

“The Law is too Grey”: Liminal Legality and Moral Injury in Encounters with Drug Law Enforcement

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journals.sagepub.com/home/sls**Liam Michaud** *York University, Canada***Emily van der Meulen***Toronto Metropolitan University, Canada***Sandra Ka Hon Chu and****Janet Butler-McPhee***HIV Legal Network, Canada*

Abstract

Overdose mortality and the legitimacy crisis facing policing have propelled momentum for drug law reform. Yet, resulting reforms and associated protections are often functionally undermined by enforcement practices and the legal environment faced by people who use drugs. To explore this tension, we conducted a community-based study in Ontario, Canada. Our findings show that people’s experiences of policing at overdose events reflect a legal regime characterized by their ambiguous legal status and uncertain protections. We argue that the resulting state of liminal legality is enacted in large part through police discretion and the uneven distribution of enforcement practices across spaces and populations; individuals compensate for this legal environment by mobilizing their knowledge of legal risks. Together, these expressions of law and drug enforcement generate substantial moral injury among people who use drugs.

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Jurisdictions around the world have witnessed increased public scrutiny of policing institutions alongside growing civil society advocacy to move away from punitive approaches to drug use. This momentum has been driven, in large part, by concern over devastating overdose mortality rates. Canada is among the countries in the midst of a long-standing and intensifying public health crisis, with 44,494 overdose deaths from toxicity in the unregulated drug supply between January 2016 and September 2023 (Health Canada, 2024). Over this time, it has implemented certain drug policy reforms, including the *Good Samaritan Drug Overdose Act*, which offers some legal protections to those who seek emergency medical services (EMS) when someone is overdosing. The law builds upon legal frameworks that limit liability for members of the public who provide assistance in emergency situations more generally. It was introduced federally in 2017 to address widespread reluctance to call EMS due to the threat of certain criminal charges, namely simple drug possession and breach of specific court conditions, which in turn contributed to overdose mortality (van der Meulen et al., 2021). Notably, however, the Good Samaritan overdose law does not prevent the laying of other criminal charges or arrest for outstanding warrants (Government of Canada, 2017).

In the years following its implementation, a series of other drug policy-related reforms were also launched nationally. For instance, in 2020, the Public Prosecution Service of Canada introduced guidelines that stipulate the prosecution of simple drug possession should be reserved “for the most serious manifestations of the offence” and that alternatives to prosecution “should be considered” (PPSC, 2020). Not long after, in 2022, the government passed Bill C-5 expanding the availability of conditional sentences and specifying that police officers are to “consider whether it would be preferable” to provide a warning or referral instead of laying a simple possession charge (Government of Canada, Bill C-5, section 10.2). Recent developments have additionally occurred at the provincial level; for example, a three-year pilot project in British Columbia provides an exemption under the federal *Controlled Drugs and Substances Act* decriminalizing possession of certain illegal drugs for personal use in quantities totaling 2.5 g or less.

While these changes may appear to suggest a progressive inflection point and move away from punitive governance of drug use, each has occurred within Canada’s broad legal regime of entrenched marginalization, racialized incarceration, and routine rights violations in the enforcement and prosecution of drug-related offences. Further, each reform falls dramatically short of the demands of prominent drug policy organizations, public health bodies, and people who use drugs (PWUDs) who call for full decriminalization on a national scale, including the decriminalization of “necessity” trafficking (HIV Legal Network and CDPC, 2021). Formal protections (e.g., due process) and rights (e.g., anti-discrimination laws) to which PWUD are entitled are functionally undermined by a range of legal mechanisms and police and prosecutorial discretion practices, which help to sustain the persistent gap between law on the books and law in action (Halpérin, 2011).

In the following, we focus our analysis on the province of Ontario, where roughly eight people die daily from a drug overdose (Health Canada, 2024). In so doing, we narrow in on the *Good Samaritan Drug Overdose Act* as a window to understanding contemporary shifts in law and the governance of drugs. Through an engagement with first-person accounts of PWUD, we argue that the law engenders a *liminal legality*—an ambiguous and uncertain space where legal protections are undermined or circumvented through a range of lawful and extralegal means. The limits of the law’s formal legal protections were frequently discussed by participants in our province-wide study, especially in relation to police discretion, spatial and temporal dynamics, and their risk knowledge practices. Our findings illustrate that limited legal protections interplay with routine harassment and extralegal police activities to constitute a liminal legal status for PWUD.

We next illuminate how the fallout of this legal status results in experiences of *moral injury*—a response to traumatic events that violate an individual’s moral compass or sense of justice, characterized by guilt, anger, and despair common in settings of militarism or warfare. Within Canada’s drug policy landscape, moral injury emerges from ethical conflicts, experiences of police targeting or abuse, and a disregard for human life and dignity on the part of authorities. Participants’ lived experiences provide a means for better understanding ethical conflicts at overdose events and rights violations or other abuses of authority experienced at the hands of police and other first responders. Taken together, our analysis of liminal legality and moral injury, which are distinctly under-addressed in socio-legal, criminological, and drug policy scholarship, surface insights relevant to other jurisdictions similarly engaged in efforts to remove criminal law from the governance and regulation of PWUD.

Methodological Approach and Participant Characteristics

As critical criminologists and legal and human rights advocates, our research prioritizes lived experience and local knowledge systems (Given, 2008), an approach that positions directly impacted people not only as relevant to policy inquiry and deliberation but as knowledge producers themselves (Fischer, 2015). In this way, we attempt to counteract some of the tendencies in governance and regulation studies to evacuate individuals’ daily realities (Chacón, 2014). Socio-legal studies and critical criminology have a long tradition of privileging local and experiential knowledge with respect to law (Feeley, 2007) in recognition that those subject to criminal legal governance have unique and highly relevant insights by virtue of their routine interactions with legal actors and settings. Our analysis also engages a legal realist approach attentive to the law in action, cognizant of the fact that a strictly legalist view of law and rights does not uncover the dynamics of violation of rights which are “pathologies of power” (Farmer and Gastineau, 2002: 656).

The study itself comprised a community-based approach (Dupont, 2008; Minkler and Wallerstein, 2008) insofar as it was led by the HIV Legal Network with support from the article’s second author at Toronto Metropolitan University, whose Research Ethics Board approved the study protocol. Following the HIV Legal Network’s mandate to uphold the rights of people living with HIV or AIDS and other populations disproportionately affected by HIV, punitive laws and policies, and criminalization, the objective of the

study was to learn from the lived experiences of PWUD across Ontario to better understand how the Good Samaritan law is working in practice. In particular, we set out to examine whether or not police and other first responders are abiding by its legal protections, and therefore reinforcing or undermining its intended aim of encouraging more bystanders to call 911 in the event of an overdose. Qualitative data collection occurred in 2019–2020 and consisted of six 2-hour in-person focus groups in Ontario's two largest southern and largest northern cities (Toronto, Ottawa, and Greater Sudbury; two groups per city). Frontline HIV, health, and harm reduction organizations in each location supported recruitment by distributing information about the study through their client networks, with some also hosting group sessions.

Eligibility limited participation to people who self-identified at the time of data collection as 18 years or older; uses drugs or has witnessed someone else use drugs; accesses harm reduction services (e.g., needle and syringe programs, supervised consumption services, opioid agonist therapy, etc.); has basic familiarity with the *Good Samaritan Drug Overdose Act*; and was available for a focus group in one of the above-named cities. A total of forty people participated in the sessions, receiving a meal, transit subsidy, and \$30 CAD honorarium. Of them, seven were between the ages of 18 and 34, 23 were between 35 and 54, and 10 were 55 or older. Twenty identified as women, 18 as men, and 2 as Two-Spirit. And twenty identified as white, 17 as Indigenous, and three as 'other.' Analysis of the verbatim transcripts followed a collaborative and grounded approach, beginning with a line-by-line review to uncover preliminary and emerging themes (see Phoenix et al., 2016; Sweeney et al., 2013). NVivo software was used by a Research Assistant for coding and to select relevant quotes, drawing from the identified thematic areas. The study team cross-checked for accuracy as necessary. (For additional methodological information, see Butler-McPhee et al., 2020; van der Meulen et al., 2021; van der Meulen and Chu, 2022).

Liminal Legality in Drug Law Enforcement

The concept of liminal legality has been used most widely by migration scholars to draw attention to the simultaneous positioning of migrant populations both inside and outside of law by virtue of their subjection to dual criminal and immigration systems (Chacón, 2014). The concept draws attention to the processes of relegation to spaces of "legal non-existence" (Coutin, 2005) largely absent of conventional safeguards and legal protections. Menjívar, for example, defines liminal legality as referring to the processes through which "law creates and recreates an excluded population and ensures its vulnerability and precariousness by blurring the boundaries of legality and illegality to create gray areas of incertitude" (2006: 1002), and in the process "exacerbates the effect of other systems of stratification, such as those based on social class, gender, and ethnicity" (1009). More recently, scholars have theorized liminal legality in relation to other communities experiencing marginalization, including those targeted by various modes of drug regulation (see e.g., Simpson et al., 2023; Taylor et al., 2018), and to understand emerging governance practices employed in policing (Chacón, 2014: 712).

One of the key features of liminal legality is the "uncertainty about the scope of reprieve" (Chacón, 2014: 711) from banishment or criminalization where "assurances

against full marginalization lack definitive temporal scope and are generally extended as privileges, not rights” (717). This conditional dispensing of privileges as opposed to an affirmation of entitlement to rights stems from a reliance on discretionary remit by legal actors. The uncertainty of reprieve is captured by the narratives of PWUD we recount below, who were unsure whether or not police would adhere to the protective provisions of the Good Samaritan law. This uncertainty is also reflected in the substantial discretionary purview of police and prosecutors in drug-related offenses.

Additionally, liminal legality functions through risk management strategies to govern the conduct of populations seen as posing a liability or risk, techniques that have been ascendant across the criminal legal system over the past quarter century as manifest through risk assessments and widespread community monitoring (Chacón, 2014: 763; see also Simon, 2005). Risk management strategies and the legal categories from which they arise generate a “stratified system of belonging” (Menjívar, 2006: 1006), reflecting the highly racialized nature of policing, and of drug enforcement in particular (Egwuonwu et al., 2022; Lynch et al., 2013).

For these reasons, liminal legality is a helpful framework for theorizing and appreciating the lived experience of drug law enforcement. It also allows us to better understand the limitations of the purported protections afforded by the Good Samaritan law. Indeed, the concept surfaces the specific legal mechanisms at play in experiences of law; it points to a more ambiguous legal positioning of PWUD as neither fully inside nor outside of legal protections; and it deepens a consideration of law in action beyond narrow notions of implementation challenges or institutional dysfunction, instead highlighting how law and legal governance functions through the creation and maintenance of liminal legal states. Or, in the words of one of the participants, “The law is too grey” (Sudbury 2). The remainder of this section takes up expressions of liminal legality in relation to police discretion, spatial and temporal dynamics of enforcement, and mobilizations of understandings of law through collective practices by PWUD that compensate for their liminal legal status and limited protections.

Experiences of Police Discretion

The exercise of discretion by police is at the heart of debates around legitimacy and authority of law, with questions of equity and legal protections or their denial at the core of these debates (Brown, 1981; Hawkins, 1992). Police discretion has been described as “the space between legal rules in which legal actors may exercise choice” (Hawkins, 1992: 11). Studies of officers and other “street-level bureaucrats” recognize these actors as engaged in the making of policy through everyday decision-making as opposed to merely enacting it (Lipsky, 2010). Some scholars have noted the higher level of police discretion in street-level crime governance, and that efforts to manage or curtail discretion are hampered by diffuse accountability mechanisms that lack accountability (Del Pozo et al., 2021; Williams, 1984). As one participant reflects: “They pick and choose who they’re going to enforce” (Sudbury 2).

Our analysis points to a range of discretionary police practices, including targeting, profiling, and selective enforcement on the basis of gender and race. This underscores Menjívar’s (2006) argument that liminal legality interplays with discretion to reinforce

existing systems of stratification. The liminal legal status in which PWUD are placed by the discretionary practices of law enforcement results in “communal rights degradations” (Chacón, 2014: 750). It is further reflective of racial disparities in drug charges generally, and drug trafficking charges specifically (Fumano, 2020; Wortley and Jung, 2020), in which decisions around charges and the uses of evidence are both racialized and gendered (O’Reilly et al., 2022). Participants disclosed:

“They treated people better if they’re white [...] Sometimes if you’re native, they just don’t give a shit” (Sudbury 1) and “as you present yourself as a stronger woman, that you know what you’re talking about, it makes it worse for you, unfortunately. There’s a stigma just around women in general” (Ottawa 2).

Women-identified participants in particular discussed gendered experiences of discretion insofar as it was wielded in relation to involuntary social service involvement and the associated mobilization of family law, saying: “They threaten to take your kids away” (Sudbury 1) and “They’re going to call this in [to child protective services] ... It’s always with threats: kids, house, everything. Jail” (Sudbury 1). Narratives such as these demonstrate dynamics of “adaptive criminalization” (Beckett and Murakawa, 2012) through the enlistment of non-criminal legal forms—a dynamic increasingly at play in the Canadian legal regime through reliance on administrative legal systems (e.g., municipal bylaws) to effectuate the legal governance of PWUD (MacDonell, 2023).

Another manifestation of police discretion recounted in the focus groups was the differentiation between simple possession, possession for the purposes of trafficking, and trafficking. Canada’s drug laws capture a broad range of activities including trading, sharing, and selling drugs for subsistence purposes, and accordingly encompasses many routine social practices among PWUD involved in procuring drugs (Michaud et al., 2023). Recognizing this complex social reality, certain countries, such as the United Kingdom and New Zealand, employ the concept of “social supply” in case law at the sentencing stage, to distinguish between large-scale drug trafficking and “non-commercial drug supplying, or sharing, among friends and acquaintances for little or no profit” (Ferencz, 2020: 198; see also Coomber and Moyle, 2014). Under Canadian law, the differentiation of simple possession from trafficking is based on circumstantial evidence rather than a specific quantity or amount alone, relying on substantial discretion on the part of law enforcement when making such determinations: “If you had a scale out, if you had dope out, they had your name, you’re grabbed, you’re gone. They’d call in for a search warrant and then they’d come back in” (Sudbury 1).

Since the only charges the Good Samaritan law provides protection against is simple possession, participants reported that police proactively seek to find a basis upon which to conduct warrant checks or to lay other charges, practices that arise from the treatment of an overdose event as crime scene (see e.g., Talati, 2023):

They came through the door, and we all had to show ID. [...] Then we exited the apartment into the hallway of the building and had to leave. The guys that were wanted on a warrant got grabbed. [...] He sat there with the radio calling all the names in. (Sudbury 1)

Yeah, and then they might search the grounds, might search your house or wherever you are. And out you on a charge for... "Oh, there's, like, crumbs," or "We found a package," or "There was stuff on her." [...] Who knows how they're going to turn it around! (Toronto 2)

As the above accounts express, drug paraphernalia and residue on drug equipment can be exploited as a legal pretext to detain, question, or search individuals (see also Burris et al., 2002). In this respect, overdose events are treated as spaces to gather intelligence and pursue additional investigations (Xavier et al., 2021). Such practices speak to the broader legal environment of drug enforcement in which up-charging and charge layering are commonplace (McCorkel, 2020: 82).

Relatedly, being charged for something other than simple possession, including manslaughter for having procured or shared drugs that led to overdose death, was a concern for participants in our study, as noted by these two: "If you were there at the scene, or perhaps even help this person inject this drug, you were culpable for manslaughter, if a person did die" (Ottawa 1) and "They took him down to the station, put him to the paces for nine hours. They wanted to charge him. Blamed him for her death" (Ottawa 1). The resulting legal ambiguity stemming from police discretion is characterized by scholars as a gray area "fraught with insecurity" (Greer et al., 2022: 6). Researchers evaluating drug law reforms thus caution against measures reliant on police and prosecutorial discretion that can sustain or expand exposure to criminalization (Logan, 2014), underscoring the shortcomings of immunity from simple possession alone.

Spatial and Temporal Dynamics of Enforcement

The uneven spatial distribution of legality is a recurring theme in socio-legal and criminological literature examining stratification and marginalization, including in relation to: the policing of unhoused communities and differential application of law based on housing status (Blomley, 2020); the use of red zoning to govern the movement of sex workers and PWUD (Sylvestre et al., 2020); the selective enforcement of public drug use prohibitions (Taylor et al., 2018); and racialized spatial segregation in drug enforcement (Lynch et al., 2013). In our study, participants' experiences of drug law enforcement draw attention to an additional expression of law's uneven spatial distribution—that of the vastly different experiences of law when an overdose event occurs within a public space versus within a private home:

If it happens in your own house, you ain't a Good Samaritan anymore. You're part of the problem. [...] It's not like you're walking down the street and somebody in the alleyway croaks and you're there. You're basically free of that issue. But if it happens in your own house and there's only two of you, they're going to want to go through everything that happened. What was said, what were you doing, what was she like when she walked in, what happened, re-enact it. (Toronto 2)

According to the participants, indoor venues provide police with greater opportunity to gather intelligence, interrogate those present, and carry out extralegal expressions of police authority free from the scrutiny of onlookers in public spaces. Overdoses occurring

in indoor settings also increased the likelihood of being regarded as culpable if you had witnessed or responded to the overdose, potentially leading to different legal outcomes.

Another spatial dimension of liminal legality noted in the focus groups was related to whether the location in which the overdose occurred was operated by a social housing provider. Some social housing buildings and service providers have informal or de facto arrangements with police (and at times formal ones) to create a place of relative refuge from criminalization for clients and residents (Watson et al., 2018). Yet, participants recounted the inadequacies of these agreements and policies:

The recovery home was supposed to be protected under law. The cops are not allowed to come in unless they're invited. It was an OD [overdose], and the cops barged in and came at us. Now, if it was under a different circumstance, like if it was outside of that place and somewhere else, I would have been ticked off. But even more so—it was our space... (Sudbury 2)

Other social housing services do not have policies providing sanctuary and are often characterized by very low thresholds for legal protection against police interrogation, detention, and surveillance, with some agencies actively facilitating law enforcement activity (Boyd et al., 2016; Fagan et al., 2012). In these instances, living in social housing, rooming houses, or shelters can create additional vulnerabilities to legal regulation:

People who live in rooming houses are subject to what are called “agency powers.” They can have very little rights, as far as search and entering on the premises, without proper warrants and stuff. It does create a system of fear, for people in those situations. (Ottawa 1)

The uneven spatial distribution of drug law enforcement underscores the ways in which the liminal legal status of PWUD is produced by an interplay of interrogation practices and assumptions of culpability differentiated by public versus private spaces, organizational policies that increase exposure to and encounters with law enforcement, and exceptions to rights entitlements based on poverty and social condition. In this respect, we can see how banishment and spatial exclusions commonly experienced by PWUD in interactions with police are made possible by the liminal legality that characterizes drug enforcement (Lininger, 2021). The liminal legal environment provides police with additional “tools” (Greer et al., 2022) to engage in intelligence gathering, or achieve compliance in effectuating public space management (Walby and Lippert, 2012).

In addition to the spatial dimensions of drug law, important temporal aspects also surfaced, in particular, participants' understanding of the Good Samaritan law as defined by ambiguity in its application, facilitating broader surveillance:

Because the area with the law is too grey. Say they [police] come into my house, and you know I got a shitload of coke on the table. They say, “Oh, okay, well, we're saving a life here,” and they piss off. Who's to say they're not going to come back in two or three hours and do a bust, right? (Sudbury 2)

It [the overdose] gave them reasonable doubt to come back. (Sudbury 1).

They're not actually arresting people, but they know there's some chopping [dealing] going on in this place, if there's drug use. They'll show up fucking two days later and hassle you. (Ottawa 2)

Indeed, these experiences underscore how the liminal legal status occupied by PWUD is substantially shaped by spatial and temporal elements of enforcement that either functionally remove certain rights entitlements (e.g. variations in the legal environment depending on housing type), or temporal dynamics that render individuals exposed for future targeting.

Legal Consciousness and the Mobilization of Legal Risk Knowledge Practices

While there is notable ambiguity regarding the scope of the Good Samaritan law and the reach of police powers, PWUD are acutely aware of their exposure to criminalization (van der Meulen and Chu, 2022). Scholarship on legal consciousness has drawn attention to the understandings and meanings of law circulating in social relations, how these understandings are embedded in daily life, and how they shape, enable, or constrain both individual and collective actions (Ewick and Silbey, 1998). Sarat describes experiences of law by low-income and poor communities as defined by the pervasiveness of legal rules and uncertainty regarding their application (2017: 362). Criminological and drug policy scholarship has explored how PWUD understand themselves in relation to law, and has emphasized, broadly speaking, overexposure to criminal charges, inadequate rights protections, targeting and social profiling, and severely constrained access to justice (Greer et al., 2022; Michaud et al., 2023). Others have elaborated on these themes, showing how knowledges of legal risks combine expert and everyday knowledges (Valverde et al., 2005). Such “hybrid risk knowledge practices” encompass how individuals view themselves in relation to the law, as well as perceptions of how the law works resulting in the modification of social and collective action (Sterling and van der Meulen, 2018). The mobilization of knowledge about law include important insights into the mechanisms that determine how people “are rendered vulnerable by law” (Chacón, 2014: 730). PWUD mobilize these understandings of law to inform collective and social action to compensate for their liminal legality and mitigate potential harms (Farcy and Smit, 2020). Such social practices encompass both adaptive strategies to resist criminalization as well as arduous choices motivated by self-preservation.

The decision to remain anonymous in interactions with 911 dispatch, as well as with EMS and police (if possible), was one of the most frequently mentioned ways in which legal risk knowledge practices were expressed: “But still, I was very frightened, because I knew I was going to be treated like a criminal whenever the cops came on the scene, and that’s why I chose to be anonymous” (Ottawa 1). Removing potentially incriminating evidence that might be seized upon to lay criminal charges other than simple possession was another way: “If it’s in somebody’s place, and they’re calling [911], like, wait 45 min while I clean my place and then call?” (Ottawa 2). Yet another means through which individuals employed legal risk knowledge practices was the adoption of the role of EMS workers, wherein participants themselves provided overdose response support and sought to develop their own expertise regarding overdose reversal in order to avoid

having to call emergency services, given that police continue to be dispatched to overdose events in most cases: “I would give them naloxone, if I felt it was needed. And then I’d give them the recommended, like CPR” (Toronto 2), and “The only reason why I say I wouldn’t call [911] is because I’ve brought, like, 10 people back without an ambulance” (Sudbury 1).

At times, the decision regarding which of the overdose witnesses takes on the role of overdose response is triaged based on relative legal exposure and vulnerability to criminalization:

It was a little over a month and a half ago. There was probably about eight or nine people. And people were all getting stopped—“Oh, I have warrants!”, “Oh, I have all of this, blah blah.” [I said,] “everybody, you guys can all go. Don’t worry about it. I’m here, I’m medically trained. I’m have my CPR, first aid, all this. I’m good to stay, don’t worry about it.” (Ottawa 2)

Based on a recognition among PWUD of the spatial dimensions of drug law enforcement examined above, some of the participants discussed moving the person experiencing overdose to a public or semi-public space which would not carry the same legal implications for those present, saying, for example: “I’ve had two addicts tell me that they were scared when the person overdosed, they actually dragged the body” (Toronto 2). Such strategies based on legal risk knowledge practices illustrate the range of social-spatial actions employed by PWUD (Collins et al., 2019) to counteract the legal environment and account for the harms related to their liminal legal status.

Others recalled how distressing encounters with law enforcement at previous overdose events resulted in them making the difficult choice to use drugs alone: “I already have one scary experience ... I’d rather be alone, you know, because of that one experience that I had. I’d rather just not have to answer too much, or, you know, to anything else” (Toronto 2). This provides a further demonstration of the ways that drug law enforcement can exacerbate overdose mortality (Lowder et al., 2022; Ray et al., 2023), and underscores how efforts to minimize legal risk can intensify fatalities among PWUD.

The mobilization of legal risk knowledges to compensate for one’s liminal legal status and avoid criminalization is reflective of the choices constrained by Canada’s drug law and enforcement regime. However, as the following section will show, constrained decision-making can involve substantial ethical conflicts, contributing to experiences of moral injury among PWUD contending with the enmeshed crises of escalating overdose mortality, unrelenting drug law enforcement, and the inadequacies of governmental and institutional reforms.

Moral Injury Among People Who Use Drugs

Moral injury as a concept is employed primarily in psychology, social work, medical ethics, and philosophy, and is often referenced in mental health treatment settings of combat veterans to describe psychological harms experienced in contexts of militarism or mass atrocity. It differs from experiences of trauma and post-traumatic stress disorder in that it arises from the transgression of one’s personally held ethics and sense of justice

by way of “traumatic events that violate [one’s] moral values” (Griffin et al., 2019: 350). In other words, moral injury is generated by a “mismatch between the individual’s core moral beliefs and the event” (Haight et al., 2016: 191). Recent scholarly work has called for the extension of the concept of moral injury to include those who interact or are in contact with “morally complex environments” such as “child protection, substance abuse treatment programs, mental health centers, schools, hospitals, homeless shelters, and jails” (Haight et al., 2016: 191). Over the past decade or so, notions of moral injury have indeed been applied to a range of groups subjected to forms of state and institutional violence such as refugees and survivors of war (Koenig and Al Zaben, 2021), as well as to parents with child protection service involvement (Griffin et al., 2019).

The fact that the concept of moral injury emerged from, and has now expanded beyond, experiences of militarism make it especially well-suited for an examination of PWUD encounters with law enforcement in the context of the “war on drugs” and the growing militarization and racialization of drug policing (Khenti, 2014; Maynard, 2020). While traumatic experience more generally is common from repeatedly witnessing and attending to overdoses (Kolla and Strike, 2019; Kolla et al., 2024), and from the ever-presence of death within one’s intimate social worlds (Schlosser and Hoffer, 2022), the accounts presented here make visible the extent that moral injury surfaces significantly from the liminal legal status of PWUD. As expressed by one of the participants: “My husband died. I watched him die” (Toronto 1). These kinds of injurious events can layer and exacerbate psychological harms resulting from interactions with police, which have been increasingly recognized in relation to broader public health impacts, particularly for racialized peoples (Alang et al., 2017). More specifically, moral injury can manifest in feelings of anger, guilt, despair, ambivalence, betrayal, and self-blame, all of which are reflected in the accounts of participants below.

Ethical Conflicts at Overdose Events

Canada’s Good Samaritan law stops short of ending police attendance at overdoses altogether or extending full amnesty from arrest and prosecution among those present (van der Meulen and Chu, 2022; Xavier et al., 2022). This legal context, in conjunction with uncertainty regarding whether its limited protections will be adhered to by law enforcement, means that calling 911 remains a major ethical dilemma for many:

So that’s a hurting call right there. Then you’ve got to deal with your emotions. Then you start thinking, are they going to charge me? Am I involved, you see what I’m saying? You’re thinking, “that person is dead.” Are you going to get committed? Are you responsible? Are you going to get a charge? ... You’re the one with the mouth, you’re the one with the words of what happened, you’re the only thing left. [...] You have to relive her last 20–30 min, 15 min. And that’s a tough call! (Toronto 2)

I’ve lost some really good friends because of that shit, man. They overdosed and they didn’t have no need to die just because we couldn’t call 911. (Sudbury 1)

Overwhelmingly, however, the most significant ethical conflict that arose in the focus groups relates to a necessary decision following a call to 911. That is, to stay with the person experiencing overdose with the knowledge that police are likely to arrive, and thus risk arrest or criminal charges, or to leave the scene in order to protect yourself from encountering law enforcement. In other words, “You got to weigh the balance: Do you stay or do you go?” (Ottawa 2).

Some participants who recounted staying on site were unambivalent in their decision: “I couldn’t live with it. If they died ... I couldn’t live with that. I couldn’t live with myself” (Ottawa 2). Those who reported remaining to ensure that adequate medical response was provided often did so at great personal expense despite extant protections. One participant recalled being interrogated by police while providing assistance to their friend: “I’m still, you know, trying to revive him ... and [the police] got right in there, taking over, you know. It was fucking disturbing! I’m in tears, and I’m ready to just fucking ... you know what I mean?” (Ottawa 2). Such experiences of anger and betrayal were often accompanied by feelings of guilt and self-blame:

I felt like ... it’s over, man. When they say that person’s gone, they’re dead. At that point, the bells start ringing. You know, “Why did I let her in? Why did it go so far? What’s going to happen to me now?” I got three cops around me, two detectives are coming. After that, the coroner and their team. I mean, you’ve got a whole episode in front of you. Hey, now you’re taking on a court case. (Toronto 2)

Those who described leaving also did so at great personal expense, discussing emotional conflicts related to uncertainty of whether the person would live or receive sufficient emergency medical attention: “We were so worried that the cops are going to search us because he’s OD’ing that we couldn’t stick around. Which really makes me feel bad because he was a friend. And he lived, he was fine” (Ottawa 2).

For others, their decision to leave the scene of the overdose after calling 911 was motivated by a recognition of their own vulnerability due to having open warrants or to their drug trade involvement:

I had an incident where a friend of mine OD’d. My brother and I were there, and he was turning purple. We tried to do resuscitation. It didn’t help any. So we called 911 right away. But we’re both walking drug stores. We had serious amounts of drugs on us. So we had to leave. (Ottawa 2)

Experiences such as these show the extent to which many PWUD are exposed to criminalization by virtue of their engagement in activities constituting drug trafficking, including activities motivated by subsistence or the provision of a social supply, adding an additional factor in ethical conflicts regarding staying or leaving. This dynamic is reflective of the bifurcation embedded in the Good Samaritan law between drug *users* regarded as non-culpable, and those involved in drug *distribution* as culpable. Such a framing fails to recognize that a majority of people involved in street-level drug selling are themselves PWUD, and neither does it account for the broad scope of Canadian drug trafficking laws,

which renders illegal many of the routine practices involved in drug procurement (such as trading, sharing, and co-purchasing) (Ferencz, 2020).

The above accounts illustrate the ambivalence, anger, and betrayal characteristic of moral injury, owing to the legal gray areas generated by the Good Samaritan law, its uneven application, and the broad discretion afforded to law enforcement actors. Indeed, feelings of traumatic loss, grief, and mourning among PWUD are exacerbated by encounters with criminal legal actors, the threat of charges, and possible incarceration preventing one from attending funerals or memorials (Schlosser and Hoffer, 2022). Participants' experiences underscore how the negotiation of moral codes and traumatic loss are inscribed within a legal regime characterized by moral injury and how PWUD experiences with law enforcement are defined by designations of blameworthiness and the presumption of culpability. This contributes to feelings of personal responsibility and remorse for many. It also adds to a sense of resignation or fatalism—symptoms characteristic of moral injury (Griffin et al., 2019)—in response to the perceived inevitability of otherwise preventable death, and the constraints placed on the ability to protect life by the legal environment.

Rights Violations and Abuse of Authority

Moral injury found further expression in relation to participants' experiences of rights violations and abuse of authority in routine drug enforcement, highlighting again that it “stem[s] from a betrayal of justice by a person of authority in a high-stakes situation” (Griffin et al., 2019: 350; see also Shay, 2014). These experiences of moral injury are embedded within a legal consciousness that appeals to a “sense of morality beyond or external to state law” (Halliday and Morgan, 2013: 17).

Alongside the scholarship on policing that emphasizes excessive use of force, a growing body of work is starting to focus on forms of attritional and “slow” violence, including dehumanization, noting that these are a defining feature of police-citizen interactions (Moffette and Bruckert, 2023). In our study, participants experienced both, with each generating distinct expressions of moral injury. That is, participants shared numerous stories of technically legal but dehumanizing police practices as well as experiences of significant police abuse of authority and extralegal actions that violated their rights.

Many described police action at overdose events as an extension of the harassment and routine, yet legally permissible, abuses faced in daily encounters with law enforcement (e.g., when an officer claims cause for questioning or detention):

They see you and they start jabbing you up for no reason. Every time they see you, they're bugging you. They're throwing you in cuffs. They're throwing you in the car for an hour. They're going to take their time. They're going to rough you up. They're going to empty your pockets, take whatever they like. (Ottawa 2).

Oftentimes, this harassment took the form of pressuring or coercing PWUD to divulge personal or other information, thereby contributing to participants' understanding of the practices that functionally disentitle them to Good Samaritan protection: “We don't have to give them our names and stuff, but then they pressure people into giving them

their names” (Sudbury 1). And when PWUD do assert their rights or express their knowledge of the law it can result in reprisals and an escalation of police tactics:

Even when you suggest to the police that you know the Good Samaritan law, and you know, “Back off, you can’t ask me these questions, there’s a Good Samaritan law that exempts me from that.” The cops go, “Oh, no, I don’t think so! I don’t care! I’ll fucking handcuff ya! I’ll come and see you!” Out come the handcuffs. (Ottawa 2)

In addition to routine, sanctioned experiences of harassment and reprisal, research participants recounted that police refusal to adhere to law was a defining feature of enforcement at overdose events, saying: “What they need to do, what they [police] feel they have the right to do, they do. Whether they can or can’t, whether they’re allowed to or not. It doesn’t matter” (Ottawa 2). Failure to uphold the protections of the Good Samaritan law was regarded as a layering of extralegal police refusal to adhere to other areas of drug law enforcement: “They were taking [injection] equipment off of you, breaking it on the street there right in front of you and everything. Defying the local mandates of the politicians and the health department and everything” (Ottawa 1). As other studies have demonstrated (Beckett, 2016; Collins et al., 2019; Lininger, 2021), confiscation of drug use supplies can similarly lead to widespread feelings of resignation, lack of protection, and vulnerability—elements characteristic of moral injury in the context of rights violations (Koenig and Al Zaben, 2021).

Participants recounted that forms of slow and routine violence were often accompanied by more spectacular forms of institutional violence:

[The police] pull them over and assault them and fucking fracture and break their fucking arms. Then bring them to the hospital ... But they’re treated like a fucking criminal, even at the hospital. And they’re not even giving treatment ... even after the assault happens. It’s like ... it’s just horrible. (Sudbury 2)

Exposure to these expressions of abuse of authority intersected with the ambiguous role of healthcare actors in processes of criminalization, and doubt regarding the ability of public health institutions to provide meaningful refuge from criminal legal enforcement. As a participant questioned: “Are you safe when you call EMS? You’re bringing yourself into the picture [...] They’re all connected. EMS won’t charge you, but EMS will bring the cops, bring the firemen” (Toronto 2). Others similarly critiqued how institutions responsible for the delivery of healthcare, while purportedly driven by medico-therapeutic aims, facilitated exposure to harmful interactions with law enforcement and thus failed to provide meaningful refuge:

I actually got charged when I was having an overdose. As soon as I was finished overdosing, I’m in the hospital bed at the [name of hospital]. I’m still in the fucking bed. The cop walks up to me and puts a cuff on me. And because, yeah, I’m still barely coming to after Narcan ... So I had no idea what the fuck was going on. I came to and realized the cop was following the ambulance. (Ottawa 2)

These passages underscore the ways in which morally injurious experiences in relation to rights violations and abuse of authority manifested in frustration, anger, and resignation, while also illustrating how the interface between health and criminal legal institutions can further contribute to moral injury. As an experience generated by the legal environment, moral injury can involve feelings of betrayal at what is regarded as the abdication on the part of healthcare actors of their responsibility to safeguard PWUD and provide necessary care.

Conclusion

Our focus groups with PWUD reveal that their experiences of drug law enforcement reflect a broader regime characterized by an ambiguous legal status and uncertain protections. This state of liminal legality functions in large part through police discretion and the uneven spatial distribution of law and enforcement practice. People who use drugs mobilize their knowledge and understandings of law and their legal risks by forging social practices to mitigate exposure to criminalization and to compensate for their liminal legal status. This status stems from the uncertain protections of Canada's Good Samaritan overdose law and the broader legal regime of drug enforcement, resulting in injurious ethical conflicts and making possible both routine and more spectacular forms of violence. In this sense, moral injury is a function of liminal legality, arising from constrained choices at overdose events as well as the interplay of routine abuse and rights violations by police and feelings of betrayal and violation at the disregard for life and human dignity by authorities, both legal and medical. In the time that has unfolded since conducting the focus groups, increased volatility in the unregulated drug supply exacerbated by the COVID-19 pandemic (Health Canada, 2024) has accentuated many of the dynamics raised here, including an increased emphasis on enforcement on identifying the source of drugs and pressing criminal charges in relation to overdose events (van der Meulen and Chu, 2022).

The interplay of law enforcement practices and insights into Canada's drug enforcement regime, as described in the accounts of study participants, contributes to the understandings of the law in action and the inadequacies of existing legal protections for PWUD. Our analysis in this regard surfaces two key theoretical and conceptual considerations relevant for those working on issues of drug law reform and the criminal legal governance of marginalized communities. First, we draw attention to the generative potential of liminal legality as a concept in understanding proposed reforms that sustain criminal legal governance and limit the reach of substantive legal protections. This concept highlights that the gap between law on the books and law in action is not primarily the product of implementation challenges or institutional dysfunction, but rather that the law functions *through* the creation of liminal legal states. Second, we emphasize that scholarship attuned to lived experience is key to uncovering the specific legal mechanisms that render entitlement to rights conditional, circumvent existing legal protections, and undermine the purported goals of drug policy reforms. Such a focus on the insights gained by experiential knowledge of law, and the legal risk knowledge practices among communities governed through criminal legal systems, attends to the

limitations of strictly legalist tendencies of drug policy advocacy. It can also orient scholars to the “hazards associated with illusory policy reform” (Wheeldon and Heidt, 2022: 1) and foster the conditions necessary for moral repair.

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