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Phantasmal Commodities: Law, Violence and the Juris-diction of Drugs

Abstract:

An appreciation of the social function of the concept of drugs is essential for understanding the moral panic that they engender. Despite only emerging as a concept over the course of the twentieth century, Drugs have come to be seen not as mere plant life in the manner that they appear in nature, nor are they seen as commodities, natural resources to be exploited for capitalist gain. Drugs instead function as the primary example of what anthropologist Michael Taussig calls ‘transgressive substances.’ Within the conceptualisation of prohibitionist law, drugs are not taken as the standard commodity to be exploited by humans for profits but instead are feared as phantom commodities that have the power to rule their creators. The concept of drugs through the law imbuing existing plant life with the phantasmal powers to able to use and consume the human subject as opposed to allowing humanity to use and consume it. Drugs become not just objects but pathways, seen to facilitate movement between different states of being, transferring its consumers from the realm of the human to the non-human. This article examines prohibition’s engagement with the everyday life of drugs to open up how the concepts theoretical grounding is anchored a law-making violence that seeks to cleanse an idealised imagination of the social.

Keywords: Drugs, Taussig, Law, Violence, Transgressive, Commodity

Introduction

Within the debates regarding the efficacy of prohibition, often overlooked is how the moral panic that concept of ‘drugs’ came to engender across the globe in recent human history provides an extraordinary example of the power of a legal fiction.¹ During the twentieth century, the term ‘drugs’ emerged to capture the global imagination as a catch-all descriptor for a variety of psychoactive substances that shared a metaphysical categorisation, over and above sharing any actual chemical or scientific similarity. The term ‘drugs’, as popularly used, served to cohere together the fear that a collection of natural growing and synthetic substances carried the potential to not only physically harm those who ingested them recreationally but to capture the very spiritual essence of any human reckless enough to consume them. James Q. Wilson, a former chairman of the U.S.A’s National Advisory Commission on Drug Abuse Prevention, gave voice to the quasi-religious underpinnings that drove drug prohibition as an expression of eschatological anxiety when he contrasted the laws against cocaine with the legal trade in tobacco, arguing that ‘tobacco shortens one’s life, cocaine debases it. Nicotine alters one’s habits, cocaine alters one’s soul.’² Why did echoes of Christian theology reverberate so successfully across the discourse of drug prohibition over the period of the global War on Drugs? And as the terrain of drug control laws begins to reconstitute itself at both the global and national register, is there is need to track the movements of the ideas about the order of being that anchored it? In his description of cocaine, Wilson articulated clearly the pre-eminent view of the twentieth century drug war, that what unified the substance that were collected together under that categorization of ‘drugs’ was that a drug ‘corrodes those natural sentiments of sympathy and duty that constitute our human nature and make social life possible.’³ What kind of commodities are drugs that they were so accepted as having such power as to destroy the social bonds that structure daily life? Despite recent steps towards drug policy reform, does the fear of their ability to consume the human persist?

Over this article, by unpacking the theoretical grounding that anchors the concept of ‘drugs’, I will show how indebted it remains to the visions of these substances transgressing the boundaries of everyday life, specifically the boundaries that are taken to separate

¹ For examinations of the function of legal fiction, see Karla FC Holloway, *Legal Fictions: Constituting Race, Composing Literature* (Durham: Duke University Press, 2014); Maksymilian Del Mar and William Twining, *Legal Fictions in Theory and Practice* (New York: Springer Publishing 2015)

² James Q. Wilson, *On Character: Essays* (Washington D.C: AEI Press; Expanded Ed edition 1995), p.160

³ Ibid.,

‘humanity’ from ‘non-humanity’ in the way they are identified through everyday existence. The question of what divides the human social life from plant-life was provoked by the emergence of the spectre of drugs over the course of the twentieth century. Through a concerted legal, political and cultural campaign, drugs have been accepted as the leading conduit that can facilitate the movement across the border of what is taken as recognised, or at least recognisable humanity. Drugs could summon the phantom of animal or even plant-life that stalks the tenuous civilisation of humanity, collapse the boundaries between nature and culture. If the sermons of figures like James Q. Wilson were accepted as gospel, as they were for much of the past century, then it was only the law that stood between social order and the collective of plants that, if commodified, contained the power to transform not just the body but the very soul of a human being. Drugs appear as just plant-life before the law encodes them with value.⁴ Their value is not so much a financial currency but their conceptualisation as the forces that can unmask the established hierarchy between humanity and nature that orders everyday life beyond its inherently instability. On an embodied level, drugs have come to signify the return of life to the mercy of nature. This value of drugs as spoken by law was translated across borders as the War on Drugs reached the scale of the global. To wrestle with the moral panics that these substances continue to engender, it is necessary to trace the ability of drugs function as commodities that cut across binaries of plant-life/human-life, science/healing and medicine/poison.

Any unpacking of the ontological journey of drugs must first reckon with how recent and contingent many of the universalist claims of the twentieth century imagining of drugs as phantasmal commodities are revealed to be under examination. As a coherent popular conception, drugs emerge through a distinct set of material and discursive relations that both produce and are produced by a particular epochal shift in regimes, of bordering, capital and culture.⁵ The very idea of ‘drugs’ is only a recent construction, as the historian Roy Porter reminds us, writing at the end of the twentieth century:

If you'd talked about the 'drugs problem' two hundred years ago, no one would have known what you meant. There was no notion then of 'drugs', in the sense of a small group of substances scientifically believed to be harmful because addictive or personality destroying, the availability of which is restricted by law. The term 'drugs' as a shorthand for a bunch of assorted

⁴ Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton: Princeton University Press 2019)

⁵ Maziyar Ghiabi, ‘Ontological journeys: The lifeworld of opium across the Afghan-Iranian border in/out of the pharmacy’ in *International Journal of Drug Policy*, Vol.89, pp.103-116

narcotics is in fact a twentieth-century coinage.⁶

Until relatively recently in historical terms, how drugs were read and experienced by humans in their everyday, was markedly different from what has become fixed by law as the norm. Traditions of engagement with ayahuasca in Brazil or the chewing of khat in across the Horn of Africa or the Arabian Peninsula provide glimpses of drugs taking on different social lives within different historical or geographic contexts.⁷ However, the exalted perspective of the law now projects a fixed, trans-temporal definition of drugs; drugs are what the law says they are and for the past century law has damned them as societies undoing. In contrast, by tracing drugs through the operation within the everyday we can start to see them not inanimate object over which the juridical can legislate, but rather as things that are in fact produced through the law. The concept of drugs and the laws that control drugs are co-constituted in the moment of prohibition.

To unpack the way ‘drugs’ are discursively produced by the law, it is necessary to analyse how the law speaks the very concept of ‘drugs’ into being. This is the diction part of juris-diction, the performative element of the speaking the law and the power of that speech to inform material life.⁸ Drugs provide a telling instantiation from which to understand how the juris-diction of law can speak into being the very concepts it then subsequently prohibits. For rather than being independent objects that are then legislated over, drugs as a distinct category of natural life are only discursively produced by the act of prohibition and therefore cannot be decouple from it. The law seeks to fix the definition of drugs and with that, their place in the world. Drugs, as we commonly use the word, do not exist outside the law and the state. Exploring how drugs become the transgressive substances requires a look at how the state’s commitment to eradicate them helps to produce into commodities. By the law applying its monopoly on legitimate violence upon this collection of plant-life, it encodes them with a phantasmal force that, unlike other tradable commodities, has the power to unmake as well as make social life.

A Legal Fiction

⁶ Roy Porter, ‘The history of the “drugs problem”’, *Criminal Justice Matters*, 24, 3 (1996), p.3.

⁷ Ross Coomber and Nigel South (eds.), *Drug Use and Cultural Contexts 'Beyond the West': Tradition, Change and Post-Colonialism* (London: Free Association Books, 2005). p.14.

⁸ Victoria L. Ridler, ‘The Exercise of Jurisdiction and the Absent Author of Law’s Speech’, *Law & Literature* (2019), 31, 1, pp.71-93

In order to trace how this reading of drugs as phantasmal commodities legitimises violence in the name of maintaining social cohesion, it is important to start with the law itself that defines what a ‘drug’ is, before moving on to survey the violence that bleeds out from the law at both a local and global level. Drugs offer an example of a quintessential legal fiction; by that I mean it is the law that first creates and then legislates what we commonly categorise as drugs. A legal fiction stands in for an object or principle that is recognised as an illusion outside on the process of making the law.⁹ The only solid criterion through which to differentiate what is commonly referred to as ‘drugs’ from other medicines or psychoactive substances accepted in normative diets is the determination of the law. The law is what ties together as one group cannabis, cocaine and opium and then places that group in contradistinction to alcohol, tobacco or caffeine. It is law that ultimately separates the medicinal from the recreational and the communal from the prohibited psychoactive substances.¹⁰ Law, especially when considered at the global register, positions itself as orbiting human life in the realm of the abstract; permanent and omnipotent, it claims for itself a one-step removed from the events that constitute our daily lives so that it can serve as the foundation on which judgement of those events rests. Such a claim of the law masquerades the ways in which its determinations constitute the actions, patterns and behaviours of everyday life.

The laws on drugs provide a particularly telling example of the challenge to positivist readings of law as fully comprehensible through the formalities of its provisions. For instance, the very title of the legal bedrock of international drug prohibition, *The United Nations Single Convention on Narcotic Drugs, 1961*, betrays in its reference to ‘narcotics’ the distinction between the scientific understanding of narcotics as a sleep-inducing substance and the juridical definition of narcotics which, since it is based not on a drugs effect but on a drug’s illegality, allows the descriptor of ‘narcotics’ to be extended to drugs that are scientifically stimulants (Cocaine) or hallucinogens (LSD).¹¹ Subsequently those engaged in the supply of these substances were labelled as narco-traffickers; law enforcement assigned to suppress the trade were christened as counter-narcotics squads. The error bleeds into the everyday life of drugs, framing the way the business of prohibition operates. Without an appreciation of the discursive field in which drug treaties are situated, the contradictions contained such as those above are irresolvable.

⁹ Simon Stern, ‘Legal Fictions and Legal Fabrication’ in Hans J. Lind (ed), *Fictional Discourse and the Law* (Routledge, 2020), pp.191-99

¹⁰ Kimani Paul-Emile, ‘Making Sense of Drug Regulation: A Theory of Law for Drug Control Policy’, *Cornell Journal of Law & Public Policy*, Vol.19, No.691, pp.691-740

¹¹ See William McAllister, *Drug Diplomacy in the Twentieth Century* (London: Routledge, 2000)

Jacques Derrida provides one resource for illuminating the make-up of contemporary global drug policy's discursive terrain. In his writings on *The Rhetoric of Drugs*, Derrida displays an understanding of the social and historical contingencies that are required to constitute the very concept of 'drugs' that the law then acclaims legislation over.¹² Derrida states:

There are no drugs "in nature." There may be natural poisons and indeed naturally lethal poisons, but they are not as such 'drugs.' As with addiction, the concept of drugs supposes an instituted and institutional definition: a history is required and a culture, conventions, evaluations, norms, an entire network of intertwined discourses.¹³

Derrida's reading of prohibition commences from an understanding that 'the concept of drugs is not a scientific concept, but is rather instituted on the basis of moral or political evaluation.'¹⁴ Within the drug laws, we find a prime example of the law discursively creating a distinction that does not objectively exist. Derrida recognises the extent to which drugs are not something external to law to which the law is applied, but instead that the idea of drugs 'carries in itself both norm and prohibition, allowing no possibility of description or certification -- it is a decree', therefore our very conceptualisation of drugs is rooted in the law itself.¹⁵ Moreover, Derrida's reading of the discursive construction of drugs also begins to point us towards the imperial structure that anchors the concept. There is a geographic and historical orientation that separates the imagining of drugs from their daily social practices. Following Adorno and Horkheimer, Derrida reminds us that 'drug culture has always been associated with the other of the Occident' and therefore the spectral threat that drugs pose to social order becomes synthesised with the corporeal threat of the colonial other.¹⁶ The history of tying in the fear of drugs the savage colonial subject is a key part of a longer story of the role that race has played the cannon of modern western thought where it has acted as the canvas onto which the occident can project onto an 'other' what fears is taboo about itself and then expel the phantom threat, along with the lived body that now has been adjudged to contain it.¹⁷ The colonial element of the law comes from this story, particularly when law arrogates onto itself a coherent

¹² Jacques Derrida, 'The Rhetoric of Drugs: An Interview', 5 *Differences: A Journal of Feminist Cultural Studies*, 5, 1 (1993), pp.1-25.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Christopher Bracken, *Magical Criticism: The Recourse of Savage Philosophy*, (Chicago: University of Chicago Press 2007)

universalism, as international drug law does, whilst also condemning traditions and cultures of human practice as an ‘other’ must remain outside of the universal, so as to offer, as Sundhya Pahuja puts it, ‘a screen onto which the negative definition of universality itself may be projected.’¹⁸ In the post-colonial era in which international law is now taken to extend to all peoples equally, those who form the other must also ‘answer a demand for inclusion within the universal without disrupting the assertion of those values as universal.’¹⁹

Taking further this analysis of the law’s claim over the definition of drugs, philosopher Jean Baudrillard offers his own reading highlighting how, rather than based on anything scientific or objective, the condemnation of the psychoactive substances collectively grouped together as ‘drugs’ is indebted to a Weberian conception of the economic and social good in western society.²⁰ For Baudrillard, the West arrogates onto itself a specific capacity for delayed gratification, which is then taken to underlie the realm of human life, in distinction to the realm of life occupied by the plant or the animal. The condemnation of drugs functions as a stand-in for a wider fear of the potential loss of that capacity for delayed gratification, the defeat of reason and the will at the hand of the appetite. Baudrillard argues that ‘[t]races of this long-standing condemnation linger on in our own vision of modern drugs and of the occult power they derive from their ancient symbolic virtues.’²¹ As opposed to the ‘evil’ of drug addiction residing in the drug itself and infecting human life from the outside, Baudrillard shows us how the ‘evil’ is instead ‘a consequence of the very logic of the system, of the excessive logic and rationality of a system – in this case society in the industrialized countries – which, having reached a certain level of saturation, secretes antibodies which express its internal diseases, its strange malfunctions, its unforeseeable and incurable breakdowns.’²²

Baudrillard reading of the social life of drugs provides illumination to the anomalous language that populates *The Single Convention on Narcotic Drugs, 1961*, particularly in the use of the descriptor of ‘evil’ to categorise the dangers that drug use poses to individual humans and society at large.²³ The reference to the concept of ‘evil’ within this international law on drugs have been queried by scholars due to its idiosyncratic presence within international legal

¹⁸ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press 2011), p.23.

¹⁹ Ibid,

²⁰ Jean Baudrillard, ‘A perverse logic’, *UNESCO Courier*, July (1987), pp.7-9.

²¹ Ibid., p.7

²² Ibid., p.9.

²³ *The United Nations Single Convention on Narcotic Drugs, 1961, Preamble*. ‘Addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind. Conscious of their duty to prevent and combat this evil, [the parties agree upon] coordinated and universal action.’

treaties, with laws governing issues such as apartheid, genocide, nuclear war or slavery all not having any mention of the concept of ‘evil’ in order to describe their subject.²⁴ Christopher Hobson queries why drugs but not genocide or slavery summons the spectre of ‘evil’, stating that, ‘among all the possible wrongdoing and bad things that exist in the world, it is slightly counterintuitive that drugs are the only one to be labelled as “evil” in international law.’²⁵ Law functions through the presumed relegation of the theological onto the/a mystic past, now overcome through a secular turn to modernity. Where the social relations between subjects are taken to be fully secularised and consequently mediated through the mutual recognition by each subject of their counterpart’s capacity for reason and a predisposition to delay the appetite, they remain haunted by the fear that ‘drug use threatens the social bond’ erase those capacities that make social life possible.²⁶ The spectre of the non-human that persists within.

Through its proclamation and co-constitutive condemnation of ‘drugs’, the law seeks to expel this spectre from the realm of human life. Violence enacted on what remains essentially plant-life is given a moral imperative through the imbuing of the drug with the power to serve as an existential threat to an idealised human subject and its contingent social order. The drug war marries with the contemporary wars against plant-life as ariel fumigation or crop-eradication policies facilitate environmental devastation.²⁷ However, law’s declaration of exclusion is an impossible one. It requires the policing of the everyday to perpetually reinstitute its declaration. It keeps the illusion of the drug alive, through chasing it through every border, every street corner, every delivery truck, every abandoned house.

Drugs as ‘Transgressive Substances’

A further resource for better understanding how these ostensibly inanimate objects, naturally occurring plants and chemicals, became discursively infused with such demonic social power is the work of anthropologist Michael Taussig. Through his scholarship, Taussig has stressed how the social histories of commodities are interwoven within the symbolic potency that they wield once crystallised in material form. An established dictum of historical materialism is to recognise commodity as not just an object of exchange but also as a container

²⁴ Rick Lines, “‘Deliver us from evil’? – The Single Convention on Narcotic Drugs, 50 years on”, *International Journal on Human Rights and Drug Policy*, 1 (July 2010), 8

²⁵ Christopher Hobson, “Challenging ‘evil’: Continuity and change in the drug prohibition regime” *International Politics* 51, No.4 (July 2014), 526.

²⁶ Derrida, ‘The rhetoric of drugs’.

²⁷ See Shela Sheikh, “Translating Geontologies” 21 *The Avery Review* (2017)

of a whole web of social relations. However, a phantasmal commodity can push this framing further. As opposed to the orthodox understanding of ‘man’ creating commodities through extractive labour and capital, before economically exploiting them for commercial gain, with phantasmal commodities this relationship is not as unidirectional as envisioned, for once created these commodities are imbued with the rare recognition of the perpetual fear society carries that ‘commodities rule their creators.’²⁸ The phantasmical power of drugs are paradigmatic of the investment capitalism carries in commodities to drive relentless consumerism. As David Courtwright argues in his latest book on *The Age of Addiction*, drugs maybe perhaps the commodities most immediately associated with addiction but they are far from the solitary example of an economy that feeds on the impossibility to satisfy human desire, with compulsive gaming, shopping and binge eating just some of the other manifestations of the same impulsive. The codependent dynamic between drugs and capitalism unfolds from shared promise of illimitable consumption, with the former serving as merely a superlative instantiation of the later.²⁹

Commodity fetishism seeks to inculcate social relations within the product itself, granting it a social life; rarely expressed is the underlying fear that these enlivened commodity goods may carry the power to enslave us. Writing with a fidelity to the full significance of idea of fetishisation, Taussig recognises the power for humans to transform objects into totems, and for those totems to then consequently transform the human upon connection. The theological undercurrent to the material relations of a modern capitalist society is unmasked by Taussig’s work, which argues for an appreciation for the particularly Christianised fetishisation of being, in which rituals and sacred objects stand in for the antagonisms between God/the Devil and good/evil, as well as anchoring the capitalist fetish in which ‘commodities are held to be their own source of value.’³⁰ This theoretical perspective, combined with his geographical focus on Latin America, has aided Taussig in developing an innovative understanding of the social life of ‘drugs.’ Speaking to the discursive production of cocaine as a ‘drug’, Taussig provides us with the insightful concept of drugs as ‘transgressive substances.’³¹ Through the term ‘transgressive substances’, Taussig illustrates how drugs are fetishized to become totems for the disruption of the order of human life, drugs such as cocaine ‘make a mockery of the notions

²⁸ Michael Taussig, *The Devil and Commodity Fetishism in South America* (Chapel Hill: The University of North Carolina Press, 1980), p.xvi.

²⁹ David T. Courtwright, *The Age of Addiction: How Bad Habits Became Big Business* (Cambridge: Harvard University Press, 2019)

³⁰ Ibid.

³¹ Michael Taussig, *My Cocaine Museum* (Chicago: University of Chicago Press, 2004), p.xiii.

of ‘laws’ of supply and demand. They decidedly sabotage the notion of “demand” riddling it with phantasmic properties unknown to conventional economics.’³² The power of drugs emerges from them being read by society as being divergent, rather than being the superlative form of the standard commodity, here are the one set of commodities recognised as having the power to rule their creators. Drugs are imbued with the phantasmal powers to able to use and consume the human subject as opposed to allowing humanity to use and consume it.

By walking with the poorest and most vulnerable communities of Colombia, Taussig provides greater insight into how the dynamics of cocaine and violence intermingle across the human life that the law offers. It also directs us to reconsider what functions as the enemy of the War on Drugs, the drugs themselves or the ‘transgression’ they are taken to facilitate. The spectre of the non-human that the plant-life categorised as drugs leads us towards is ‘is the world of physics and chemistry, sex and silence, dreams and nightmares’, the resister of daily experience that troubles the rationality and predictability through which social order remains anchored.³³ Not that the two realms remain wholly separate, they bleed into each other with drugs quickening and amplifying this transgressive movement. In peoples attempt to eradicate or ingest the drug, commodities like cocaine can accelerate passions beyond their social confines, leading human capacity for intellect to be subsumed within the non-human appetite for instinct. This dynamic subsequently invites and justifies the law’s purifying violence, a violence that renews itself daily in order to keep the spectre away.

Living within the *Limpieza*

A tour of the Cali region of Colombia in 2001 during the country’s most intensive period of counter-narcotics policing, informed Taussig’s most immersive account of law renews itself through daily violence visited upon the spectre encapsulated by the concept of drugs. His field diary of his time living in this region, eventually published field diary, later published in book form as *Law in a Lawless Land*, details the distance between the romantic proclamations of prohibitionist law and the reality of the experience on the ground.³⁴ At the time of Taussig’s arrival, Colombia had just been engulfed by the shadow of the U.S.A. funded counter-narcotics programme known as ‘Plan Colombia’, signed into law in the year 2000 by the administrations of US president Bill Clinton and Colombian President Andrés Pastrana, after the two countries

³² Ibid., pp.118-119.

³³ Ibid., p.314

³⁴ Michael Taussig, *Law in a Lawless Land: Diary of a Limpieza in Colombia* (Chicago: University of Chicago Press, 2003).

had spent the previous decade at loggerheads over drug policy. Plan Colombia was presented as an aid program, but the majority of the money received was ring-fenced for law enforcement, policing and military equipment.³⁵ By injecting the force of the law with the propellant of unprecedented financial propellant, Plan Colombia escalated the violence of drug prohibition in the region to new levels. Taussig used his writing to document the cataclysm of this moment for the inhabitants living the Cali region of Colombia, describing how ‘a whole new political and cultural economy was fashioned out of prohibition and its transgression’ in the aftermath of this intensification of the drug war.³⁶ New technologies of violence, terror and ecocide was unleashed on the region in the attempt to finally expel the demonic plant-life from within its midst.³⁷

To Taussig, the reinforcement of law did not fix the distinction between order and animality but erupted it, summoning up a crescendo of violence. Through extensive crop eradication schemes, Plan Colombia embodied a transnational commitment to eradicating the very appearance of particular forms of nature from the environment of the Cali region Taussig was walking through, reinscribing this plant-life with a spectral force beyond any material threat. The indefinite nature of this war upon the natural habitat gave it the shape of perpetual purification. He expounds further by saying:

Spraying herbicides poisons the Colombian forest, the rivers, and peasant crops, and so far has done far has done nothing but lead to an expansion of the acreage under cultivation. By combining this aerial onslaught of poison with military support for attacks on the guerrilla, attacks now sanctioned by the U.S. Congress, which had until recently been reluctant to see the US. dragged into a guerrilla war, the violence in Colombia is exacerbated.³⁸

By connecting the coordinated assault upon the living earth with the militarised attack on the rebels who embed themselves in the terrain in order to disguise themselves, Taussig illustrates how the drug war collapsed the distinctions between deviant non-human life and the types of people categorised as sub-human, allowing abuses against the rights of nature to operate coterminously with abuses of human rights, particularly of those communities who are

³⁵ Julia Buxton, *The Political Economy of Narcotics: Production, Consumption and Global Markets* (London: Zed Books, 2006) p.180.

³⁶ Taussig, *Law in a Lawless Land*, p.197

³⁷ Hannah Meszaros Martin, ‘Defoliating the World’, *Third Text*, Vol.32, No.2-3, pp.230-253

³⁸ Taussig, *Law in a Lawless Land*, p.198

imagined as transgressing the boundaries of humanity. The ‘guerrilla’, the ‘para’, the ‘Yicijos’, ‘rateros’, ‘transvestis’ (drug addicts, thieves, and transvestites) are all discursively interwoven with phantasmic powers given to the coca plant itself to constitute an existential threat to the presumed order of civilization.³⁹ The war against drugs, against this threat becomes a ‘limpieza’— a cleansing. In Colombia, a *limpieza* is the term used for traditional forms of spiritual cleansing. However, during the War on Drugs, it developed locally a dual meaning as a description for the public acts of purifying violence.⁴⁰ Within the Cali region, the drug war has metamorphosized into a purge, a campaign to disinfect the atmosphere of unclean souls alongside the drugs that had altered the spiritual essence of the damned. Taussig describes how the staccato rhythms of machine gun fire are accompanied with the cries of onlookers, “Son de Limpieza! They are people doing a cleansing.”⁴¹ When living in the midst of the drug war, the theological contestation that underwrote the bureaucratic dictates of the how became starkly visible through the language of the everyday.

The Phantom and law-making violence

Taussig’s subtitle and its focus upon the work done by the ‘cleansing’ process points to the presence of the law within the operation of perpetual violence; the *limpieza* doesn’t happen outside of the gaze of the law but realises itself through the law. Public executions carried out by paramilitaries are often state-sponsored or at least occurring under the complicit gaze of the state. A reading of the social function of the concept of drugs calls into question an orthodox understanding of the law: that law acts as an external limit on violence. Law derives much of its authority from the presupposition of its ability to restrict the human inclination to violence, thereby laying the basis on which society can be founded. When war appears to have become universally contagious, a turn to the law is offered as the solution to re-establish order; international law is presented as a solution to the crisis, a pacifying force to be acclaimed and celebrated as the diametric opposition of the violent crisis.

However, critical legal thought has complicated understandings of the relationship between law and violence.⁴² The *limpieza* reminds us, as Richard Cover wrote, that that ‘legal

³⁹ Ibid., p.57, p.177

⁴⁰ Ibid., p. xiii.

⁴¹ Ibid., p.24

⁴² For scholarship on the relationship between law and violence, see Walter Benjamin, ‘Critique of Violence’, *Reflections: Essays, Aphorisms: Autobiographical Writings*, ed. P. Demetz (New York: 1978), p. 287; Robert M. Cover, ‘Violence and the Word’, *Yale Law Journal*, 95 (1986), p. 1609; Gary Boire, ‘Legalizing Violence: Fanon, Romance, Colonial Law’, M. Freeman and A. Lewis (eds.), *Law and Literature, Current Legal Issues*, 2

interpretation takes places in a field of pain and death.⁴³ The War on Drugs, is but one example that illustrates how violence can be produced not through an absence or lack of law but can emerge from law, as multiple forms of violence are performed everyday through the law and its institutions. The War on Drugs therefore offers a paradox: this violence cannot be the opposite of law – after all, it is a violence spoken into existence by the law; yet neither can this violence be simply all that the law is, since this would destabilise an international law understood to self-authorised the peaceful order of an international community. The laws that inscribe drug prohibition are not the architecture for restraining violence in the traditional Hobbesian sense of sovereign power, instead the laws are at the root of this eruption of violence, feeding this perpetual war of purification. Taussig argues:

For the root of the "drug problem" lies not with the people who take drugs nor with those who traffic in them. Instead, it lies in the inevitable effects of prohibition. It is prohibition that makes drugs valuable and the trade violent. So long as prohibition of drugs is maintained in the US and elsewhere, it is extremely unlikely there will be peace in Colombia.⁴⁴

The scenes that can be seen in the heart of the drug war in the Cali region of Colombia remind us that of the critical insight that law must be violent in order to take effect; without the ability to wield violence, the law is not the law. And yet violence cannot be the totality of what the law is, for if law were only violence, it would not invoke the reverence that the law requires.⁴⁵ The theoretical and conceptual questions at play in the construction of drugs and drug prohibition only reinforce the importance of narrowing the gap between the laws' moralistic projection against these substances and lived experience of the consequences of this projection. To clarify, with regard to the instantiation of the drug war, to read the daily violence produced by of the legal fiction of drugs as law-making and law-preserving is not to claim that all of the violence that has flowed from the drug war, is the result of state and international enforcement of prohibition. Instead, it is an understanding of law being productive of the conditions for both

(1999), pp. 581–601; Austin Sarat (ed.), *Law, Violence, and the Possibility of Justice* (Princeton: Princeton University Press, 2001).

⁴³ Robert M. Cover, 'Violence and the Word', *Yale Law Journal*, 95 (1986), p.1609.

⁴⁴ Taussig, *Law in a Lawless Land*, p.197

⁴⁵ Austin Sarat, 'Situating Law Between The Realities Of Violence And The Claims Of Justice: An Introduction', *Law, Violence, and the Possibility of Justice* (Princeton: Princeton University Press, 2001), p.1.

law enforcement to violently police drug prohibition and for the traffickers to violate the inscribed boundaries in an attempt to circumvent drug prohibition.

It is important to recall that drugs have not always been interwoven with violence, the cultivation and usage of these substances were practiced for centuries in various cultural traditions without being a generator of any violence comparable to that which has been realised through the War on Drugs.⁴⁶ The distinctions applied by society to different plant-life is a product of the legal determination that cleaves the difference between, for example, the sugar cane plant that is cultivated and commoditised and the coca-leaf plant that is prohibited and subject to eradication through aerial fumigation. But the illegality of drugs has masked the way law still speaks them into being. While not transforming them into standard commodities by underwriting their value, the law assigns a further value to the drug by determining as the commodity that has then power to consume its consumer, escape the confines of tradability and take the very soul of a human soul as its own private property. The violence, emerging both from and against drug enforcement can be better understood as actually rooted in the law, rather than in the drug, itself. The violence is not external to law or can be resolved by a more stringent or more militaristic application of the law. The violence that emerges from both those working for and against the law of drugs are themselves an outgrowth of the terrain set in place by the legal regime.⁴⁷ In short, the international and domestic laws on drugs releases 'legitimised' violence in an attempt to enforce its determination of prohibition and when, the law is unable to control the powers it has called up, it associates the excess of violence produced with the object of prohibition- the drugs- rather than the law of prohibition itself.

Taussig's great interlocutor Walter Benjamin detailed the function of legal violence as being law-making or law-preserving, that it doesn't protect an established community from an external threat but it actually constitutes that community through its daily renewal.⁴⁸ A through line runs from the legitimised violence of colonialism that conscripted the Americas into euro-modernity, all the way to the transformation of certain forms of 'nature' into commodities for consumption and profit and others into transgressive substances for expungement. Furthermore, rather than merely concern itself with legal violence as only the inflicting of

⁴⁶ For further reading on the long history of different cultural traditions of drug use, see Ross Coomber and Nigel South (eds.), *Drug Use and Cultural Context 'Beyond the West'* (London: Free Association Books, 2004); or Jordan Goodman, Andrew Sherratt, Paul E. Lovejoy (eds.), *Consuming Habits: Drugs in History and Anthropology* (London: Routledge, 1995).

⁴⁷ Alvaro Santos, 'International Law and its Discontents: Critical Reflections on the War on Drugs or the Role of Law in Creating Complexity', *American Society of International Law Proceedings* (2012), pp.172-176, p.174.

⁴⁸ Walter Benjamin, 'Critique of Violence', *Reflections: Essays, Aphorisms: Autobiographical Writings*, ed. P. Demetz (New York: 1978), pp.278-300.

physical force through the word of the law, there is a multiplicity of law's violence. Violence informs law's discourse as well as its actions, the way law uses languages and representational practices to silence perspectives, the way law denies alternatives of experience and the way law delimits legitimacy through its objectifying epistemology.⁴⁹ The violence of the drug war draws on these refined, discursive understandings of violence in addition to the singular impacting of force. While the violence of the drug war does often manifest as the material inflicting of force, this material violence must be examined as merely the superlative form of a preceding discursive violence. The two cannot be wholly decoupled: the material is, in itself, always already discursive. Discourse functions to reduce things beyond what they possibly could be, before it enacts force upon them.

In the Cali region of Colombia and other such front lines of the War on Drugs, the discourse that continues to inform the violence the history of colonialism. The imposition of Euro-modern worldview upon an arrogated universal reimaged the natural earth as resources to be exploited and consumed.⁵⁰ The reduction of the natural earth into commodities fueled the rise of capitalism. But it also fueled the re-sacralization of the plant-life that resisted the determinism of commodification, the plant-life that carried the prospect of consuming the human subject, rather than a vice versa. The socio-legal concept of 'drugs' emerged as a form of natural life that is distinct to the general category of 'nature' in that drugs were constructed not to function in as the typical passive 'matter' to be extracted but instead here was nature as an active operator impacting upon the world.

The dream of prohibiting the use and trade of such drugs does not emerge decoupled from the suppressed histories colonialist and racist violence that formed the basis for the relations of sociality in this region of the world. Colombia, like many other spaces in the Americas, carries within the contemporary cocaine trade echoes of the longer racialised history of slavery and gold production in Colombia.⁵¹ The mass shootings, forced crop eradication and aerial fumigation policies of Plan Colombia have particularly affected Afro-Colombian and indigenous communities, reinforcing the 'historic marginalisation' of these communities.⁵² The cleansing attached itself to those people already rendered impure by pre-existing ideas of the characterisation of human beings. The impetus to enforce law's order in remaking this space,

⁴⁹ Sarat, 'Situating Law', p.4.

⁵⁰ See Achille Mbembe, *Out of the Dark Night: Essays of Decolonisation* (New York: Colombia University Press 2019)

⁵¹ Michael Taussig, *My Cocaine Museum* (Chicago: University of Chicago Press, 2004).

⁵² See 'Peace, Drug Policy, and an Inclusive Society: Eleven Ways Colombian and FARC Negotiators can Reform Drug Policy and Build a Lasting Peace', *Washington Office on Latin America* (2013), p.4.

interweave the concept of drugs as commodities of transgression and race as a taxonomy of impurity to give the *limpieza* its essential cleansing quality.⁵³

The Pharmakon

By tracing the social function of the concept of drugs and marking its distance from the neutral and objective claims made in the prohibitionist legislation, we can begin to gain clearer understanding of the moral panic that these substances engender. Drugs are not seen as mere plant life in the manner that they appear in nature, nor are they seen as commodities, natural resources to be exploited for capitalist gain. Drugs are instead discursively produced as ‘transgressive substances’, elements of the natural world that are turned into a universal negation of ‘humanity’. As Desmond Manderson argues, the fear of drugs is not merely the fear of the substances themselves, rather ‘what lies beneath is undoubtedly a fear of contamination’, a fear of the failed state of humanity they are commonly read as bringing about.⁵⁴ Drugs are taken to facilitate movement between different states of being, transferring its consumers from the realm of the human to the non-human. The contemporary conceptualisation of drugs takes much from the classical notion of *pharmakon*, which Derrida recovers to describe the discursive process for how difference is produced. The *pharmakon* – which can be taken to be both remedy and poison- captures how an ambivalence through dichotomies can be constructed but it also facilitates ‘the movement and the play that links them [...] (soul/ body, good/evil, inside/ outside, memory/ forgetfulness, speech/ writing, etc.)’ threatening an notion of ‘internal purity and security.’⁵⁵ René Girard picks up Derrida’s interpretation of *pharmakon* and links its use to how sacrifice is used to produce and sustain a community, he reads *pharmakon* within the enacting of a ‘maleficent violence on a double, who is arbitrarily expelled from the philosophic community.’⁵⁶ It is important to acknowledge when exploring the discursive field unpinning ‘drugs’ the way in which classical philosophical concepts continue to inform modern juridical concepts such as ‘drugs’, only within the objective discourse of the law, this debt is both mystified and denied.

A key element to grasp in order to appreciate the fear that underwrites prohibition is to understand that prohibition sees a mimetic or contagious power within drugs. The collective

⁵³ See Kojo Koram (eds), *The War on Drugs and the Global Colour Line* (Pluto Press 2019)

⁵⁴ Desmond Manderson, ‘Possessed: Drug Policy, Witchcraft and Belief’, in *Cultural Studies*, 19, p.38.

⁵⁵ Jacques Derrida, ‘Plato’s Pharmacy’, *Dissemination* (Chicago: The University of Chicago Press, 1983), pp.61-172, pp.127-128

⁵⁶ René Girard, *Violence and the Sacred* (Baltimore and London: The Johns Hopkins University Press, 1977) p.296

fear that drugs might consume the subject that themselves sought to consume the drug is not only a fear of the damage drugs might cause to a specific consumer or even to those susceptible members of the community, the drug addict, the narco-trafficker etc. Rather the fear of these drugs is that they threaten the stability of the social order as a whole, functioning as what Stanley Cohen termed as the societal folk-devil, through their suspected ability to spread their affliction amongst the whole community.⁵⁷ David Couthwright states that ‘absent the idea of addiction, the whole system of controlling drug supply that has developed over the last two centuries would make little moral or practical sense.’⁵⁸ I would add to this that an understanding of the fear drug addiction causing, and importantly spreading, the denigration of an idealised figure of the human being is necessary for a theoretical appreciation of how the system of laws persisted despite the devastation it brought upon particular peoples. This fear underwrites the law’s turn towards prohibiting vegetation/plant-life through the drug war. Drugs become imbued with a sovereign power over human life, which Taussig captures with a description of how “death stalks these substances in equal measure to the way they enliven life, enchant and compel.”⁵⁹ Prohibition draws on the fear that drugs are able to drive human passions beyond the containment required for the fixing of a legal order. The correlative response to this fear is the aim of expelling these toxic substances from the collective social order, along with those who might be addicted or particular susceptible to addiction to such substances. This metaphysical quality read into drugs emphasises what is taken as being at stake in the project of drug prohibition, the very communality of the universal legal order as imagined.

Conclusion

The threat to upturn the communality of a global community, anchored on the historical foundations of euro-modernity, is what comprises the transgressive element of the drugs Taussig called ‘transgressive substances.’ The spectre of summoning the non-human that lurks within human society is what provides the phantom within these phantasmal commodities. Drugs carry a social life which, as Maziyar Ghiabi argues, places them within a global order that ‘confutes state talk and state imagination for it traces, not static images, but complex journeys that affect its ontologies on multiple levels: semantic; political and economic; and

⁵⁷ Stanley Cohen, *Folk Devils and Moral Panics* (London: Routledge, 2011).

⁵⁸ David T. Courtwright, ‘A Short History of Drug Policy or Why We Make War on Some Drugs but not on Others’, *LSE IDEAS!*, *Governing the Global Drug Wars* (October 2012), pp.17-24, p.18.

⁵⁹ Taussig, *My Cocaine Museum*, p.253.

bioethical.’⁶⁰ To that catalogue could be also be added the militaristic and the violent. The very speaking of the concept of ‘drugs’ can turn plant-life into phantoms that provoke the unleashing of both state and transnational forces of war. The journey of a coca leaf that takes it from a plant into a commodity into the harbinger of the transformation of community life passes through a daily litany of military checkpoints, police helicopters, midnight drugs rights and, every once in a while, the cacophony of machine gun fire. The social life of such plant-life is spread throughout the world by global supply chains. Intervening pathways of legality and illegality guide the movement of the materials in their raw form from the Andes of Colombia, Peru and Bolivia to the medical laboratories and street corners of the consumer markets in Europe and North America. The mechanisms of production that transform the raw coca plant into the processed commodity of cocaine are scattered at several locations along this journey. Within both the legitimate and clandestine manufacturing sites exist entire histories of geopolitical, economic and ontological struggles pulling the material of plant life in divergent directions. The strict segregation between pharmaceutical and the criminal that the law projects, between medicine and poison, between the saving of the body and the stealing of the soul, evaporates when tracing the travels of these ‘transgressive substances’ on the ground.

Over the past century, ever since the 1909 Shanghai Opium Commission, the discourse of the War on Drugs so captured the public imagination that not only do prohibitionists remain invested in the infallibility of law, the dissociation of the catastrophe from the actual law itself is also echoed by some critics of prohibition. Scholars or activists who seek to dismantle the foundations on the which the drug war is built may, like UN special rapporteur Philip Alston, describe prohibition as an ‘approach [that] might be tempting in theory but in practice is murderous and self-defeating.’⁶¹ This understanding, while challenging the efficacy of the drug war, misreads prohibition as a benevolent project, albeit one that, due to unforeseen complications, has created worse harms than those it initially aimed to address. Theoretically, while it recognises a problem, it reinforces the idea that problem is not one of law but of implementation – the failure is with the external reality of politics and economics that make the noble intentions of the law impossible.

This article has worked to reconcile that violence with the body of the law by unpacking how the juris-diction of the law speaks the very concept of drugs into being, while legislating

⁶⁰ Maziyar Ghiabi, ‘Ontological journeys: The lifeworld of opium across the Afghan-Iranian border in/out of the pharmacy’,

⁶¹ Philip Alston, ‘Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions – Mission to Brazil’, *Human Rights Council, Eleventh Session, A/HRC/11/2* (2008), p.13.

over it.⁶² The dream of prohibition has aimed for nothing short of the remaking of the ontology of the world. The law cast particular forms of natural life as the phantom that sits in negation to a universal humanity and then claimed upon itself the omnipotent power to expel the drugs from the order of being. This logic progressed as far as the United Nations General Assembly hosting a Special Session on Drugs in 1998 under the ambition of creating “*A Drug Free World*.”⁶³ The dream of total eradication is dependent upon the transgressive nature of drugs under this regime. This ambition emphasises the belief in the pre-eminent authority of the law. Its authors of international drug prohibition held that it was within the power of the law to remake the natural world conform to its word. The underlying belief of prohibition is that it is possible for the law to universally reduce and finally abolish the illegitimate production and use of substances drawn from naturally occurring plants such as cocaine, opium and cannabis.⁶⁴ This required the coding of drugs as transgressive substances, phantasmal commodities that carry within themselves the undoing of society. The tracing of the everyday journey of global commodities has been shown to provide a glimpse into the shaping of the modern world in a number of examples.⁶⁵ Drugs contain within themselves the same world-making histories that can be read in the turning of the sugar cane plant or the coffee leaf into a tradable goods to be sold across borders.⁶⁶ But what the histories of coca, opium or marijuana also open up is what Benjamin would describe as the phantasmagoria of such commodity fetishism, the ability for the products we consume to upturn our perceptions and experiences of everyday life. Following

⁶² For more on the concept of juris-diction and the relationship between the expression and the representation of law, see Edward Mussawir, *Jurisdiction in Deleuze: The Expression and Representation of Law* (London: Routledge 2011)

⁶³ United Nations press release GA/9411, Secretary-General Calls on All Nations To Say 'Yes' To Challenge Of Working Towards Drug-Free World 08/06/1998, Available at <https://www.un.org/press/en/1998/19980608.ga9411.html> (Accessed 09/12/2020)

⁶⁴ This overarching ambition of the international drug control system is clearly stated in the Transitional Reservations of Article 49 in *The Single Convention on Narcotic Drugs, 1961*. See Article 49, 2 (g): ‘The production and manufacture of and trade in the drugs referred to in paragraph 1 for any of the uses mentioned therein must be reduced and finally abolished simultaneously with the reduction and abolition of such uses.’ This ambition was further reaffirmed in the ‘UNODC Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem 2009’. See paragraph 2: ‘[We] Reaffirm also that the ultimate goal of both demand and supply reduction strategies and sustainable development strategies is to minimize and eventually eliminate the availability and use of illicit drugs and psychotropic substances in order to ensure the health and welfare of humankind.’

⁶⁵ For such study of commodities and world-making histories see Kwasi Kwarteng, *War and Gold: A Five-Hundred-Year History of Empires, Adventures and Debt* (London: Bloomsbury, 2014); Brian C. Black, *Crude Reality: Petroleum in World History* (New York: Rowman & Littlefield, 2012); or Anthony Wild, *Black Gold: The Dark History of Coffee* (London: Harper Collins, 2010).

⁶⁶ Michael Fakhri, *Sugar and the Making of International Trade Law* (New York: Cambridge University Press, 2014); or Michael Fakhri, ‘The Institutionalisation of Free Trade and Empire: A Study of the 1902 Brussels Convention’, *London Review of International Law*, 2, 1 (2014), pp.49–76 or Mark Pendergrast, *Uncommon Grounds: The History of Coffee and How It Transformed Our World* (New York: Basic Books 1999) or Anthony Wild, *Black Gold: The Dark History of Coffee* (London: Harper Collins, 2010).

Benjamin and Taussig, we come to suspect that only those who were attentive to the phantasmal nature of commodities, like proponent of opium use Charles Baudelaire, could adequately portray the experience of high capitalism.⁶⁷ To illustrate how ‘drugs’ do not exist in nature, but they are instead a concept discursively produced through the law’s (mis)relation with particular psychoactive substances, is to open up the field for how we imagine the social problems that are currently attributed to in the inherent corrosive force of drugs. Furthermore, prohibition not only produces these drugs as an existential threat to humanity, it then retrospectively projects this threat backwards throughout time immemorial in order to de-historicize our contemporary relationship to these drugs. An understanding of the different socio-cultural perceptions of drug use that have existed historically and globally helps to contextualize the current existential fear of drugs and provokes questioning about what underlies this fear.

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⁶⁷ For Benjamin’s celebration of Baudelaire see, Walter Benjamin, *Charles Baudelaire: A Lyric Poet in the Era of High Capitalism* (London: Verso 1997); for Baudelaire’s engagements with opium see Charles Baudelaire, *Artificial Paradises (Les Paradis Artificiels)*

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