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Quasilegality: Khat, Cannabis and Africa's Drug Laws

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Abstract

This article explores the concept of 'quasilegality' in relation to two of Africa's drug crops: khat and cannabis. It argues that the concept is useful in understanding the two substances and their ambiguous relation to the statute books: khat being of varied and ever-changing legal status yet often treated with suspicion even where legal, while cannabis is illegal everywhere in Africa yet often seems *de facto* legal. The article argues that such quasilegality is socially significant and productive, raising the value of such crops for farmers and traders, but also allowing states to police or not police these substances as their interests and instincts dictate. It also argues that there is no clear link between the law on the statute book and the actual harm potential of these substances. Finally, it suggests that the concept has much wider use beyond these case-studies of drugs in Africa in a world where global consensus on drug policy is cracking, and where many other objects of trade and activities find themselves in the blurred territory of the quasilegal.

Key words: Quasilegality, drug law, drug policy, crime, Africa, khat, cannabis

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Introduction

Anti-drug law has been a powerful force for more than 100 years, colonising statute books around the world. A complicated assemblage of good intentions, genuine concern, more dubious intentions and vested interests has brought many substances into the orbit of international and national legal frameworks, and continues to do so. There has been an almost inevitable pattern: if something gets classed as a drug, then soon enough the law will attempt to colonise it, generally through prohibition. Such a pattern has perhaps reached its heights in the UK, where recently an expansive ban on anything 'capable of producing a psychoactive effect in a person who consumes it' (aside from the socially sanctioned exceptions such as alcohol, tobacco, caffeine) has been introduced in an attempt to counter what had been termed 'legal highs'.[1]

This global force has encountered much friction, using the terminology of Anna Tsing in describing how universalizing forces and grounded particularities meet in creative tension, often generating new social forms in the process.[2] In the case of global drug law, the apparently universal logic of the 'war on drugs' forms and unravels through interactions with particular locales or people. Such friction often results in traction, as pre-existing concerns about particular substances – or political motives only distantly related to drug eradication – make such logic attractive, while allowing repressive drug policy purchase. Sometimes this collision leads to excessively enthusiastic embrace of the 'war on drugs' as the recent extrajudicial killings in the Philippines make clear.[3] Yet, despite this traction, to state an obvious point, prohibition by law has proven no straightforward recipe for eradication. Indeed, even the strongest states lack capacity to enforce these laws effectively, while policing flows of smuggled commodities in a world built on global trade is incredibly difficult.[4]

Friction encountered by drug law can also generate resistance and certain substances are hard to definitively depict as legal or illegal. While law-makers might try and fix their status under the law - and consequently fix their moral status as 'bad' - such substances refuse to comply, or only comply partially. These substances take on a 'quasilegal' quality where moral and legal ambiguity surround them. This paper explores the quasilegality of two substances in particular in relation to Africa: khat and cannabis. Their quasilegality differs – khat varies greatly in its relation to the statute books (being legal in Kenya and Ethiopia, but illegal in Tanzania and now much of the west), but is often tainted with illegality even when it is legal; cannabis, meanwhile, is universally illegal *de jure* in Africa, though often appears *de facto* legal.

Despite these differences, both show the social importance of quasilegality – legal ambiguity matters: it can be socially and politically useful; it can be fraught with danger, yet also opportunity, for producers, traders and consumers; it can be something to resist, as some

try and make the substance in question unambiguously illegal, others unambiguously legal. The quasilegality of these substances also raises critical questions about the future of drug law in Africa and beyond as the friction it encounters becomes ever more disruptive to the intention of bringing about a drug free world.

This paper examines the quasilegality of khat and cannabis in turn, before demonstrating the political, economic and social salience of their legally ambiguous status in Africa. In the final section, the paper connects its case studies to the current flux in global drug laws where 'quasilegality' is becoming the norm in a number of ways. First, however, we look in more detail at the term 'quasilegality' and its ability to capture a key aspect of not just drugs like khat and cannabis, but other commodities, activities and even people whose relationship to the state and law is ambiguous.

Quasilegality

'Quasilegal' is a term with resonance in a number of fields, from the study of law and the state to the study of drugs and other such goods. The prefix 'quasi' adds the idea of ambiguity to the term 'legal' through its meaning of 'as if', 'almost' or 'seemingly'. Quasilegal can refer to procedures and rules within an organisation that are not supported directly by state law, but resemble them in form, while also referring to what might elsewhere be termed 'paralegal'. Oren Perez links the quasilegal to 'fuzzy law', 'soft law' that lies between the 'poles of lawlessness and complete legality'.[5] Such a definition is useful for our purposes, linking the term as it does to spaces where state law is often rivalled by 'semi-autonomous social fields' in the words of Sally Falk Moore, spaces that the substances we examine travel through while often regulated by relationships of trust more than legal contract.[6]

The term also hints at the vagueness of the law and its flexibility. In this regard it links to debates in criminology regarding the concept of 'discretion', where there is much leeway in the interpretation and application of legal statutes.[7] Again this leeway is often influenced more by social relationships than by reference to the law. The law is an imprecise tool, so in using discretion as to whether to charge someone with an offence or whether to apply a more or less lenient penalty, those who apply the law enter into an ambiguous - quasilegal - realm. The law and its vagueness is also capable of being corrupted by its protagonists, where discretion becomes a tool for indiscretion and discrimination.[8]

However, there is a small literature that has taken up the term in relation to the status of psychoactive substances. It refers to substances that are generally legal such as alcohol and tobacco, but whose trade and usage can become illegal, for example, where smuggled to evade tax, or where consumed by minors or after licensing hours.[9] But it is in regard to one of the very substances we shall explore that the term quasilegal has become most associated: khat. In a contribution to Appadurai's seminal 1986 volume *The Social Life of Things: Commodities in Cultural Perspective*, Lee Cassanelli wrote about khat within

northeast Africa, its commodity chains, and its varying legal status. He argued that khat's quasilegality meant that it 'hovered on that indistinct boundary between legality and illegality' and lack of social consensus about its status made it 'susceptible to manipulation for political ends'.[10] As a substance with ambiguous harm potential - capable of being defined as either relatively harmful or relatively harmless - and one not under international control, its political economy spurred producer countries to defend its legality (though there are anti-khat voices within these producer countries too), and consumer countries (who benefit less economically from its trade) to outlaw it. This meant that in some jurisdictions khat was legal and in others khat was illegal.

Cassanelli's analysis of khat has had influence in wider conceptions of illicit flows through the work of van Schendel and Abraham.[11] They build on Cassanelli to argue that 'what determines legality and illegality at different points of the commodity chain is the particular regulatory scale an object finds itself in'.[12] These scales are not just those of the state, but include transnational and social regulatory scales. This approach is encapsulated by their distinction between the *il/legal* and the *il/licit*: il/legal referring to how states define these substances and il/licit referring to how societies view the substances as legitimate or otherwise items of trade and consumption. They argue that 'students of illicit practices need to begin by discarding the assumption that there is a clear line between illicitness and the laws of states'.[13] Thus, some substances or activities are socially viewed as licit even though by law they are illegal, and vice versa. Quasilegal can help capture this ambiguity, and help break glib assumptions that legality maps cleanly onto the values of wider society.

Our focus is on 'quasilegality' as a quality that comes to coalesce in particular things, people or activities. Coming to possess such a quality certainly relies on the varying forms of social and legal regulatory relationships that van Schendel and Abraham focus upon, but is something that can adhere to a substance through its associations, and something that can be hard to shift however much resistance there may be to these associations. By focusing on quasilegality in this way, we suggest that legal ambiguity is not just something that emerges in specific regulatory regimes, but can be relevant even in contexts where it is either definitively legal or definitively illegal (as well as definitively licit or illicit). In a sense, in quasilegality, the precise wording of the statute books is only secondary - what matters is how these substances are treated by those tasked with upholding the law, and by wider society. And far from simply being a mismatch between the law and its application, quasilegality has important implications, as we suggest through a case study of one quasilegal substance that is often legal but treated as illicit - khat - and another that is always officially illegal, yet treated as licit - cannabis.

Khat

Khat is the archetypal quasilegal substance, thanks to Cassanelli's 1986 analysis. It consists of the stimulant stems and leaves of the shrub *Catha edulis* (Forsk.) which is found from the Middle East down to the Eastern Cape, and is now cultivated intensively in Yemen, Ethiopia,

Kenya, Uganda and Northern Madagascar, and consumed in that region, as well as globally through the region's diasporas. In Kenya the substance is more commonly known as *miraa*. The actual harvested commodity varies in what is considered edible: in Yemen, Ethiopia and Madagascar often just the leaves and tender stem tips are chewed, whereas in Kenya small leaves and bark of stems are chewed. Chemical analysis of khat has revealed several alkaloids, the most potent being *cathinone*, which acts in a similar manner to amphetamine.[14] Generally, chewing khat renders one alert and acts as a euphoriant, making it popular in recreational and work contexts. A crucial factor is its perishability:[15] *Cathinone* rapidly degrades into a weaker alkaloid post-harvest, and once khat dries it loses potency and value (though there is a growing international trade in dried khat). Wherever it is used, therefore, consumers usually want it as fresh as possible.

Chewing khat is associated with some adverse health consequences, though the scale of these is disputed and the evidence ambiguous.[16] The most serious health concerns include a link between heavy consumption and cardiac problems, especially when chronic consumption is combined with other cardiovascular risk factors,[17] and an association with liver damage is supported by a small number of cases in the UK.[18] Khat is also said to be the cause of a number of social harms: it is linked with family breakups, as chewers – generally, but by no means exclusively, male – reportedly spend much time away from the home; and it is often cited as a cause of unemployment, as khat is associated with idleness. Income diversion is also seen as a major problem in countries such as Djibouti where a large proportion of household income is spent on khat. What evidence there is in respect to social harms suggests demonising khat as their source is simplistic, falling into the trap of 'pharmacological determinism', where all agency is given to the substance rather than the wider social context.[19]

Whether khat is a relatively harmless mild stimulant or an addictive curse on society is fervently debated, yet it is unrealistic to expect any conclusive assessment, as with most such substances, however mild – ambiguity reigns.[20] There are 'problem users' who chew at the expense of food (khat – like other stimulants – reduces appetite) and sleep, making it hard for them to hold down work; however, evidence suggests that many chew more moderately and with relatively few ill effects.[21] More positively, some point to its link to cultural identity and its role in bringing people together in peaceful gatherings where amity is generated and advice proffered. Going even further, some have even described khat as playing a contributory role in uniting people in the context of Somaliland's post-war path to peace.[22]

It is important to describe these debates about khat and its potential for medical or social harm or benefits, as its ambiguities in these regards matter for how states treat it under the law. As Cassanelli emphasized,[23] these ambiguities mean that policy makers have been able to argue both for banning it and not banning it, depending on their instincts or interests at any one time, ambiguity that has helped generate an extremely varied international legal

situation: although khat is not under international control, it has come to be prohibited in numerous countries throughout the world, but remains legal in others. The colonial government of Kenya attempted to prohibit it through what was known as the 'khat ordinance'.[24] This law was crippled from the start by khat's ambiguities. Debates raged among colonial officers about its addictiveness or otherwise (and which substance to best compare it to – opium, gin or tobacco), while a racialised view emerged of khat harming pastoralists such as the Somali, while being innocuous for agriculturalists such as the Meru of central Kenya who were and still are the main cultivators of the crop in Kenya. These ambiguities led to fuzzy and unworkable law: the trade of the substance was prohibited in the north while Meru cultivation and consumption was protected as a cultural right. Bans imposed in the postcolonial era, including in Somalia (which banned it in the 1980s), also failed through lack of legitimacy, ever-increasing demand, and inability to police multiplying smuggling routes.[25]

Since Cassanelli's writing on khat, it has become yet more ambiguous legally. Khat went global in the 1990s and 2000s with the spread of the Somali diaspora and consequent demand for the crop in places like Minneapolis, encountering more illegality as several Western countries had banned it not so much because of its alleged harms, but because its individual compounds *cathinone* and *cathine* were scheduled internationally in 1988.[26] This scheduling applied only to the isolated compounds, and was not intended to subject khat itself to international control. Nevertheless, scheduling led to Sweden and Norway prohibiting the substance itself in 1989; the USA scheduled cathine (1988) and cathinone (1993), the Drug Enforcement Administration taking this scheduling to imply that khat itself is scheduled when it contains these substances. Canada scheduled the plant itself in 1997, while a number of other European countries soon also banned the substance.[27] However, khat's exact legal status and penalties for those caught with it in these territories is far from clear, especially in the US. There, defence lawyers often use the argument that fair warning of khat's illegality has not been provided as khat itself is not listed as a scheduled substance under Federal Law, or that defendants are unaware that khat contains cathinone and therefore do not understand its status.

The UK has been the most recent country to ban the substance, in 2014, after a long review process in which the chief body advising the government on drug policy - The Advisory Council on the Misuse of Drugs - recommended it not be banned, but the government, under pressure from UK-based Somali anti-khat activists and other European countries whose illegal khat imports were routed through the UK, banned it anyway.[28] Indeed, for the Conservative Home Secretary of the time – Theresa May – banning khat was a 'win-win' political move, appearing 'tough on drugs' yet sympathetic to the plight of an ethnic minority. Khat became a 'Class C' substance, a relatively low classification, but one that stopped the legal import of over 56 tonnes of khat that had been coming from Kenya and Ethiopia. There have since been seizures, although how actively policed the substance is remains in doubt as khat is unlikely to be high up the list of priorities for overstretched

police forces. Obtaining khat is still reckoned reasonably straightforward, as some of Carrier's informants have confirmed, and a variety of dried khat called *graba* appears increasingly popular, being easier to smuggle, and said to remain potent once rehydrated. While a standard retail bundle of khat sold for £3 in the UK when legal, now such a bundle retails from £15-45, reflecting how risk has affected pricing.

Thus, while its legal status still varies greatly, if anything khat is moving towards the more illegal side of the spectrum, certainly in the West. Yet in most producer countries back in Africa it remains *de jure* legal, although it is often treated as illegal. For example, its production has risen in recent decades in Uganda and Madagascar, where it is technically legal, yet there are continual rumours that the substance is banned or about to be banned such is its conflation with other drugs, and various local by-laws add further ambiguity as Beckerleg relates in regard to Uganda.[29] Indeed, as Beckerleg suggests for Uganda, there is often much conflation of khat and other drugs, including cannabis, that further muddy the waters concerning the legality of the substance.[30]

However, in one jurisdiction at least the situation appears to be clarifying: Kenya. The crop was long subject to ambiguity in Kenya as the government kept aloof from either encouraging or discouraging its production fearing international disapproval, and in Carrier's early research on the substance in the early 2000s, there was sufficient ambiguity about the substance for security officers to once threaten him with arrest in the hope of a bribe when they spotted him carrying some: they felt the substance sufficiently 'quasilegal' that a foreigner would believe them that it was in fact illegal. However, the recent ban in the UK has ironically made the substance if not 'respectable', then at least more unambiguously legal. This is because the Kenyan state came out in support of the crop under pressure from Meru growers and traders, now a powerful voting bloc since the introduction of devolution in 2013. Khat has been designated an official cash crop - something Meru have campaigned for decades - while a task force has been established to see how its farmers can further benefit from the crop and be protected from the negative effects of the ban in the UK.[31] Now also in the new era of Kenyan devolved politics, appealing to the important voting bloc of Meru County relies on politicians embracing khat: thus, the likes of Raila Odinga and William Ruto indulge in a little khat chewing at campaign rallies in the county. This would have been unthinkable in previous times. Thus, paradoxically, the UK ban on khat has meant that in Kenya khat is less quasilegal than it used to be.

Cannabis

Our other case study, *Cannabis sativa*, needs little introduction as a substance, though it is important to emphasise that, like khat, there is much ambiguity when it comes to its harmfulness or otherwise: medical opinion throughout history has been polarized,[32] and remains so today, especially in regard to mental health.[33] Like khat, this also allows rhetorically-strong arguments to be made for either restricting or liberalizing its markets.

While not indigenous to Africa, cannabis has a long history on the continent, as cannabis traces on Ethiopian pottery from the fourteenth century reveal and research in southern Africa suggests cannabis was used well before 1500.[34] It was no doubt introduced through the Indian Ocean trade networks and Arabs who settled on the eastern African coast, from there percolating southwards and westwards. In Madagascar, its consumption is known from the mid-seventeenth century,[35] while in Central Africa, cannabis was integrated into a charismatic movement known as the *Bene Diamba* ('children of hemp' – *diamba* being a variant of a common term for cannabis), whose ceremonies suffused with cannabis smoke were bemusedly recorded by nineteenth century explorers.[36]

Throughout the region, cannabis was not just used for its intoxicating properties, but also as a medicine, and many traditional healers – such as the *sangoma* of southern Africa – still use all parts of the plant to cure various ailments. It was commonly reported in the literature of explorers that cannabis was smoked by warriors before raids, although its use by praise singers and by people requiring deep thought to solve problems was also reported.[37] Despite the imposition of legal restrictions on cannabis production and consumption in Africa over the course of the twentieth century, it is as ubiquitous as ever and offers many farmers a livelihood.

In the course of the 1950s cannabis use also expanded in West Africa, where it has a much shorter history than on the rest of the continent, having been re-introduced by soldiers returning from South Asia after the Second World War. While initially associated with urban deviance, cannabis use and cultivation expanded to rural areas and other less marginal strata of society, such as students, and by the end of the 1970s, cannabis had established itself as the favourite illegal drug across West Africa. In Nigeria - one of the latecomers to cannabis - the substance had entered the cultural mainstream by the 1980s, being used by a variety of social groups and in diverse social settings, such as motor parks, university campuses and in bars and being promoted - much to the dislike of military governments - by one of the country's musical giants, Fela Kuti.[38] In many places like Nigeria, cannabis kept its deviant reputation to some extent but also came to be a symbol of resistance to the state, not least in Fela's music.

Today, cannabis is by far the most widely consumed and traded substance deemed illegal by the state in Africa. The UNODC in its most recent large-scale study on cannabis on the continent estimates that there were 38.2 million cannabis users in 2005, 7.7 percent of the 15-64 aged population.[39] A 1999 UN report on drugs in Africa that surveyed 10 countries found cannabis sold much cheaper than bottled beer, making it highly accessible.[40] Large quantities are seized – especially in South Africa and Nigeria – as international concern has meant that cannabis consumers and farmers have been the easiest targets for drug enforcers, although supply appears unaffected.[41]

Social perceptions of cannabis and its potential harms in Africa are as polarised as those in the west between those who see it as a 'hard drug' strongly linked to 'madness', and those

who extol its virtues as a 'herb'. In Ghana, Henry Bernstein reports of young consumers who eloquently defend cannabis as 'life-enhancing: good for ailments (asthma, appetite loss), reading, contemplation and sense of self – and sexual potency'.[42] These same consumers are very much influenced in their perceptions of cannabis by reggae culture and Rastafarianism, which is a major factor throughout the continent.[43]

Opposing views emanate from more 'respectable' segments of society. Doctors and in particular psychiatrists were the first to write about the dangers of cannabis use in the 1950s and its impact on mental and social health, at times borrowing from western models and debates on addiction and substance abuse. Interestingly, the foremost medical experts on substance use on the continent had and still have an ambiguous idea of cannabis's harm potential.[44] While medical experts rarely simply condemned cannabis and its users, medical statements were nonetheless interpreted in a more negative light in the media and in government circles. For instance, while psychiatrists in Nigeria started to explore the mental health implications of cannabis in a relatively balanced and critical way, their concerns were often sensationalised in the media. Military governments since the 1960s knowingly ignored medical advice and instead initiated the most attention-generating and punitive legal and policy responses.[45]

Cannabis use is also strongly opposed by various religious groupings, such as pentecostal Christian denominations, which also run some of the most well-funded drug treatment centres on the continent.[46] Even in contexts where cannabis has been smoked for centuries, its use by younger generations is frowned upon, and the common discourse that substance use has degenerated as a result of the loss of power by African elders can be heard, as reported by the 1999 UN report from Mozambique.[47]

Legally, cannabis should be much less ambiguous a substance than khat, as it is universally controlled under unified global drug conventions, while its prohibition is decreed by statute in all African countries, and has been in some countries for over a century. In most countries, legislation was introduced alongside that against opium following the 1925 International Opium Convention (that also was concerned with cocaine and cannabis). These colonial ordinances were often based on imperial templates and responded to international treaties rather than to concerns about consumption within particular colonies.[48]

South Africa is somewhat distinct in this respect, as concern over the consumption of 'dagga' (one of the local names for cannabis) has different historical roots. Already in the 1880s, use of dagga among workers in the Natal Colony became an important part of a government inquiry on Indian indentured labourers. In subsequent decades South Africa became one of the leading proponents internationally to promote the prohibition of cannabis and its recognition as an internationally illegal drug in the 1920s. At the time, South African government concerns about dagga were intrinsically linked to racialized ideas about the control of labour and productivity on farms and mines.[49] This was quite different

from most other parts of the continent, where there was little to no state concern about the substance until the 1950s.

Despite its overwhelming illegality since the 1920s, cannabis was increasingly commoditised, becoming deeply embedded in rural economies, for example in Lesotho where Laniel and Bloomer analysed its rise in rural significance in compensation for decreasing opportunities for migrant labour in South Africa.[50] In other countries too its importance was tied to the economic uncertainties of the neoliberal economic reforms and their often devastating effects on livelihoods.[51] In Nigeria as well as in other parts of West Africa, the rise of cannabis was linked to the decline in cocoa cultivation and first appeared as a means to compensate or diversify agricultural production.[52] In recent decades, it has become a key produce of an area that used to be called Nigeria's 'cocoa belt' and in many ways it is now more than a 'compensation crop'.[53]

In a context where cannabis plays such an important role in rural and urban economies, there are often few attempts made to enforce cannabis' *de jure* illegality. Nigeria's war on drugs since the 1990s is somewhat exceptional in this respect, although also its impact on the trade was at most marginal.[54] In countries especially reliant on the crop for rural economies, it is more or less *de facto* legal. For example, in Lesotho and Malawi state enforcement is minimal, a state policy characterised by neglect. Of course, this neglect also comes about as few states have the capacity to police cannabis cultivation and trade effectively.[55]

Furthermore, as a ubiquitous crop and item of consumption associated with medicine and tradition, as well as with popular figures like Fela Kuti, cannabis law meets much resistance on the continent as elsewhere in the world. Of course, there are local cultures of condemnation too, especially when the use of cannabis is linked to deviant and at times violent groups, such as insurgents in the Niger Delta, or when cannabis is debated in the context of mental health by doctors. These condemning discourses on cannabis in the media, state and medical circles, as well as in the general public have given cannabis law and its enforcement some traction, as was the case in the Nigerian drug war in the 1990s.

But like khat, cannabis is a substance that for many in Africa has a social, economic and cultural legitimacy, and attempts to definitively fix it as 'bad' have often failed, especially if the main promoter of its illegality is a state that lacks legitimacy.[56] Cannabis may be illegal, but for many in Africa, as elsewhere, it is far from universally condemned. In this context where some see it as a legitimate source of livelihood and relief, it is cannabis law that can seem illegitimate.

The social salience of quasilegality

Does this quasilegality matter? After all, these two substances flow fairly freely in much of Africa and beyond despite what the statute books say: drug law is not only hard to police,

especially for resource-poor states, it is also impossible to translate abstract law into definitive consensus about the production, trade and consumption of such substances. However, drug law still hangs over them, and their quasilegal and morally ambiguous statuses are socially and economically consequential in several respects.

While the trade and production of these commodities have expanded impressively, mostly without state input, quasilegality of course prevents governments from supporting these commodities in a way they can with other drug crops such as tea or tobacco. This situation has now somewhat changed in regard to khat in Kenya, but generally speaking producers of such crops have no legal support from the state. Meanwhile, underneath quasilegality, illegality often lies dormant and latent. For cannabis, its latent illegality can spring up to bite those who grow or trade such goods. For example, cannabis farmers and traders in Africa are often easy targets for law enforcers wanting to boost seizure statistics. Quasilegality cannot prevent many in Kenya, Nigeria and elsewhere from being charged and imprisoned for cannabis crimes.[57] These decisions are often made quite arbitrarily by the state and its police officers. Usually it is the small-scale producer and user who carries the can: as elsewhere, drug law disproportionately affects the poorest.

Quasilegality can also be useful for actors including the state. The state can be lenient in its implementation at times, or even become complicit in the trade, while it can be tough on these substances when politically convenient, for instance when increasing drug seizures will gain an African government western support, as was the case during Nigeria's war on drugs at the end of the 1990s.[58] As already alluded to by Cassanelli, lack of consensus about a substance's status makes it 'susceptible to manipulation for political ends'.[59] This is not only the case between states on the international level but also within states. Within the context of quasilegality, the implementation of drug law has often served as a means to extend state control, especially by expanding repressive law enforcement - often with donor-funded equipment.[60]

Meanwhile, for consumers and producers quasilegality is also useful in a number of ways, principally through enhancing economic and cultural value. In the case of cannabis, something freely sold in much of Africa and easy to grow, much of its economic value derives from illegality and the risk premium this adds to its sale price.[61] Quasilegality also gives the likes of khat a value boost, as its reputation as something not 'respectable' in wider society can earn it 'respect' among sub-cultures. In this way, khat becomes more 'cool' and more in demand as a commodity, especially among the young.[62] Cannabis too gains great appeal as its consumption is associated with defiance and counter-culture and the likes of famous smokers including Fela Kuti and Bob Marley.

In another geographical context, there are benefits to quasilegality, as Polson makes clear in relation to cannabis cultivation in California.[63] There cannabis' increasing legality for medicinal usage means it is far more tolerated as a 'licit' though not 'legal' crop, although producers can still be arrested and charged, making it still a risky occupation that attracts a

premium. However, there are deep inequalities in who reaps rewards from this quasilegality, as it is those most able to distance themselves legally from the crop who benefit the most: Polson highlights how landowners who can distance themselves from what tenants were growing are those who benefit the most. Regarding cannabis in Africa, we see the same happening, with growers of cannabis being the easiest targets for law enforcers, yet also the ones benefitting the least from its trade.

However, growers in California value cannabis' licit yet illegal status as this can protect them from 'the predations of the regulated, competitive market'.[64] For farmers in Africa and other parts of the developing world too, the ability of drug crops to insulate them from predatory states is a key part of their appeal, and in the case of khat in Kenya there are those who warn farmers to beware their longed-for government input, as with this might come less benevolent state attention including increased taxes. Indeed, khat and cannabis in much of Africa appear to offer producers and traders the benefits of a middle-ground between full licitness and legality and competition from corporate capitalism, and definitive illegality and the repressive consequences of consensus over their illicitness. Of course, this is a precarious middle-ground.

Importantly, quasilegality also spurs campaigns to more definitively fix these substances as legal or illegal. For example, khat producers in Kenya have long campaigned to validate their commodity globally as a legal stimulant – not just to boost trade, but also out of pride in their khat heritage; on the other hand Somalis campaigned to have it made illegal in Britain not just out of concern for social harms, but also because they reckoned a ban would give them validation from the UK government as a community to be treated seriously. Furthermore, in the latter case, we can see how illegality elsewhere in the world fed the notion among campaigners that khat must be harmful: why would it be illegal elsewhere, if not?[65] Here we see an instance of how drug law can help form public opinion. Meanwhile, in relation to cannabis there are numerous 'free the weed' campaigns in Africa, especially in South Africa, but also in Kenya, where recently a Member of Parliament - Ken Okoth - called for the substance to be legalised so farmers could profit from it as an export crop.[66]

In this way, quasilegality can be generative of social movements that seek to dispel this very quasilegality. Like the war on drugs and its universalizing policy, legalization and decriminalisation campaigns can be global and transnational in scale, and can also generate either traction or resistance in local contexts. As the next section discusses, in our current era such campaigns are apparently gaining traction.

Cracks in the system

Thus, the quasilegality of these substances and others like them matters. In this regard, quasilegality is becoming more common for drugs around the world as the global logic of the drug war both loses and gains traction depending on the substance and the jurisdiction. The experiments of Uruguay, Colorado and Washington in regard to cannabis legalisation

suggest a loss of traction of the global drug policy regime, as do increasingly vocal international initiatives pushing for drug law reform. There was much optimism that the United Nations General Assembly Special Session (UNGASS) on global drug policy in April 2016 would culminate in concrete change.[67] This session was pushed through by countries in the global south that have long suffered through more repressive drug policy, especially in Latin America where drug control has long been militarized.[68] However, the end result was disappointing for reformers, as more reactionary forces were able to promote hardly revolutionary recommendations.[69] Thus, the drug war is fighting back. Nonetheless, there are strong arguments that we are witnessing the fracturing of the international consensus on drug law that has been in place since the 1920s, particularly on such substances as cannabis.[70]

While repressive measures against drugs continue, and the recent horrors perpetrated in the Philippines show how anti-drug law remains a popular means of social control for autocratic leaders such as Duterte, perhaps the general tenor is towards more liberal policy. In Europe, Portugal is held as a case study of effective decriminalisation - another form of quasilegality. In the UK, a number of police forces have over the last few years retreated from active policing of small amounts of cannabis possession:[71] cannabis has thus become more quasilegal there too. In South America, coca also finds itself increasingly quasilegal as global anti-drug initiatives lose traction in a local context where many validate the crop and its consumption culturally and many depend on it economically.[72]

Yet the drug war has perhaps gained traction in regard to khat, as witnessed by its increasing illegality in the west. While cannabis moves away from illegality, the arguably less harmful khat is pulled more towards it, and the story of other substances – including synthetic legal-highs and increasingly tobacco – suggest there remains a powerful impetus towards restrictive drug law. Of course, the situation is more nuanced than this suggests, as we have also seen khat becoming more licit in Kenya itself, and less quasilegal.

However, in regard to our two case-study substances, perhaps a wider generalization can be made, in that khat has become illegal in western countries where it is used principally by minority populations,[73] while cannabis's illegality is ever more questioned as its use is so well ingrained into wider western society. As ever, there are far more powerful forces at work in the shaping of drug policy than simple evaluations of harmfulness or harmlessness. Some of these forces are economic in nature, and other states around the world will be monitoring the results of cannabis legalization in places like Colorado and the apparent economic boosts to legal businesses and states that can come from such policy.[74]

Thus, global drug policy is itself increasingly ambiguous, and how this will play out in the African context remains to be seen. There is talk of legalising medical marijuana in Rwanda and the South African parliament has recently considered a similar proposal.[75] A less repressive drug policy is being seriously considered by the West Africa Commission on Drugs, although some countries remain wedded to harsher policies. There are of course

many voices in Africa as elsewhere urging that rather than making drugs like khat and cannabis more unambiguously legal, they should be made more unambiguously illegal.

So despite growing cracks in the landscape and logic of global drug policy, cannabis and khat are likely to remain decidedly ambiguous and quasilegal for the foreseeable future, on the African as well as the international level. Their quasilegality helps to understand the traction that drug laws and drugs more generally have in political and popular debates on the continent, as elsewhere – debates that are not simply about the pharmacological effects or the medical and social harms of psychoactive substances, but about their broader roles in helping to define inter-generational conflicts, the labeling of migrant communities or as a way to debate such contested ideas as development or national identity.[76]

As a concept, quasilegality is compelling as it captures the fluidity of the evolution, status and perceptions of these substances over time, helping to explore the extensive hidden spaces between the legal and illegal, where much drug-related activity and debate takes place. Yet it is also has strong potential as a concept in analyzing other areas of policy and law making characterised by ambiguity and fluidity. These include other aspects of society where the law attempts to stamp out things and activities deemed illegal yet regarded by many as 'licit', from sex work and migration to so-called 'radicalization'. It is in this ambiguous space of the quasilegal where the law sometimes gains traction, but is ever susceptible to wider social values and desires.

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1. UK Psychoactive Substances Act 2016.
2. Tsing, *Friction: An Ethnography of Global Connection*.
3. For example, see *The Guardian, "Duterte vows to continue war on drugs."*
4. Nadelmann, "Global Prohibition Regimes."
5. Perez, "Fuzzy Law."
6. Moore, "Law and Social Change."
7. Gelsthorpe and Padfield, *Exercising Discretion*.
8. Ibid.
9. Okwumabua and Duryea, "Age of onset, periods of risk."
10. Cassanelli, "Qat," 254.
11. Van Schendel and Abraham, *Illicit Flows and Criminal Things.*
12. Ibid. 17.
13. Ibid. 7.
14. Zaghloul, Abdalla, El-Gammal and Moselhy, "The Consequences of Khat Use," 80.
15. See Carrier, "The need for speed."
16. Thomas and Williams, "Khat (*Catha edulis*): A systematic review."
17. Graziani, Milella and Nencini, "Khat Chewing from the Pharmacological Perspective," 772-3.
18. Chapman, "Severe, Acute Liver Injury and Khat Leaves."
19. Anderson and Carrier, *Khat: Social Harms*.
20. See also, Hansen, "The ambiguity of khat."
21. Anderson and Carrier, Khat: *Social Harms*.
22. Hansen, *Governing Khat.*
23. Cassanelli, "Qat."
24. Anderson and Carrier "Khat in colonial Kenya."
25. Ibid. 250. Khat is also illegal in Tanzania and Eritrea, although the reasons for these bans are unresearched.
26. Anderson and Carrier, *Khat: Social Harms*, 21ff.
27. Anderson and Carrier, *Khat: Social Harms*, 22-23.

28. Klein, "The khat ban in the UK," 6-8.
29. Beckerleg, *Ethnic Identity and Development.*
30. Ibid. 169-171.
31. Carrier, "Khat and its changing politics".
32. Mills, *Cannabis Britannica.*
33. See, for example, the 2007 special issue of *The Lancet* on cannabis and mental health: "Editorial: Rehashing the evidence on psychosis and cannabis."
34. Du Toit, "Dagga*."*
35. Ibid., 84.
36. Fabian, "*Out of Our Minds*."
37. Du Toit, "Dagga," 96-7.
38. Klein, "Nigeria and the Drugs War," 60.
39. UNODC, *Cannabis in Africa,* 15.
40. UNDCP, *Drugs Nexus in Africa*.
41. Leggett, *Rainbow Vice*, 37; Klantschnig, "The politics of drug control in Nigeria."
42. Bernstein, "Ghana's Drug Economy", 18.
43. Savishinsky, "The Baye Faal of Senegambia," 212.
44. Lambo, "Medical and Social Problems of Drug Addiction." Also see the work on cannabis by academics affiliated to Africa's major drug policy pressure group CRISA and its *African Journal of Drug and Alcohol Studies* for diverse medical views on the substance.
45. Klantschnig, "Histories of Cannabis Use and Control in Nigeria."
46. Adelekan and Morakinyo, *Rapid Assessment of the Treatment and Rehabilitation Facilities*.
47. UNDCP, *Drugs Nexus in Africa,* 40.
48. Klantschnig, "Histories of Cannabis Use."
49. Government of the Colony of Natal, "*Wragg Commission;"* Crampton, *Dagga*.
50. Laniel, "Cannabis in Lesotho;" Bloomer, "Using a political ecology framework."
51. Carrier and Klantschnig, "Illicit livelihoods."
52. Klantschnig, *Crime Drugs and the State*.
53. Laudati, "Out of the Shadows."
54. NDLEA, *Annual Report 2008*.
55. Carrier and Klantschnig, *Africa and the War on Drugs*, 106-129.
56. Ibid., chapter four.
57. NDLEA, *Annual Report 2008.*
58. Obot, "Assessing Nigeria's Drug Control Policy."
59. Cassanelli, *Qat*, 254.
60. Carrier and Klantschnig, *Africa and the War on Drugs.*
61. Carrier and Klantschnig, *Africa and the War on Drugs,* 117.
62. Carrier 2005.
63. Polson, "Land and law in Marijuana County."
64. Ibid. 226.
65. Although as discussed above, khat's path to illegality throughout the world was not a straightforward equation of harm generating law.
66. Ane-Loglo, *Decriminalising Drug Use; Nairobi News*, "Why this MP wants bhang legalized"
67. See UNGASS website.
68. On the push for new policy in Latin America, see, for example, article in *The Guardian, "*Leaked paper reveals UN split over war on drugs."
69. For a critical report on UNGASS 2016, see report by the International Drug Policy Consortium: IDPC, *Leaked paper reveals UN split over war on drugs*.
70. Bewley-Taylor, *International Drug Control*.
71. See article *The Guardian*, "Durham police stop targeting pot smokers."
72. *BBC News*, "Bolivia's Morales boosts legal coca production."
73. Carrier, "Strange Drug in a Strange Land."
74. For example, on cannabis and tourist revenue in Colorado, see Kang, O'Leary and Miller, 'From Forbidden Fruit."
75. *BBC News*, "Afrique du Sud: 'légaliser le cannabis.'"
76. Carrier and Klantschnig, "Illicit livelihoods."

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