changes that have been occurring over the course of Canada's legislative history with marijuana. This broader conceptualization of law evades the reductionist binaries to which the punitive turn literature is prone (e.g. punitive/non-punitive, regressive/progressive, etc.), while also revealing that thinking to be of limited usefulness and based on taken-for-granted assumptions about law. However, as advantageous as the law as governance perspective is for helping us to explain regulation and its part in juridification, it does not tell us what these practices *signify*. Law and regulation are communicative, they mean

something, and it is to this communicative function of regulation, its signifying value, which I turn in the next section.

6. REGULATION AND SIGNIFYING PRACTICES

As I have shown, although criminalization, decriminalization, and legalization are distinct processes, they are all part of a broader overarching process of regulation that results in the juridification of social life. One of the premises of semiotics is that everything that is social or cultural can be taken as a system of signs (Barthes 1957: 108; Boer 2011: 216; Gaines 2001: 6; Hodge & Kress 1988: 1). Regulation can be understood as a signifying practice on multiple levels.³⁵ In this section I discuss and demonstrate the value of Barthesian semiotics for examining the signification inherent within regulatory practices. There are at least two levels at which regulation can be understood as signification. First, there is the expression or articulation of these practices (e.g. verbal, textual, or visual) and, second, there are the practices themselves. Both of these are communicative and so both can be subjected to semiotic analysis. In this section I will briefly discuss an example which incorporates both a textual and visual expression of regulation while also constituting a regulatory practice.

On March 19, 2018, Health Canada released a report detailing the results of its consultation with members of the public. The report's stated purpose was to develop the

³⁵ Chandler (2002: 261) defines signifying practices as "the meaning-making behaviours in which people engage [...] following particular conventions or rules of construction and interpretation". In other words, signifying practices are activities which result in the creation of signification, either in written, verbal, or textual form (Chandler 2002: 261). However, semiotics conceives of the recipient of this signification as an active, rather than a passive, part of the signifying process (Gaines 2008: 247; Hodge & Kress 1988: 12; Potter 1998: 181). The interpretation of signs is subject to polysemy, which means that the individual has a degree of agency in how they decipher the meaning of signs (Gaines 2008: 247; Hebdige 1979: 117; Hodge & Kress 1988: 12; Potter 1998: 181; Valverde 1991: 177). As a result, the reading and interpretation of signs also constitutes a signifying practice because these are also meaning-making behaviours (Chandler 2002: 261).

regulatory framework necessary for the implementation of the *Cannabis Act* (Health Canada 2018: 1). As part of this endeavor, the report provided proposals for the regulation of licensing for cannabis production, as well as for the packaging, labeling, and tracking of cannabis products. The recommended labelling and packaging regulations are intended to “[protect] the health of young persons by restricting their access to cannabis and [...] [protect] young persons and others from inducements to use cannabis”, while also helping to “promote informed consumer choice, particularly with respect to the health risks associated with cannabis use and allow for the safe handling and transportation of cannabis” (Health Canada 2018: 14). The highly detailed labeling and packaging regulations recommended in the report are visually brought to life as a number of graphics that appear in the report’s appendices. The first of these graphics that is of particular interest as a regulatory signifying practice is the proposed standardized cannabis symbol, included below as *Figure 21*.



*Figure 21: This is the standardized cannabis symbol developed by Health Canada (2018: 14) to appear on all cannabis products sold in Canada following the legalization of marijuana. It is intended to be a recognizable symbol that will “help consumers make informed decisions and to avoid misuse” (Health Canada 2018: 14).
© All Rights Reserved. Proposed Approach to the Regulation of Cannabis: Summary*

of comments received during the public consultation. Health Canada, 2018. Adapted and reproduced with permission from the Minister of Health, 2018.

The standardized cannabis symbol is composed of a number of different signs, each of which signifies a great deal. Its bright red colour and octagonal shape are immediately recognizable in their resemblance to a STOP sign. For drivers, a STOP sign visually signifies that they should travel no further without first stopping and assessing the potential hazards ahead. Similarly, the standardized cannabis symbol admonishes the consumer to STOP and consider the potential hazards inherent in the consumption of the cannabis product. The choice of colours is significant. In his semiotic analysis of anti-branding campaigns initiated by consumers, Kucuk (2015: 249) suggests that the colour red often symbolizes “passion, danger, anger, and hell”, whereas black symbolizes death, mourning, and rebellion or opposition. He further suggests that in the West the appearance of red and black together can carry religious connotations of “fire and brimstone” and Hell (Kucuk 2015: 249). This, in turn, leads to associations between cannabis and sin, introducing the possibility that the consumption of marijuana is morally corrupting. As I will show, these moralizing connotations are also invoked by other aspects of the government's proposed marijuana packaging. I will return to regulation's relationship to moralization in a later section.

In addition to its resemblance to a STOP sign, the standardized cannabis symbol is reminiscent of the standardized chemical hazard symbols used on household and industrial products, pictured below in *Figure 22*. According to the official Government of Canada (2018) website, hazard symbols have three main components, each of which signifies something different about the potential hazard. The first is the picture at the centre of the

symbol, which indicates the type of danger (e.g. explosive, corrosive, flammable, poison, etc.) (Government of Canada 2018). The second is the frame that surrounds the picture, which indicates the source of the danger (Government of Canada 2018). For example, if the picture appears within a triangle, then the container within which the chemical is stored is the source of the danger, but if it appears within an octagon then it is the chemical itself that is hazardous (Government of Canada 2018). Thirdly, the words that appear in association with the symbol (e.g. Danger, Caution, etc.) indicate the extent or degree of risk (Government of Canada 2018).



Figure 22: There is a similarity between the standardized marijuana symbol devised for Health Canada's approved packaging and the standardized chemical hazard symbols that Health Canada relies on to visually communicate the potential dangers of household chemicals.

In this case, the standardized cannabis symbol visually communicates that marijuana is inherently hazardous. The octagonal shape indicates that the danger lies in the product itself and not in the packaging or storage of the product. Within the centre of the octagon is the recognizable form of a marijuana leaf, which indicates that the danger is inherent to the substance and not in its usage or storage. Importantly, it is only the *silhouette* of a marijuana leaf that appears in the octagonal frame, rather than a realistic representation of a marijuana leaf. This is significant because, as I discussed in chapter 5, marijuana leaves can appear flower-like and visually communicate connotations of nature, health, safety, beauty, elegance, and so on. Not so here. The leaf itself is absent, but the

white void that appears in its place is still signifier enough to denote marijuana and draw a connotative association with danger without facilitating other connotative associations (e.g. green, natural, safe, etc.) that would detract from the symbol's intended meaning. The letters THC, which stand for tetrahydrocannabinol, one of marijuana's main psychoactive compounds, appear below the leaf contrasted by a black border. The appearance of the letters THC within this symbol further undermines any possible reading of the product as natural or safe by associating marijuana with a chemical compound instead of a naturally-occurring plant. This is important because while plants carry connotations of being natural, organic, healthy, and therefore safe, chemical compounds carry connotations of being unnatural and even dangerous forms of man-made pollution. The appearance of the letters "THC", instead of a word like "cannabis" or "marijuana" for example, is also significant in that it suggests a danger lying below the surface. While users might dispute the purported hazards of the marijuana plant, it is much more difficult to dispute the hazardousness of a chemical compound like tetrahydrocannabinol without having scientific expertise. So, the letters THC here are an implicit caution to the user not to be fooled by appearances—although the cannabis product they have just purchased may appear natural, harmless, safe, and so on, the letters THC suggest that a powerful and dangerous chemical is at work within that seemingly harmless and innocently natural product.

I argue that both the leaf and the letters beneath it can be understood as attempts to guide or police the interpretive practices of viewers. Images, like other signs, form chains of signification that give them a meaning potential that is actualized (or not) by the viewer (Barthes 1967: 23; Machin 2004: 327). As is the case with language or speech, visual signs are communicative at several different levels but there is an optimal level at which the

intended message will be most intelligible, though the viewer has the freedom to decide at which level they will choose to stop (Barthes 1967: 23). So, while images and other signs can be used to construct an ideological message, viewers are free to negotiate the meanings they read into images as a result of polysemy, which gives them an active role in the process of meaning construction rather than a passive one (Gaines 2008: 247; Hodge & Kress 1988: 12; Potter 1998: 181). It is my contention that, in this case, the absence of a realistic green marijuana leaf and the reference to marijuana's main psychoactive chemical compound instead of the plant itself evades and subverts connotations of marijuana's harmlessness while reinforcing connotations of its dangerousness.

In addition to this standardized cannabis symbol, Health Canada's report also provides visual examples of the standardized packaging on which this symbol appears. Two potential packaging options were proposed, the first of which appears below as *Figure 23*.



Figure 23: This is an example of the recommended marijuana packaging regulations included in Health Canada's report based on the proposed regulatory framework developed in consultation with members of the public. © All Rights Reserved. Proposed

Approach to the Regulation of Cannabis: Summary of comments received during the public consultation. Health Canada, 2018. Adapted and reproduced with permission from the Minister of Health, 2018.

The stated intent behind this packaging design is to strictly regulate “the use of colours, graphics, and other special characteristics of packaging to curtail the appeal of [cannabis] products to youth and to ensure that key information would be the most prominently displayed elements” (Health Canada 2018: 14). The choice of what is considered to be key information as well as the placement of these various pieces of information are important factors that shape the packaging’s signifying value. Along the top left appears the standardized cannabis symbol and the name of the company that produced the product will appear on the right. The order of these pieces of information is important because in the West things are most commonly read from left to right, which means that the standardized cannabis symbol is meant to be read *before* the company name. As I noted above, the symbol functions as a warning of danger and as an admonishment to STOP and consider the dangers before proceeding further. This ordering is just one example of many where the packaging’s design prioritizes the message of marijuana’s harmfulness over its retail function. I will return to this idea shortly.

Based on its central location as well as its relative size, it would be reasonable to conclude that the intentionally eye-catching yellow warning label is the most important piece of key information on the packaging. The warning label speaks to the potential harms to babies from mothers who consume marijuana before or after childbirth. This is one of 14 different rotating health warnings which appear on the packaging of all cannabis products (Health Canada 2018: 26). The regulations stipulate that this warning must be centrally located on the packaging and have the largest font size on the label (Health Canada 2018:

18). Each warning label is presented in both official languages and is composed of a primary sentence appearing in bold font that provides a reason why marijuana use is dangerous or harmful, followed by a secondary sentence that indicates the specific health harms that could be incurred should the consumer ignore the health warning (Health Canada 2018: 26, 30). The information presented in the secondary sentence is medical and scientific in nature and the implicit suggestion is that its source is an expert (e.g. doctor, scientist, etc.), which enhances the authority and legitimacy of the sentence's denotative meaning about marijuana's harmfulness (Hermer & Hunt 1996: 466). In the example provided in *Figure 23*, the primary sentence is less a warning than a command or imperative presented to a specific group of would-be marijuana users: pregnant women and new mothers. However, the secondary sentence makes the intended audience even more specific and targeted by suggesting that "[u]sing cannabis during pregnancy may harm *your* baby" (Health Canada 2018: 36—my emphasis). Whereas the presumed audience for the primary sentence is women more generally, the secondary sentence addresses itself specifically to women who are already pregnant and have made the choice to consume marijuana nevertheless. The statement presumes that the pregnant reader has either made the choice to consume marijuana despite the warning or has already done so. Behind this presumption lurks the myth that I discussed in chapter 5, that marijuana consumers are irrational and irresponsible and would undoubtedly place their unborn children in danger.

This also exemplifies the moralizing quality of many regulatory signs identified by Hermer and Hunt (1996: 469). They note that regulatory signs, including warnings, advisories, and the directions on product packaging, are often highly infantilizing and

“construct consumers/users in such a way as to imply that they are ignorant, feckless, or helpless” (Hermer & Hunt 1996: 469). This infantilizing of the consumer has the added effect of further enhancing the legitimacy and authority of those unseen experts behind the warning label’s benevolent and paternal message (Hermer & Hunt 1996: 469). But in this case the moralizing signification is not only infantilizing, it is also highly gendered and invokes the longstanding morally-saturated mythology of motherhood. The idea of motherhood carries connotations of love, nurture, selflessness, responsibility, self-sacrifice, altruism, purity, and so on. The myth of the intoxicated and therefore irresponsible and irrational marijuana user is at odds with this mythology of motherhood. According to this myth, mothers are not supposed to be irresponsible or hedonistic and they are not supposed to escape from reality by consuming marijuana. The actions of mothers who deviate from this mythic ideal by consuming marijuana are made even more condemnable by the fact that their actions endanger the most vulnerable humans imaginable—unborn and newborn children. Here we also find yet another chain of signification linking marijuana consumption and the myth of protecting children which I discussed in chapter 5. Following this moralizing signification further, the conclusion is that a mother who would selfishly and *knowingly*, after having read the warning on the product packaging, expose their child to the dangers of THC must be a bad or unfit mother.

Within this we see a particular example of how regulation, signification, myth, and a process of juridification can function together. First, this proposed packaging is a *regulatory practice*. The regulation of cannabis packaging is one part of an overall strategy supported by multiple different governmental and non-governmental institutions and agencies to regulate how cannabis products are bought and sold in Canada. As I noted

earlier in this chapter, this is an example of how legalization, while appearing very different from criminalization or decriminalization, is actually just another mode of regulation that ends in juridification. Under criminalization, Canadian law did not have much to say about how marijuana was packaged, but legalization has resulted in a sudden proliferation of law on the subject.

But the aforementioned example shows that there is more going on here. The regulatory practice represented by this standardized, government-approved marijuana packaging is also a *signifying practice*. As I have shown, each aspect of this packaging has a signifying value. The standardized cannabis symbol abounds with signification that seems intended to lead consumers to the conclusion that the cannabis product is inherently dangerous, while suppressing any countervailing connotations that it is natural and safe. Whether or not this attempted policing of the signification of marijuana consumption will be at all successful is a question that is beyond the scope of the present analysis. The point is that, regardless of whether or not I have correctly interpreted the intention behind this symbol, it clearly constitutes a purposive signifying practice. But, as my brief semiotic analysis of the warning label shows, these signifying practices invoke myth. Beyond the denotative meaning, with its reference to specific medical harms to babies, there lies a connotative meaning that is gendered and moralizing and invokes ideas about motherhood that have attained the status of myth in our society. The warning label, with all of its denotative, connotative, and mythic signification, becomes a regulatory practice in its own right because it is intended to regulate the behaviour of targeted consumers (i.e. pregnant women and new mothers) by discouraging them from consuming the cannabis product. This suggests that while regulatory practices like this standardized packaging are also

signifying practices that visually communicate that marijuana is dangerous, the same is true in reverse—signifying practices like the warning label can constitute attempts to impose further regulation, in this case by controlling the consumptive practices of pregnant women and new mothers.

This means that regulatory practices can be signifying practices and that signifying practices can, in turn, be regulatory practices. But the warning label and the packaging that it appears on also further the process of *juridification*. Both the label and the packaging as a whole serve as vehicles for regulation to penetrate even further into the lives of women in an attempt to assert control over their behaviour. According to Hermer and Hunt (1996), regulatory signs have an “expansive nature” (465) and are colonizing our lives more than ever by migrating from public spaces into our homes and other private spaces. So the proposed marijuana packaging demonstrates the process of juridification in two important ways. First, it opens an area of social life that was previously unknown to law up for colonization by an increasing number of legal regulations. Second, these regulations create the means by which further regulation can be introduced into private spaces in an attempt to regulate the behaviour of specific and targeted groups of consumers whose activities were formerly outside the law’s reach. So, law and regulation facilitate the commodification of marijuana as well as the creation of a new legitimate marijuana market. Yet, this example also shows how law and regulation integrates individuals into the legitimate economy whose practices once existed outside of it, such that those once illicit practices can be more readily policed through regulatory practices.

However, there is yet more being signified by this packaging. So far I have only addressed the aspects of the packaging that seem intended to ward off potential consumers by communicating the harmfulness of the cannabis product. This is yet another example of the politics of signification. There are, however, a great many more signs that revolve around the packaging's commercial retail purpose. With the exception of the standardized cannabis symbol and the prominent warning label, the packaging resembles so many other types of plastic product packaging that are ubiquitous and with which we are already familiar. There are a number of different signs that attest to the freshness of the marijuana contained in the packaging. The expiration and packaging dates attest to the freshness of the product. "Freshness" is an important sign for consumerism because it signifies quality, vitality, safety, and so on. While some of the information presented on the reverse side of the packaging, like the name and contact info of the licensed processor, the lot number, and expiration and packaging dates, suggest that the responsibility for the freshness and quality of the product lies with the producer, the instructions to "store in a dry place" also place some of this responsibility for product freshness on the consumer.

Thanks to innumerable advertisements, plastic containers and re-sealable openings are also associated with the preservation of freshness. This is particularly the case for comestible products like food and beverages. However, the larger and seemingly more complex mechanism on this re-sealable opening suggests that it is also meant to be child-proof. The reverse side of the packaging commands the legal marijuana consumer to "KEEP [the cannabis product] OUT OF REACH OF CHILDREN". However, the child-proof opening provides an added layer of protection just in case the irresponsible marijuana user has failed in this simple task. It is worth noting that this imperative to keep the product out of

children's reach is presented entirely in capital letters. This is significant because in texting and email etiquette, writing in "all-caps" can be considered rude because it makes it seem as though the person is "shouting". In this case, both the shouted admonition to consumers to keep children safe, as well as the seeming presumption that they will fail to do so which necessitates an added child-proofing protection, demonstrate Hermer and Hunt's (1996: 469) point, that regulatory signs infantilize consumers by portraying them to be irresponsible, helpless, or stupid. Within this we can discern another appearance of the myth that I described in chapter 5. The consumer is deemed to be naturally irresponsible simply by virtue of being the consumer of a dangerous cannabis product, which reaffirms the necessity of state intervention into their private sphere. As a result of the myth, the marijuana consumer's inability to behave rationally or responsibly seems natural and this makes their failure to heed the many warnings on the packaging a foregone conclusion. The inevitability of the consumer's failure to behave responsibly and rationally by protecting the children in their vicinity in turn legitimizes and naturalizes an exercise of paternal power, in this case by creating a child-proof opening that helps protect children from harm without relying on the irresponsible consumer.

Overall, the mix of discourses articulated through the signs on this proposed marijuana packaging seem contradictory. On the one hand, there are signs like the warning label and the standardized cannabis symbol that seem intended to dissuade people from consuming the product based on associations of danger and moralizing mythic discourses. On the other hand, the remaining signs, including the packaging material and construction and all of the other text on the front and back seem intended to facilitate the sale of marijuana as a commodity to be freely consumed by Canadians. Here once again Hermer

and Hunt's (1996) study of regulatory signs proves helpful. They discuss the example of fast-food Styrofoam coffee cups that warn consumers about the dangerously hot liquid they contain (Hermer & Hunt 1996: 472). They suggest that although these types of warning labels on consumer products might appear to prohibit the use of the very products that they appear on, they actually serve a vital commercial purpose of "relieving the manufacturer of possible liability arising from its use" (Hermer & Hunt 1996: 472). This proposed packaging contains many elements that indemnify the manufacturer, as well as the government, from liability for any potential harms associated with the products use. It also indemnifies them from misuse by children, from poor diminished product quality due to improper storage, etc. Therefore, in spite of all of the warnings and regulation that adorn it, this packaging is still designed to facilitate and even encourage the sale of a commodity.

Although the packaging provides clear instructions to consumers on how marijuana should be stored, it is silent about how these products should be used. Directions are a common form of regulatory sign featured on most consumer products, yet there are no such signs in this case. This is an example of how signification itself can become the object of regulation. As I discussed in chapter 4, Canadian governments have long tried to suppress or assert control over information about marijuana. This was exemplified during the Communication Period (1980-1989), when parliamentary discourse reflected a belief that the consumption of marijuana by Canadian youth could be minimized if control were exerted over the information available to youth about marijuana. This produced an extreme caution among parliamentarians towards espousing any views about marijuana that might be misinterpreted as even tacit approval of the drug by the nation's youth. It also led to legislative changes intended to limit the commercialization of marijuana

paraphernalia and to impose censorship on marijuana-related media. Health Canada's proposed packaging reflects a similar attempt to walk a fine line between encouraging and facilitating the commercial *sale* of marijuana without providing explicit or tacit approval for the *consumption* of marijuana.

However, Health Canada's packaging is by no means the only example of contemporary attempts to regulate signifying practices about marijuana. In fact, the regulation of marijuana-related signification was a considerable part of parliamentary debate during the Legalization Period (2013-2018), particularly in the Senate. As the following quotes show, a number of Senators held the view that controlling signifying practices regarding marijuana would be a key determinant of the success of legalization as a social policy as well as the success of the new economic market that it will create.

Currently, Bill C-45 prohibits cannabis companies from publishing, broadcasting or otherwise disseminating promotion of cannabis or related accessories or services if they are (a) associated with young persons, (b) appealing to young persons or (c) associated with a way of life that includes glamour, recreation, excitement, vitality, risk or daring. (SOC Deb 1 June 2018)

I think a store should be able to have a sign outside. I don't think they should be handing kids T-shirts and hats and every other bit of cool gear to go out and run around with. (SOC Deb 1 June 2018)

I personally want the legal market to work. I want companies that legally produce cannabis to be able to do some promotion, because I want it to work. I want the illicit market to be reduced as much as possible. If we prohibit them from doing any promotion whatsoever, the legal market will not work. (SOC Deb 1 June 2018)

The first of these quotes raises the concern that companies involved in the production or retail sale of marijuana in the legal market might develop signifying practices intended to create a connotative association between their product and signifieds that might be especially enticing to youth or children. The second quote shows the specific kind of signifying practice that Senators sought to regulate, while also showing the balance that was sought between facilitating signifying practices associated with some aspects of

marijuana's commercialization while impeding others. These examples of the regulation of signification demonstrate the government's desire to profit from the revenues to be generated by a legalized marijuana market, without assuming the negative connotations associated with doing so. But these attempts to regulate signifying practices point to another seeming contradiction inherent within the Liberal government's regulatory framework.

The third quote shows that the tension is one that exists between competing goals—facilitating the creation of a new economic market that is successful enough to absorb its illicit counterpart, while also preventing the inclusion of children and youth from that new market. As I discussed in chapter 4, both of these goals have been the central supporting arguments to the government's legalization agenda from the very beginning. However, there is a contradictory logic at work within these arguments. MPs and Senators with diverse political affiliations have continually reproduced and retransmitted the idea that youth constitute the bulk of marijuana users in Canada. As I stated in the previous chapter, the connection between marijuana consumption and youth has been so often affirmed that it has become virtually impossible to speak of the former without addressing its connection to the latter. While the major Canadian political parties have different positions vis-à-vis marijuana's legalization, they all base those positions on the premise that youth constitute a huge proportion of the marijuana being consumed in Canada and this premise has animated their efforts to either support or oppose legalization. But if this is the case, then it becomes unclear how the two central goals of legalization can coexist and even more so how they can be met through the proposed framework. How can the Liberals create a new legitimate, regulated, and economically profitable marijuana market that will be successful

in absorbing the illegal black market while excluding the very same youth who are believed to constitute the bulk of that illegal market?

This is by no means the only puzzling and seemingly contradictory finding. All of the results of my analysis discussed so far, in this chapter as well as the previous two chapters, bring me to what appears to be a theoretical contradiction. Many of my key findings seem to run counter to what we know about how neo-liberal governments should behave towards their subjects and towards the economy. These seeming theoretical contradictions are discussed and addressed in the next section.

7. THE SEEMING CONTRADICTIONS OF NEO-LIBERAL FORMS OF REGULATION, JURIDIFICATION, AND PATERNAL POWER

Neo-liberalism has become characterized by several principles that have become recognizable. As a governing style, neo-liberalism has become associated with a *laissez-faire* rationality that suggests that the most efficient economic order is one in which the state does not interfere and where economic markets operate free of external restraint (Cotterrell 1988: 5; Garland 1997: 178; Harcourt 2009: 3, 6; Larner 2000: 5-7; Purvis 2002: 39; Teeple 2000: 88). This is premised on the concept of market efficiency, the idea that the economic system is “self-correcting” and “self-stabilizing” and functions best when allowed to operate free of external restraint (Pearce & Snider 1995: 22; Purvis 2002: 39; Teeple 2000: 88). Economic regulation, particularly the post-war welfarist examples, are understood to have been “fundamentally misguided, leading inevitably to regulatory crises and failure” (Purvis 2002: 38). Because of this, neo-liberalism has become associated with deregulation, a withdrawal of the state from regulatory practices in order to remove

barriers to the free operation of economic markets (Harcourt 2009: 12-13; Larner 2000: 5-7; Pearce & Snider 1995: 23; Purvis 2002: 39; Teeple 2000: 92-94). The state's retreat results in the diffusion of its regulatory practices amongst institutions and experts within the private sphere, which is often associated with the notion of governing at a distance (Garland 1996: 452-454; 1997: 179-180, 182; Jessop 1993: 10; Larner 2000: 8; Pearce & Snider 1995: 25; Purvis 2002: 37, 39; Teeple 2000: 106-107). The diffusion of this laissez-faire economic rationality reinforces the liberal idea that people are rational actors capable of self-regulation, with the result that individuals are encouraged to be self-reliant and are made responsible for their own social, physical, and economic welfare (Amable 2011: 6, 24; Garland 1996: 452-454; 1997: 188, 191-192; Purvis 2002: 40-41; Sears 2003: 2, 10).

This is the conventional explanation of neo-liberalism. Yet, these principles are entirely at odds with the results of my analysis. First, there is no trace of a laissez-faire market rationality with respect to marijuana. In fact, it is quite the opposite. Far from following a non-interventionist course and letting the invisible hand of the market guide the economy, the Liberal Trudeau government has directly intervened in the economy by creating a new legal market for cannabis products. Instead of removing barriers to the free operation of this newly created market, the government is strictly regulating it by, among other things, imposing a ban on advertising, creating a licensing regime for producers, and standardizing product packaging that include health warnings similar to those on tobacco products. This is at odds with the neo-liberal principle of non-intervention and promotion of fair economic competition in the market. The fact that the Liberals' strict regulatory framework is predicated on moralizing discourses about marijuana consumption and trafficking, instead of an actuarial basis or amoral cost-benefit analysis, makes this plan to

legalize marijuana seem even less neo-liberal. Although neo-liberal governance is supposed to be about the responsabilization and autonomization of individuals, my results suggest that beneath the surface of the parliamentary debates about marijuana lies a mythology about impairment, irrationality, and the necessary exercise of paternal power. The neo-liberal emphasis on individual responsabilization and state non-intervention should result in deregulation; however, my results suggest that all of the modes of regulating marijuana, including legalization, lead to *more* regulation, not *less*. Furthermore, instead of leading to a state that governs at a distance, all of these modes of regulating marijuana have advanced juridification, a process that is entrenching direct forms of legal governance in our lives in increasingly new ways.

However, there are a number of dissenting opinions to the traditional understanding of neo-liberalism. When these dissenting opinions and their alternative ways of conceptualizing neo-liberalism are considered, the seeming disparity between neo-liberal principles and the results of my analysis virtually disappear. A number of scholars (see Amable 2011, Almond & Colover 2012, Braithwaite 2008; Harcourt 2009, Pearce & Tombs 1998, Purvis 2002) point out that misconceptions exist within the traditional and popular understanding of neo-liberalism that I outlined above. This traditional view of neo-liberalism is premised on the idea of market efficiency—that an economic market functions most efficiently when it is independent of state control—but this idea has been denounced as an illusion inherited from 18th century liberal thought that cannot possibly exist (Amable 2011: 9; Harcourt 2009: 11; Pearce & Tombs 1998: 47). In reality, an economic market is “an artificial human creation and not a product of nature” (Amable 2011: 10-11), which means that even neo-liberal states need to take constant action in order to establish,

preserve, and maintain them (Harcourt 2009: 11; Pearce & Tombs 1998: 47). Consequently, regulation is not the antithesis of neo-liberal governance but an integral and inescapable component of it (Almond & Colover 2012: 1001; Amable 2011: 11; Harcourt 2009: 11; Pearce & Tombs 1998: 47; Purvis 2002: 29, 31; Teeple 2000: 86-87). The reality is that everything about economic markets is scrutinized and highly regulated, even by neo-liberal states, but the perception of the neo-liberal state as a hollowed out “nightwatchman” whose style of governance is passive, non-interventionist, and leaves regulation to the private sphere remains strong nevertheless (Amable 2011: 10; Braithwaite 2008: 26-27; Garland 1997: 178; Harcourt 2009: 11-13; Pearce & Tombs 1998: 47; Purvis 2002: 46). In addition to state regulation, capitalist industries also regulate themselves to a degree that suggests that their supposed desire for a totally free market is a considerable overstatement (Teeple 2000: 86). Strategies like joint ventures, mergers, and corporate alliances and innumerable others are attempts to evade the free and unfettered market competition that capitalist industries supposedly welcome (Teeple 2000: 86).

While it is certainly true that the neo-liberal state is one that is decentred, this should not be taken as an indication that state governance is disappearing or that state sovereignty is being overshadowed by corporations as the primary agents of governance (Jessop 1993: 10; Purvis 2002: 46-48). According to Bruno Amable (2011: 16), “neo-liberal ideology does not call for a weak non-interventionist state, but for a strong regulatory state whose duty is to ensure that liberty prevails over private collective interests”, without which “free markets would not stay free for long and competition would soon turn unfair”. Similarly, Braithwaite (2008: 198-199) argues that even self-regulatory corporate institutions make moral judgements and that, in the absence of moral judgements guiding

regulatory practices, capitalism would “afflict us with unspeakable misery”. However, morality is pertinent to neo-liberalism in another significant way. According to Hunt (1993: 314; 1997a: 116; 1999: 6), every instance of regulation involves a certain degree of moral regulation. He defines moral regulation as a “form of politics in which some people act to problematise the conduct, values or culture of others and seek to impose regulation upon them” (Hunt 1999: 1). Elsewhere, he says that moral regulation can be understood as any attempt to assert governance whose aim is protecting “the social and moral well-being of an aggregated population” (Hunt 1996: 412). Moral regulation is about asserting control over the behaviour of individuals, but it is also about asserting control over the formation of identities and “internal subjectivities”, by promoting some kinds of identities or “ways of being” and discouraging others (Hunt 1993: 314; 1997a: 116). This allows morality to serve capital by imposing an ideal standard of identity and personhood that corresponds with the needs of the economic market (Hunt 1997c: 296). Consequently, morality is an indispensable dimension of neo-liberal rationality because it establishes the ideal standard of social citizenship as the active consumer and economically productive citizen.

So, what seems to be a process of *deregulation* is in fact only a *re-regulation* that serves and enforces compliance with the needs of the market (Almond & Colover 2012: 1001-1002; Harcourt 2009: 12; Larner 2000: 12; Pearce & Tombs 1998: 46; Purvis 2002: 41). Considered in this way, my results are not as contradictory of neo-liberal theory as they first appeared. Although attempts to decriminalize and legalize marijuana seemed like processes of deregulation, they were in fact simply a re-regulation that resulted in further juridification and which facilitate the creation of a new economic market. This process of re-regulation has an important moralizing dimension that constructs an ideal identity that

serves the needs of the new marijuana market. When the regulatory framework for marijuana legalization came into force on October 17, 2018, marijuana users underwent a sudden transformation, the most dramatic of which was the instant metamorphosis of some users from *criminals* to *consumers*. They ceased being outlaws whose consumptive practices fuel an unsanctioned and unregulated black market and they were suddenly drawn into a newly created and sanctioned market in which they are productive participants by virtue of their legitimate consumption of regulated cannabis products.

However, the contradiction that I noted in the previous section remains. Parliamentary discourse has consistently associated recreational marijuana consumption with youth and children, who are excluded from the newly legalized marijuana market, making it difficult to understand exactly how the government will achieve their goal to eliminate the illicit marijuana market by meeting the demands of its consumers through a state-regulated market. The government has repeatedly claimed that its legalization framework will keep marijuana out of the hands of children and youth, both by eliminating the illicit market and by excluding them from the legalized and regulated market. So, in one sense, it appears that legalization aims to transform “typical” marijuana users, not only by spontaneously transforming them from *criminals* into *consumers*, but also by transforming them from *youth* and *children* into *adults*. However, since irrationality remains associated with marijuana use at a mythic level, the only legitimate consumption of marijuana by adults is that which is subject to paternal power in the form of rigorous oversight, regulation, and so on. On the other hand, an alternative logic founded on an economic motivation might explain this seeming contradiction. From a solely economic perspective, the legalization of marijuana at this point in our history—when Canada is said to have the

highest rates of marijuana use among its youth of any country in world—might make the most sense. If, as many have suggested, the government’s ultimate goal is to maximize the profits generated by a legal and state-regulated marijuana industry, then perhaps implementing a legalized framework now seems like its best option, since users who are currently underage are only being excluded from the legitimate marijuana market *temporarily*, that is, until they reach the age of legal consumption. By the time that the new economic market has had a chance to develop, over the next few years, many of the underage youth who are currently excluded from that market will have reached legal age and they too will undergo the sudden metamorphosis from *criminals* into economically productive and therefore legitimate *consumers*.

There are other seeming contradictions or “dialectical reversals” (Valverde 1996: 370) that are actually inherent within the neo-liberal rationality itself. For example, while responsabilization is undoubtedly an important neo-liberal principle, it is maintained alongside the understanding that people are “ignorant and capricious and by no means sovereign” (Amable 2011: 17) as well as a “persistent pessimism about ‘the average sensual man’s’ lack of capacities for autonomous government” (Valverde 1996: 362). In situations in which individuals are incapable of attaining the ideal of self-regulation and “whose passions are out of order” (Harcourt 2009: 4), the neo-liberal state has discretion not only to impose regulation, but also repression and even punishment (Harcourt 2009: 4). Much has been written about how the neo-liberal state interacts with criminalized and marginalized populations, but it is commonly assumed that law-abiding citizens are simply responsabilized and autonomized (Amable 2011: 22). While this is true to a certain extent, a more nuanced understanding of neo-liberalism suggests that it is equally true that neo-

liberal states can and do impose strict regulation and even repression on individuals who are not criminalized per se but who for some reason fail to live up to the neo-liberal ideal of rational and responsible productivity and consumerism (Amable 2011: 22). Marijuana consumers, who as I showed previously are linked by chains of association to the liberal myth of irrationality as a justification for exercises of paternal power, most definitely fall into this category, even under a legalized framework. So, in spite of seeming contradictions, my findings about the Liberals' legalized regulatory framework and its roots in the myth of irrationality and of the necessity of paternal power are perfectly compatible with a more nuanced understanding of neo-liberalism and its creation and regulation of new economic markets.

8. CONCLUSION

Marijuana's 127-year history as a subject of debate in Canada's Parliament has been characterized by a repeated pattern in which the discovery of new problems or risks that the drug posed to Canadian society triggered legislative responses. Over the years, the favoured responses to these problems have changed considerably. Criminalization has long been the dominant response or default position with respect to marijuana, one which politicians have been very reticent to distance themselves from. Decriminalization was proposed but failed to materialize. Legalization, the relative newcomer to the marijuana debates, received Royal Assent on June 21, 2018 and came into legal force on October 17, 2018. Considered through the lens of punitiveness literature, these three approaches appear to be vastly different. As I argued in chapter 1, debates about the meaning of criminal justice trends can reduce highly complex and multi-faceted issues into

oversimplified binaries. Recent examples include the tendency to classify criminal justice policies as either punitive or non-punitive, as well as the ascription of progressive or non-punitive connotations to Liberal governments and regressive, counterproductive, or punitive connotations to the Harper Conservatives (see for example Dawe & Goodman 2017, Doob & Webster 2016, Harris 2015, Harris & Crawford 2015, Jeffrey 2015, Mallea 2010, Youssefi 2015). This tendency is by no means universal, however, as a number of scholars have problematized these dichotomous distinctions (see for example Moore & Hannah-Moffat 2005, Carrier 2010, and Piché 2014).

Examining marijuana's legislative history in Canada according to these binaries might well result in a conclusion that the criminalization of marijuana consumption is highly punitive and that its legalization is non-punitive and will, therefore, be a step in the right direction. However, as I have argued, the conceptualization of law as governance allows us to reframe them as modes of regulation, all of which further "the growing legalization of everyday life" (Smart 1989: 8). Considered from a law-as-governance perspective, the transition from criminalization to legalization is not one from punitive to non-punitive policies or from regressive to progressive politics. It is simply translating legal problems into different kinds of legal problems. Parliamentary debates with respect to marijuana show an unswerving support for the "persistent increase in the range, scope and detail of legal intervention", which over the course of the last 127 years has contributed to "a general movement towards an expanding legalization and juridification of social life" (Hunt 1997a: 112).

So, understanding regulation through the lens of governance allows us to understand the history of marijuana debates in Parliament and the regulatory strategies that have emerged from them as forming part of a process of juridification. But, as I have shown, regulatory practices are also signifying practices, which in this case (re)produce, transform, and (re)transmit myth. Beneath the often-repeated association between marijuana consumption and youth lies a myth that by 1891, when Canadian parliamentarians first took notice of marijuana, was already over a century old. Then as now, the myth of irrationality necessitating paternal power facilitates and guarantees juridification by triggering, naturalizing, and legitimizing the expansion of state regulatory intervention with respect to marijuana. In *Policing the Crisis*, Hall et al. (2013: 164-165) suggest that the language and the ideas through which people express themselves are pervaded by pre-constituted and ideologically saturated elements. There is a certain parallel with myth in the sense that the signs that form part of our daily signifying practices, particularly the linguistic signs, are already shot through and saturated by myth (Barthes 1971: 615). Through its parasitic high-jacking of linguistic and visual signs, the myth of irrationality and the necessity of paternal power continues to reproduce, reinvent, and retransmit itself through politics of signification as well as the very regulatory practices that it itself gives rise to.

For decades the issue of marijuana use has not been one of problematic *criminality*, as it had once been during the Reactionary Period (1938-1960), but rather one of problematic *consumerism*. In the years leading up to legalization, many of the problems with which recreational marijuana consumption has been identified in parliamentary debates can increasingly be traced back to its location outside of state control in an illicit

black market. For example, the problems of marijuana being available to children in schoolyards, of marijuana sales fueling organized crime, and of marijuana being dangerously potent or containing harmful additives are all rooted in the lack of regulation that exists in an illegal and unsanctioned black market. This has been a recurring message repeated during recent debates about legalization, particularly by the Liberals. In light of its neo-liberal tendencies, it is unsurprising that the Liberal government believes that its creation of a legal regulatory framework will resolve all of these problems. Throughout the Legalization Period (2013-2018) this has been their central and often repeated argument. It is even less surprising that the government is invoking paternal power by creating a highly detailed regulatory framework to govern the actions of irrational marijuana consumers and transform them from “criminals” into legitimate “consumers”. The Liberal government’s decision to suddenly break with nearly a century of prohibition by legalizing marijuana can be understood as a move that is grounded in a neo-liberal outlook that is saturated by the naturalized myth of irrationality and of the necessity of paternal power. The legalization of marijuana opens to legitimate capital an economic market that was previously beyond its reach and integrates into it citizens who previously were economically unproductive, suddenly rendering them economically productive. However, the necessary increase in regulation involved in the creation of this new market, which stands to enrich both the state and private enterprise, also facilitates the assertion of paternal power over irrational marijuana users whose previous lack of regulation made them a liability but who now will become a regulated cash cow. Within the next few years, this paternal power will also be applied to those youth who now are excluded from the current framework but by then will have come of age. This will transform another group of

illegitimate criminal marijuana users into economically productive, albeit irrational, consumers of a legitimate commodity by drawing them into the legal market. For a Liberal government that is entrenched in a neo-liberal perspective saturated by Enlightenment mythology, this undoubtedly has every appearance of being a win-win scenario.

In the concluding chapter that follows, I discuss the implications of these findings in further detail and also identify potential avenues for further research that could utilize the Barthesian semiotic approach to demystification that I have illustrated.

CONCLUSION

1. MYTH AS PARASITIC SIGNIFICATION

Thus, every day and everywhere, man is stopped by myths, referred by them to this motionless prototype which lives in his place, stifles him in the manner of a huge internal parasite and assigns to his activity the narrow limits within which he is allowed to suffer without upsetting the world: [...] in the fullest sense a prohibition for man against inventing himself.

—Roland Barthes, *Mythologies* (1991: 156)

Throughout his work, Barthes (1957: 222-223, 239-241; 1964: 101; 1977: 25) continuously returns to the idea that both connotation and myth are parasitic forms of signification, since they can only signify by latching onto or high-jacking existing signs (e.g. a word, image, etc.) and using them as vehicles for their own signification. This notion of higher-order signification being parasitic is often repeated by Barthes. Boer (2011: 217) notes that this idea “of a myth as a parasite feeding off the rich and full meaning of the denotational sign” becomes Barthes’ “favoured image” for explicating myth’s relationship to language and other sign systems. However, the epigraph included above suggests that, for Barthes, the parasite metaphor explains not only how myth is *signified*, but also explains its *functioning* and its *effect* on individuals exposed to it. Within the chapter from which this epigraph is taken, Barthes (1991: 156) argues that when bourgeois ideologies are elevated to myth their function is to “immobilize the world” or, in other words, to preserve and reproduce the existing social order by facilitating the individual’s acceptance of that order and of their place within it as natural. In this epigraph, Barthes (1991: 156) is suggesting that part of myth’s parasitic function is a kind of anaesthetizing effect on the thinking of the individual and, importantly, on their subsequent lived practices. So, the parasite metaphor

not only helps explain how the transmission and reproduction of myth occurs, it also helps to explain myth's influence on its "host" once transmitted.

Although this may seem to be an eccentric and somewhat dramatic comparison, the results of my analysis suggest that the parasite metaphor is apposite for conceptualizing how myth functions at different levels of signification and within different signifying practices. Parasites are among the most widespread and adaptable organisms thanks to the peculiar ability that many possess to transmit themselves between hosts and to high-jack their host's biological systems in ways that facilitate the parasite's successful reproduction. For example, *Toxoplasma Gondii*, one of the most common and widespread parasites in the world, is only able to reproduce within the intestinal tract of cats but has developed the unique ability to introduce itself into that ideal reproductive environment by first infecting rodents and overriding their fear of cats, thereby increasing the likelihood that they will be eaten by a cat and that *T. Gondii* will be introduced into its intestinal tract (Kochanowsky & Koshy 2018: R770-R771). Following its successful sexual reproduction, *T. Gondii* is excreted through the cat's feces, from where it can infect virtually any other warm-blooded organism, including humans (Kochanowsky & Koshy 2018: R770).

Myth has a similar parasitic pattern of transmission from host to host and accomplishes a similar high-jacking of the host's functions in ways that facilitate its own reproduction. This can be seen in the results of my analysis of the myth of irrationality and paternal power. The frequent appearance of the word "youth" in the marijuana debates in Parliament is one example of the way that linguistic signifiers became hosts for this myth. In chapter 5, I described how this linguistic sign became a signifier for a number of

connotative signifieds, such as impairment, irresponsibility, etc., that together became a signifier for the myth of irrationality and paternal power. From there, the myth of irrationality and the necessity of paternal power shaped the course of the Parliamentary debates surrounding marijuana, as I showed in chapters 5 and 6, making the debates themselves another host that facilitated the (re)production of the myth. As I have demonstrated, the debates about marijuana were made up of intentional and purposive signifying practices that focused on whatever the substantive issues of concern were in that period, like how to punish, protect, or educate youthful marijuana users for example. Yet, parasitic to those signifying practices was a myth that appeared natural and was unintentionally (re)produced and (re)transmitted through the everyday politics of signification taking place in Parliament over the years.

From there, law itself became a host for the myth of irrationality and necessity of paternal power. As I argued in chapter 6, law-making can be understood as a process of myth-(re)making. My analysis shows that the naturalized presence of this myth throughout the parliamentary debates about marijuana resulted in three different regulatory strategies (i.e. criminalization, decriminalization, and legalization) intended to modify law in order to assert paternal power over a group (i.e. youthful marijuana users) deemed incapable of rational calculation. As I showed in chapter 6, each of these modes of regulation furthered a process of juridification which, in turn, became a host for the parasitic myth, facilitating its further (re)transmission and (re)production. My analysis suggests that legalization, for example, is furthering juridification by triggering a proliferation of legal regulations that are being carried into ever-increasing areas of social life. However, the regulatory framework is already pervaded by the parasitic myth because the legal and political

discourses that gave rise to that regulatory framework were equally pervaded by the myth, as were the linguistic signifiers that gave rise to those legal and political discourses. So, everywhere that these regulations are introduced (e.g. into the private sphere through regulatory packaging, into new economic spaces opened by commercialization, etc.) so too is the parasitic myth of irrationality and necessity of paternal power that underlies them. Consequently, the effect of legalization and of the process of juridification that it represents will be that the myth of irrationality and necessity of paternal power will be more deeply and more pervasively embedded within Canadian society.

So, my results corroborate and affirm the aptness of Barthes' characterization of myth as parasitic at the level of language, discourse, and thought, yet they also broaden this characterization considerably by showing that myth may be able to transmit and reproduce itself parasitically through any and all signifying practices. Given the results of my research, it is no wonder that Barthes (1957: 268) argues that anonymous myths are everywhere around us and accost us incessantly. I consider this rediscovery of the pervasive presence of myth—that is, of naturalized ideas that are parasitic to signification—as well as the rediscovery and illustration of Barthes' framework as an effective means of demythologization to be the main contributions of this dissertation. In the section that follows, I describe this and other contributions in further detail and make note of what I consider to be their significant implications.

2. CONTRIBUTIONS AND IMPLICATIONS

One of the notable implications of my results is what they suggest about the differences between seemingly disparate political parties, as well as their platforms and

policies. As I showed in chapter 1, traditional approaches to understanding criminal justice trends often emphasize the differences between political parties and their respective criminal justice agendas. Yet, over the course of my research, these differences all but disappeared. All of the political parties engaged in what the Birmingham School identify as politics of signification, forging favourable connotative associations for themselves and their policies while seeking to disrupt the associations made by their rivals. Through these purposive signifying practices, all of the political parties invoked myth. In some cases the connection to myth was explicitly made, like the conflict over which party's outlook on legalization will truly protect children for example. In these instances, the function of myth was to legitimize and naturalize and lend persuasive force to the signification. Once again, this is not to say that these politicians were aware of or saw through the constructed nature of the myths they invoked. It is far more likely that they themselves believed the myth to be natural and chose to connect their signifying practices to them in order to enhance their legitimacy and persuasiveness. In other cases, however, politicians seemed oblivious to the myth present in their signifying practices, like the myth of irrationality and paternal power lurking behind the familiar association between marijuana and youth for instance.

As I explained in the previous section, the *function* of this myth—what it accomplished through its parasitic presence throughout the parliamentary debates—was to make the expansion of regulation in order to address the problems or risks posed by irrational marijuana consumers appear to be a rational necessity. Over the course of the last century, the myth of irrationality and paternal power has made the expansion of regulation seem natural and legitimate but, conversely, as I discussed above, regulation

also serves as a vehicle for the myth because it is also a signifying practice that carries it into the private sphere of Canadians, as my example of the proposed marijuana packaging shows. All of the major political parties facilitated this juridification through their support of expanded regulation, regardless of whether their stance might be interpreted as punitive or non-punitive or regressive or progressive. Regardless of whether the political parties involved in the parliamentary marijuana debates intentionally or unintentionally connected their signifying practices to myth, all of them did so. Consequently, all of them (re)made and (re)transmitted these myths through their signifying practices, as well as through the regulatory strategies that they endorsed and implemented over the last century.

What I have demonstrated in this dissertation is that demystification, which I understand as the identification of these anonymous myths and the explication of their function, is certainly possible. But this is a conceptualization of demystification that is altogether different than that which developed in the radical and critical criminological traditions. Demystification within contemporary critical criminology often centres on the necessity of speaking truth to power. In other words, for many critical criminologists, demystification means holding the state accountable by exposing misinformation about criminal justice issues and, where possible, revealing the intentionality behind this misinformation. This is undoubtedly important work, but it remains completely different from what Barthes developed and which the Birmingham School and Valverde later refined. While both are indebted to Marxism, contemporary critical criminology's conceptualization of demystification evolved in a different direction as a result of the rejection of Marxism and the rise in influence of postmodernism, post-structuralism,

feminism, left realism, and other critical literatures. This different theoretical point of departure results in different goals as well as the use of different tools to achieve them. Consequently, mystified knowledge in contemporary critical criminology is often understood as that which has been distorted by misinformation or supplanted by falsehood. In contrast, according to the Barthesian conceptualization it is knowledge situated at the margins of our conscious perception, not because it has been intentionally obscured or hidden, but because its seeming naturalness and familiarity renders it virtually invisible. The task of demystification then, from a Barthesian perspective, is one of demythologization. It is not to speak truth to power but rather to bring myth to the surface and identify its social function in order to contribute to a greater quality and depth of debate about the issues that myth underlies.

My dissertation makes a contribution to knowledge by illustrating this demythologizing approach, showing how it works both theoretical and methodologically. It demonstrates the viability of Barthes' framework, as well as the modernizing contributions made to it by the Birmingham School and more recently by Marianna Valverde, for producing critical and demystifying scholarship about the meaning of criminal justice trends. As I have illustrated, this approach offers a wide variety of analytical tools that can allow criminologists to unpack the myths that hide behind linguistic, verbal, or visual signs, and that (re)produce themselves through discourse. Moreover, this approach can help draw connections between the myths that are continually being (re)produced through signifying practices and the real world in which governance takes place. This contributes something new to the critical criminological approaches that I discussed in the first three chapters of this dissertation. It contributes a robust and versatile means of both

conceptualizing and analyzing signification that is visual, textual, or verbal and of delving deeper into that signification in order to draw out its mythic substrata.

But my dissertation also makes empirical contributions. The taxonomy that I have created of marijuana's history as a topic of debate in Canada's Parliament offers us an alternative way of understanding this history, not as a series of chronologically-ordered events but as an evolution in signification over time that is driven by a parasitic mythic undercurrent. However, the application of Barthes to this history also results in an alternative understanding of some of the key events in that history, like the 1923 decision to add marijuana to the list of prohibited substances. The eight temporal periods that I have identified each correspond to a stage in the evolution of marijuana's signification. They show that the marijuana that is now being legally sold in Canada is not at all the same marijuana that was first prohibited in 1923. I do not mean that the physical substance itself is different, though many would argue that it is more potent, dangerous, etc., but rather that as a *discursive object* the marijuana now legalized is not the same one that was criminalized in 1923.

However, signification surrounding marijuana is vast, and underexplored areas remain that offer a number of potential avenues for further research. A few of these potential research directions are briefly discussed in the concluding section below.

3. FUTURE DIRECTIONS

One underexplored area of the discourse surrounding marijuana is the connotative meaning surrounding not only "marijuana", but also the drug's many other appellations. For the sake of consistency, I chose to use the term "marijuana" throughout my work, since

this is the most common name for the substance. Nevertheless, a variety of alternate words were also used to describe this substance, including cannabis, hashish, pot, dope, weed, grass, and so on. So, a potential avenue for further research would be to more closely examine the context in which each of these terms is used and what other signs are connected to them. Barthes' framework allows us to see these as more than simply alternative words for the same substance. It would permit an examination of the subtle differences that make them completely different discursive objects with different connotative associations and, in all probability, connections to different myths. For instance, the name "marijuana" is derived from Spanish and it evokes ethnic and historic connotations that connect it to Mexico and to the racism and xenophobia beneath American panic about "reefer madness". On the other hand, the name "cannabis" is derived from the plant's Latin name, which evokes connotations of "scientificity" that connect it with the classification work of Carl Linnaeus, botany, scientific discovery, etc.

As we saw in the two previous chapters, connotative associations are a battleground upon which struggles over signification take place. Politicians actively seek to associate themselves and their policies with favourable connotations while undermining the signifying practices of their opponents. In so doing, their intentional signifying practices unintentionally become hosts for parasitic myths to (re)produce and (re)transmit themselves. With this in mind, it would be interesting to examine in what context marijuana's different appellations are used and what other connotations they carry, in order to more fully understand how they play a role in the politics of signification and, importantly, what myths underlie these politics of signification and what the functions of these myths are. The same thing could be done with the different alternative terms used to

make reference to “youth”, like “kids”, “children”, “teenagers”, and so on. Examining the differences in the connotative and mythic signification of these terms, as well as their uses in political rhetoric, would undoubtedly provide greater insight into the dynamics of politics of signification in Canada’s Parliament, as well as numerous other areas of public debate and discourse. A further benefit of this deeper examination of connotative associations and their signification would be the identification of a broader range of myths. I identified two myths with respect to marijuana—the myth of protecting children and the myth of irrationality and paternal power—and focused mainly on the latter. However, these are by no means the only myths that exist with respect to marijuana. One of the values of Barthes’ approach is that it can facilitate an examination of the minutiae of signification, like individual signs for example, as well as how these come together to form complex networks of signs that cumulatively have a unique signifying value.

The racialized, gendered, and classed dimension of the signifying practices in my sample offer three more potential research directions that could be further explored. Overall, issues of race, gender, and class appeared very little in the marijuana debates in Canada’s Parliament, at least overtly. Nevertheless, as I will briefly discuss, what few explicit mentions of these issues do appear are significant, as are the implicit references to these issues. Aside from a few references during the Age of Innocence (1891-1937) to marijuana’s origins in India, there is no explicit mention of race at all until the end of the Social Decay Period (1961-1969). Between the late 1960s and mid-1990s there are only a handful of instances where race is mentioned. All of these instances identify Indigenous Peoples as being part of the drug problem because they are engaged in the production, smuggling, and trafficking of marijuana, though never in its consumption or possession. To

make matters worse, there are some instances in which the Indigenous people involved in these activities are referred to as “warriors” (HC Deb 18 February 1994). As a sign, this descriptor has an extremely rich set of connotative associations. Its application to Indigenous Peoples implies that they are at war and that their enemy is not only the law enforcement personnel who enforce the drug prohibition, but that Canadian society itself is their enemy. Aside from these brief appearances of Indigenous “warrior” traffickers, who are essentially portrayed as hostile, atavistic, and antisocial, there is an almost complete absence of race in the parliamentary debates until the Legalization Period (2013-2018).

During the Legalization Period (2013-2018), the issue of race becomes an important one, particularly towards the final months of debate before the *Cannabis Act* received Royal Assent, during which the Senate’s amendments to the bill were being discussed in both houses of Parliament. The issue of race first re-emerged in a general way when the issue of how Bill C-46’s discretionary roadside stop provisions will potentially aggravate the existing problem of the profiling of some visible minority groups by law enforcement. Then, in the months immediately preceding Royal Assent, the issue of the impact of legalization on Indigenous communities became a focal point of debate, particularly in the Senate, where the emphasis was most often placed on how legalization might aggravate existing problems currently faced by these communities, like elevated rates of addiction and suicide for example. Much was said about the need for resources to be diverted towards enhancing access to “culturally-relevant” drug education and addiction treatment facilities in Indigenous communities in order to pre-emptively address the disproportionate harms that would be experienced there by comparison with the rest of Canada as a result of

marijuana's legalization. However, the following quotes describe a more positive effect that some parliamentarians hope legalization will have on Indigenous communities:

From the Indigenous perspective, this bill represents a potential economic powerhouse for First Nations, in particular those that choose to take part in the cultivation, production and retailing of legal marijuana, but it casts a long and threatening shadow on an element of Canadian society already ravaged by unmitigated poverty, ill health, poor education outcomes, higher rates of cannabis usage amongst youth, high unemployment, drug dependency and epidemic rates of suicide. (SOC Deb 6 June 2018)

This, honourable senators, should give rise to treating our Indigenous communities as true partners with governments in planning for and sharing the benefits, not only from the current cannabis industry but from all current economic development on the lands that were covered by these treaties, and for developing institutions to address educational, health and other needs of the communities. (SOC Deb 6 June 2018)

Strangely, the rhetorical stock character of the Indigenous trafficker returns to parliamentary debates about marijuana decades later in the weeks and days leading up to the *Cannabis Act* receiving Royal Assent. However, instead of returning as warriors fighting against Canadian society, Indigenous Peoples re-enter the discourse as the government's "true partners" in the legal marijuana market (SOC Deb 6 June 2018). But while their potential participation in the legal marijuana market as producers and retailers is being welcomed and described as an "economic powerhouse" (SOC Deb 6 June 2018) that will facilitate the growth and development of Indigenous communities, their potential participation in this market as consumers is rejected on the grounds that it will aggravate existing problems within these communities. The involvement of Indigenous Peoples in activities like marijuana trafficking, production, and consumption carries a very different signification within these Parliamentary debates compared with the signification that usually surrounds these activities. Moreover, the two different versions of Indigenous trafficking show the enormous change that has occurred in the signification associated with Indigenous Peoples and their involvement with marijuana. The reasons for these

differences in signification are undoubtedly rooted in myth, which could be explored using the approach that I have illustrated.

Much like race, issues of gender and class were largely absent from the debate, yet the few instances in which they appear signify a great deal. The Social Decay (1961-1969) and Anti-Criminalization (1970-1979) periods contain the most references to class and gender than any other periods. A major focus of debate in both of those periods was the need to change the punishments for marijuana crimes, based on the harms that criminalization and incarceration had on the youth convicted of these crimes. As a result, there was a great deal of attention given to discussing the experiences of the “typical” marijuana consumer, in order to describe the negative effects of existing laws on them. Overall, the debates of the period implied an archetypical marijuana consumer who is young, white, and male. It was common for parliamentarians to describe the experience of either real or, more often, hypothetical marijuana consumers caught in the web of criminalization. These scenarios overwhelmingly involve males and many were also suggestive about class.

Most often, these stories are about upper or middle-class young men attending college or university who make an impetuous and regrettable decision to experiment with marijuana, only to be caught by the police, resulting in their incarceration and the destruction of their promising futures as a result of the criminal record that now permanently stigmatizes them. The point of these stories is that these individuals, who are portrayed as having made a *single* mistake that cost them dearly, deserve pity and the help of Parliament. However, an alternative to this story is that of the *habitual* marijuana user.

These users are typically, in the words of one Progressive Conservative MP, “disadvantaged youngsters who come from broken homes where parental guidance has been little or non-existent” and they are “the product of schools where no attention at all was paid to the homes or the environment from whence they came” (HC Deb 11 February 1975). For these individuals, marijuana use is not a one-time experimentation; it is a habitual practice that they engage in as a result of a need to cope with the misery of their lives due to poverty, neglect, and a lack of opportunity. The message of these stories is the same, that criminalizing and incarcerating such disadvantaged and impoverished youths is counterproductive and that they deserve pity and help. Both versions of this story about young men whose lives are ruined by an unfair justice system were repeated often, particularly during the 1960s and 1970s but also in subsequent decades as well. The telling of these stories in the debates reveals assumptions that existed at the time about the differences between those for whom marijuana use was a brief stage of experimentation on the road to a successful life and those for whom it was an inescapable habit leading to a lifetime of crime and incarceration. These assumptions, in turn, are rooted in other assumptions about class, but beyond this they are also rooted in myth. There is an important yet unarticulated parasitic mythic substrata present in this discourse that could be revealed using Barthesian demythologization.

Similarly, the appearance and absence of gender in these debates is significant and suggests a mythic undercurrent. As I noted, whenever real or hypothetical scenarios were discussed with respect to the experience of typical marijuana users, they were overwhelmingly male. Even when marijuana users were referenced in a more general way, the use of pronouns was invariably male-centric. Apart from one or two real examples of

women whose lives had been ruined by a marijuana conviction, women only appeared in the debates on a few occasions, either as pregnant women jeopardizing the health of their unborn children as a result of their marijuana use or as potential victims of sexual assault as a result of being impaired by marijuana. Signification surrounding gender, race, and class are areas of discourse that merit further investigation, not only with respect to these particular parliamentary debates, but in public discourses more generally. Below the surface level of any discourse are myths that animate that discourse and yet remain unrecognized.

Myths do not disappear. Much like the parasites that they metaphorically resemble, myths simply continue to reproduce and evolve as the process of semiosis unfolds, which means that uncovering the myths that underlies discourse, both past and present, and explicating their social function is a valuable critical endeavour and one which, as I have shown, can be accomplished using Barthes' conceptual and methodological framework.

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September 6th, 2018

Ref: HC2018-0334

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Proposed Approach to the Regulation of Cannabis
Summary of comments received during the public consultation

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