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# **THE SEMIOTICS OF THE TITLE: A COMPARATIVE AND HISTORICAL ANALYSIS OF DRUG LEGISLATION**

Desmond Manderson

## **INTRODUCTION**

**B**ehind the variable minutiae of offences and penalties controlling the use of illicit drugs (such as the opiates, cocaine, and marijuana) around the world, there is a remarkable sameness of character and ferocity. In the Philippines and Jamaica, in Malaysia and Singapore, and in some of the United States, drug trafficking may be punishable by death. In the several States of Australia, the trafficking of a "commercial quantity" of a drug may typically lead to a penalty of 25 years' imprisonment and in addition a fine of up to \$250,000. In some jurisdictions the guilty are liable to \$500,000 fines and to life imprisonment.<sup>1</sup> In Canada likewise, and in the United Kingdom, trafficking in a narcotic drug or even possession for that purpose are punishable by life imprisonment. As Robert Solomon and S.J. Usprich have argued in the Canadian context, the Narcotic Control Act (Can.) and its many analogues are extraordinary, not simply due to the severity of particular provisions but because so many exceptional devices are therein harnessed together. Other laws also provide for harsh penalties; for mandatory sentencing; for a reverse onus of proof, requiring defendants to prove their innocence; for expanded police powers of search and seizure: but only in 'drug' laws do all these measures coalesce.<sup>2</sup> The result is that modern drug laws around the world are a collection of extravagances, an expression of fury in legislative form.

Despite this consistency, across jurisdictions and over time,<sup>3</sup> it is important to recognize that the reasons for the enactment of drug legislation have not, of course, remained static. At different times, vastly different purposes and priorities have led to similarly oppressive laws. It is not the

reasons given for drug laws, or the beliefs of the evil or harm which 'drugs' are said to cause, which have remained constant for over a century; far from it. Rather, it is simply the consistent ferocity of the social response. An awareness of this truth — that drug laws around the world and over time have shared not a certain logic, misguided perhaps but nevertheless amenable to reason, but instead a visceral hatred expressed in legislative form — will lead us in the right direction: towards addressing the emotions and symbolism which drug use conjures up in the community, and not the transient reasons advanced for its suppression.

To pursue this point — to demonstrate more fully how the focus and values of drug legislation have changed markedly over time even as the fierceness of legislative response has found parallels around the world — I develop an argument in comparative history, focusing on drug laws enacted in Australia, Canada, the United Kingdom and, to some extent, the U.S.A.. First, I highlight how the style of drug laws has changed over time. Second, and in greater depth, I draw attention to the way in which the focus of drug laws and the reasons for their enactment have also varied dramatically.

I tell a story, then, about the development of drug legislation around the world. But this narrative does not proceed by means of a traditional historical analysis. Rather, my argument takes a semiotic approach to the question, focusing on the connotations and implications of particular key words in the history of drug laws, words which recur time and time again in a variety of jurisdictions at a specific historical moment. What are the key words in the changing rhetoric of drug laws, I ask, and what did they symbolize? It is the marshalling of this semiotic technique which provides my argument with much of its interest and novelty.

Semiotics means different things to different people. At times it is undoubtedly true that the field of legal semiotics has been overtaken by a systematizing impulse in which the scientific aspirations of semiotics have held sway. Bernard Jackson, for example, attempts the complex task of the categorization of legal tropes, defining with considerable precision and care a structure of signification and the ways in which law uses language. The same can be said of some of the works of Roberta Kevelson who has attempted to apply to legal materials the difficult semiotic theories of Charles Peirce, with their complex arrangement of orders and classes of signs.<sup>4</sup> Nevertheless, this treats the law as an interior monologue: linguistic signs confront linguistic signs and explain themselves by themselves. As Peirce insisted, this semiosis — a process by which signs refer to other signs — is "unlimited". Likewise according to Umberto Eco, "Semiosis explains itself by itself ... This continual circularity is the normal condition of signification", the construction of a self-referential "rhizome-like labyrinth"<sup>5</sup> Certainly, absent a phenomenological understanding, all meaning is given to

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us through signs which point to a reality not immediately present. But here there is a different kind of circularity at work, characteristic of legal formalism. In this kind of semiotics, law is not treated as referring to a wider social symbolism, or as a creator or mediator of those symbols, but rather as a system of signs and of language use internal to itself.<sup>6</sup>

But elsewhere, a broader approach to the inter-relationship of law and semiotics has been taken. Notwithstanding her own predilection for a Peircean framework, the three volumes of *Law and Semiotics* edited by Kevelson showcase a remarkable eclecticism of approach and mien. The articles collected therein explore not only the symbolic referents of words to words, but everything from the function of the design of shopping malls to the architecture of the courts.<sup>7</sup> The signs which laws express are here clearly not merely treated as abstract signifiers of norms and values, but of a more labyrinthine interaction between popular, social, and legal symbols.

In a number of valuable books and articles Peter Goodrich, in particular, has explored the ways in which the calculated illogicality of legal forms such as the writ and subpoena, and the arcane formulæ of legal language in general, possess a structural meaning beyond that of the words they use. Taking a semiotic approach to the languages of law, he sees symbolic communication not only in what is said, but in the kind of things that are said, and in the manner of their saying.<sup>8</sup> On this analysis, it is the feel and look of the legal words, and books, and forms, which has symbolic import. Semiotics is here a species of aesthetics. Indeed the two undoubtedly have much in common. Without the ability to recognize that our understanding of a word (of a law) extends, far beyond its literal meaning, to a whole realm of subtle connotations, we could not go beyond a rational and instrumentalist account of law; and without the appreciation that words and acts do not — cannot — simply ‘stand for themselves’ but rather symbolize other things, themselves signs of other things in a vast chain of cultural associations and resonances, we could not begin to appreciate how a legal text can have a visual, metaphorical, emotional significance. Thus both this kind of semiotics and aesthetics emphasize the pervasive influence of symbolism over every aspect of our lives, and demonstrates an appreciation of the subtle intricacies of linguistic connotation in the formation of that symbolism.

Adopting this flexible semiotic methodology, I therefore focus on the meaning and implications of key words in the history of international drug regulation. Distinct patterns of constancy and change emerge, illustrating the kind of insight that a semiotic approach provides through its sensitivity to linguistic subtlety. We find important aspects of the history of drug laws encapsulated in a few words and placed into sharp focus. And what this linguistic archaeology reveals is that drug laws, understood as a consistent international phenomenon, have varied over time in their rationale, their

concerns, and their style. Through a semiotic analysis, sensitive to the sound and character of the language used in drug laws, we can clearly appreciate both its coherence across jurisdictional space as well as its evanescence over time.

Moreover, as I have noted, the anger these laws express has remained remarkably constant. Difference beneath sameness, then, and sameness beneath difference. Given these two points, I suggest that we need to look elsewhere to explain this coherence of temper – to our aesthetic reactions to the drugs themselves, perhaps, and to the emotion which drug use generates. Not as a product of reason but of feeling, therefore, have drug laws been born and grown; not in response to the voice of the mind but of the senses have they shown themselves so impervious to reform.

### **THE SOUND AND WEIGHT OF DRUG LAWS**

Since the first laws prohibited the possession of ‘opium suitable for smoking’ around the turn of the century — in parts of the United States and in Australia first, then in Canada and later still in the United Kingdom<sup>9</sup> — the style and detail of these laws have undergone considerable change. But baldly and with almost biblical simplicity, the first laws in these jurisdictions established a precedent which has not been questioned since. This is the paradigm of the style they adopt:

1. This Act may be cited as the Opium Smoking Prohibition Act 1905...
2. No person shall smoke opium.
3. No person shall sell or deal or traffic in opium in any form suitable for smoking.
4. No person shall prepare or manufacture opium in any form suitable for smoking.
5. No person shall have in his possession order or disposition opium in any form suitable for smoking.<sup>10</sup>

Northrop Frye has argued in relation to the Authorized Version of 1611 that the numbering of verses enhances the monadic quality of each fragment.<sup>11</sup> Like a shattered mirror, each shard of which equally reflects the world, the verses of the Bible are each and all a gateway to the same holistic truths. The terse discontinuity of the Bible paradoxically binds its sprawling narrative together. In this simple Act, too, the enumeration does not detract from the rhythmic insistency of the sections but rather enhances their strength.

Poetry, for Frye, is also the language of command: “Let there be light”; “Thou shalt not kill”. The democratic discursivity of prose seeks to persuade

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and to cajole, but a poem is a declaration not an argument, an aphoristic form which brooks no dissent. Are these early laws not likewise written in a declaratory style which idealizes, as do the Ten Commandments, the effect of words upon behaviour? The brevity and absolute nature of these provisions conveys this message. But consider also their tense. Like "Thou shalt not kill", "No person shall smoke opium" describes a future world which is assumed to have become realized in the very making of the enactment. Illegal conduct is not here countenanced: after the passage of this Act, we are told, no person shall smoke opium. We find the same style in many other criminal laws of the time, all of which reflect the moral certitude of the late Victorians, and their corresponding faith in the power and effectiveness of the law.

Admittedly, not all the laws passed at this time are of the same tenor. The first Canadian Act, for example, which dates from 1908, begins:

1. Every person is guilty of an indictable offence and liable to imprisonment for three years, or to a penalty not exceeding one thousand dollars and not less than fifty dollars, or to both, who imports for other than medicinal purposes ... any crude opium or powdered opium, or who manufactures, sells, or offers for sale, or has in his possession for sale, for other than medicinal purposes, any crude opium or powdered opium.

Unlike the previous example, we here begin with an assumption of trespass. It is the wrong-doer who is the focus of the law and not the law-abiding citizen. There is undoubtedly a greater realism at work here, since the law foreshadows a world in which the importation of opium for other than medicinal purposes, although illegal, continues. Nonetheless, the law is simple and to the point. Indeed, for all its density it is shorter than the Victorian Act. Structured as a threat and not a promise, it still conveys an aura of straightforward certainty. It is this terseness and simplicity which characterized the early opium laws around the world.

Over time, the beauty of simplicity, with all the legislative arrogance that implied, has given way to a monumental complexity. In this change we can witness the confidence of law-makers being replaced by a dogged determination. The original Victorian legislation of six sections has expanded to over one hundred, supplemented, moreover, by in excess of a thousand regulations dealing with everything from the granting of licenses to the format of medical prescriptions. In Canada, the Narcotic Control Act remains a relatively modest 28 sections long, although the consolidation and amendments proposed in Bill C-85 would bring the weight of Canadian law in line with that of other Commonwealth jurisdictions. At the same time, in Canada or Australia, the U.S. or the U.K., the number of controlled drugs has

expanded enormously. The original control of opium or opium suitable for smoking was soon modified to include heroin, morphine, cocaine, and ecgonine. But now the relevant drug schedule of any jurisdiction you care to name includes close to 150 substances ranging from the common and the garden to the most obscure products of the laboratory technician's art.<sup>12</sup>

This enormous growth reflects not only the extent to which these substances are now attempted to be controlled in society, but the way in which the law itself has become not just a means of declaring appropriate behaviour but a way of supervising it. The law has changed its mood, from imperative to indicative. But the increasing intrusion of the law into life shows not its power but its failure. The consistent inability of bald and simple laws to prevent 'drug abuse' has led, with manic desperation, to an insistent and exponential increase in both the objects and detail of drug control.

### **THE SEMIOTICS OF THE SHORT TITLE**

The bureaucratization and intrusiveness of drug laws is one way in which drug laws have been transformed over the years, and we have only to listen to the style and feel the weight of drug legislation to appreciate that a profound change has taken place. It is the mood and tense of language in a host of jurisdictions which reveals the extent of this change. Of even more significance has been the shifting rhetoric used to explain the need for drug control. Drugs have come to symbolize very different fears at different times.<sup>13</sup>

The very morphology of the titles of drug laws provides us with a valuable snapshot of these historical currents and eddies. Indeed, it is possible to construct a whole study of drug laws from the perspective of the terminology used by and contained in them. These terminological changes, which appeared natural at the time and yet are in a constant state of flux, reveal through their unconscious and unmediated use of language the changing values and priorities of the community. Law is a part of society, its mirror as well as its mould, and its language is not that of a hermetically sealed formalism. Let us consider, then, the short titles of drug legislation around the world as a semiotic system which reveals the concerns and fears of legislatures at different times – revelations found through carefully evaluating those few words which, as talismans at the head and origin of legislation, captured its approach to the problems which drug use presented.

What after all is a title but an attempt at suzerainty over meaning?<sup>14</sup> On the borderline between text and con-text, the title seeks to define in advance the boundaries of meaning of the words contained within or beneath it. Like a literary title, the title of an Act is not merely an administrative convenience; as Eco writes, it "is already — and unfortunately — a key of

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interpretation".<sup>15</sup> The title in law or literature is therefore a normative and interpretive argument which participates in the power struggle for the legitimacy of its subject-matter. It attempts to justify — and no more clearly or problematically than in the field of drug law — the use of force which lies at the heart of all law, by insisting that the problem it addresses be looked at and characterized in a certain way.

The concept of legal title defines a space of land in a particular fashion and consequently engages in the power struggle for possession of it. So too, the short title defines a social space in a particular fashion and similarly claims legitimacy for a certain view of power relations. It tells us: this is how a certain problem should be looked at, this is the way in which the social event dealt with within this framework, should be defined and dealt with. A short title is indeed like the frame of a painting — it organizes the space within it a certain way and tells us where and how to look. But as Derrida emphasizes, too, a picture frame is not neutral.<sup>16</sup> It purports to act as an objective boundary between the relevant and the irrelevant: but there is nothing objective about such a delineation. The picture frame and the short title alike are part of the work as well as prior to it.

## **POISONS AND OPIUM**

Let us excavate a semiotics of the short title in order to discern the differing purposes which drug laws were meant to achieve from time to time; purposes which showed, in their language, remarkable changes over time and a striking similarity between jurisdictions. In titrating the potential of this kind of approach, to show what it reveals of commonality and difference in the comparative history of drug legislation, we begin by noting that the first laws dealing with the control of drugs were contained in Poisons Acts, such as those of the United Kingdom and cognate legislation throughout the Empire. They were, we may therefore presume, concerned with the dangers of accidental or deliberate poisoning.<sup>17</sup> For most drugs, include opium and morphine, minimal controls simply ensured that they were properly labelled, so that people would not be killed by consuming them unknowingly. The danger of a poison lies in ignorance. There was no attempt to control the conscious use of these drugs, whether habitual, recreational, or otherwise. Wilful (mis)use was not, as yet, problematic or corrupt.

As the thought that people might be poisoning themselves with these substances became less important, other preoccupations began to develop, and drug legislation was by and large removed from the province of the Poisons Acts.<sup>18</sup> There emerged instead Acts such as the Opium Act of 1895 in South Australia, An Act to prohibit the importation, manufacture and sale of Opium for other than medicinal purposes — passed in 1908 in Canada — and, about the same time, the international Opium Convention signed at The

Hague in 1912. What these Acts have in common (the Opium Convention less so) is a pre-occupation with one particular drug, opium. The reason for this is not hard to find: it is because opium was associated with the Chinese, a hated and alien minority in colonial countries such as Canada and Australia. The Victorian legislation is even clearer. Its short title is the Opium Smoking Prohibition Act, 1905. Why is this an Act about 'smoking' rather than any other means of ingestion? – because the Chinese only smoked their opium and only the Chinese did so.<sup>19</sup> The shift of emphasis from 'poison' to 'opium' is therefore significant. It indicates a change in the kind of concern which was driving the developing area of 'drug laws'. Drug laws are now being driven by xenophobia.

For some time the focus on opium — that is, on the Chinese — continues alongside an increasing interest in other drugs used for recreational purposes. Thus in 1911 the Canadians pass An Act to prohibit the improper use of Opium and other Drugs. Notice, then, the bifurcation between "opium" and those "other drugs" which, although not opium (not taken by the Chinese) are nonetheless worthy of control. Notice, too, the use of that word "improper" which suggests that we are not concerned with the safety of consumers, such as might be the brief of a "poisons" Act, but with their propriety. In a way which was not true in relation to Poisons Acts, nor even in relation to the Chinese smoking of opium, we have entered upon moral legislation. Octavius Beale, an Australian Royal Commissioner of peculiar fanaticism, wrote:

It is said that "you cannot make people moral by Act of Parliament." But that is precisely what you can do, and it is the only way ... This doctrine of *laissez-faire*, of unrestraint, [is] in diametrical antithesis to the Christian philosophy, which we surely cannot be expected to ignore.<sup>20</sup>

## **DANGER AND NARCOSIS**

The first comprehensive British legislation parallels this transitional phase. Enacted in 1920, it was entitled An Act to regulate the Importation, Exportation, Manufacture, Sale and Use of Opium and Other Dangerous Drugs. But in the United Kingdom, without the experience of large-scale Chinese migration, the question of opium was less important than elsewhere, and the Act was known as the Dangerous Drugs Act 1920 (U.K.). But there is another significant linguistic shift here. We are beginning to explore why the uncontrolled consumption of drugs such as morphine, heroin, or cocaine was deemed "improper". It is because they are "dangerous" that consumers cannot be trusted with a free market. Legal control is justified not simply



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because of what the drug is or who takes it, as in the case of the "opium smoking" laws, but because of their power. The use of the phrase "dangerous drugs" to describe the objects of legislative control, then, suggests an expansion in the drugs covered by legislation, a rationale for that expansion, and perhaps also a recognition of the need to develop such a rationale.

The vagueness of this rationale, since it says nothing about why certain drugs were to be considered "dangerous", was undoubtedly another reason for its utility for a time. It was a rubric commonly used: the relevant United Kingdom legislation remained the Dangerous Drugs Act from 1920 until 1971; in South Australia the Dangerous Drugs Act was in force from 1934 to 1974; in Victoria the Dangerous Drugs Regulations, 1922 provided the meat and substance of the legislation contained in the Poisons Acts; even in New South Wales, the sections of the dragnet legislation called the Police Offences Act dealing with drugs were commonly known as the "Dangerous Drugs Laws".<sup>21</sup>

Of course, the implied assertion that these Acts were entitled to treat a congeries of substances similarly because they were all "dangerous" begged the question. Why did society respond to their apparent "danger" by either proscribing their use utterly (in the cases of opium for smoking and, later, heroin and marijuana) or, more typically, permitting their consumption only under medical supervision? Some justification was required which would define the issue of drug-taking as a medical problem rather than a social one. It is for this reason that the use of the word "narcotics" comes to be commonplace. First in Canada, where The Opium and Narcotic Drug Act was enacted in 1929; it was re-enacted as the Narcotic Control Act (Can.) from 1961. Then in the States of Australia, with Victoria leading the way, defining all drugs covered by the relevant Part of the Poisons Act, 1930 (Vic.) as "Narcotics". Later we find the Health (Narcotics) Act, 1956 (Vic.), the Commonwealth Narcotic Drugs Act, 1967 (Aust.) and the Narcotic and Psychotropic Drugs Act 1970 (S.A.).

It is only in the 1970s, indeed, that the term begins to lose its currency, as new priorities and concerns began to take shape. From the 1930s to the 1960s, the word "narcotics" was the standard general term used to cover these substances. This was particularly noticeable and influential at the level of the international community, where the Convention for Limiting the Manufacture of and Regulating the Distribution of Narcotic Drugs of 1931 exercised a powerful normative influence on national legislation. In 1946 the Advisory Committee on the Traffic in Opium, the administrative body of the League of Nations which oversaw the growing machinery of international co-operation in this area was renamed, under the United Nations, the Commission on Narcotic Drugs. In 1961 a new treaty consolidated and replaced the previous dozen international agreements in the area. It was

called the Single Convention on Narcotic Drugs.

This kind of linguistic history is more difficult to trace in relation to the United States, because of the unique traditions of that country, at once both highly rationalist and highly individualist. The individualism has led to a practice of naming important Bills for their authors, such as the Harrison Act 1914<sup>22</sup> which had the effect of prohibiting the use of heroin absolutely, whether for medical purposes or otherwise. The rationalism has led to the incorporation of various legislation, enacted at different times, into the complex structure of the United States Code. Accordingly, the law relating to illicit drug use is scattered throughout various Titles of the Code, some parts contained, for example, in the Title dealing with "Food and Drugs" and others under the rubric "The Public Health and Welfare". It is the requirement that legislation conform to a set and pre-existing logical structure which has led to this fragmentation. Nonetheless, even here, we may note that the relevant Part of Title 21 (Food and Drugs) of the 1946 Code dealt with "Narcotic Drugs", while that of 1952 contained, under Public Health and Welfare, provisions concerning "Narcotic Addicts and Other Drug Abusers". We might similarly recall that as early as the 1920s, the Division of the Department of the Treasury which investigated breaches of the Harrison Act was restructured and renamed the Federal Bureau of Narcotics.

What is the effect of the use of placing this crucial word so visibly in the short title of all these Acts and treaties? What message does it convey? It implies that the substances previously identified only as "dangerous" are in fact united in their medical and pharmacological nature as well as by their legal status. There is a patina of scientific legitimacy attached to that central word "narcotics". By using it, the title tells us to expect a certain kind of scientific substance to be dealt with. The frame gives medical legitimacy to the like treatment of the substances dealt with in the Act. Clearly this is untrue: neither cocaine nor cannabis are narcotics (that is, sedative). By categorizing them using a technical medical term, however, their legal treatment was shored up with scientific authority, all the while underscoring the belief that 'drug use' itself was a medical problem.

The word "narcotics", therefore, (a) gives the illusion that there is a scientific basis to legal policy and, (b) presents the drug question as a medical rather than a moral or a social issue. The word acts as a legitimation and as a defence of government intervention. Here, then, we see the power of the language of the title to construct a reality, to expropriate authority by the use of persuasive words, and to redefine a social event — the consumption of cannabis, for example — by placing it within a frame so that it comes to be seen as scientifically dangerous and medically unjustifiable.

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## MISUSE AND ABUSE

By the 1970s, however, the language of narcosis, with its emphasis on the medical dangers of drug use, was no longer an adequate description and justification of people's fears. The concern over drug use which began to crystallize from about 1970 was a more general one. Admittedly this concern was in part related to with the increasing non-medical or recreational use of drugs – thus for example the Canadian government's Royal Commission of Inquiry into the Non-Medical Use of Drugs, or the South Australian Royal Commission which, six years later, bore exactly the same title; and indeed the use of similiar language in academic scholarship.<sup>23</sup> But it was the social symbolism of non-medical use, that is, the way in which it had come to represent non-conformity in general, which was seen to be particularly alarming at that time. For in the light of drug controls which provided a familiar framework of absolute medical power and potent legal sanctions, illegal use challenged both medical sovereignty and legal authority alike. Any illicit use, whether "dangerous" or "addictive" or not, whether of "narcotics" or otherwise, was seen to constitute an affront to both the established order and to professional power.

The language of the law mirrors this refinement. In 1970, that Part of Title 21 of the U.S. Code which had previously dealt with "Narcotic Drugs" became entitled the Drug Abuse Prevention and Control Act. The next year saw passage in the United Kingdom of the Misuse of Drugs Act 1971 (U.K.). So too we may note the Drug Misuse and Trafficking Act, 1985 (N.S.W.) and the Drug Misuse Act 1986 (Qld.). In the substantive provisions of many other Acts there is likewise growing reference to those who "misuse" or "abuse" drugs. "Misuse" and, even more so, "abuse", both return us to an implication of impropriety based on legal and social norms as much as medical ones. The drug user may not be suffering from any medical problem but he or she is nevertheless "abusing" drugs and is therefore subject to the rigours of the law.

In fact, the power of this language comes exactly from the intentional conflation of 'use' with 'misuse' and 'abuse'. Medically, it is possible to simply "use" a drug (whether heroin or cannabis) without suffering harm. But in the language of these laws, this fact is no longer relevant. The use of the word "misuse" or "abuse" to cover any illegal consumption of controlled drugs immediately taints the behaviour as deviant. Again, the short title, by telling us what we can expect to find within the substantive provisions that follow it, help persuade us that anyone who breaks the law is in fact "misusing" or "abusing" drugs. The language encourages us to characterise certain kinds of behaviour in a certain way, and thus exerts a significant normative force in the ostracism of (mis- or ab-) users.

Nowhere is this clearer than in the Misuse of Drugs Act 1971 (U.K.)

which describes itself as “An Act to make new provision with respect to dangerous or otherwise harmful drugs”. Observe, therefore, that the rationale for the law is no longer the fact that drugs are “dangerous”. Some drugs are not dangerous — not, therefore, a threat to the health of users — but remain “otherwise harmful” — a threat to society instead. The Act goes on to define its terms. “Misusing a drug”, it explains placidly, means “misusing it by taking it”.<sup>24</sup> There is no such thing as taking it without misusing it. The effect and purpose of the Act is to label all illegal drug use as misuse. It reflects a concern in which it is no longer the medical aspects of drug use which are seen as terrifying, but rather its place as a species of social deviancy or pathology. In the United Kingdom and in other jurisdictions in which this terminology is taken up, therefore, severe legislation is now justified because the Acts in which it is contained do not simply deal with objects, that is with drugs which are “dangerous” or “narcotic”, but with their “misuse” or “abuse”.

## TRAFFIC

The power of the word “misuse” comes from the establishment of an isomorphism between users and misusers, and its function is to focus on the inappropriateness of the user’s criminal rebellion rather than the dangers of the drug per se. But it must be acknowledged that not all users were or are equally blamed. Increasingly attention has been focused on those who sell drugs: the pedlar, the distributor, and the trafficker. Indeed, through the 1970s and into the present day, it is the seller who does not use who becomes a new image of evil. He is portrayed as a vulture who, unlike his clients, remains in complete control of his faculties and, in calculated fashion, chooses to distribute dangerous and corrupting poisons. New legislation and legislative amendments reflected this new priority. Courts had always, in practice, been harsher on the trafficker than the mere user; in the 1960s, both New South Wales and Victoria consolidated this practice into specific legislative provisions establishing separate and more severe penalties for the sale of controlled drugs.<sup>25</sup> In 1980, the Australian Royal Commission on Drugs recommended the development of a separate Drug Trafficking Act to provide the police with the powers, provisions, and penalties necessary to deal with ‘the drug trade’.<sup>26</sup> In all Australian jurisdictions there is now separate and significantly harsher provision for those who traffic in illegal drugs, or convicted of being in possession of a quantity of an illegal drug deemed for the purposes of the Act to be “traffickable” (to which reverse onus provisions apply).

And what of the language itself — the Drug Misuse and Trafficking Act, 1985 (N.S.W.), the Drug Trafficking Offences Act 1985 (U.K.), and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic

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Substances 1988? Nowhere is the ability of the title to legitimate a reality more evident. Compare, for example, the Victorian Act passed at the same time, entitled the Drugs, Poisons, and Controlled Substances Act, 1981 (Vic.), which does not just deal with “drugs” but treats them in their context as part of a broad family of “substances” such as “poisons”. The language of this Act does not set drugs apart from the rest of the world, but attempts to a limited extent to normalize them and to strip them of their emotive connotations. The Controlled Substances Act, 1984 (S.A.) is even more pointed in this respect. The title of this Act, probably the most liberal legislation to emerge from any comparable jurisdiction, makes a studied effort at neutrality. We are not dealing with “drugs” – only with “substances” of all sorts. Moreover, the title does not attempt to justify in any sense the content of the Act. These substances are “controlled”. In stark contrast to the apparently objective but in fact value-laden titulation we have been noting, no justification for this control is offered. Rather, the title emphasizes the fact of legislative control and no more.

The word “traffic” has dramatically different connotations. In the first place, the very word “traffic” is loaded, echoing with images of the slave trade or electoral bribery. To be involved in ‘traffic’ is already to engage in something morally reprehensible and worthy of repression. The use of the word itself justifies the measures taken in relation to it. Indeed, the word ‘drug’ also shares some of this notoriety. It is a word redolent of indolence and somnolence, hedonism and heinous power. In the context of one hundred years of hysteria, a “drug” “trafficking” Act both proclaims itself a response to this fear, and does more than its fair share in promoting it.

More than this, however, a “trafficking Act” establishes the importance of traffic as a subject deserving of special concentration. This is the short title’s function as a means of structuring reality, and it demonstrates the normative power the law exerts over how we understand and construct the world. The law defines a particular social space — that occupied by the drug trade — as opposed to the infinite other possible ways in which we might define relationships in the world. An Act about “traffic” prioritizes this kind of drug-related behaviour as something which ought to be foregrounded and the focus of legal attention: not the species of drugs used (“opium” and “other”; although, admittedly, there is normally a distinction made between “cannabis”, for which less severe penalties are provided, and “other” drugs) nor the kind of use (“medical” or “non-medical”) nor the extent of use (“recreational” or “addictive”) are held at this stage to be conclusive legal categories. Rather the language of the law encourages us to make judgments about people on the basis of the degree of their involvement in the drug economy.

The New South Wales Drug Misuse and Trafficking Act 1985, for

example, provides different penalty régimes depending on whether the amount of the drug in question was a "small quantity", a traffickable quantity, an "indictable quantity" or a "commercial quantity".<sup>27</sup> The law establishes a moral taxonomy based principally on the amount of drugs involved, which is itself seen to reflect the economic status of the criminal. Monetary and quantitative categories determine and structure our understanding of the degree of wrong-doing, and validate the severity of the law. Laws create categories of thought, and in so doing they define, they set apart, they accuse, and they blame.

The very focus on drugs as an economic problem indicated by the priority of the language of "traffic" marks a significant shift in the priorities of the law. By the 1980s, it was the business of drugs which aroused people's greatest anger and was used to justify the extreme severity of the law. Thus Victorian M.L.A. Williams spoke in high rhetorical dudgeon of "multi-million dollar financiers" who were "wicked men" and "evil monsters". Likewise the Victorian Minister of Health, giving the second reading speech of the Drugs Poisons and Controlled Substances Bill 1983, insisted that "the new dimension of drug abuse was its promotion for profit, the involvement of organized crime".<sup>28</sup> The new symbol of evil was a businessman whose wickedness stemmed from his respectability, his power and his wealth. As the language of "traffic" demonstrates, the drug problem was no longer a question of health or morality, but of economics and power.

## **CONCLUSION**

In drug laws in particular, the brute force of the law is manifest. But this power is sustained by the communal belief in its legitimacy, which is in turn upheld by strategies of rhetoric, the manipulation of language and of reason. It is exactly those argumentative strategies which we have seen the short title deploy with great variety and with considerable effect. The semiotics of drug legislation reveals with great clarity the range and changing focus of those justificatory arguments, repeated in similar fashion in a variety of countries. At the same time, this approach has demonstrated the normative and persuasive power which the framework erected by the law exerts through its capacity to characterise the subject-matter of our lives. We have seen the legislative voice trace (for us) and help determine (for them) a shifting reality in which only the global decibelage and timbre of that voice has remained, to a remarkable degree, constant.

It will do no good, therefore, to try and elaborate reasons for the maintenance of current policy or, for that matter, to use logic to criticize it. For it is not reason which is operative here. As we have seen, the reasons for the continuing hostility of and severe penalties exacted by the law have remained no more constant than the substantive laws themselves.<sup>29</sup> The

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constant anger which finds expression in drug legislation has been pressed into the service of a range of causes and beliefs. But that only makes the constancy of the anger in the face of changing historical circumstances all the more puzzling. We must look beyond reason and argument and politics, therefore, to the visceral and aesthetic symbolism of drugs in order to begin to learn why — differently defined, differently understood, but always vilified — these substances have consistently generated a climate of fear and virulent legislative reaction. What has remained constant through the changing face of reason in all these jurisdictions has been the feelings of revulsion or seduction, of dirt and purity, which images of drugs have always provoked. It is this symbolism which we need to understand.

A single example suggests the directions in which this analysis, itself broadly semiotic in nature, might develop. The Australian Royal Commission of Inquiry into Drugs, chaired by Justice Sir Edward Williams, and commissioned jointly by the States and Commonwealth of Australia, was a document exhaustively researched and carefully compiled. Despite its detail and length, however, everything we need to know about this Commission is to be found in the sixteen pages of colour plates at the front of Book A.<sup>30</sup> The first picture is of a single opium poppy and the last, of a cannabis plant. They are beautifully photographed, elegant, simple, and lush. Between these images of beauty lie maps of world drug production and traffic routes, and page after page of photographs of the fruits of drug raids and custom searches, crudely displayed and harshly lit. Sticks of hashish are paraded alongside the dismantled radio in which they were found, sachets of heroin next to the objects in which they were concealed, and so on. What do these images communicate to us? They convey a message which emphasizes the spirit of perverse inventiveness by which the drug trade is carried on. Yet it is the drug itself which seems to be doing the hiding here. There are without exception no people in these pictures, only objects: agents of corruption and places of secretion. For Mr Justice Williams, the “drug problem” is not a human problem at all, but simply about techniques of importation, law enforcement, and the interdiction of chemicals. Illegality and evasion constitute the sole focus of Justice Williams investigation.

And what of the only two living things in these pictures? Our reaction to them is coloured by the harsh images which are their counterpoint. Our first reaction is perhaps to appreciate the beauty of the opium poppy, but by the time we reach the cannabis plant, this beauty has become ironic. In the context provided by the other pictures, the natural beauty of these plants seems seductive and deceptive. *Papaver somniferum* and *cannabis sativa* may look harmless enough, but like a wanted poster, we are being warned. Theirs is a saccharine, cloying beauty, not of innocence but of depravity. It is the beauty of the femme fatale.

Through our aesthetic reactions and not our capacity to reason, these images symbolize a world view and an argument. They tell us how to look at drugs – how to understand their beauty and how to resist their allure, what aspects of the drug problem matter and what are to be ignored. All these messages are conveyed simply through the operation of the visual, through a semiotic system which effectively juxtaposes beauty and brutality. But the images I have explored do not merely illustrate what beliefs are operative here; they are a powerful instrument in their construction. The design of the colour plates for the Australian Royal Commission of Inquiry into Drugs was neither a calculated manipulation of the emotions of the reader, nor a coincidence. It reveals a response to the problem of drugs grounded in aesthetic reactions. A revulsion to certain images, and a concept of beauty as purity, guided the Commission throughout the execution of its task. In the imagery of the Royal Commission we can see that the constant hostility to drugs is not driven by logic or ethics but by a certain aesthetic semiotics.

At this point, I have only suggested that the idea of drugs generates complex aesthetic reactions of great symbolic importance, and provided, by way of introduction, one example of how such an analysis might proceed. A more specific and detailed analysis is called for. By focusing on the symbolism of drugs, we may begin to explain the intensity of emotion which surrounds the question of drug use in society and of which the law is a clear and constant reflection. And knowing what is really at stake, we may yet be able to address the fears which drug use arouse: to shift the focus of drug imagery from the seductive evil of the poppy's juice and the devious hiding-places of corrupt traffickers, and instead to focus on the pained faces of those who suffer because of the brutal drug legislation we insist upon imposing on them.

## NOTES

- <sup>1</sup> *Customs Act, 1901-1979* (Cwth.), s.235; *Drugs Poisons and Controlled Substances Act 1981-1983* (Vic.), s.71; *Controlled Substances Act, 1984* (S.A.), s.32(5); *Drug Misuse and Trafficking Act 1985* (N.S.W.), ss. 23(2), 24(2), 25(2) & 33; *Drugs Misuse Act Amendment Act 1990* (Qld.); *Drugs of Dependence Act 1989* (A.C.T.), s.164
- <sup>2</sup> *Narcotic Control Act, R.S.C., 1985*, s. 4. See R. Solomon & S. Usprich, "Canada's Drug Laws", *J. of Drug Issues* 21 (1991), 17.
- <sup>3</sup> See D. Manderson, *From Mr. Sin to Mr. Big — A History of Australian Drug Laws* (Melbourne: Oxford University Press, 1993). See also D. Musto, *The American Disease* (New Haven: Yale University Press, 1973); V. Berridge & G. Edwards, *Opium and the People* (London: St. Martin's Press, 1981).
- <sup>4</sup> B.S. Jackson, *Semiotics and Legal Theory*; R. Kvelson, "Semiotics and Methods



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- of Legal Inquiry". 61 *Ind. L.J.* (1985) 355; R. Kevelson, *The Law as a System of Signs* (New York: Plenum Press, 1988).
- <sup>5</sup> Quoted in R. Benson, "The Semiotic Web of the Law", in R. Kevelson, ed., *Law and Semiotics, Volume 1* (New York: Plenum Press, 1987) at 42-43; and in R. Benson, "How Judges Fool Themselves", in R. Kevelson, ed., *Law and Semiotics, Volume 2* (New York: Plenum Press, 1988) at 39; and see U. Eco, *Semiotics and the Philosophy of Language* (Bloomington: Indiana Univ. Press, 1984).
- <sup>6</sup> See the critique of legal semiotics in C. Douzinas and R. Warrington, *Postmodern Jurisprudence* (London: Routledge, 1991), at 99-100.
- <sup>7</sup> R. Kevelson, ed., *Law and Semiotics, vols. 1-3* (New York: Plenum Press, 1987-9).
- <sup>8</sup> In general, see P. Goodrich, *Reading the Law* (Oxford: Blackwell, 1986); P. Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (Basingstoke, Hamps: Macmillan, 1987); P. Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld & Nicholson, 1990).
- <sup>9</sup> For example, *Aboriginals Protection and Restriction of the Sale of Opium Act, 1891* (Qld.); *Opium Act, 1895* (S.A.); *Opium Smoking Prohibition Act 1905* (Vic.); *Sale of Opium Act 1908* (Can.).
- <sup>10</sup> *Opium Smoking Prohibition Act 1905* (Vic.).
- <sup>11</sup> N. Frye, *The Great Code: The Bible and Literature* (Toronto: Academic Press Canada, 1982), 207-08.
- <sup>12</sup> For example, *Prohibited Substances Control Act, Bill C-85* (Can.); *Narcotic Control Act* (Can.), R.S.C., 1985, c. N-1; *Drugs, Poisons, and Controlled Substances Act 1981-92* (Vic.); *Misuse of Drugs Act, 1971* (U.K.); *Drug Traffic Offences Act 1986* (U.K.).
- <sup>13</sup> For Canada, see — S. Small, "Canadian Narcotics Legislation 1908-1923: A Conflict Model Interpretation" *Can. Rev. of Socio. & Anthro.* 6 (1969), 36; R. Solomon and M. Green, "The First Century: The History of Non-medical Opiate Use and Control Policies in Canada", *Univ. West. Ont. L. Rev.* 20 (1982), 307; P.J. Giffenet al., *Panic and Indifference: The Politics of Canada's Drug Laws, A Study in the Sociology of Law* (Ottawa: Canadian Centre on Substance Abuse, 1991); for Australia, see — D. Manderson, "The First Loss of Freedom: Early Opium Laws in Australia", *Aust. Drug and Alcohol Rev.* 7 (1992), 439; D. Manderson, "Trends and Influences in the History of Australian Drug Legislation" *J. of Drug Issues* 22 (1992), 507; D. Manderson, *From Mr Sin to Mr Big: a History of Australian Drug Laws* (Melbourne: Oxford University Press, 1993); A. McCoy, *Drug Traffic* (Sydney: Harper & Row, 1980); for the U.K., see — V. Berridge and G. Edwards, *Opium and the People* (London: St Martin's Press, 1981); V. Berridge, "War Conditions and Narcotics Control: The Passing of the Defence of the Realm Act Regulation 40B" *J. Social Policy* 7 (1982), 285; P. Morgan, "The Legislation of Drug Laws: Economic Crisis and Social

- Control" *J. Drug Issues* 8 (1978), 53; for the U.S.A., see — D. Musto, *The American Disease* (New Haven: Yale University Press, 1973); R. Bonnie and C. Whitebread, *The Marijuana Conviction* (Charlottesville: University Press of Virginia, 1974); J. Helmer, *Drugs and Minority Oppression* (New York: Seabury Press, 1975); H. Morgan, *Drugs in America — A Social History 1800-1980* (Syracuse: Syracuse University Press, 1981); D. Courtwright, *Dark Paradise* (Cambridge, Mass.: Harvard Univ. Press, 1982)
- <sup>14</sup> See N. Horn, "tityrus", *Law/Text/Culture* 1 (1994); G. Genette, "Structure and Function of the Title in Literature", *Critical Inquiry* 14 (1988), 692; J. Derrida, "TITLE: To be specified", *Sub-stance* 31 (1988), 5.
- <sup>15</sup> Quoted in Genette, *supra* note 14, at 719.
- <sup>16</sup> J. Derrida, trans. G. Bennington & I. McLeod, *The Truth in Painting* (Chicago: University of Chicago Press, 1987).
- <sup>17</sup> *Sale of Poisons Act, 1852* (U.K.); *Sale and Use of Poisons Act 1876* (N.S.W.); *Sale and Use of Poisons Act 1876* (Vic.).
- <sup>18</sup> The one solitary exception was in Victoria, where drug laws remained as part of the Poisons Act until as late as 1981: see for example the *Poisons Act, 1915* (Vic.), the *Poisons Act, 1962* (Vic.) and the *Poisons (Drugs of Addiction) Act, 1976*. In New South Wales, drug laws were transferred back to the *Poisons Act, 1966* but relocated again in 1985: see *Poisons Act, 1966* (NSW) and *Drug Misuse and Trafficking Act, 1985* (NSW).
- <sup>19</sup> See Manderson, *supra* note 13; Helmer, *supra* note 13; Green, *supra* note 13; N. Boyd, "The Origin of Canadian Narcotics Legislation", *Dalhousie L.J.* 8 (1984), 102.
- <sup>20</sup> Commonwealth of Australia, *Royal Commission Into Secret Drugs, Cures, and Foods* (O. Beale, Commissioner) (Melbourne: Government Printer, 1907), 26, 418.
- <sup>21</sup> See *Police Offences Amendment (Drugs) Act, 1927* (N.S.W.) and its successors.
- <sup>22</sup> *United States Code*, Title 26.
- <sup>23</sup> Government of Canada, *Commission of Inquiry into the Non-medical Use of Drugs, Final Report* (G. Le Dain, Chair) (Ottawa: Government Printer, 1973) South Australia, *Final Report of the Royal Commission into the Non-medical Use of Drugs, South Australia* (R. Sackville, Chair) (Adelaide: Gillingham Printers, 1979); and see for example R. Solomon. & T. Madison, "The Evolution of Non-Medical Opiate Use in Canada – Part 1 1870-1929", *Drug Forum* 5(3) (1976-77), 237-65; R. Solomon, "The Evolution of Non-Medical Opiate Use in Canada – Part 2: 1930-1970", *Drug Forum* 6(1) (1977-78), 1-25.
- <sup>24</sup> *Misuse of Drugs Act 1971* (UK), s. 37(2).
- <sup>25</sup> *Poisons Act, 1962* (Vic.), ss. 32 & 34(2); *Poisons Act 1966* (NSW), ss. 21 & 32; *Poisons (Amendment) Act 1970* (NSW), ss. 21 & 45a.
- <sup>26</sup> Commonwealth and States of Australia, *Australian Royal Commission of Inquiry Into Drugs, Books A-F* (Sir Edward Williams, Commissioner) (Canberra:

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Aust. Govt. Publishing Service. 1980), Book F.

<sup>27</sup> *Drug Misuse and Trafficking Act 1985* (N.S.W.), ss.29, 30-33. I use the term “traffickable quantity” analogously with the language of other jurisdictions on the basis of the deeming provisions of s.29.

<sup>28</sup> *Victorian Parliamentary Debates*, Session 1982-83, 3531-32; *Victorian Parliamentary Debates*, Session 1983-84, 2113; *Victorian Parliamentary Debates* Session 1983-84, 5294.

<sup>29</sup> See also J. Himmelstein, “From Killer Weed to Drop-out Drug”, *Contemporary Crises* 7 (1983), 13-38.

<sup>30</sup> Commonwealth and States of Australia, *supra* note 26, following page xx.